



# Payment Systems (Regulation) Act 1998

No. 58, 1998

## Compilation No. 6

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*[ME note: This is an annotated version of the Payment Systems (Regulation) Act 1998 prepared by MinterEllison for the purposes of showing the changes proposed by the Exposure Draft of Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023: Amendments of the Payment Systems (Regulation) Act 1998. The proposed changes are 'marked up' throughout the document.]*

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## About this compilation

### This compilation

This is a compilation of the *Payment Systems (Regulation) Act 1998* that shows the text of the law as amended and in force on 30 September 2020 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Short title .....	1
2 Commencement .....	1
3 Crown is bound by this Act .....	1
4 Application of this Act to external Territories .....	1
5 Application of <i>Criminal Code</i> .....	1
6 Overview of Act .....	1
<b>Part 2—Interpretation</b>	<b>3</b>
7 Definitions .....	3
8 Meaning of <i>public interest</i> .....	5
8A Meaning of <i>national interest</i> .....	5
9 Meaning of <i>purchased payment facility</i> and <i>holder of the stored value</i> .....	5
9A Functions and powers under this Act .....	6
9B Contravening an offence provision or a civil penalty provision ....	6
<b>Part 3—Regulation of payment systems</b>	<b>7</b>
<b>Division 1—Overview</b>	<b>7</b>
10 Overview of main regulatory provisions .....	7
<b>Division 2—Designated payment systems</b>	<b>8</b>
11 Reserve Bank may designate payment systems .....	8
11AA Multiple designation—consultation by Reserve Bank .....	8
<b>Division 2A—Special designated payment systems</b>	<b>9</b>
11A Minister may designate payment systems .....	9
11B Meaning of <i>special regulator</i> .....	9
11C Nomination of special regulators .....	9
11CA Functions and powers of nominated special regulators .....	10
11E Ministerial directions to nominated special regulators .....	11
11F Contents of ministerial directions to nominated special regulators .....	12
11G Reports by nominated special regulators .....	12
11H Authorised use or disclosure of information .....	13
<b>Division 3—Access regimes</b>	<b>14</b>
<b>Subdivision A— Operation of access regimes</b>	<b>14</b>
12 Imposition of access regime .....	14
13 When access regimes are in force .....	15
14 Variation of access regime .....	15
15 When access regimes cease to be in force .....	16
15A Authorisation of conduct under access regime for the purposes of the <i>Competition and Consumer Act 2010</i> .....	17
15AA Conflicts between access regimes .....	17
<b>Subdivision B—Enforcement of access regimes</b>	<b>18</b>
16 Right to ask for directions .....	18
17 Right to apply to the Federal Court .....	18
<b>Division 4—Standards</b>	<b>20</b>
18 Making of standards .....	20
18A Authorisation of conduct under certain standards for the purposes of the <i>Competition and Consumer Act 2010</i> .....	21

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18AA Conflicts between standards .....	21
<b>Division 5—Arbitration of disputes</b>	<b>22</b>
19 Disputes to which Division applies .....	22
20 Arbitration of disputes .....	22
<b>Division 6—Directions to participants</b>	<b>24</b>
21 Directions .....	24
21A Conflicts between directions.....	26
<b>Part 4—Regulation of purchased payment facilities</b>	<b>28</b>
22 Holder of stored value must be an ADI or be authorised or exempted under this Part .....	28
23 Authority to be the holder of the stored value.....	28
24 Directions on failure to comply with conditions.....	29
25 Exemptions.....	30
25A Acceptance and enforcement of undertakings.....	31
<b>Part 5—Miscellaneous</b>	<b>33</b>
26 Persons to give Reserve Bank and nominated special regulators information .....	33
26A Enforcement of civil penalty provisions .....	34
27 Power to determine requirements for applications.....	35
29 Notification obligations .....	35
31 Delegation – Reserve Bank .....	35
31A Delegation—nominated special regulators .....	36
32 Regulations.....	37
<b>Endnotes</b>	<b>38</b>
<b>Endnote 1—About the endnotes</b>	<b>38</b>
<b>Endnote 2—Abbreviation key</b>	<b>40</b>
<b>Endnote 3—Legislation history</b>	<b>41</b>
<b>Endnote 4—Amendment history</b>	<b>42</b>

# An Act to provide for the regulation of payment systems and purchased payment facilities, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Payment Systems (Regulation) Act 1998*.

### 2 Commencement

This Act commences on the commencement of the *Australian Prudential Regulation Authority Act 1998*.

### 3 Crown is bound by this Act

This Act binds the Crown in all its capacities, but does not make the Crown liable to be prosecuted for an offence.

### 4 Application of this Act to external Territories

This Act extends to every external Territory.

### 5 Application of *Criminal Code*

The *Criminal Code* applies to all offences against this Act.

### 6 Overview of Act

- (1) This Act provides for the regulation of payment systems and purchased payment facilities.

Note: The regulation of purchased payment facilities operates through regulation of the holders of the stored value of such facilities.

- (2) Part 2 contains definitions of terms used in this Act.
- (3) Part 3 deals with the regulation of payment systems. It provides for:
- (a) ~~the designation of payment systems (see Division 2); and the designation of payment systems (see Division 2 for designated payment systems and Division 2A for special designated payment systems); and~~
  - (b) the imposition of access regimes on participants in ~~designated payment systems~~ payment systems that are designated payment systems or special designated payment systems (or both) (see Division 3); and

Section 6

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- (c) standards to be complied with by participants in ~~designated payment systems~~ [payment systems that are designated payment systems or special designated payment systems \(or both\)](#) (see Division 4); and
- (d) the arbitration of disputes relating to ~~designated payment systems~~ [payment systems that are designated payment systems or special designated payment systems \(or both\)](#) (see Division 5); and
- (e) directions to be complied with by participants in ~~designated payment systems~~ [payment systems that are designated payment systems or special designated payment systems \(or both\)](#) (see Division 6).

Note: A payment system may be a designated payment system and a special designated payment system: see subsections 11(1A) and 11A(2).

- (4) Part 4 deals with the regulation of holders of the stored value of purchased payment facilities.
- (5) Part 5 deals with miscellaneous matters.

## Part 2—Interpretation

### 7 Definitions

(1) In this Act:

**access**, in relation to a payment system, means the entitlement or eligibility of a person to become a participant in the system, as a user of ~~the system~~ the payment system, on a commercial basis on terms that are fair and reasonable.

**access regime**, in relation to a ~~designated payment system~~ payment system that is a designated payment system or a special designated payment system (or both), means an access regime:

- (a) that has been imposed by the Reserve Bank or a nominated special regulator under section 12; and
- (b) that is in force.

**civil penalty provision** has the same meaning as in the Regulatory Powers Act.

**constitutional corporation** means a corporation to which paragraph 51(xx) of the Constitution applies.

**contravene an offence or civil penalty provision** has a meaning affected by section 9A.

Note: The meaning of **contravention** is correspondingly affected (see section 18A of the *Acts Interpretation Act 1901*).

