

EXPOSURE DRAFT EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Corporations Act 2001

Treasury Laws Amendment (Payment System Modernisation) Regulations 2026

Section 13 of the *ASIC Supervisory Cost Recovery Levy Act 2017*, section 251 of the *Australian Securities and Investments Commission Act 2001*, section 71 of the *Banking Act 1959*, and section 1364 of the *Corporations Act 2001* (the Acts) provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

The purpose of the *Treasury Laws Amendment (Payments System Modernisation) Regulations 2026* (the Regulations) is to support the reforms to the regulation of payment service providers in Australia.

The Regulations make consequential amendments to a range of legislative instruments to ensure consistency with the introduction of new payment service provider terms and definitions and remove or replace references to ‘non-cash payment’, ‘purchased payment facility’ and ‘non-cash payment facility’, where appropriate. The Regulations also introduce tailored definitions, exclusions, exemptions and transitional arrangements for certain low risk payment products and services.

The Regulations also incorporate the effect of *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*, which provides exemptions from various obligations of the existing regulatory framework for certain ‘non-cash payment facilities’.

Finally, the Regulations include various transitional arrangements to ensure the amendments apply consistently with the broader reforms.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after this instrument is registered.

Details of the Regulations are set out in Attachment A.

Details of the Treasury Laws Amendment (Payments System Modernisation) Regulations 2026

Section 1 – Name

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Payments System Modernisation) Regulations 2026* (the Regulations).

Section 2 – Commencement

The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *ASIC Supervisory Cost Recovery Levy Act 2017*; the *Australian Securities and Investments Commission Act 2001*; the *Banking Act 1959*; and the *Corporations Act 2001* (the Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

Part 1 – Main amendments

Consequential amendments to various Regulations

Items 1 to 3, 5 to 13, 15, 20 to 32, 34 to 41 and 43 make consequential amendments to the following regulations to reflect the updated payment product and payment service terminology in the Treasury Laws Amendment (Payments System Modernisation) Bill 2026 (the Amending Bill), and to remove references to non-cash payment financial products and/or facilities:

- *ASIC Supervisory Cost Recovery Levy Regulations 2017*;
- *Australian Securities and Investments Commission Regulations 2001*;
- *Banking Regulation 2016*;
- *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*;
- *Corporations Regulations 2001*.

The amendments in the Amending Bill, which will modernise the payments system regulatory framework, are referred to as the payments system reforms for the purposes of Attachment A.

ASIC Supervisory Cost Recovery Levy Regulations 2017

Items 1 and 5 amend the heading to section 28, and its appearance at item 28 of Schedule 1, to extend the references from payment product providers to payment product and service providers.

This ensures ASIC's supervisory cost recovery framework applies to entities that issue payment products, and to entities that provide payment services.

Items 2 and 3 amend subsections 28(1) and (5) to replace non-cash payment facility terminology with references to payment services, and payment products that are financial products. The amendment to subsection 28(1) reframes leviable entities – from those licensed to deal in financial products through which non-cash payments can be made, to those that are licensed to provide payment services or deal in payment products that are financial products. Similarly, the amendment to subsection 28(5) replaces the reference to revenue derived from non-cash payment facilities with revenue derived from payment services or payment products that are financial products.

The amendments ensure that levy calculations will be based on revenue from payment products and payment services.

Item 4 inserts a new application provision specifying that the amendments apply from the first financial year beginning on or after commencement.

Australian Securities and Investments Commission Regulations 2001

Item 6 amends paragraph 2B(1)(i) to clarify that the relevant provision applies to payment instruments that are financial products.

Banking Regulation 2016

Item 7 repeals section 6, which established the Australian Prudential Regulation Authority's regulatory perimeter regarding providers of purchased payment facilities (PPFs). Under the reforms, the provision of PPFs will be replaced as a regulated activity by the provision of stored value facilities, with APRA's regulatory perimeter established in the Payment Entities (Prudential Regulation) Bill 2026.

Item 8 amends paragraph 8(c) to refer to stored value facilities (SVFs) within the meaning of the Act. This regulation ensures that SVFs are not protected accounts for the purpose of the Financial Claims Scheme under the *Banking Act 1959*.

Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020

Items 9 and 11 to 13 replace references to non-cash payment facilities with references to payment products, and repeal the definition of non-cash payment facility.

Item 10 expands the definition of eligible financial service to include new terminology in the Amending Bill of payment service.

Corporations Regulations 2001

Item 14 inserts new definitions to support the incorporation of *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* (the ASIC Instrument) into the *Corporations Regulations 2001*, which provides for various exclusions and conditional exemptions from certain obligations of the Act. The definitions are further explained below as part of the broader explanation of those exclusions and exemptions.

Items 15, 20 to 32, 34 to 41, and 43 make consequential amendments by repealing and/or replacing redundant terms such as ‘non-cash payments’, ‘facility for making non-cash payments’, ‘non-cash payment financial product’ with updated references to payment products and payment services terms and related terminology as relevant.

Exclusions and exemptions under the Australian Financial Services licensing framework

The amendments introduce new, or incorporate existing, exclusions from the definitions of SVF and payment instrument and exemptions from certain obligations under the Australian financial services (AFS) licensing framework for certain payment products and services (such as requiring a licence).

Item 16 is a consequential amendment inserting a subheading into subregulation 5C.1.03(2) to clarify the effect of the subsection (relating to document exemptions for managed investment schemes).

Item 17 incorporates subsection 6(1) of the ASIC Instrument into regulation 5C.1.03 of the Regulations. New subregulation 5C.1.03(3) excludes a loyalty scheme from the requirement to register as a managed investment scheme.

Item 14 provides a definition of loyalty scheme, being a facility that allocates credits resulting from the purchase of goods or the use of services which can be redeemed for goods, services or benefits. The dominant purpose of the scheme has to be that it is to promote the purchase of goods or services, and the scheme cannot be a part of another financial product.

Item 18 inserts regulations 7.1.04FA and 7.1.04FB, which incorporate the effect of sections 6 and 7 of the ASIC Instrument, which specifies circumstances where certain non-cash payment facilities (which would now fit under the definitions of SVF and payment instrument) are excluded from being a financial product.

Regulation 7.1.04FA excludes from the definition of SVF facilities that are loyalty schemes, or that can only be used to pay road tolls.

In addition, regulation 7.1.04FA excludes from the definition of SVF a facility under which payments can only be made to the issuer of a financial product consisting of the facility or a related body corporate of the person. This exclusion replaces a licensing exemption that is currently contained in paragraph 7.6.01(1)(lb). Applying an exclusion provides wider regulatory relief in relation to these facilities, and means that they are treated in the same way as ‘single payee’ facilities that are covered by exclusions from the definitions of SVF and payment instrument in the amended Act.

Regulation 7.1.04FB excludes from the definition of payment instrument a facility that is covered by reg 7.1.04FA.

Exemption from requirement to hold an AFS licence

Item 33 repeals the now redundant paragraph 7.6.01(1)(lb).

Item 33 also inserts new paragraphs 7.6.01(1)(lb), (lba), (lbb) and (lbc). These provisions specify categories of financial services that are exempt from the requirement to hold an AFS licence under subsection 911A(1) of the Act. These exemptions are intended to ensure the regulatory burden imposed on certain providers is not disproportionately burdensome while ensuring appropriate consumer protections under the Act still apply.

Paragraph 7.6.01(1)(lb) incorporates section 8 of the ASIC Instrument by exempting financial services in relation to third party payments. This exemption applies to a financial service provided by a licensee that consists of providing advice about an SVF or a payment instrument linked to such a facility, or arranging for another person to deal in an SVF or related payment instrument (other than by issuing it), where the SVF or instrument is used to pay a third party for goods or services.

For the exemption to apply, the advice must be provided in the ordinary course of business, the licensee must not be the issuer of the SVF or payment instrument, and the licensee must not already be authorised under their AFS licence to provide the services in relation to an SVF or a payment instrument. This exemption is similar to existing exemptions contained in paragraphs 7.6.01(1)(l) and (la), but deals with factual situations that are not addressed by those existing exemptions.

