

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Australian Securities and Investments Commission Act 2001

Corporations Act 2001

Payment Systems (Regulation) Act 1998

Payment Systems Legislation Amendment (2025 Measures No. 1) Regulations 2025

Section 251 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the ASIC Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the ASIC Act.

Section 1364 of the *Corporations Act 2001* (Corporations Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Corporations Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Corporations Act.

Section 32 of the *Payment Systems (Regulation) Act 1998* (PSRA) provides that the Governor-General may make regulations prescribing matters required or permitted by the PSRA to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the PSRA.

The *Payment Systems Legislation Amendment (2025 Measures No. 1) Regulations 2025* (the Regulations) make amendments to the following:

- the *Australian Securities and Investments Commission Regulations 2001* (ASIC Regulations);
- the *Corporations Regulations 2001* (Corporations Regulations); and
- the *Payment Systems (Regulation) Regulations 2006* (PSR Regulations).

The purpose of the Regulations is to support the amendments in Schedule 1 to the Treasury Laws Amendment (Payments System Modernisation) Bill 2025 (the Bill), which was passed by both Houses on 4 September 2025.

Schedule 1 to the Bill amends the PSRA to modernise the payments regulatory framework, ensuring it is fit-for-purpose and can address emerging risks related to payments.

In particular, Schedule 1 to the Bill provides that the Minister may designate a payment system as a special designated payment system if the Minister considers that doing so is in the national interest. The amendments in the Schedule empower the Minister to nominate special regulators in relation to special designated payment systems and to give directions in relation to the special regulator's performance of functions or exercise of powers under the PSRA. This allows the Minister to direct a special regulator to address payments issues that are beyond the existing remit of the Reserve Bank of Australia (RBA) under the

PSRA. The Regulations support the amendments in Schedule 1 to the Bill by prescribing special regulators, heads of special regulators and eligible delegates in relation to special regulators that are nominated special regulators.

Schedule 1 to the Bill also provides that the following persons may use or disclose information or documents obtained under, or for the purposes of, the PSRA to either the RBA or another nominated special regulator in relation to a special designated payment system for the purposes of the PSRA:

- a nominated special regulator;
- the head of such a nominated special regulator;
- a delegate of such a nominated special regulator or of the head of such a nominated special regulator; or
- a person prescribed by the regulations.

The Regulations support the amendments in Schedule 1 to the Bill by specifying prescribed persons.

Schedule 1 to the Bill further provides that the following persons are not subject to civil liability in respect of an act or omission if the act or omission relates to a special designated payment system, and is done in good faith in the performance or exercise (or purported performance or exercise) of a function or power under the PSRA, or for the purposes of assisting another person to perform or exercise a function or power under the PSRA:

- a nominated special regulator (other than the RBA);
- the head of such a nominated special regulator;
- a delegate of such a nominated special regulator, or the head of such a nominated special regulator; or
- a person prescribed by regulations in relation to such a nominated special regulator.

The Regulations support the amendments in Schedule 1 to the Bill by specifying prescribed persons.

The empowering Acts do not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised. Section 4 of the *Acts Interpretation Act 1901* enables regulations to be made in anticipation of the commencement of the relevant authorising provisions in Schedule 1 to the Bill.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). The Regulations are subject to disallowance under section 42 of the Legislation Act and will be repealed automatically by section 48A of that Act.

The PSR Regulations are not subject to sunset in accordance with table item 50 in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOMR).

They were exempted from sunseting by the LEOMR, because the sunseting of a regulation made under the PSRA would undermine commercial certainty.

The ASIC Regulations are not subject to sunseting in accordance with table item 9B in section 12 of the LEOMR. They were exempted from sunseting by the *Legislation (Exemptions and Other Matters) Amendment (Sunsetting Exemptions) Regulations 2017*, because regulations made under ASIC Act are integral to the Corporations Agreement 2002 (the Corporations Agreement). These Regulations cannot be used for any other purpose other than to support the legislative framework underpinning ASIC as the relevant regulator under the Corporations Agreement. Under the terms of the Corporations Agreement, the law giving effect to the Corporations Agreement cannot be amended without agreement from or notifying the Legislative and Governance Forum on Corporations. The ASIC Act and regulations made under that Act are also integral to the intergovernmental schemes on business names registration and national consumer credit law which refer the supervision of those intergovernmental schemes to ASIC. Accordingly, it is appropriate to exempt regulations made under the ASIC Act from sunseting on the basis that they are part of intergovernmental schemes.

