

19 July 2023

Nghi Luu
Assistant Secretary
Payments Systems and Financial Innovation Branch
The Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

Dear Ms Luu,

RE: Payments System Modernisation (Licensing: Defining Payment Functions)

The Financial Services Council (FSC) welcomes the opportunity to make a submission in relation to reforms to the Payment Systems (Regulation) Act 1998.

The FSC is seeking further clarity with regard to the extension of designation powers to the responsible Minister, in this case the Treasurer, in relation to matters of national interest. Specifically, the FSC's concerns relate to the fact that there appears to be no positive obligation to consult on the use of these powers and no parameters around what considerations will be made by the Minister in utilising these powers.

Answers to specific questions are outlined below.

Summary of Recommendations

1. A list of considerations that the Treasurer should make in the process of making a designation should be included in the legislation.
2. A positive duty to consult should be included within the legislation prior to the Treasurer exercising their designation powers under the Act.

Question 6. Are there views or considerations on whether the Government should include a list of relevant considerations for the Treasurer to have regard to in the legislation, explanatory materials, or a separate policy document?

The FSC believes that a list of matters that the Treasurer should take into account before exercising their designation powers is warranted in order to provide certainty to payments industry participants.

There is precedent in other jurisdictions for considerations to be included in the legislation conferring designation powers on the central bank and/or responsible Minister. For example, in New Zealand the powers to designate a payment system rest with the Minister through the Reserve Bank of New Zealand.

Section 156Z of the *Reserve Bank of New Zealand Act 1989* outlines the matters that the Minister must have consideration to when designating a payment system. These are:

- the purpose and scope of the payment system;
- the rules of the payment system;
- any laws or regulatory requirements relating to the operation of the payment system

and the extent to which the payment system complies with those laws or regulatory requirements;

- the importance of the payment system to the financial system; and
- any other matters that the Reserve Bank considers appropriate.

These considerations provide certainty to operators about how the Minister might use their power and allow those participants to prepare and respond appropriately.

The FSC recommends a similar approach in Australia to afford the necessary clarity to the payments system operators.

RECOMMENDATION 1

A list of considerations that the Treasurer should make in the process of making a designation should be included in the legislation.

11. Is the proposed consultation approach sufficient for both Ministerial designations and directions?

It is noted that there is currently no positive duty to consult conferred upon the Minister when they are considering exercising their designation powers. Instead, the Consultation Paper notes that “it is expected that the Treasurer would consult as appropriate with affected parties, including industry and regulators, before a designation decision.”¹

The reason given for not imposing a positive duty is that designation in and of itself does not provide any extra legislative or regulatory burdens. While this is true, it comes with the potential for future standards and access requirements. That it does not immediately impose obligations on the subject of a designation should not hinder the introduction of a legislated positive requirement to consult.

The FSC therefore recommends a positive duty to consult be inserted within the Act.

RECOMMENDATION 2

A positive duty to consult should be included within the legislation prior to the Treasurer exercising their designation powers under the Act.

If you would like to discuss anything contained in this submission, please do not hesitate to contact me.

Yours sincerely,

Kirsten Samuels
Policy Manager, Superannuation and Innovation

¹ The Treasury. (2023). *Reforms to the Payment Systems (Regulation) Act 1998*. Australian Government: The Treasury. [Link](#). p. 15