Paragraph 7.6.01(1)(lba) exempts financial services relating to low value SVFs or low value payment instruments, conditional on the person providing the service having lodged a notice with ASIC, in the form approved by ASIC, stating that they intend to rely on the exemption. The notification requirement will ensure that ASIC is aware of entities that rely on the exemption. This will give ASIC better visibility of the range of entities and low value payment products that are made available, and enable ASIC to monitor entities that rely on the exemption. An additional conditional exemption is provided from disclosure and other requirements in Part 7.9 (see further information below on insertion of new regulation 9.12.06).

Paragraph 7.6.01(1)(lbb) exempts financial services relating to facilities that are not yet issued but where the provider reasonably expects the facility to be a low value SVF. This exemption is also conditional on the person having lodged a notice with ASIC, in the form approved by ASIC, stating that they intend to rely on the exemption.

Paragraph 7.6.01(1)(lbc) exempts financial services provided in relation to gift facilities or prepaid mobile facilities.

Item 14 provides definitions for low value SVF, low value payment instrument, low value payment service, gift facility, and prepaid mobile facility.

For SVFs (that are not tokenised SVFs), the two-part threshold for 'low value':

- Limits the exemption to SVF providers that have a limited business with SVF liabilities. Providers with over \$10 million in SVF liabilities are of sufficient size that the licensing obligations will not be disproportionate.
- Limits the potential for exposure of individual clients to loss of stored value.

For tokenised SVFs, only the aggregate \$10 million threshold will apply. Unlike traditional SVFs (which are usually account-based facilities, where value is recorded in an account maintained by the SVF provider and each holder is identified as a customer), tokenised SVFs involve the creation of digital tokens that are attached to rights to redeem amounts standing to the credit of a tokenised SVF. These digital tokens can be transferred peer-to-peer without the involvement of the tokenised SVF provider, and result in the transfer of the right to redeem (so that it is no longer possessed by the holder of the tokenised SVF). Because ownership of digital tokens is not necessarily linked to an account relationship and can circulate through secondary markets, the issuer of the tokenised SVF may not have any practical means to determine whether a holder possesses digital tokens that represent over \$1,000 at any given time.

A low value payment instrument is a payment instrument that allows transfers only from a single low value SVF. As payment instruments are typically used to access other sources of value (e.g. SVFs, deposit products, digital asset platforms or credit facilities), a specific threshold test has not been applied. Only instruments that relate to low value SVFs will be covered by an exemption. Those instruments that relate to other kinds of facilities are more likely to either enable access to larger amounts of value or involve additional risks for the holder of the instrument and related facility. A payment instrument will only be covered by the exemption if it can be used to access a *single* low value SVF – if the instrument could access multiple facilities (even if all were low value), there would be a higher risk of use of the instrument resulting in loss.

A low value payment service is a payment service where the average monthly value of funds transferred in relation to payment services provided by the provider, or a related body corporate, over the previous 12 months does not exceed \$8 million and the service is not part of another financial product. The use of a threshold determined by average monthly transaction volume allows for smoothing of fluctuations, but ensures that on a monthly basis the volume of transactions is consistent with a smaller business and lower risk of loss for any individual client.

A gift facility is an SVF that is issued with a fixed value and is marketed only as a gift product. It cannot be reloaded with further credit after issue (except when reversing a transfer or fixing an error). A gift facility may be used on more than one occasion, and cannot be part of another financial product.

If a gift facility has an expiry date, that expiry date (or the date of issue, or a date no later than 3 months after the date of issue), must be prominently displayed on the associated device (such as the ‘gift card’). If there is no device then the expiry date (if there is one) must be prominently displayed in such a way that you would reasonably expect a person receiving the gift facility and using the gift facility would note the expiry date.

Cash withdrawals are limited for gift facilities. A cash withdrawal can only occur where one or more non-cash funds transfers have been made, and the available remaining amount is unlikely to be conveniently used, and the withdrawal is the full amount remaining.

A prepaid mobile facility is an SVF linked to prepaid telecommunications services under which transfers are debited against the prepaid amount, and cannot be part of another financial product.

Other exemptions from the AFS licensing framework

Item 42 inserts regulation 9.12.06, which incorporates additional exemptions from obligations under the AFS licensing framework provided by the ASIC Instrument, for low value SVFs, low value payment instruments, gift facilities, and prepaid mobile facilities, with some modifications to reflect the updated payment product and payment service terms and to provide appropriate conditions for relying on the exemptions.