**designated payment system** means a payment system that is designated under section 11.

**Federal Court** means the Federal Court of Australia.

**funds** includes, but is not limited to, the following:

- (a) money;
- (b) digital units of value, including digital currency (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*).

**head**, of a nominated special regulator, has the meaning given by subsection (2).

**holder of the stored value**, in relation to a purchased payment facility, has the meaning given by subsection 9(2).

**national interest** has a meaning affected by section 8A.

**nominated special regulator**, in relation to a special designated payment system, has the meaning given by subsection 11C(2).

~~**participant in a payment system** means:~~

Section 7

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~~(a) a constitutional corporation that is a participant in the system in accordance with the rules governing the operation of the system; or~~

~~(b) a constitutional corporation that is an administrator of the system.~~

participant in a payment system means:

(a) a constitutional corporation that operates, administers or participates in a payment system; or

(b) a constitutional corporation that provides services that enable or facilitate the operation or administration of, or participation in, a payment system.

~~payment system~~ means a funds transfer system that facilitates the circulation of money, and includes any instruments and procedures that relate to the system.

payment system:

(a) means an arrangement or series of arrangements under which transfers of funds are made; and

(b) includes any instruments and procedures that relate to that arrangement or series of arrangements.

**public interest** has ~~the meaning given~~ a meaning affected by section 8.

**purchased payment facility** means a facility described in subsection 9(1), other than a facility covered by a declaration under subsection 9(3).

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014*.

**Reserve Bank** means the Reserve Bank of Australia.

**responsible Minister** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**special designated payment system** means a payment system that is designated under section 11A.

**special regulator** has the meaning given by section 11B.

**standard** means a standard in force under section 18.

(2) In this Act, a person is the **head** of a special regulator (including a special regulator that is a nominated special regulator) if the person is prescribed by the regulations as the head of that special regulator.



## 8 Meaning of *public interest*

In determining, for the purposes of this Act, if particular action is or would be in, or contrary to, the *public interest*, the Reserve Bank is to have regard to the desirability of payment systems:

- (a) being (in its opinion):
  - (i) financially safe for use by participants; and
  - (ii) efficient; and
  - (iii) competitive; and
- (b) not (in its opinion) materially causing or contributing to increased risk to the financial system.

The Reserve Bank may have regard to other matters that it considers are relevant, but is not required to do so.

### 8A Meaning of *national interest*

In determining, for the purposes of this Act, whether a particular action is in the *national interest*:

- (a) the Minister may have regard to a matter (a *core public interest matter*) that the Reserve Bank would be required to have regard to if it were determining, for the purposes of this Act, whether the action is in the public interest (see section 8); and
- (b) the Minister must identify, and have regard to, one or more matters each of which:
  - (i) is not a core public interest matter; and
  - (ii) is a matter that the Minister considers relevant to determining whether the action is in the national interest.

## 9 Meaning of *purchased payment facility* and *holder of the stored value*

- (1) A *purchased payment facility* is a facility (other than cash) in relation to which the following conditions are satisfied:
  - (a) the facility is purchased by a person from another person; and
  - (b) the facility is able to be used as a means of making payments up to the amount that, from time to time, is available for use under the conditions applying to the facility; and
  - (c) those payments are to be made by the provider of the facility or by a person acting under an arrangement with the provider (rather than by the user of the facility).

However, a facility covered by a declaration under subsection (3) is not a purchased payment facility for the purposes of this Act.

## Section 9A

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- (2) The **holder of the stored value**, in relation to a purchased payment facility, is the person who is to make payments as mentioned in paragraph (1)(c).
- (3) The Reserve Bank may, by legislative instrument, declare that this Act does not apply to a specified facility, or to facilities included in a specified class of facilities, if the Reserve Bank considers that it is not appropriate for this Act to apply to the facility, or to each facility of that class, having regard to:
- (a) any restrictions that limit the number or types of people who may purchase the facility; or
  - (b) any restrictions that limit the number or types of people to whom payments may be made using the facility.
- The Reserve Bank may have regard to other matters that it considers are relevant, but is not required to do so.
- (4) In this section:
- (a) a reference to a facility includes a reference to a right to use a facility; and
  - (b) a reference to the purchase of a facility includes a reference to the payment of an amount for a right to use a facility.

### 9A Functions and powers under this Act

In this Act, a reference to a function or power under this Act includes a reference to a function or power under the Regulatory Powers Act as it applies in relation to this Act.

### 9B Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the **conduct provision**) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

## Part 3—Regulation of payment systems

### Division 1—Overview

#### 10 Overview of main regulatory provisions

~~(1) Under this Part, the Reserve Bank is given the power to designate payment systems (see Division 2).~~

(1) Under this Part:

(a) the Reserve Bank is given the power to designate payment systems, which are then known as designated payment systems (see Division 2); and

(b) the Minister is also given the power to designate payment systems, which are then known as special designated payment systems (see Division 2A).

Note: A payment system may be a designated payment system and a special designated payment system: see subsections 11(1A) and 11A(2).

(1A) Under Division 2A, the Minister is given the power to:

(a) nominate special regulators in relation to special designated payment systems; and

(b) direct nominated special regulators about the performance of their functions or the exercise of their powers under this Act or the Regulatory Powers Act as it applies in relation to this Act.

(2) The Reserve Bank has the following powers in relation to a designated payment system, and a nominated special regulator has the following powers in relation to a special designated payment system:

(a) ~~it may impose an access regime on the~~ to impose an access regime on participants in the payment system (see Division 3); and

(b) ~~it may~~to make standards to be complied with by participants in the payment system (see Division 4); and

(c) ~~it may~~to arbitrate disputes relating to the payment system (see Division 5); and

(d) ~~it may~~to give directions to participants in the payment system (see Division 6).

Section 11

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## Division 2—~~Designation of~~ Designated payment systems

### 11 Reserve Bank may designate payment systems

- (1) The Reserve Bank may, by notifiable instrument, designate a ~~payment system if it considers that designating the system~~ payment system, or each payment system in a class of payment systems, if it considers that designating the payment system, or each payment system in the class, is in the public interest.

(1A) To avoid doubt, the Reserve Bank may designate a payment system under subsection (1) whether or not that payment system has been designated by the Minister under subsection 11A(1).

Note: However, if the payment system has been designated by the Minister under subsection 11A(1), consultation requirements apply: see subsection 11AA(1).

- (2) The designation has effect until it is revoked.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

### 11AA Multiple designation—consultation by Reserve Bank

#### *Consultation before multiple designation*

- (1) If a payment system is a special designated payment system, the Reserve Bank must, before designating the payment system under subsection 11(1), consult each nominated special regulator in relation to the payment system that is not the Reserve Bank.

#### *Consultation after multiple designation*

- (2) Subsection (3) applies if a payment system (the *target payment system*) is both a designated payment system and a special designated payment system.
- (3) Before the Reserve Bank performs a function, or exercises a power, under this Act in relation to the target payment system (other than a function or power that the Reserve Bank has because it is a nominated special regulator in relation to the target payment system), the Reserve Bank must consult each nominated special regulator in relation to the target payment system that is not the Reserve Bank.

Note: See also subsection 11CA(4), which requires nominated special regulators to engage in consultation before performing functions or exercising powers under this Act.

