

FinTech Australia
Level 5, 11 York Street
Sydney, NSW 2000

Mr Alan Raine
Committee Secretary
Senate Economics Legislation Committee

By email: economics.sen@aph.gov.au

RE: Inquiry into Treasury Law Amendment (Better targeted Superannuation Concessions and Other Measures) Bill 2023

Thank you for the opportunity to contribute to the Senate Economics Legislation Committee Inquiry into the Treasury Law Amendment (Better targeted Superannuation Concessions and Other Measures) Bill 2023.

About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech sector, representing over 400 fintech companies and startups across Australia. As part of this, we work with a range of businesses in Australia's fintech ecosystem, including fintechs engaging in payments, consumer and SME lending, wealthtech and neobanking, the consumer data right and the crypto, blockchain and Web3 space.

Overview

Our submission focuses on the proposed changes to the payments system regulatory framework to allow the RBA and Treasurer to regulate a broader range of payment systems and the participants within them. While we support these amendments in principle and the intent behind expanding the payments regulatory perimeter, given the scope of the proposed changes we believe greater scrutiny of the appropriate checks and balances is required.

It is also crucial to exercise caution and ensure that the overarching focus in using these powers is to support a more competitive, efficient, and innovation-enabling regulatory landscape for payments. Expanding the regulator's remit to consider a broader range of payment functions and participants can enable this and will provide flexibility to adapt to a changing payments ecosystem.

However, it is essential to strike the right balance between regulatory oversight and fostering an environment that encourages fintech innovation and competition. By exercising these powers judiciously, regulators and policy makers can help create a regulatory environment that fosters a vibrant and competitive fintech ecosystem while safeguarding consumer interests.

Importance of payments reform for Australia's FinTech Sector

Payments has historically been a highly regulated sector with regulatory obligations having a far-ranging impact on market dynamics and competition. The rationale for this regulatory intervention is underpinned by the very specific market characteristics that apply in the currently limited remit of payments licensing.

Under the proposed changes, the regulatory perimeter for payments is expanded to a far greater range of payment-related functions. Many of these will not have the same market characteristics as those that are currently regulated. As fintechs have emerged, many payment-related functions are becoming highly competitive and dynamic. In these circumstances the same regulatory obligations are unlikely to yield the same results and may have adverse impact on the ability for new entrants to emerge and innovate.

Importance of oversight and adequate consultation

A cautious approach to new payments reform is particularly important given a designation is likely to have a significant regulatory impact on participants. Adequate public consultation and impact analysis would ensure the power is subject to appropriate guardrails and is an informed and transparent decision. As noted in our previous submission to the exposure draft, similar public consultation requirements have been enacted for new sectoral designations under the Consumer Data Right framework. Under these requirements, the Minister must be satisfied before making a designation that the Treasury has conducted consultation and analysis about the designation and published a report about that analysis and consultation.¹

In this sense, adequate oversight mechanisms should be established to ensure accountability and prevent regulatory overreach. This includes formal requirements that show appropriate analysis about decisions have been undertaken. However, we also note that designation alone does not impose regulatory obligations and any consultation requirements should be balanced with avoiding unnecessarily delays to designations which are clearly in the national interest.

¹ See s56AC of the Competition and Consumer Act 2010.

In addition, a first principles review should be conducted of what regulatory obligations are appropriate under the broader perimeter. Regulators should assess the competition impact of obligations and an evidence-based review of impacts of new obligations. This may include being required to demonstrate that a market is uncompetitive or a market failure exists before imposing regulations designed to address those exact situations. To support this, the ACCC should conduct a review of competition in Retail Payments in conjunction with the expansion of payments licensing reforms. This should consider how the new licensing regime can best support growth, innovation and competition in Australia's fintech sector.

National interest test

While we welcome the additional clarity and guidance on how the public and national interest tests will apply in designating a payments system, some members remain concerned the tests have insufficient regard for the role of non-regulatory solutions, other regulations which already apply, and the impact of regulating networks with smaller number and value of transactions. Even without designation, the uncertainty created could reduce competition, consumer choice and discourage investment in Australia by smaller networks which may now be captured.

FinTech Australia previously provided feedback on the need for the national interest test to be guided by a clear list of relevant considerations. We support the approach taken to set these out in the explanatory memorandum but would recommend that this also be included in the legislation.

In addition, we recommend adding 'competition' as an additional factor considered in the national interest test. Competition is a key theme underpinning the Strategic Plan for the Payments System outlined by the Government earlier this year and should be a consideration when the Minister makes a designation and including this would more closely align this test with the 'competitive' and 'efficient' considerations currently included at section 8 of the PSRA.

Requiring specific criteria to be considered as part of the test also aligns with similar powers for the payments system regimes in the UK and New Zealand. However, we note these regimes go even further and require consideration of matters like the nature of the system, the number and value of the transactions the system processes and the relationship between the system and other payment systems. Fairness and consistency for participants and proportionate regulatory outcomes for systems are also important considerations. We would recommend including similar considerations in the national interest test too.

Thank you for the opportunity to make this submission. We look forward to ongoing engagement with the Committee. Please do not hesitate to contact us if you require further input or clarification.