



Response to the Treasury on
Reforms to the Payment Systems
(Regulation) Act 1998 – Exposure
Draft Legislation

1 November 2023

Sally Etherington
Director
Payments Strategy and Policy Unit
Financial System Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: paymentsconsultation@treasury.gov.au

Dear Ms Etherington,

Visa submission to the Treasury on Reforms to the Payment Systems (Regulation) Act 1998 – Exposure Draft Legislation

Visa welcomes the opportunity to share its perspectives on Treasury’s Consultation Paper on Reforms to the Payment Systems (Regulation) Act 1998 (PSRA) – Exposure Draft Legislation (Consultation Paper).

As set out in Visa’s submission on Treasury’s June 2023 Consultation Paper on Reforms to the PSRA (June 2023 Consultation Paper), we strongly support the Government’s view that the regulatory architecture governing payments needs to be updated to reflect the changing payments landscape.¹ In addition, Visa welcomes that the Bill “expands the regulatory coverage of the PSRA by updating key definitions to ensure all entities that play a role in facilitating or enabling payments, including new entrants, are appropriately regulated”². This followed the final report of the Review of the Australian Payments System finding that the Reserve Bank of Australia’s (RBA) current regulatory powers under the PSRA may not adequately capture the full suite of systems and participants within the payments ecosystem.³

Treasury’s approach across both consultations regarding the PSRA reforms recognises that there are a diverse set of businesses providing payment services well beyond the ‘traditional’ payment systems – ranging from established financial institutions to large technology companies and fintech companies to closed-loop systems. Visa commends Treasury for its principles-based approach to reforming the PSRA – rather than a highly prescriptive approach⁴ – which will provide the RBA with greater flexibility in exercising its functions under the Act.

¹ Treasury (2023), [Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper \(treasury.gov.au\)](#), p4.

² Treasury (2023), [Exposure draft explanatory materials: Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023: Amendments of the Payment Systems \(Regulation\) Act 1998](#), 1.1, p5.

³ Ibid, 1.7.

⁴ Treasury (2023), [Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper \(treasury.gov.au\)](#), p6.

Visa also wishes to share its perspectives on the following specific elements of the exposure draft legislation and explanatory materials:

'Payment system' definition

Visa noted in our submission on the June 2023 Consultation Paper that four-party models like Visa are clearly in scope of the current PSRA definition of 'payment system'. However, there was a lack of clarity about whether other similar ecosystem participants – such as 'three-party' or 'closed loop' systems – were likewise within the ambit of the current definition⁵. Accordingly, we welcome Treasury's clarification that a payment system will "encompass 'three-party' and 'closed loop' systems".⁶ This approach will ensure the definition's technology neutrality⁷ and bring clarity and certainty to the payments ecosystem as well as creating a level playing field among and between ecosystem participants.

'Participant' definition

Visa believes that ensuring a level playing field and open competition should be a prevailing principle of payments regulation. This position considers that, in a world of fast-paced innovation and multiple technologies, systems and service providers, a truly competitive ecosystem – where the playing field is level – is the only way to support Australia's ambitions to advance innovation and growth in a digitally-enabled economy.

In Visa's submission on the June 2023 Consultation Paper, we supported Treasury's view that the RBA should be able to apply the PSRA as appropriate to entities that play a role in the payments value chain, including entities that facilitate or enable payments⁸, such as digital wallets. As a result, we welcome that the Bill repeals the current definition of 'participant' and substitutes it with a new definition "to capture all entities that play a role in facilitating or enabling payments that are made through a payment system".⁹ This approach balances the risks in the payments ecosystem and maximises competition and innovation, since it considers newer participants in the ecosystem that often do not face the same domestic regulatory requirements.

⁵ Visa (2023), [Visa - Submission in response to: Reforms to the Payment Systems \(Regulation\) Act 1998 \(treasury.gov.au\)](#), p7.

⁶ Treasury (2023), [Exposure draft explanatory materials: Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023: Amendments of the Payment Systems \(Regulation\) Act 1998](#), 1.15.

⁷ *Ibid.*, 1.11.

⁸ Visa (2023), [Visa - Submission in response to: Reforms to the Payment Systems \(Regulation\) Act 1998 \(treasury.gov.au\)](#), p8.

⁹ Treasury (2023), [Exposure draft explanatory materials: Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023: Amendments of the Payment Systems \(Regulation\) Act 1998](#), 1.18.

The Role of the Minister

(i) Power to designate payment systems

Visa appreciates Treasury's thoroughness in consulting on the proposed introduction of Ministerial powers to be exercised in the national interest. We believe that any intention to exercise authority on the basis of the national interest should be used only when necessary and taking into account factors listed in Section 1.30 of the explanatory materials, such as consumer protection, data, cybersecurity, and anti-money laundering, among others¹⁰. In addition, Visa encourages that any Ministerial powers in this ambit are exercised in a manner narrowly tailored and proportional to the need, with as much notice and transparency as possible regarding the policy considerations related to issuing a special designation. In the event that such a designation would require a payment system to make changes to current business practices, where possible, it would be prudent to allow an appropriate time period for the implementation of new requirements, with minimal disruption to consumers, merchants, and commerce in general.