## **Division 2A—Special designated payment systems**

### **11A Minister may designate payment systems**

(1) The Minister may, by notifiable instrument, designate a payment system as a *special designated payment system* if the Minister considers that designating the payment system is in the national interest.

(2) To avoid doubt, the Minister may designate a payment system under subsection (1) whether or not the payment system has been designated by the Reserve Bank under subsection 11(1).

#### *Conditions on designation*

(3) Before designating a payment system under subsection (1), the Minister must:

(a) consult the Reserve Bank and each special regulator on the proposed designation; and

(b) consider the following:

(i) whether there are alternatives to the designation available under this Act or any other Act;

(ii) the outcome of the consultation undertaken by the Minister under paragraph (a);

(iii) any other matter the Minister considers relevant.

#### *Revocation*

(4) The Minister may revoke the designation if, at the time of the revocation, the Minister considers that the designation is no longer necessary or appropriate.

### **11B Meaning of special regulator**

(1) An entity is a *special regulator* if it is prescribed as a special regulator by the regulations.

(2) An entity may be prescribed as a special regulator only if the entity is a Commonwealth entity or a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*).

### **11C Nomination of special regulators**

(1) The Minister may, by legislative instrument, nominate one or more special regulators in relation to a special designated payment system if the Minister considers that doing so is in the national interest.

(2) If a special regulator is nominated in relation to a special designated payment system under subsection (1), then the special

## Section 11CA

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regulator is a *nominated special regulator* in relation to that special designated payment system.

- (3) The special regulator is a nominated special regulator either:
- (a) for the period specified in the nomination; or
  - (b) if no period is specified—until the nomination is revoked.

### *Conditions on nomination*

- (4) Before nominating a special regulator under subsection (1), the Minister must:
- (a) consult the head of the special regulator; and
  - (b) be satisfied that the nomination is consistent with any functions of the special regulator under this Act or any other Act (and with any requirements that apply to the performance of those functions); and
  - (c) consider the following:
    - (i) the outcome of the consultation undertaken by the Minister under paragraph (a);
    - (ii) any other matter the Minister considers relevant.

### *Revocation*

- (5) The Minister may revoke a nomination made under subsection (1) if, at the time of the revocation, the Minister considers that the nomination is no longer necessary or appropriate.

## **11CA Functions and powers of nominated special regulators**

- (1) Subject to this section, a nominated special regulator in relation to a special designated payment system may perform the functions, and exercise the powers, of a nominated special regulator under this Act in relation to that special designated payment system.

### *Restrictions relating to Ministerial directions*

- (2) A nominated special regulator must not perform a function, or exercise a power, of the kind mentioned in subsection (1) unless:
- (a) the performance of the function, or the exercise of the power, is for the purpose of giving effect to a direction given to the nominated special regulator by the Minister under subsection 11E(1); or
  - (b) the Minister has given the nominated special regulator a direction under subsection 11E(1) specifying matters that must be considered by the nominated special regulator before performing the function or exercising the power.

Note: One effect of this subsection is that if no directions to the nominated special regulator are in force under subsection 11E(1), then the nominated special regulator must not perform any of the functions, or exercise any of the powers, of the kind mentioned in subsection (1) of this section.

- (3) In performing a function, or exercising a power, of the kind mentioned in subsection (1), a nominated special regulator must comply with any directions given to the nominated special regulator by the Minister under subsection 11E(1).

*Consultation*

- (4) Before a nominated special regulator in relation to a special designated payment system performs a function, or exercises a power, under this Act in relation to the special designated payment system, the nominated special regulator must consult:
- (a) the Reserve Bank (if the nominated special regulator is not the Reserve Bank); and
  - (b) if there are one or more other nominated special regulators in relation to the special designated payment system—each of those other nominated special regulators.

**11E Ministerial directions to nominated special regulators**

- (1) The Minister may, by legislative instrument, give a direction to a nominated special regulator about the performance of functions or the exercise of powers under this Act, or the Regulatory Powers Act as it applies in relation to this Act, by that nominated special regulator in relation to a special designated payment system.

Note 1: For the contents of a direction, see section 11F.

Note 2: Nominated special regulators must comply with directions given under this subsection: see subsection 11CA(3).

- (2) To avoid doubt, the Minister may give a direction under subsection (1) to a nominated special regulator by giving a direction to all nominated special regulators.

*Conditions on giving direction*

- (3) Before giving a direction to a nominated special regulator under subsection (1), the Minister must:
- (a) consult the head of the nominated special regulator; and
  - (b) be satisfied that giving the direction is in the national interest; and
  - (c) be satisfied that giving the direction is consistent with any functions of the nominated special regulator under this Act or any other Act (and with any requirements that apply to the performance of those functions); and
  - (d) if the Minister is not the responsible Minister for the nominated special regulator—obtain written consent to the direction from the responsible Minister.

*When direction is in force*

- (4) The direction:

## Section 11F

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(a) comes into force:

(i) unless subparagraph (ii) applies—on the day on which it is given; or

(ii) if the direction specifies a later day as the day on which it comes into force—on the day so specified; and

(b) continues in force until it is revoked.

### *Revocation*

(5) The Minister may revoke the direction if, at the time of the revocation, the Minister considers that the direction is no longer necessary or appropriate.

## **11F Contents of ministerial directions to nominated special regulators**

(1) Without limiting subsection 11E(1), a direction given to a nominated special regulator under that subsection may:

(a) relate to a particular special designated payment system; or

(b) relate to a particular function or power that the nominated special regulator may perform or exercise under this Act or the Regulatory Powers Act as it applies in relation to this Act; or

(c) specify the purposes for which a function or power mentioned in paragraph (b) of this subsection is to be performed or exercised; or

(d) specify matters that the nominated special regulator must consider when performing or exercising a function or power mentioned in paragraph (b) of this subsection; or

(e) provide that a function or power mentioned in paragraph (b) of this subsection must not be performed or exercised by the nominated special regulator, or must be performed or exercised by the nominated special regulator only in specified circumstances.

(2) The direction must specify the time by which, or period during which, the direction is to be complied with.

(3) The direction must not relate to a particular participant in a special designated payment system.

## **11G Reports by nominated special regulators**

(1) The Minister may, by notice in writing, request a nominated special regulator in relation to a special designated payment system to report in writing to the Minister on:

(a) the performance of functions and exercise of powers under this Act, or the Regulatory Powers Act as it applies in relation to this Act, by the nominated special regulator; or



(b) without limiting paragraph (a), the nominated special regulator's compliance with a direction given to the nominated special regulator under subsection 11E(1).

(2) The nominated special regulator must comply with a request made by the Minister under subsection (1).

### **11H Authorised use or disclosure of information**

(1) The Reserve Bank may use or disclose information or documents obtained by the Reserve Bank under or for the purposes of this Part if:

- (a) the use or disclosure is to a nominated special regulator; and
- (b) the use or disclosure is for the purposes of the performance of functions or the exercise of powers under this Act, or the Regulatory Powers Act as it applies in relation to this Act, by the Reserve Bank or that nominated special regulator.