The Corporations Regulations are not subject to sunseting in accordance with table item 18 in section 12 of the LEOMR. They were exempted from sunseting by the *Legislation (Exemptions and Other Matters) Amendment (Sunsetting Exemptions) Regulations 2017*, because they are integral to the Corporations Agreement, an intergovernmental scheme between the Commonwealth, States and Territories. They are reliant on a referral of power from the States. Ordinarily, amendments to the Corporations Regulations must be approved by the Legislative and Governance Forum for Corporations. The sunseting of the Corporations Regulations would bypass this requirement, contrary to the Commonwealth's obligations under the Corporations Agreement. The Corporations Regulations are also integral to long-term decision making by the relevant stakeholders. Subjecting the regulations to the sunseting regime would create significant commercial uncertainty and impose a heavy regulatory burden on stakeholders. Accordingly, it is appropriate to exempt the Corporations Regulations from sunseting.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The Regulations commence at the same time as the Bill.

Details of the Regulations are set out in Attachment A.

Details of the Payment Systems Legislation Amendment (2025 Measures No. 1) Regulations 2025

Section 1 – Name

This section provides that the name of the regulations is the *Payment Systems Legislation Amendment (2025 Measures No. 1) Regulations 2025* (the Regulations).

Section 2 – Commencement

The Regulations commence at the same time as the Treasury Laws Amendment (Payments System Modernisation) Bill 2025 (the Bill) commences.

Section 3 – Authority

The Regulations are made under:

- the *Australian Securities and Investments Commission Act 2001* (ASIC Act);
- the *Corporations Act 2001* (Corporations Act); and
- the *Payment Systems (Regulation) Act 1998* (PSRA).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Main amendments

Payment Systems (Regulation) Regulations 2006

Item 1 – New definition for AUSTRAC

Item 1 inserts a new definition of AUSTRAC into the *Payment Systems (Regulation) Regulations 2006* (PSR Regulations). The definition refers to the corresponding definition in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AMLCTF Act).

Item 2 – Other amendments to the *Payment Systems (Regulation) Regulations 2006*

Regulation 7 – Prescribing special regulators, heads and eligible delegates

The amendments in Schedule 1 to the Bill empower the Minister to nominate special regulators in relation to special designated payment systems and to give directions in relation to the special regulator's performance of functions or exercise of powers under the PSRA. A special regulator is defined as the RBA or an entity that the regulations prescribed as a special regulator (see paragraph 11C(1)(b) of the PSRA as amended by the Bill). An entity must only be prescribed as a special regulator if the entity is a

Commonwealth entity or a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

Regulation 7 prescribes the following as special regulators (for the purposes of paragraph 11C(1)(b) of the PSRA as amended by the Bill):

- the Australian Competition and Consumer Commission (the Commission);
- the Australian Prudential Regulation Authority (APRA);
- the Australian Securities and Investments Commission (ASIC); and
- AUSTRAC.

Under the Bill, a person is the head of a special regulator if:

- in the case of the RBA, that person is the Governor of the RBA; or
- in the case of an entity prescribed by the regulations as a special regulator, the person prescribed by the regulations as the head of that special regulator (see paragraph 7(2)(b) of the PSRA as amended by the Bill).

Regulation 7 prescribes the following as heads of special regulators (for the purposes of paragraph 7(2)(b) of the PSRA as amended by the Bill):

- the Chairperson of the Commission;
- the Chair of APRA;
- the Chairperson of ASIC; and
- the Chief Executive Officer of AUSTRAC.

Under the Bill, a nominated special regulator (other than the RBA), in relation to special designated payment systems may, by written instrument, delegate all or any of their functions or powers under the PSRA to the head of the nominated special regulator or a person prescribed as an eligible delegate in the regulations (see paragraph 31A(1)(b) of the PSRA as amended by the Bill). In turn, the head of a nominated special regulator (other than the Governor of the RBA), in relation to a special designated payment system may, in writing, delegate all or any of the head's functions or powers under the PSRA to a person prescribed as an eligible delegate in the regulations (see subsection 31A(2) of the PSRA as amended by the Bill), except for the functions and powers relating to the conduct of arbitrations.

This does not limit a nominated special regulator or the head of a nominated special regulator from delegating powers in accordance with another Act.

Regulation 7 prescribes the following as eligible delegates in relation to special regulators that are nominated special regulators (for the purposes of paragraph 31A(1)(b) and subsection 31A(2) of the PSRA as amended by the Bill):

