



Australian Banking
Association



Submission to the Senate Standing Committee on Economics:
Treasury Laws Amendment (Better targeted Superannuation
Concessions and Other Measures) Bill 2023

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Submission

The Australian Banking Association (**ABA**) welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee inquiry into the Treasury Laws Amendment (Better targeted Superannuation Concessions and Other Measures) Bill 2023 (**Bill**). ABA's submission is confined to the proposed amendments to the *Payment Systems (Regulation) Act 1998* (**PSRA**) in Schedule 8 of the Bill.

ABA strongly supports the proposed amendments to the PSRA.

Summary

ABA's key points are:

1. ABA supports the proposed amendments to the PSRA clarifying its application to newer forms of systems and participants, and addressing changes in digital payments.
2. **Form and timing:** ABA strongly recommends the amendments to the PSRA being considered by Parliament as a stand-alone bill and at the earliest opportunity.

Regulatory context

Since the PSRA was passed by Parliament in 1998, the ways consumers, government, businesses make and receive payment have changed significantly. The Review of the Australian Payments System (August 2021) recognised the Reserve Bank of Australia (**RBA**)'s jurisdiction under the PSRA does not capture the full range of payment systems and participants active in Australia today. This gap can adversely affect the RBA's ability to provide oversight of the efficiency and competitiveness of the Australian payments system which can ultimately affect consumers' trust in the Australian payments system.

It is therefore critical for the RBA to have clear, up to date and fit-for-purpose regulatory powers to perform its role as the primary payment systems regulator. Importantly, this includes the ability to monitor and regulate new technologies and participants.

As the nation continues to embrace the digital era, ABA urges Parliament to pass Schedule 8 of the Bill swiftly to ensure that the payments system remains secure, resilient, and conducive to economic growth.

Recommendation: form and timing

The proposed amendments to the PSRA are currently included in the omnibus Bill.

Given the importance of the proposed changes and speed of change in the payments system, ABA recommends the amendments to the PSRA being removed from the omnibus Bill to become a stand-alone bill. This can allow the stand-alone Bill to be considered by Parliament at the earliest opportunity.

Other key amendments

ABA supports the proposed amendments to give RBA's responsibility in relation to a broader range of payment systems and their participants, to introduce certain powers for the Minister including a power to designate payment systems, and to strengthen the regulatory powers available to the RBA and special nominated regulators in relation to designated payment systems.



ABA supports the powers under the PSRA being subject to a public interest test (in the case of the RBA) or a national interest test (in the case of the Minister). These tests would help to ensure that the powers under the PSRA would only be exercised where doing so would be in the public interest or national interest.

ABA supports the proposed amendments to the definitions of 'payment system' and 'participant'.

The explanatory memorandum states that the revised definition of 'payment system' would apply to arrangements that are digital asset payment systems, closed loop or three-party systems, buy now pay later, or those that enable or provide for the exchange of 'payment instructions, authorisation messages and token keys'. ABA agrees with this approach and considers the expanded definition would appropriately apply to systems that perform a gateway function to authorise, permit or limit access to certain payments services and technology, and would ensure RBA's regulation can apply to all relevant payment systems where it is in the public interest to do so, not just some.

For example, under RBA regulations, card schemes cannot prohibit merchants from surcharging for credit or debit card payments; however, buy now pay later (BNPL) providers are not subject to RBA regulation and can prohibit merchants from surcharging for BNPL.¹

The revised definition of 'participant' would apply to a broader range of entities in the Australian payments industry, even if (for example) they do not issue a card to a consumer, or clear and settle payments in a payment system. This definition appropriately recognises the range of services and products available today that are not directly governed by the rules of a payment system, yet perform an important role in facilitating consumers, Government, businesses and other entities to make and/or receive payment.

ABA considers it is appropriate the revised definitions can apply to foreign entities that operate in Australia.

ABA also supports the proposal for the RBA or a nominated special regulator to collect and publish certain information. Doing so can help to inform decisions about whether to exercise the regulatory powers provided under the PSRA. ABA notes that a legislative requirement to report data and a legislative power to publish data would override commercial confidentiality agreements.

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About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

¹ The *Competition and Consumer Act 2010* limits the amount businesses can surcharge customers, the limit being linked to the direct costs of the payment method.