Note: This subsection, and subsection (2), constitute authorisations for the purposes of the *Privacy Act 1988*.

(2) A nominated special regulator (the *first regulator*) in relation to a special designated payment system may use or disclose information or documents obtained by the nominated special regulator under or for the purposes of this Part if:

- (a) the use or disclosure is to:
  - (i) the Reserve Bank; or
  - (ii) another nominated special regulator in relation to the special designated payment system; and
- (b) the use or disclosure is for the purposes of the performance of functions or the exercise of powers under this Act, or the Regulatory Powers Act as it applies in relation to this Act, by the first regulator, the Reserve Bank or that other nominated special regulator.

Section 12

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**Division 3—Access to designated systems regimes**

**Subdivision A—Access regimes Operation of access regimes**

**12 Imposition of access regime**

- (1) The Reserve Bank may, by legislative instrument, impose an access regime on ~~the~~ participants in a designated payment system.

(1A) A nominated special regulator in relation to a special designated payment system may, by legislative instrument, impose an access regime on participants in that special designated payment system.

- (2) The access regime imposed must be one that the Reserve Bank or the nominated special regulator (as the case may be) considers appropriate, having regard to:

(a) ~~whether imposing the access regime would be in the public interest; and either:~~

(i) in the case of an access regime imposed by the Reserve Bank under subsection (1)—whether imposing the access regime would be in the public interest; or

(ii) in the case of an access regime imposed by the nominated special regulator under subsection (1A)—any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the imposition of the access regime; and

- (b) the interests of the current participants in the system; and  
(c) the interests of people who, in the future, may want access to the system; and  
(d) any other matters the Reserve Bank or the nominated special regulator (as the case may be) considers relevant.

(3) Without limiting subsection (1) or (1A), the Reserve Bank or the nominated special regulator (as the case may be) may, in an instrument made under either of those subsections:

(a) specify participants or classes of participants to whom the access regime does or does not apply; or

(b) provide that the access regime applies differently in relation to different participants or classes of participants.

Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (5) As soon as practicable after imposing the access regime, the Reserve Bank or the nominated special regulator must provide notification under section 29.
- (6) A failure to comply with subsection (5) does not affect the validity of the access regime.

### 13 When access regimes are in force

An access regime:

- (a) comes into force on the day specified in the instrument imposing the regime under section 12, which must not be earlier than the day after the instrument is registered on the Federal Register of Legislation under the *Legislation Act 2003*; and
- (b) may be varied as provided in section 14; and
- (c) remains in force until it ceases to be in force as provided in section 15.

Note: [The operation of section 15AA \(which deals with conflicts between access regimes\) may result in a part of an access regime ceasing to be in force before the time when the whole of the access regime ceases to be in force as provided in section 15.](#)

### 14 Variation of access regime

- (1) The Reserve Bank [or a nominated special regulator in relation to a special designated payment system](#) may, by legislative instrument, vary an access regime [that it has imposed](#) if the Reserve Bank [or the nominated special regulator \(as the case may be\)](#) considers it is appropriate to do so, having regard to:

- (a) ~~whether the variation would be in the public interest; and either:~~

[\(i\) in the case of an access regime imposed by the Reserve Bank under subsection 12\(1\)—whether the variation would be in the public interest; or](#)

[\(ii\) in the case of an access regime imposed by the nominated special regulator under subsection 12\(1A\)—any matters that the nominated special regulator has been directed by the Minister under subsection 11E\(1\) to consider in relation to the variation; and](#)

- (b) the interests of the current participants in the system; and
  - (c) the interests of people who, in the future, may want access to the system; and
  - (d) any other matters the Reserve Bank [or the nominated special regulator \(as the case may be\)](#) considers relevant.
- (5) If the Reserve Bank [or the nominated special regulator](#) varies the access regime it must, as soon as practicable, provide notification under section 29.
  - (6) A failure to comply with subsection (5) does not affect the validity of a variation of the access regime.
  - (7) A variation of the access regime takes effect on the day specified in the instrument, which must not be earlier than the day after the instrument is registered on the Federal Register of Legislation under the *Legislation Act 2003*.

Section 15

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## 15 When access regimes cease to be in force

- (1) An access regime that the Reserve Bank or a nominated special regulator has imposed ceases to be in force if:
- (a) the access regime contains an expiry date and that date is reached; or
  - (b) ~~the Reserve Bank, on the application of the participants in the designated payment system concerned, revokes the access regime; or the entity that imposed the access regime, on the application of the participants in the payment system concerned, revokes the access regime; or~~
  - (c) the ~~Reserve Bank~~ entity that imposed the access regime revokes the access regime on its own initiative; or
  - (d) ~~the payment system concerned ceases to exist or ceases to be a designated payment system. the payment system concerned ceases to exist; or~~
  - (e) either:
    - (i) in the case of an access regime imposed by the Reserve Bank under subsection 12(1)—the payment system concerned ceases to be a designated payment system; or
    - (ii) in the case of an access regime imposed by a nominated special regulator under subsection 12(1A)—the payment system concerned ceases to be a special designated payment system; or
  - (f) the access regime ceases to be in force under section 15AA (which deals with conflicts between access regimes).

Note: The operation of section 15AA may also result in a part of an access regime ceasing to be in force before the time when the whole of the access regime ceases to be in force as provided in this section.

- (2) An application for the revocation of the regime must comply with the applicable requirements determined under section 27.
- (3) The ~~Reserve Bank~~ entity that imposed the access regime (whether the Reserve Bank or a nominated special regulator) may, by legislative instrument, revoke the access regime (pursuant to an application or on its own initiative) if the ~~Reserve Bank~~ entity considers it appropriate to do so, having regard to:
- (a) ~~whether revoking the access regime would be in the public interest; and either:~~
    - (i) in the case of an access regime imposed by the Reserve Bank under subsection 12(1)—whether revoking the access regime would be in the public interest; or
    - (ii) in the case of an access regime imposed by a nominated special regulator under subsection 12(1A)—any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the revocation; and

- (b) the interests of the current participants in the system; and
  - (c) the interests of people who, in the future, may want access to the system; and
  - (d) any other matters the ~~Reserve Bank~~entity considers relevant.
- (5) If the ~~Reserve Bank~~entity that imposed the access regime revokes the access regime it must, as soon as practicable, provide notification under section 29.
- (6) A failure to comply with subsection (5) does not invalidate the revocation of the access regime.
- (7) The revocation of the access regime takes effect on the day specified in the instrument, which must not be earlier than the day after the instrument is registered on the Federal Register of Legislation under the *Legislation Act 2003*.

### **15A Authorisation of conduct under access regime for the purposes of the *Competition and Consumer Act 2010***

For the purposes of subparagraph 51(1)(a)(i) of the *Competition and Consumer Act 2010*, anything that is done:

- (a) by a participant in a ~~designated payment system~~payment system that is a designated payment system or a special designated payment system (or both) under an access regime; and
  - (b) in accordance with that access regime;
- is taken to be specified in, and specifically authorised by, this Act.