With these points in mind, Visa welcomes that the explanatory materials note that "the Minister must consider whether there are alternatives to the designation available under the PSRA or another Act as well as the outcome of consultation with the RBA and each special regulator. The Minister may also consider any other relevant matters. These matters provide appropriate safeguards around the use of the Minister's national interest designation power to ensure that the power is exercised appropriately".¹¹ Visa also welcomes that a number of safeguards will be in place to ensure Ministerial directions are only made when appropriate¹² and that they "must only be performed or exercised in specified circumstances."¹³

(ii) Nomination of regulators for special designated systems

At section 1.43 in the explanatory materials, it is noted that "where there are multiple nominated special regulators in relation to a particular special designated payment system, each regulator must first consult the other regulators for the system."¹⁴ In addition, Treasury proposes that if a payment system is both a designated and special designated payment system, directions from the nominated special regulators shall prevail where it conflicts with RBA's directions.¹⁵ Visa commends Treasury for proposing a mechanism that incentivises coordination among regulators. To do this, we encourage that the consultation process among regulators aim to avoid duplicative, conflicting or inconsistent directions and the imposition of unnecessary burdens on ecosystem participants.

¹⁰ Ibid., 1.30

¹¹ Ibid., 1.32.

¹² Ibid., 1.45.

¹³ Ibid., 1.49.

¹⁴ Ibid., 1.43.

¹⁵ Ibid., 1.81.

Visa also wishes to reiterate the observation contained in our January 2021 response to the Review of the Australian Payments System Issues Paper, where we noted that there was “the potential for improvement regarding regulator coordination of payments policy development”.¹⁶ Based on Visa’s experience, sufficient improvements are yet to be introduced to eliminate or, at least, reduce duplication.

Use and disclosure of information

Visa welcomes that, unlike the proposals contained in Treasury’s June 2023 Consultation Paper¹⁷, the draft exposure legislation and explanatory materials do not raise the possibility of the PSRA being amended to enable the RBA to publicly disclose participant information without consent. The June 2023 Consultation Paper raised the option of introducing a mechanism for participant information to be publicly disclosed without requiring consent from the participant to support the RBA’s existing public interest-based powers (similar to the Australian Prudential Regulation Authority’s (APRA) power under section 57 of the APRA Act).¹⁸

Visa reiterates that it is best regulatory practice to obtain consent from a participant before any identifying information about the participant can be publicly disclosed (section 79A of the RBA Act). We put forward this position because otherwise commercially sensitive data could be disclosed without consent. In addition, we noted that the public interest-based powers under sections 56 and 57 of the APRA Act were for a specific product and use case rather than being suitable to have wider applicability.¹⁹ Visa welcomes that Treasury has taken account of Visa’s and other organisations’ significant concerns regarding this potential reform raised in the June 2023 Consultation Paper.

Visa has welcomed the opportunity to engage with Treasury regarding the latest consultation on the PSRA. If Visa can be of any additional assistance regarding this consultation, the relevant Visa representatives are available to help.

Yours sincerely,



Julian Potter
Group Country Manager
Australia, New Zealand & South Pacific

¹⁶ Visa (2022), [VISA Inc. submission to Review of the Australian Payments System \(treasury.gov.au\)](#), p12.

¹⁷ Treasury (2023), [Reforms to the Payment Systems \(Regulation\) Act 1998 - Consultation paper \(treasury.gov.au\)](#), p17.

¹⁸ Ibid.

¹⁹ Visa (2023), [Visa - Submission in response to: Reforms to the Payment Systems \(Regulation\) Act 1998 \(treasury.gov.au\)](#), p10.

About Visa

Visa is one of the world's leaders in digital payments. Our mission is to connect the world through the most secure, reliable, and innovative payment network – enabling individuals, businesses, and economies to thrive. We facilitate global commerce and money movement across more than 200 countries and territories and among consumers, financial institutions, businesses, strategic partners, and government entities through innovative technologies.

In Australia, Visa has offices in Sydney and Melbourne. Together with our Australian financial institutions, fintech and business clients, and our technology partners, we are committed to building a future of commerce that fosters Australian economic growth, security, and innovation. Since 2020, Visa has worked with Global Sisters to provide business mentoring and coaching to aspiring businesswomen who recently graduated from Global Sisters' small business education program. In the same year, we launched #WhereYouShopMatters, an initiative focused on supporting Australian small businesses through education and promotion. Prior to this, Visa partnered with Quest Payment Systems and The Big Issue, the independent magazine sold by homeless, marginalised and disadvantaged people, to enable Big Issue vendors to accept digital payments.

Visa continues to enable new payment flows and expand acceptance across the payments ecosystem, ensuring that every Australian can both pay and be paid in a secure and convenient way. We are realising this through Visa Fintech Partner Connect and the Visa Accelerator Program. The program provides Australian fintechs with access to Visa's technologies, networks, and solutions, enabling businesses to scale for the benefit of consumers, businesses and the economy. Regarding security, over a five-year period, Visa invested nearly AU\$14.5 billion in systems resilience, fraud management and cybersecurity, including tokenisation, Artificial Intelligence (AI) and blockchain-based solutions, to bring even more security to every transaction.²⁰ In 2021, Visa's AI-driven security helped financial institutions prevent more than AU\$354 million in fraud from impacting Australian businesses.²¹ As commerce moves rapidly online, the threat landscape is also changing and, in response, Visa released its updated [Australian Security Roadmap 2021-23](#), given the increasing risk of cybercrime and scams facing Australian businesses and consumers. The roadmap highlights the steps that Visa is taking, together with industry, to continue securing digital payments in Australia.

²⁰ Visa internal data on global technology and operations investments, FY15-FY19. For further detail, see <https://usa.visa.com/visa-everywhere/blog/bdp/2019/12/24/investing-in-the-1577207091483.html>

²¹ Visa (2021), "Visa's AI prevents more than \$350 million in fraud from disrupting Australian businesses", [Visa's AI prevents more than \\$350 million in fraud from disrupting Australian businesses | Visa](#)