- if the nominated special regulator in relation to a special designated payment system is the Commission – each of the following:
 - a member of the Commission (within the meaning of the *Competition and Consumer Act 2010* (CCA));
- a person who is referred to in subsection 27(1) of the CCA and is a Senior Executive Service (SES) employee or acting SES employee in the Commission.
- if the nominated special regulator in relation to a special designated payment system is APRA – each of the following:
 - an APRA member (within the meaning of the *Australian Prudential Regulation Authority Act 1998* (APRA Act));
 - a person who is an APRA staff member (within the meaning of the APRA Act), other than a person engaged under section 47 of the APRA Act (about consultants and other people engaged to perform services), and holds or is acting in, a position in APRA that is equivalent to, or higher than, a position occupied by an SES employee.
- if the nominated special regulator in relation to a special designated payment system is ASIC – each of the following:
 - a member of ASIC (within the meaning of the ASIC Act);
 - a senior staff member (within the meaning of the ASIC Act), other than a person engaged under subsection 121(1) of the ASIC Act (about consultants etc.);
 - an SES employee or acting SES employee who is seconded to ASIC under section 122 of the ASIC Act.
- if the nominated special regulator in relation to a special designated payment system is AUSTRAC – a person who:
 - is covered by the definition of **AUSTRAC entrusted person** in section 5 of the AMLCTF Act, other than a person covered by paragraph (c), (e) or (g) of that definition and a person covered by paragraph 225(3)(g) of that Act, and is either an SES employee or acting SES employee in AUSTRAC or holds, or is acting in, a position in AUSTRAC that is equivalent to, or higher than, a position occupied by an SES employee.

Given the nature of the functions of a nominated special regulator, delegations are limited to SES employees or acting SES employees (and persons holding a position in the Commonwealth entity that is equivalent to or higher than an SES position).

Regulation 8 – Prescribing persons authorised to use or disclose information (in relation to nominated special regulators)

The amendments in Schedule 1 to the Bill allow the following persons to use or disclose information or documents obtained under, or for the purposes of, the PSRA to either the

RBA or another nominated special regulator in relation to a special designated payment system for the purposes of the PSRA:

- a nominated special regulator;
- the head of such a nominated special regulator;
- a delegate of such a nominated special regulator or of the head of such a nominated special regulator; or
- a person prescribed by the regulations (see paragraph 26A(4)(d) of the PSRA as amended by the Bill).

Regulation 8 prescribes the following as persons authorised to use or disclose information (for the purposes of paragraph 26A(4)(d) of the PSRA as amended by the Bill):

- if the nominated special regulator in relation to a special designated payment system is the Commission – each of the following:
 - a member of the Commission (within the meaning of the CCA);
 - an associate member of the Commission (within the meaning of the CCA);
 - a person who is referred to in subsection 27(1) of the CCA (staff necessary to assist the Commission) or engaged under section 27A (consultants engaged to give advice to and perform services for the Commission) of that Act.
- if the nominated special regulator in relation to a special designated payment system is APRA – each of the following:
 - an APRA member (within the meaning of the APRA Act), other than the Chair of APRA;
 - an APRA staff member (within the meaning of the APRA Act).
- if the nominated special regulator in relation to a special designated payment system is ASIC – each of the following:
 - a member of ASIC (within the meaning of the ASIC Act);
 - a staff member (within the meaning of the ASIC Act).
- if the nominated special regulator in relation to a special designated payment system is AUSTRAC – an AUSTRAC entrusted person (within the meaning of the AMLCTF Act).

Regulation 9 – Prescribing persons protected from civil liability (in relation to nominated special regulators)

The amendments in Schedule 1 to the Bill provide that:

- a nominated special regulator (other than the RBA);

- the head of such a nominated special regulator;
- a delegate of such a nominated special regulator or of the head of such a nominated special regulator; or
- a person prescribed by the regulations in relation to such a nominated special regulator (see paragraph 30B(4)(d) of the PSRA as amended by the Bill);

is not subject to civil liability in respect of an act or omission if the act or omission relates to a special designated payment system, and is done in good faith in the performance or exercise (or purported performance or exercise) of a function or power under the PSRA, or for the purposes of assisting another person to perform or exercise a function or power under the PSRA. If the act or omission contravenes a direction given by the Minister or a delegator, the person must have attempted in good faith to comply with the direction.

Regulation 9 prescribes the following as persons protected from civil liability (for the purposes of paragraph 30B(4)(d) of the PSRA as amended by the Bill):

- if the nominated special regulator is the Commission – each of the following:
 - a member of the Commission (within the meaning of the CCA);
 - an associate member of the Commission (within the meaning of the CCA);
 - a person who is referred to in subsection 27(1) of the CCA or engaged under section 27A of that Act.
- if the nominated special regulator is APRA – each of the following:
 - an APRA member (within the meaning of the APRA Act), other than the Chair of APRA;
 - an APRA staff member (within the meaning of the APRA Act).
- if the nominated special regulator is ASIC – each of the following:
 - a member of ASIC (within the meaning of the ASIC Act);
 - a staff member (within the meaning of the ASIC Act).
- if the nominated special regulator is AUSTRAC – an AUSTRAC entrusted person (within the meaning of the AMLCTF Act).