### **15AA Conflicts between access regimes**

(1) This section applies if:

- (a) a particular payment system is both a designated payment system and a special designated payment system; and
- (b) the Reserve Bank has, under subsection 12(1), imposed an access regime (the *normal access regime*) on participants in the payment system; and
- (c) a nominated special regulator has, under subsection 12(1A), imposed an access regime (the *special access regime*) on participants in the payment system; and
- (d) the normal access regime is, to any extent, inconsistent with the special access regime.

(2) For the purposes of this Act, the normal access regime ceases to be in force to the extent that it is inconsistent with the special access regime.

Section 16

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## Subdivision B—Enforcement of access regimes

### ~~16 Right to ask Reserve Bank to give a direction~~

~~If a person who has been denied access to a designated payment system considers that the denial of access constitutes, or is attributable (wholly or partly) to, a breach of a provision of an access regime by a participant, the person may ask the Reserve Bank to use its power under section 21 to give a direction to remedy the situation.~~

### 16 Right to ask for directions

(1) This section applies if a person who has been denied access to a payment system that is a designated payment system or a special designated payment system (or both) considers that the denial of access constitutes, or is attributable (wholly or partly) to, a breach of a provision of an access regime by a participant.

(2) The person may ask the entity that imposed the access regime (whether the Reserve Bank or a nominated special regulator) to use its power under section 21 to give a direction to remedy the situation.

### 17 Right to apply to the Federal Court

~~(1) If a person who has been denied access to a designated payment system~~ payment system that is a designated payment system or a special designated payment system (or both) considers that the denial of access constitutes, or is attributable (wholly or partly) to, a breach of a provision of an access regime by a participant, the person may apply to the Federal Court for an order under subsection (3).

~~(2) The person must notify the Reserve Bank of the application to the Federal Court. The Reserve Bank may apply to the Federal Court to be joined as a party to the proceedings for the order. The person must notify the entity that imposed the access regime (whether the Reserve Bank or a nominated special regulator) of the application to the Federal Court.~~

(2A) The entity may apply to the Federal Court to be joined as a party to the proceedings for the order.

(3) If the Federal Court is satisfied that the participant has breached a provision of the access regime, the Court may make all or any of the following orders:

- (a) an order directing the participant to comply with that provision of the access regime;

- (a) an order directing the participant to compensate any other person who has suffered loss or damage as a result of the breach;
  - (b) any other order that the Court considers appropriate.
- (4) The Federal Court may discharge or vary an order made under this section.

ME Annotated Draft

Section 18

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## Division 4—Standards for designated systems

### 18 ~~Reserve Bank may make standards for designated systems~~

#### Making of standards

- (1) The Reserve Bank may, by legislative instrument, determine standards to be complied with by participants in a designated payment system if it considers that determining the standards is in the public interest.

Note 1: A failure to comply with a standard is not an offence, but it may lead to a direction being given under section 21.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(1A) A nominated special regulator in relation to a special designated payment system may, by legislative instrument, determine standards to be complied with by participants in that special designated payment system.

Note 1: A failure to comply with a standard is not an offence, but it may lead to a direction being given under section 21.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(1B) Before determining a standard under subsection (1A), the nominated special regulator must have regard to any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the determination of standards.

- (2) A standard:
- (a) comes into force on the day specified in the determination, which must not be earlier than the day after the determination is registered on the Federal Register of Legislation under the *Legislation Act 2003*; and
  - (b) ~~continues in force until it is revoked.~~ continues in force until:
    - (i) it is revoked; or
    - (ii) it ceases to be in force under section 18AA (which deals with conflicts between standards).

Note: The operation of section 18AA may also result in a part of a standard ceasing to be in force before the time when the whole of the standard ceases to be in force as provided in paragraph (b) of this subsection.

- (6) If the Reserve Bank or a nominated special regulator determines a standard, or varies or revokes a standard, it must, as soon as practicable, provide notification under section 29.
- (7) A failure to comply with subsection (6) does not affect the validity of a standard or of the variation or revocation of a standard.



### **18A Authorisation of conduct under certain standards for the purposes of the *Competition and Consumer Act 2010***

(1) For the purposes of subparagraph 51(1)(a)(i) of the *Competition and Consumer Act 2010*, anything that is done:

- (a) by a participant in relation to the setting, or charging, of wholesale fees (also known as interchange fees) payable under a payment system to which an interchange fees standard applies; and
- (b) in accordance with that standard;

is taken to be specified in, and specifically authorised by, this Act.

(2) In this section:

***interchange fees standard*** means any of the following standards as amended and in force from time to time:

- (a) a standard that is known as Standard No. 1, The Setting of Wholesale (“Interchange”) Fees and that was determined by the Reserve Bank on 26 August 2002;
- (b) a standard specified by the regulations for the purposes of this paragraph.

#### **18AA Conflicts between standards**

(1) This section applies if:

- (a) a particular payment system is both a designated payment system and a special designated payment system; and
- (b) the Reserve Bank has, under subsection 18(1), determined a standard (the ***normal standard***) to be complied with by participants in the payment system; and
- (c) a nominated special regulator has, under subsection 18(1A), determined a standard (the ***special standard***) to be complied with by participants in the payment system; and
- (d) the normal standard is, to any extent, inconsistent with the special standard.

(2) For the purposes of this Act, the normal standard ceases to be in force to the extent that it is inconsistent with the special standard.

Section 19

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## Division 5—Arbitration of disputes ~~relating to designated systems~~

### 19 Disputes to which Division applies

This Division applies to the following kinds of disputes:

- (a) a dispute between 2 or more participants in a designated payment system (that is not also a special designated payment system) that arises out of, or that is otherwise connected with, that system;
- (b) a dispute between a person and 2 or more participants in a ~~designated payment system~~ payment system that is a designated payment system or a special designated payment system (or both) and for which there is an access regime, being a dispute relating to whether the access regime is being complied with.

### 20 Arbitration of disputes

- (1) The Reserve Bank may arrange for a dispute to which this Division applies to be settled by arbitration in accordance with this ~~section~~. ~~The Reserve Bank must only do so if~~ section if:

- (a) it considers that the dispute raises issues related to:
  - (i) the financial safety of payment systems for participants; or
  - (ii) the efficiency of payment systems; or
  - (iii) the competitiveness of payment systems; or
  - (iv) risk to the financial system; and
- (b) the parties to the dispute agree to the Reserve Bank arranging the arbitration; ~~and~~.

Note: The Reserve Bank may be acting on its own initiative or in response to a request from one or more of the parties to the dispute in arranging for the arbitration.

- (c) if the dispute is of a kind mentioned in paragraph 19(b)—the dispute relates to whether an access regime imposed by the Reserve Bank under subsection 12(1) is being complied with.

(1A) A nominated special regulator in relation to a special designated payment system may arrange for a dispute to which this Division applies to be settled by arbitration in accordance with this section if:

- (a) the dispute is of a kind mentioned in paragraph 19(b); and
- (b) the dispute relates to whether an access regime imposed by the nominated special regulator under subsection 12(1A) is being complied with; and
- (c) the nominated special regulator has had regard to any matters that the nominated special regulator has been directed by the Minister under subsection 11E(1) to consider in relation to the arbitration; and

(d) the parties to the dispute agree to the nominated special regulator arranging the arbitration.

