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18 March 2024

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## **Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023**

### **Schedule 8 Amendment of the Payment Systems (Regulation) Act 1998**

This letter comments on the amendments proposed to be made by Schedule 8 of the Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 (“**Bill**”) to the Payment Systems (Regulation) Act 1998 (Cth) (“**Act**”). It is provided in the context of the recommendations made in the report of the Australian Government’s Payments System Review (“**Review**”), dated June 2021 (“**Report**”).<sup>1</sup> Although I led the Review, this letter is not provided in any official capacity (nor as representative of any particular organisation) and it should not be read as going beyond the Report in any way.

The purpose of this letter is to confirm the consistency of the amendments to be made to the Act by Schedule 8 to the Bill with two of the recommendations made in the Report.

The Review made 15 recommendations which are set out in the Report. The most relevant recommendations to the Bill are numbers 6 and 7. These are set out below (from page xii):

#### **Recommendation 6: Expand definition of payment system in the PSRA**

The RBA should be better positioned to regulate new and emerging payment systems that are part of the changing and growing payments ecosystem.

Expanding the definition of a payment system will broaden the RBA’s ability to designate new and emerging payment systems under the Payment Systems (Regulation) Act 1998 (PSRA), where it is in the public interest as defined in the PSRA.

#### **Recommendation 7 – Introduce a Ministerial designation power**

The Treasurer should have the power to designate payment systems and participants of designated payment systems where it is in the national interest to do so. The designation power includes the power to direct regulators to develop regulatory rules and the power for the Treasurer to give binding directions to operators of, or participants in, payment systems.

These recommendations are explained in more detail in pages 53 to 58 of the Report under the heading “A modernised regulatory framework”. The Report states (at page 54):

... as the payments ecosystem continues to evolve, the regulatory architecture needs to be flexible to adapt to new products and services, facilitate the entrance of both small and large [Payment Service Providers], and coordinate system wide innovations.

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<sup>1</sup> The report is available on The Treasury website: <https://treasury.gov.au/publication/p2021-198587>.

And, in respect of Recommendation 6 (at page 54):

Part 3 found that the RBA's designation power is limited by the PSRA definition of a 'payment system'. The definition may no longer adequately capture the full suite of payment systems within the ecosystem and, as a result, there are providers that could fall outside the regulatory scope of the RBA.

Expanding the definition of a 'payment system' would bring the RBA's designation power up to date. It would provide additional flexibility for the RBA to designate in the public interest in accordance with the PSRA, and allow it to better respond to financial stability, efficiency or competition risks posed by new innovations in the payments ecosystem.

In respect of Recommendation 7, the Report states (at page 54):

The RBA is precluded from exercising its powers based on considerations that are broader than the defined term of 'public interest' – for example, national security and consumer protection. These issues are beyond the RBA's mandate, powers, expertise, and role in the ecosystem. As a result, the RBA is not the appropriate entity to respond to these issues.

To ensure that emerging payments issues that fall outside the scope of the RBAs mandates are able to be brought within regulation where it is in the national interest to do so, the Review recommends that a broader designation power should rest with the Treasurer. Further, the Treasurer would be able to exercise these powers on wider grounds than the RBA and would not be limited by considerations of financial stability, competition, and efficiency.

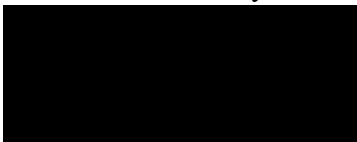
In the context of both Recommendations, the Report also states (at page 55):

The Review envisages that the RBA would continue to designate payment systems based on financial stability, efficiency, or competition considerations. Where a designation is required in the national interest for reasons beyond financial stability, efficiency, or competition, the decision to designate should be vested in the Treasurer.

The Report also noted alignment with other jurisdictions that have vested designation powers in their responsible Minister, including in the United Kingdom and Canada.

Accordingly, in my view, the amendments proposed to be made to the PSRA by the Bill are consistent with Recommendations 6 and 7 of the Review, as set out in the Report.

Yours sincerely



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