Schedule 2 – Other amendments

Australian Securities and Investments Commission Regulations 2001

Corporations Regulations 2001

Items 1 and 2 – Specific things that are not financial products

Subsection 12BAA(8) of the ASIC Act provides a list of specific things that are not financial products for the purposes of Division 2 of the ASIC Act. This includes a facility

that is a designated payment system for the purposes of the PSRA. Schedule 1 to the Bill amends this provision to provide that a facility that is a designated payment system or a special designated payment system (or both) will not be a financial product for the purposes of Division 2 of the ASIC Act where it is declared by regulations not to be a financial product (see paragraph 12BAA(8)(e) of the ASIC Act as amended by the Bill).

Section 765A of the Corporations Act provides a list of specific things that are not financial products for the purposes of Chapter 7 of the Corporations Act. This includes a facility that is a designated payment system for the purposes of the PSRA. Schedule 1 to the Bill amends this provision to provide that a facility that is a designated payment system or a special designated payment system (or both) will not be a financial product for the purposes of Chapter 7 of the Corporations Act where it is declared by regulations not to be a financial product (see paragraph 765A(1)(j) of the Corporations Act as amended by the Bill).

Regulation 2BAA of the ASIC Regulations and regulation 7.1.04P of the Corporations Regulations declare that each of the following is not a financial product (for the purposes of paragraph 12BAA(8)(e) of the ASIC Act as amended by the Bill and paragraph 765A(1)(j) of the Corporations Act as amended by the Bill, respectively):

- the credit card system operated within Australia known as the MasterCard system or MasterCard network card system and designated as a payment system under section 11 of the PSRA on 12 April 2001. Notification of designation through the Commonwealth of Australia Special Gazette No S 130 of 12 April 2001 could be accessed on the Federal Register of Legislation <https://www.legislation.gov.au>.
- the credit card system operated within Australia known as the VISA system or the VISA network card system and designated as a payment system under section 11 of the PSRA on 12 April 2001. Notification of designation through the Commonwealth of Australia Special Gazette No S 130 of 12 April 2001 could be accessed on the Federal Register of Legislation <https://www.legislation.gov.au>.
- the debit card system operated within Australia known as Visa debit and designated as a payment system under section 11 of the PSRA on 23 February 2004. Notification of designation through the Commonwealth of Australia Special Gazette No S 41 of 23 February 2004 could be accessed on the Federal Register of Legislation <https://www.legislation.gov.au>.
- the payment system operated within Australia known as the ATM system and designated by *Designation No 1 of 2008* as a payment system under section 11 of the PSRA on 10 December 2008. Notification of designation through the Commonwealth of Australia Special Gazette No S 271 of 10 December 2008 could be accessed on the Federal Register of Legislation <https://www.legislation.gov.au>. It should be noted that the designation was signed on 8 December 2008 but gazetted on 10 December 2008. Given how section 11 of the PSRA was drafted at the time, the Regulations state that the payment system was designated on 10 December 2008, when it was gazetted.
- the debit card system operated within Australia known as the EFTPOS system and designated by *Designation No 1 of 2012* as a payment system under subsection 11(1) of the PSRA on 12 June 2012. Notification of designation through the

Commonwealth of Australia Special Gazette No S 70 of 12 June 2012 could be accessed on the Federal Register of Legislation <https://www.legislation.gov.au>.

- the debit card system operated within Australia known as Debit MasterCard and designated by *Designation No 2 of 2015 (Designation of the Debit MasterCard system)* as a payment system under subsection 11(1) of the PSRA on 15 October 2015. The designation of the system is currently on the Federal Register of Legislation as an individual item.
- the prepaid card system operated within Australia and designated by *Designation No 3 of 2015 (Designation of the EFTPOS prepaid system)* as a payment system under subsection 11(1) of the PSRA on 15 October 2015. The designation of the system is currently on the Federal Register of Legislation as an individual item.
- the prepaid card system operated within Australia known as MasterCard Prepaid and designated by *Designation No 4 of 2015 (Designation of the MasterCard prepaid system)* as a payment system under subsection 11(1) of the PSRA on 15 October 2015. The designation of the system is currently on the Federal Register of Legislation as an individual item.
- the prepaid card system operated within Australia known as Visa Prepaid and designated by *Designation No 5 of 2015 (Designation of the Visa prepaid system)* as a payment system under subsection 11(1) of the PSRA on 15 October 2015. The designation of the system is currently on the Federal Register of Legislation as an individual item.

Where there is descriptive text in the titles of the instruments – the specific instruments are referred to. This descriptive text may be particularly helpful for the *Designation No 3 of 2015 (Designation of the EFTPOS prepaid system)* as that designation does not otherwise appear to refer to the name of the payment system that it is designating.

Where provisions are referred to (that is, subsection 11(1) and section 11) – the intention is to mirror the wording of the designations.