Note: The nominated special regulator may be acting on its own initiative or in response to a request from one or more of the parties to the dispute in arranging for the arbitration.

(2) ~~The arbitration is to be conducted by the Governor of the Reserve Bank, or by a person appointed in writing by the Governor for the purpose.~~ The arbitration is to be conducted:

(a) in the case of an arbitration arranged by the Reserve Bank—by the Governor of the Reserve Bank, or by a person appointed in writing by the Governor to conduct the arbitration; or

(b) in the case of an arbitration arranged by a nominated special regulator—by the head of the nominated special regulator, or by a person appointed in writing by the head of the nominated special regulator to conduct the arbitration.

- (3) The person conducting an arbitration is not subject to any action, claim or demand by, or liable to, any person in respect of anything done, or omitted to be done, in good faith in connection with the arbitration.
- (4) The arbitration must be conducted in accordance with the regulations.
- (5) The fact the dispute is being, or has been, settled by arbitration under this section does not prevent a party to the dispute from bringing an action in a court in connection with the dispute, unless the court otherwise orders.

Section 21

## Division 6—Directions to participants ~~in designated systems~~

### 21 Directions

(1) The Reserve Bank may give a direction to a participant in a designated payment system if the Reserve Bank considers that:

~~(a) the participant has failed to comply with a standard; or~~

~~(b) the participant has failed to comply with an access regime.~~

(a) the participant has failed to comply with a standard determined by the Reserve Bank under subsection 18(1); or

(b) the participant has failed to comply with an access regime imposed by the Reserve Bank under subsection 12(1).

(1A) A nominated special regulator in relation to a special designated payment system may give a direction to a participant in the special designated payment system if the nominated special regulator considers that:

(a) the participant has failed to comply with a standard determined by the nominated special regulator under subsection 18(1A); or

(b) the participant has failed to comply with an access regime imposed by the nominated special regulator under subsection 12(1A).

(2) The direction is to require the participant to take specified action, or to refrain from specified action, as the Reserve Bank or the nominated special regulator (as the case may be) considers appropriate having regard to the failure.

(3) The direction must be consistent with any applicable standards and with any applicable access regime.

(4) The direction may deal with the time by which, or the period during which, it is to be complied with.

(5) The direction is to be given by notice in writing given to the participant.

~~(6) The participant commits an offence if:~~

~~(a) the participant does, or fails to do, an act; and~~

~~(b) doing, or failing to do, the act results in a contravention of the direction; and~~

~~(c) the doing of the act, or the failure to do the act, occurs at a time when:~~

~~(i) the participant is still a participant in the payment system referred to in subsection (1); and~~

~~(ii) that payment system is still a designated payment system.~~

~~Penalty: 50 penalty units~~

~~Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.~~

~~Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.~~

~~(7) If a contravention of the direction occurs in circumstances that give rise to the participant committing an offence against subsection (6), the participant commits an offence against that subsection in respect of:~~

~~(a) the day on which the contravention occurs; and~~

~~(b) each subsequent day (if any) on which the contravention continues (including the day of conviction for any such offence or any later day).~~

~~Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.~~

#### When direction is in force

(6) The direction:

(a) comes into force:

(i) unless subparagraph (ii) applies—on the day on which it is given; or

(ii) if the instrument giving the direction specifies a later day as the day on which it comes into force—on the day so specified; and

~~(b) continues in force until it is revoked.~~ continues in force until:

(i) it is revoked; or

(ii) it ceases to be in force under section 21A (which deals with conflicts between directions).

~~Note: The operation of section 21A may also result in a part of a direction ceasing to be in force before the time when the whole of the direction ceases to be in force as provided in paragraph (b) of this subsection.~~

~~(9) The Reserve Bank may revoke the direction by notice in writing given to the participant if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.~~

#### Revocation of directions

(7) The Reserve Bank or the nominated special regulator (as the case may be) may revoke the direction by notice in writing given to the participant if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

#### Contravention of directions

(8) The participant contravenes this subsection if:

(a) the participant does, or fails to do, an act; and

## Section 21A

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(b) doing, or failing to do, the act results in a contravention of the direction given under subsection (1) or (1A); and

(c) if the direction was given under subsection (1)—the doing of the act, or the failure to do the act, occurs at a time when:

(i) the participant is still a participant in the payment system referred to in subsection (1); and

(ii) that payment system is still a designated payment system; and

(d) if the direction was given under subsection (1A)—the doing of the act, or the failure to do the act, occurs at a time when:

(i) the participant is still a participant in the payment system referred to in subsection (1A); and

(ii) that payment system is still a special designated payment system.

### *Fault-based offence*

(9) The participant commits an offence if the participant contravenes subsection (8). The physical elements of the offence are set out in that subsection.

Penalty: 100 penalty units.

### *Civil penalty provision*

(10) A person is liable to a civil penalty if the participant contravenes subsection (8).

Civil penalty: 100 penalty units.

### *Continuing contraventions of offence provision*

(11) If a contravention of the direction occurs in circumstances that give rise to the participant committing an offence against subsection (9), the participant commits an offence against that subsection in respect of:

(a) the day on which the contravention occurs; and

(b) each subsequent day (if any) on which the contravention continues (including the day of conviction for any such offence or any later day).

Note 1: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

Note 2: Subsection (10) is a continuing civil penalty provision under section 93 of the *Regulatory Powers Act*.

## **21A Conflicts between directions**

(1) This section applies if:

(a) a particular payment system is both a designated payment system and a special designated payment system; and

- (b) the Reserve Bank has, under subsection 21(1), given a direction (a *normal direction*) to a participant in the payment system; and
  - (c) a nominated special regulator has, under subsection 21(1A), given a direction (a *special direction*) to that participant in the payment system; and
  - (d) the normal direction is, to any extent, inconsistent with the special direction.
- (2) For the purposes of this Act, the normal direction ceases to be in force to the extent that it is inconsistent with the special direction.

ME Annotated Draft

## Part 4—Regulation of purchased payment facilities

### 22 Holder of stored value must be an ADI or be authorised or exempted under this Part

- (1) A constitutional corporation commits an offence if:
- (a) it is the holder of the stored value of a purchased payment facility; and
  - (b) it is not an authorised deposit-taking institution, within the meaning of the *Banking Act 1959*; and
  - (c) there is no authority or exemption in force under section 23 or 25 that applies to the corporation and the purchased payment facility.

Penalty: 200 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

- (2) If a constitutional corporation is the holder of the stored value of a purchased payment facility in circumstances that give rise to the corporation committing an offence against subsection (1), the corporation commits an offence against that subsection in respect of:
- (a) the day on which the contravention occurs; and
  - (b) each subsequent day (if any) on which the contravention continues (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

### 23 Authority to be the holder of the stored value

- (1) A constitutional corporation may apply to the Reserve Bank for an authority to be the holder of the stored value of a class of purchased payment facilities. The application must comply with the applicable requirements determined under section 27.
- (2) The Reserve Bank may, by notifiable instrument, grant the authority if it is satisfied that the corporation will be able to satisfy its obligations as the holder of the stored value of purchased payment facilities of the relevant class.
- (4) The Reserve Bank may, at any time, by notifiable instrument:
  - (a) impose conditions, or additional conditions, on the authority; and
  - (b) vary or revoke conditions imposed on the authority.