Subregulations 9.12.06(1) and (5) exempt anyone providing financial services in relation to:

- low value SVFs;
- low value payment instruments;
- facilities not yet issued but which the provider reasonably believes will be a low value SVF or low value payment instrument;
- low value payment services;
- gift facilities; or
- prepaid mobile facilities;

from the requirement to hold an AFS licence (under subsection 911A(1) of the Act), the prohibition on hawking of financial products (subsection 992A(1) of the Act), and financial product disclosure obligations (Part 7.9 of the Act), in relation to those financial services.

Further, where an AFS licensee (who, due to holding a licence, is subject to further obligations under the Act that apply to licensees, regardless of whether they can rely on an exemption for particular services), provides financial services in relation to the above, subregulation 9.12.06(2) exempts them from:

- Part 7.6 of the Act (which includes the licensing obligations) but not Divisions 4 and 8 (which deal with how a licence may be obtained, varied and cancelled, as well as how people may be banned or disqualified from providing a financial service);
- Divisions 2, 3 and 4 of Part 7.7 of the Act (which includes disclosure requirements such as providing a financial services guide and statement of advice); and
- Divisions 2, 3, 5 and 6 of Part 7.8 of the Act (which includes requirements for dealing with client money and safeguarding payment-related money, as well as requirements for financial records, statements and auditing).

Subregulation 9.12.06(3) also exempts authorised representatives of an AFS licensee from the requirement to provide a financial services guide, statement of advice, or other disclosure requirements (Divisions 2, 3 and 4 of Part 7.7 of the Act).

Conditions for relying on the exemptions

There are no conditions required to be met to rely on the exemptions in relation to financial services that are related to gift facilities or prepaid mobile facilities.

However, conditions do apply in relation to the other financial services mentioned in subregulation 9.12.06(5). The conditions that apply depend on whether the person providing the financial services in relation to a payment product is the issuer of the payment product, an authorised representative or a third party. Financial services in relation to low value payment services are subject to a more limited range of conditions.

Conditions for issuers of facilities

Subregulation 9.12.06(6) requires issuers of low value SVFs, low value payment instruments, or facilities not yet issued but reasonably believed to likely be a low value SVF, to take reasonable steps to:

- Provide a disclosure document to retail clients;
- Prominently set out any expiry dates;
- Provide a means for clients to check expiry dates, the previous 10 transactions, and (for SVFs) the amount standing to the credit of the SVF;
- Inform clients of changes to the terms and conditions, fees or charges;
- Maintain an internal dispute resolution procedure for retail clients.

Disclosure documents must be provided to retail clients before, or at the time, the facility is offered. The information in the disclosure document must be clear, concise and effective. That is, it must readily communicate to the client the following information under subregulation 9.12.06(9):

- whether any of the terms and conditions of the facility may be unilaterally varied by the issuer how a client may get information about the new terms and conditions;
- whether the facility has an expiry date and, if so, how a client may find out what that date is;
- the procedures for dealing with any unauthorised or mistaken transactions relating to the facility or the loss or theft of an associated device (if any) through which the facility is used;
- fees or charges for acquiring and using the facility and, if any fees or charges are subject to change, how a client may obtain information about the new fees or charges.

Item 14 defines an expiry date of a low value SVF as the date after which that SVF cannot be used to make transfers.

If the facility has an expiry date and involves providing a device to the client (such as a card), the device must prominently and clearly set out the expiry date. Alternatively, the

device may state the date of issue (or a date up to three months after the date of issue) along with a statement that the device cannot be used after a specified period.

If the facility has an expiry date but does not involve providing a device to the client, the expiry date must be provided in the disclosure document or in a written statement attached to the disclosure document.

If terms and conditions, fees, or charges are changed, the issuer must ensure that information about the change is made available to the client in accordance with the information in the disclosure document, made available on request by the client, and also displayed clearly and prominently anywhere (including websites) where the facility can be acquired.

Internal dispute resolution procedures for retail clients must comply with standards and requirements made or approved by ASIC, and must cover complaints made by retail clients in connection with financial services provided in relation to the facility.

