

SENATE ECONOMICS LEGISLATION COMMITTEE

TREASURY LAWS AMENDMENT (BETTER TARGETED SUPERANNUATION CONCESSIONS AND OTHER MEASURES) BILL 2023

18 APRIL 2024

Questions on notice

1. What are the RBA's views on the final six dot points in Block's submission to the Committee?

Where the factors listed by Block are within the scope of the Reserve Bank's payments regulatory mandate, Block is encouraged to provide a submission directly to the Bank as part of the Bank's upcoming Review of Retail Payments Regulation. However, some of the factors listed by Block are outside the scope of the Bank's payments system mandate, such as the effect on the consumer credit market.

Under the *Payment Systems (Regulation) Act 1998* (PSRA), broadly speaking, the Bank is empowered to designate payment systems and impose regulations on participants in designated payment systems when it considers that it is in the public interest to do so. To determine whether such regulatory action is in the public interest, the Bank must consider financial safety, efficiency, competition and risk to the financial system. The Bank's existing formal regulations under the PSRA seek to address inefficient market outcomes. In addition, when conducting a policy impact analysis, the Bank follows the Office of Impact Analysis recommendation to consider whether there is market failure, regulatory failure or unacceptable risk.

Informed by its governing legislation and the original intent of the legislators, the Bank's approach has long been to work constructively with industry to encourage it to address efficiency, competition and safety issues. But it also stands ready to impose regulation where industry has failed to promote these objectives and where it is in the public interest. For example, the Bank was not able to reach agreement with the card schemes to give merchants the choice to surcharge payments and instead introduced a standard under the PSRA in 2003.

If and when the amendments to the PSRA are passed by Parliament, the Bank intends to conduct a comprehensive Review of Retail Payments Regulation, providing an opportunity for extensive consultation on policy issues. The review will revisit the Bank's policy stance on BNPL surcharging, and stakeholders like Block are encouraged to provide a submission to the review.

In considering any policies or regulations, the Bank will examine a range of issues and evidence. When revisiting whether BNPL providers should allow merchants to surcharge, the factors the Bank intends to examine include:

- recent BNPL market trends, including market size as well as the level and change in merchant fees;
- the services offered by BNPL providers to merchants;
- the effect of BNPL providers' no-surcharge rules on payment system efficiency;
- the entry of BNPL providers and their role in fostering innovation to meet end-user needs;
- other issues raised by stakeholders.

The Bank values the input of all stakeholders and welcomes feedback on the issues that they believe the Bank should consider as part of its review.

2. What consultation processes does the RBA engage in before imposing a standard or access regime under the *Payment Systems (Regulation) Act 1998*?

Legislative requirements

The [*Payment Systems \(Regulation\) Act 1998*](#) gives the Reserve Bank the authority to 'designate' a payment system if it considers that doing so is in the public interest. In considering the public interest, the Bank is to have regard to safety, efficiency, competition and systemic risk. Having designated a payment system, the Bank may then set an access regime or determine standards for participants in a designated payment system by legislative instrument if it considers that doing so is in the public interest.

Section 17 of the [*Legislation Act 2003*](#) requires that, before making a legislative instrument (including an access regime or standard), the Bank must be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to the proposed instrument. In accordance with section 15J of the [*Legislation Act 2003*](#), the explanatory statement for any access regime or standard must describe, amongst other things, the nature of any consultation undertaken by the Bank.

The Bank has a presumption in favour of self-regulation.¹ The Explanatory Memorandum for the *Payment Systems (Regulation) Bill 1998* made clear that the intent of the legislators was for the Bank's regulatory powers to be used sparingly. It stated that:

"The philosophy of the Bill is, however, co-regulatory. Industry will continue to operate by self-regulation in so far as such regulation promotes an efficient, competitive and stable payments system. Where the RBA considers it in the public interest to intervene, the Bill empowers it to designate a payment system and develop access regimes and standards in close consultation with the industry and other interested parties."

This has been the approach adopted by the Bank; it imposes regulation only where it considers it necessary in the public interest and where the industry is unable or unwilling to address the Bank's concerns. Any regulatory action by the Bank is generally preceded by lengthy consultations with the industry in an effort to arrive at a non-regulatory solution. The Explanatory Memorandum also states an expectation that the Bank will generally only designate a payment system after substantial consultation with participants and consideration of alternative regulatory approaches and voluntary arrangements have been exhausted.

The Bank's usual consultation process

The Bank's usual approach to consultation for regulation can be described in three steps. Firstly, the Bank releases an issues paper which outlines the background, key policy considerations and poses questions to invite responses from stakeholders. The aim of the issues paper is to spotlight key issues that we wish to seek views on and present the issues from a neutral standpoint to avoid pre-judging a potential policy response. The issues paper is typically published on the Bank's website. The Bank usually invites both written or verbal submissions and will meet with the most critical stakeholders at a minimum. Stakeholders are able to make public submissions and/or confidential submissions.

The Bank then considers the feedback given by stakeholders on the issues paper and develops proposals for new or amended regulation. These proposals are shared publicly in a consultation paper which would

1 See [Approach to Regulation | RBA](#) for further information.

be published and provide an opportunity for stakeholders to respond via written or verbal submission, similar to the process for an issues paper. The Bank then conducts a second round of meetings with interested stakeholders to discuss their feedback on the regulatory proposals. After this, the Bank considers the feedback received from the consultation paper, and makes any necessary amendments to the proposed regulation, and submits an Impact Assessment of the proposed regulation to the Office of Impact Analysis.

The final step includes a conclusions paper and implementation of any new or amended regulation. The conclusions paper summarises the background, process for consultation, key issues and policy considerations as well as the policy position and/or regulatory actions determined. The conclusions paper, along with the issues paper, consultation paper and Impact Assessment are all reviewed and approved by the Payments System Board.

Given that the Bank and the ACCC both have legislative responsibilities for access and competition policy in the payments system, there are also arrangements in place to ensure mutual consultation on relevant issues. As set out in a [Memorandum of Understanding](#), the Bank and the ACCC agree that when either organisation is determining policy with respect to competition in the payments system, including access, or when the RBA is considering designating a payment system, each will, where appropriate:

- notify the other of policy issues being considered, and advise the approach it proposes to take to seeking information and formulating policy, and the date by which it anticipates a policy decision will be reached;
- provide the other the opportunity for private discussions on the proposed policy, prior to any public consultation period. Discussions will be on the basis of material prepared by the organisation with responsibility for the policy; and
- provide opportunity to the other for comment on draft determinations, plans to authorise or impose access rules and plans to set relevant standards, prior to their release for public comment.