The conditions must be aimed at ensuring the corporation meets its obligations as holder of the stored value of purchased payment facilities of the relevant class.

- (5) The authority:
- (a) comes into force on the day specified in the authority, which must not be earlier than the day after the authority is registered on the Federal Register of Legislation under the *Legislation Act 2003*; and
  - (b) continues in force until it is revoked.
- (6) The Reserve Bank may, by notifiable instrument, revoke the authority if:
- (a) it is no longer satisfied as mentioned in subsection (2); or
  - (b) it considers that the corporation has contravened a condition of the authority; or
  - (c) the corporation applies to the Reserve Bank for revocation of the authority; or
  - (d) the corporation ceases to be the holder of the stored value of any purchased payment facilities of the relevant class.

An application for revocation of the authority must comply with any applicable requirements determined under section 27.

## **24 Directions on failure to comply with conditions**

- (1) The Reserve Bank may give a direction to a corporation that has been granted an authority under section 23 if the Reserve Bank considers that the corporation has failed to comply with a condition of the authority.
- (2) The direction is to require the corporation to take specified action, or to refrain from specified action, as the Reserve Bank considers appropriate having regard to the failure.
- (3) The direction may deal with the time by which, or the period during which, it is to be complied with.
- (4) The direction is to be given by notice in writing given to the corporation.
- (5) The corporation commits an offence if:
  - (a) the corporation does, or fails to do, an act; and
  - (b) doing, or failing to do, the act results in a contravention of the direction; and
  - (c) the doing of the act, or the failure to do the act, occurs at a time when;
    - (i) the authority referred to in subsection (1) is still in force; and

## Section 25

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- (ii) the corporation is the holder of the stored value of one or more purchased payment facilities of the class to which that authority applies.

Penalty: 50 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty stated above.

- (6) If a contravention of the direction occurs in circumstances that give rise to the corporation committing an offence against subsection (5), the corporation commits an offence against that subsection in respect of:
  - (a) the day on which the contravention occurs; and
  - (b) each subsequent day (if any) on which the contravention continues (including the day of conviction for any such offence or any later day).

Note: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (7) The direction:
  - (a) comes into force:
    - (i) unless subparagraph (ii) applies—on the day on which it is given; or
    - (ii) if the instrument giving the direction specifies a later day as the day on which it comes into force—on the day so specified; and
  - (b) continues in force until it is revoked.
- (8) The Reserve Bank may revoke the direction by notice in writing to the corporation if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

## 25 Exemptions

- (1) The Reserve Bank may grant a corporation, or corporations included in a class of corporations, an exemption allowing the corporation, or each corporation in the class, to be the holder of the stored value in respect of purchased payment facilities in a particular class even though the corporation is not an authorised deposit-taking institution, within the meaning of the *Banking Act 1959*, and does not have an authority under section 23 of this Act that covers those facilities.
- (2) The Reserve Bank may be acting on its own initiative or pursuant to an application in granting the exemption. An application for an exemption must comply with the applicable requirements determined under section 27.

- (3) The Reserve Bank may grant the exemption if it is satisfied that the corporation, or each of the corporations in the class, will be able to satisfy the obligations of the holder of the stored value of purchased payment facilities of the relevant class.
- (4) The exemption is to be granted:
  - (a) if it applies to a particular corporation—by notifiable instrument; or
  - (b) if it applies to a class of corporations—by legislative instrument.
- (5) The exemption:
  - (a) comes into force on the day specified in the instrument, which must not be earlier than the day after the instrument is registered on the Federal Register of Legislation under the *Legislation Act 2003*; and
  - (b) continues in force until it is revoked.

### **25A Acceptance and enforcement of undertakings**

*Note: The amendments made by this Part apply in relation to undertakings given on or after the commencement of this Part.*

- (1) The Reserve Bank may accept a written undertaking given by a participant in a payment system (whether or not it is a designated payment system or a special designated payment system) in connection with a matter in relation to which the Reserve Bank has a function or power under this Act, the regulations or another legislative instrument made under this Act.
- (2) The Reserve Bank may accept an undertaking under subsection (1) only if doing so would be consistent with the Reserve Bank's payments system policy (within the meaning of the *Reserve Bank Act 1959*).
- (3) The participant may withdraw or vary the undertaking at any time, but only with the Reserve Bank's consent.
- (4) If the Reserve Bank considers that the participant who gave the undertaking has breached any of the terms of the undertaking, the Reserve Bank may apply to the Court for an order under subsection (5).
- (5) If the Court is satisfied that the participant has breached a term of the undertaking, the Court may make all or any of the following orders:
  - (a) an order directing the participant to comply with that term of the undertaking;
  - (b) an order directing the participant to pay to the Commonwealth an amount up to the amount of any financial

Section 25A

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benefit that the participant has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the participant to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

*Authorisation for the purposes of the Competition and Consumer Act 2010*

(6) For the purposes of subparagraph 51(1)(a)(i) of the *Competition and Consumer Act 2010*, the following are taken to be specified in, and specifically authorised by, this Act:

(a) anything done by the Reserve Bank under this section;

(b) the giving, by a participant in a payment system, of a written undertaking to the Reserve Bank under subsection (1) of this section;

(c) anything done by the participant in accordance with the terms of that written undertaking.

*Definitions*

(7) In this section:

*Court* means:

(a) the Federal Court; or

(b) the Federal Circuit and Family Court of Australia (Division 2); or

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

## Part 5—Miscellaneous

### 26 Persons to give Reserve Bank and nominated special regulators information

- (1) The Reserve Bank may require a participant in a payment system or a special designated payment system (whether or not it is a designated payment system) to give the Reserve Bank information relating to the payment system and its participants.

*Note:* Part VIII of the Reserve Bank Act 1959 imposes secrecy requirements upon certain information provided to the Reserve Bank.

(1A) A nominated special regulator in relation to a special designated payment system may require a participant in the special designated payment system to give the nominated special regulator information relating to that special designated payment system and its participants.

- (2) The Reserve Bank may require a corporation that is authorised under section 23, or that is exempted under section 25, to give the Reserve Bank information relating to purchased payment facilities of the class to which the authority or exemption relates.

*Refusal or failure to comply with requirement to give information*

- (3) A corporation (including a participant in a payment system) ~~commits an offence~~ contravenes this subsection if it refuses or fails to comply with a requirement under this section.

~~Penalty: 200 penalty units.~~

~~Note 1: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.~~

~~Note 2: If a body corporate is convicted of an offence against this subsection, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a fine of up to 5 times the penalty stated above.~~

~~Note 3: The secrecy requirements of Part 6 of the Reserve Bank Act 1959 apply to information provided under this section.~~

*Fault-based offence*

(3A) A corporation commits an offence if the corporation contravenes subsection (3). The physical elements of the offence are set out in that subsection.

