# EPAA SUBMISSION TO

# REFORMS TO THE PAYMENT SYSTEMS (REGULATION) ACT 1998 – EXPOSURE DRAFT LEGISLATION

**Country of Origin:**
Australia

**Department:**
Payments System and Strategy Unit
The Treasury

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Submission by email to: paymentsconsultation@treasury.gov.au

**Title: Response to "Reforms to the Payment Systems (Regulation) Act 1998 – Exposure draft legislation"**

Please find attached the submission of the Emerging Payments Association Asia (EPAA) to the Reforms to the Payment Systems (Regulation) Act 1998 – Exposure draft legislation released by the Commonwealth Treasury in October 2023.

EPAA's goal is to unify the payments agenda in the region, drive business development and improve the regulatory landscape for all organisations within the payments value chain. We are a community of payments organisations whose goal is to strengthen and expand the payments industry for the benefit of all stakeholders. More information about EPAA can be found on our website www.emergingpaymentsasia.org .

Please note, that while we have consulted with our membership, any views expressed in this submission are solely the views of EPAA and do not necessarily represent the views of individual contributors / EPAA Ambassadors or individual EPAA Members.

EPAA has been supportive of the Australian Government's payments reform agenda and is broadly comfortable with the direction of the changes to Payment Systems (Regulation) Act (PSRA). We believe that these reforms will create a more robust regulatory framework that will provide greater certainty for industry participants and greater confidence for consumers.

Australia's reforms are occurring within a rapidly evolving global regulatory environment, which includes the G20 cross-border payments agenda and regulatory reforms within a number of Australia's major trading partners. As well, Australia is now party to a number of multilateral and bilateral agreements, such as the Australia – Singapore Digital Economy Agreement, where electronic payments feature as an item for cooperation and coordination. This is important as payment reform should not be seen solely as a domestic policy issue but also as a matter with international trade ramifications, including Australia's attractiveness as a place to invest and do business as well as supporting regional and global trade through more efficient and secure cross-border payment options.

We note that a number of the concerns raised as part of the June-July 2023 consultation have been addressed in the Exposure Draft, in particular more carefully accommodating the Minister's new national interest test alongside the Reserve Bank of Australia's existing public interest test. We welcome these inclusions.

Below are comments on issues that we raised in the previous consultation that we believe warrant consideration prior to the bill being introduced to the Australian Parliament.

**1. Definition of 'payment system' and 'participant'**

The definitions for 'participant' and 'payment system' are critical to updating the PSRA so that it is more responsive to a continuously evolving payments ecosystem.

The enhanced definition of 'participant' has been designed to capture providers that have, to date, operated outside of regulatory oversight and we appreciate the clarification provided on its intended scope within the Draft Explanatory Materials.

However, we do have some concerns in respect to the revised definition of 'payment system'.

Firstly, we would question the removal of the word 'facilitates' from the definition of 'payment system'. This may result in a proposed definition that is actually narrower than the current definition. Our concern is premised on there being entities that operate as both participants within a system yet also run their own system within the other system. It is possible that those 'nested' arrangements would not be considered payment systems in the absence of the term 'facilitates'. It should be noted that there is nothing that prevents an entity operating as both a participant in a system and then also operating its own system – so any notion of mutual exclusion between the definitions of 'participant' and 'payment system' is not well founded.

On a related matter, we are also concerned about the continued focus on 'transfer of funds' in the revised definition of 'payment system' as it has the potential to miss where a system supports a transfer of messages between participants and not necessarily a transfer of funds. One example of this would be Swift, which supports the transfer of messages between financial institutions but not value, yet it would be difficult to argue that Swift should be excluded from the definition of 'payment system'.

More generally, we believe that the relevant definitions in the PSRA should be designed so that there is access to relevant underlying infrastructure, regardless of the technology used, so as to ensure interoperability, and to promote competition and innovation, while recognising certain access restrictions may be warranted to control risks.

Further and as noted in our previous submission, we would appreciate any further clarification that could be provided by the Treasury as to how these definitions should be read alongside the payment functions captured through the proposed licensing regime. We believe it is important that there are no 'gaps' whereby significant players could avoid both designation and licensing because relevant definitions were not broad enough.

**2. The Minister's 'national interest' test**

We appreciate the efforts made within the Exposure Draft to ensure that the national interest test for the Minister and the public interest test for the RBA should be treated as mutually exclusive, including recognising that the Minister may designate even if the RBA has previously designated on public interest grounds.

While the clarity provided around the operation of the safeguards and consultation process prior to Ministerial designation is appreciated, we continue to remain concerned that these processes could inhibit quick action in the case of a genuine emergency (for example, a system-wide cyberattack).

We further appreciate the clarification provided at 1.30 in the Draft Explanatory Materials as to the topic areas that would inform the exercise of the national interest test by the Minister. As we noted in our previous submission, while the national interest test is well established within other areas of Commonwealth law, its application in payments would be new and, as such, we would strongly encourage the development of clear criteria for interpretation of the national interest test and application of the Minister's designation powers. This would provide industry participants with greater visibility and comfort as to the interpretation of this test and the use of these new powers.

We are more than happy to expand further on the items raised in this submission or to provide further information. If you do have any comments or questions, please feel free to contact me at camilla.bullock@emergingpaymentsasia.org or Dr Brad Pragnell at brad.pragnell@34south45north.com.

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