Conditions for persons other than issuers

Subregulation 9.12.06(7) requires people providing financial services in relation to (but not issuing) low value SVFs, low value payment instruments, or facilities not yet issued but reasonably believed to likely be a low value SVF, to take reasonable steps to ensure that the same disclosure document and broad expiry date obligations are provided, but is not required to provide dispute resolution, inform of changes to terms and conditions, or provide a means to check transaction records or amounts of credit.

Conditions relating to low value payment services

When providing financial services in relation to low value payment services, subregulation 9.12.06(8) requires providers of the financial service to take reasonable steps to ensure that retail clients are provided with statements and information setting out the name and contact details of the provider, how the client may provide instructions to the provider, (in the case of an authorised representative) who they represent, and information on the client's rights to request records of advice and how they may request it.

Repealed exclusions and exemptions

Item 19 repeals regulation 7.1.07G which excluded electronic funds transfers from being a financial product. This exclusion is removed because it is inconsistent with the intention to apply AFS licensing requirements to a wider range of payment products and pay services providers.

Item 44 removes the reference to *ASIC Class Order [CO 05/736]* in paragraph 9.12.03A(1)(a). ASIC Class Order [CO 05/736] was an earlier version of the ASIC Instrument and regulation 9.12.03A has the effect of providing a person exempted via a listed ASIC legislative instrument with an exemption from complying with Division 2 of Part 7.7A of the Act (relating to best interest obligations and remuneration). It is intended that the Regulations will include a provision giving effect to this exemption.

Part 2 – Application and transitional provisions

Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020

Item 45 adds a new Part 7 comprising regulations 26 to 29.

Regulation 26 provides that Part 7 relies on the meaning of terms used in section 1804 of the Act, as well as providing definitions for new terminology following the payments system reforms.

Regulations 27 to 28 deal with the application of amendments connected with financial services. Regulation 27 provides that these amendments apply to payment product-related services and payment services provided on or after the commencement of the amendments, and by or on behalf of constitutionally-covered corporations (see also section 1804A of the Act).

However, regulation 28 provides that transitional arrangements apply to the provision of payment product-related services and payment services on or after commencement, delaying the application of the amendments to the provision of these services in specified circumstances. This delay is referred to as a ‘grace period’, per its meaning under section 1804B of the Act. It means that the amendments start to apply in full in relation to such services provided on or after the day after the end of the relevant person’s grace period. During the grace period, as the amendments do not apply, the original provisions of the Act and any ASIC instruments that provide relief in relation to those provisions, continue to apply. This will allow time for entities that rely on existing relief to make any changes to their business arrangements necessary to rely on the amended provisions, or to apply for an AS licence if they are no longer covered by relief under the amended provisions.

Regulation 29 deals with the application of amendments not connected with financial services. Amendments not connected with financial services are those that relate to a payment product but do not relate to the product in connection with a financial service. The application of these amendments depends on whether the product was a non-cash payment facility prior to commencement. If the product was not a non-cash payment facility prior to commencement, the amendments apply to conduct in relation to the financial product only if the conduct occurs on or after commencement.

Corporation Regulations 2021

Item 46 inserts new Part 10.54 comprising regulations 10.54.01 to 10.54.04.

Regulation 10.54.01 provides that Part 10.54 relies on the meaning of terms used in section 1804 of the Act, as well as providing definitions for new terminology following the payments system modernisation.

Regulations 10.54.02 to 10.54.03 deal with the application of amendments connected with financial services. Regulation 10.54.02 provides that these amendments apply to payment product-related services and payment services provided on or after the commencement of the amendments, and by or on behalf of constitutionally-covered corporations (see also section 1804A of the Act).

However, regulation 10.54.03 provides that transitional arrangements apply to the provision of payment product-related services and payment services on or after commencement, delaying the application of the amendments to the provision of these services in specified circumstances. This delay is referred to as a 'grace period', per its meaning under section 1804B of the Act. It means that the amendments start to apply in full in relation to such services provided on or after the day after the end of the relevant person's grace period.

Regulation 10.54.04 deals with the application of amendments not connected with financial services. Amendments not connected with financial services are those that relate to a payment product but do not relate to the product in connection with a financial service. The application of these amendments depends on whether the product was a non-cash payment facility prior to commencement. If the product was not a non-cash payment facility prior to commencement, the amendments apply to conduct in relation to the financial product only if the conduct occurs on or after commencement.

EXPOSURE DRAFT