Penalty: 200 penalty units.

*Civil penalty provision*

(3B) A corporation is liable to a civil penalty if the corporation contravenes subsection (3).

## Section 26A

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Civil penalty: 200 penalty units.

### Continuing contraventions of offence provision

- (4) If a refusal or failure to comply with a requirement under this section occurs in circumstances that give rise to a corporation (including a participant in a payment system) committing an offence against subsection (3A), the corporation commits an offence against that subsection in respect of:
- (a) the day on which the refusal or failure occurs; and
  - (b) each subsequent day (if any) until the requirement is complied with (including the day of conviction for any such offence or any later day).

Note 1: This subsection is not intended to imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

Note 2: Subsection (3B) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

## 26A Enforcement of civil penalty provisions

Note: The amendments made by this Part apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of this Part.

### Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

### Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the following are authorised applicants:
- (a) in relation to subsection 21(10) of this Act—the entity (whether the Reserve Bank or a nominated special regulator) that gave the direction to which the contravention of that subsection relates;
  - (b) in relation to any other civil penalty provision of this Act—the Reserve Bank.

### Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to each civil penalty provision of this Act:
- (a) the Federal Court;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

*Extension to external Territories*

(4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

## 27 Power to determine requirements for applications

The Reserve Bank may, by notifiable instrument, determine requirements to be complied with in relation to applications under this Act, including (but not limited to) requirements relating to:

- (a) the means by which an application is to be made; and
- (b) the information or documentation that is to be included in or submitted with an application; and
- (c) the verification of an application or of information or documentation included in or submitted with it.

## 29 Notification obligations

*Notification of determination or variation of standard or imposition or variation of access regime*

- (1) Subsection (2) applies to the following actions taken by the Reserve Bank or a nominated special regulator:
  - (a) the imposition of an access regime;
  - (b) the variation of an access regime;
  - (c) the determination of a standard;
  - (d) the variation of a standard.
- (2) If this subsection applies to an action, the Reserve Bank or the nominated special regulator (as the case may be) must take reasonable steps to ensure that the participants in the payment system concerned are informed of the action.

*Notification of revocation of a standard or an access regime*

- (3) If the Reserve Bank ~~revokes a standard or an access regime, the Reserve Bank~~ or a nominated special regulator revokes a standard or an access regime, the Reserve Bank or the nominated special regulator (as the case may be) must take reasonable steps to ensure that any participants in the payment system concerned are informed of the revocation.

## 31 Delegation – Reserve Bank

- (1) The Reserve Bank may, by written instrument, delegate all or any of its functions or powers under this Act or the Regulatory Powers

## Section 31A

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Act as it applies in relation to this Act (other than its functions or powers as a nominated special regulator) to a person who holds any of the following offices:

- (a) Governor of the Reserve Bank;
  - (b) Deputy Governor of the Reserve Bank;
  - (c) Assistant Governor of the Reserve Bank;
  - (d) Department Head of the Reserve Bank;
  - (e) any other prescribed office in the Reserve Bank Service.
- (2) The Governor of the Reserve Bank may, in writing, delegate all or any of the Governor's functions or powers under this Act or the Regulatory Powers Act as it applies in relation to this Act (other than the Governor's functions or powers as the head of a nominated special regulator) to a person who holds any of the following offices:
- (a) Deputy Governor of the Reserve Bank;
  - (b) Assistant Governor of the Reserve Bank;
  - (c) Department Head of the Reserve Bank;
  - (d) any other prescribed office in the Reserve Bank Service.
- (3) In exercising powers under a delegation under subsection (1) or (2), the delegate must comply with any directions of the delegator.

Note: For further information about delegations, see sections 34AA to 34A of the *Acts Interpretation Act 1901*.

(4) This section does not limit a power of delegation that a delegator mentioned in subsection (1) or (2) has under any other Act.

### **31A Delegation—nominated special regulators**

(1) A nominated special regulator in relation to a special designated payment system may, by written instrument, delegate all or any of its functions or powers under this Act or the Regulatory Powers Act as it applies in relation to this Act to:

- (a) the head of the nominated special regulator; or
- (b) a person prescribed by the regulations as an eligible delegate in relation to the nominated special regulator.

(2) The head of a nominated special regulator in relation to a special designated payment system may, in writing, delegate all or any of the head's functions or powers under this Act to a person prescribed by the regulations as an eligible delegate in relation to the nominated special regulator.

(3) Before delegating a function or power to a person under subsection (1) or (2), the delegator must have regard to:

- (a) if the power or function is to be delegated to a person holding, occupying, or performing the duties of, a specified office or position—whether the office or position is



sufficiently senior for the person to perform the function or exercise the power; or

(b) otherwise—whether the person has appropriate qualifications or expertise to perform the function or exercise the power.

(4) In exercising powers under a delegation under subsection (1) or (2), the delegate must comply with any directions of the delegator.

Note: For further information about delegations, see sections 34AA to 34A of the *Acts Interpretation Act 1901*.

(5) This section does not limit a power of delegation that a delegator mentioned in subsection (1) or (2) has under any other Act.

### **32 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient for carrying out or giving effect to this Act.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled

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Endnote 1—About the endnotes

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law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

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## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Payment Systems (Regulation) Act 1998	58, 1998	29 June 1998	1 July 1998 (s 2)	
Payment Systems (Regulation) Amendment Act 2005	65, 2005	26 June 2005	1 July 2005 (s 2(1) item 2)	Sch 1 (item 2)
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 83): 1 Jan 2011 (s 2(1) items 3, 5)	—
Corporations and Other Legislation Amendment (Trustee Companies and Other Measures) Act 2011	24, 2011	12 Apr 2011	Sch 2: 13 Apr 2011 (s 2(1) item 7)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 229): 10 Mar 2016 (s 2(1) item 6)	—
Treasury Laws Amendment (2019 Measures No. 3) Act 2020	64, 2020	22 June 2020	Sch 3 (items 258–291, 325, 326): 1 Oct 2020 (s 2(1) item 6)	Sch 3 (items 325, 326)

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 2</b>	
s 9	am No 64, 2020
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<b>Part 3</b>	
<b>Division 2</b>	
s 11.....	am No 64, 2020
<b>Division 3</b>	
<b>Subdivision A</b>	
s 12.....	am No 64, 2020
s 13.....	am No 64, 2020
s 14.....	am No 64, 2020
s 15.....	am No 64, 2020
s 15A.....	ad No 24, 2011
<b>Division 4</b>	
s 18.....	am No 64, 2020
Heading to 18A.....	am No 103, 2010
s 18A.....	ad No 65, 2005
	am No 103, 2010
<b>Division 6</b>	
s 21.....	am No 4, 2016
<b>Part 4</b>	
s 22.....	am No 4, 2016
s 23.....	am No 64, 2020
s 24.....	am No 4, 2016
s 25.....	am No 64, 2020
<b>Part 5</b>	
s 26.....	am No 4, 2016
s 27.....	am No 64, 2020
s 28.....	rep No 64, 2020

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Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 29.....	am No 64, 2020
s 30.....	rep No 64, 2020

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