GIFT AND PREPAID CARD ASSOCIATION AUSTRALIA

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1 December 2025

Payments Licensing Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: paymentslicensingconsultation@treasury.gov.au

Subject: *Treasury Laws Amendment Bill 2025: Payments System Modernisation - amendment of the Corporations Act 2001*

Dear Sir/Madam

The Australian Gift and Prepaid Card Association (**AGPCA**) welcomes the opportunity to respond to the draft legislation titled "*Treasury Laws Amendment Bill 2025: Payments System Modernisation - amendment of the Corporations Act 2001*" and accompanying exposure draft explanatory materials (**Tranche 1 Reform**) regarding the proposed payments regulatory framework.

The Australian Gift and Prepaid Card Association (AGPCA) is an industry body representing organisations involved in the prepaid and gift cards sector in Australia. Its membership includes issuers, program managers, card networks, processors, distributors, retailers, and technology providers, covering the key stakeholders in the ecosystem.

Please find below our responses to the consultation –

1. Payment functions regulated as financial products

AGPCA supports the inclusion of a "stored value facility" (**SVF**) as a specific concept that is a financial product under section 764 of the Corporations Act, subject to the appropriate exemptions discussed in item 5 of this submission.

The SVF concept is defined in section 761EB. In the context of gift cards, there is some complexity as to who "possesses the right" to redeem amounts standing to the credit of the SVF because the users of gift cards are typically not party to any contract with the issuer. Section 761EB also contemplates that rights to redeem value might be exercised either by "the person who possesses the right" or "a person nominated by that person". There is no formal process for nominating a recipient of a gift card and the terms would generally allow any holder to use it regardless of their rights. If gift cards are to be included as SVFs, it is submitted that the definition should extend to circumstances where the right to redeem amounts standing to the credit of the facility may be exercised by "any holder of any physical of virtual device for using the stored value facility".

AGPCA also supports the inclusion of a "payment instrument" as a specific thing that is a financial product under section 764 of the Corporations Act, subject to the appropriate exemptions discussed in item 5 of this submission.

According to the draft Explanatory Memorandum, a payment instrument can be used to source funds from one of multiple sources of value including SVFs. This suggests there is intended to be a distinction between the "payment instrument" used to draw funds and the separate facility (which might be a deposit account or SVF) from which a credit balance is available to be drawn. It would follow that:

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- a bank account with a debit card would comprise two financial products, one being the deposit account and the other being the debit card (a payment instrument); and
- a gift card would comprise two financial products, one being the facility for holding an unused credit balance and the other being the physical or virtual card used for redeeming the unused credit balance.

It will therefore be important to ensure that any exemptions, say for gift cards, recognise the dual nature of such products to ensure consistency across how financial products are regulated. For example, any exemption provided to a gift card should also flow through to the facility for holding an unused credit balance to ensure consistent regulatory outcomes are achieved given they will each be regulated as a financial product and are typically offered together i.e. one cannot exist without the other.

2. Payment functions regulated as financial services

AGPCA generally, supports the inclusion of "payment initiation services" and "payment facilitation services", subject to the considerations at item 3 and item 5 of this submission.

In the context of "payment technology and enablement services", further clarity is required around the parameters of the concept. It is unclear why a provider enabling identity verification for the purposes of making non-cash fund transfers is to be characterised as providing a financial service under the Chapter 7 of the *Corporations Act 2001*(Cth) which is focused on consumer protection and the promotion of market integrity (not money laundering or terrorism financing risks.)

It is submitted there is no regulatory imperative to impose a licence obligation upon a business which merely provides its services to other licensees. The most appropriate and certain basis for regulating providers of payment technology and enablement services is for the provider of those services to have a direct contractual relationship with the end user of those services as its client. It is submitted that in a consumer protection regime for financial services, it is not efficient to regulate "chains" of licensees. It is more appropriate and efficient to direct the licensing obligations at those who provide their services directly to consumers of the payment services and to impose appropriate outsourcing obligations on those licensees to ensure the quality and integrity of those who provide technology and network services.

3. Corporate providers of defined functions required to hold a licence

AGPCA submits that to the extent a corporate provider of a financial service (e.g. payment technology and enablement service or payment initiation service) solely provides its services in relation to exempt financial products, the exemption should carry through to the corporate provider of the financial service. It is not appropriate to impose a licence obligation on a back-end service provider if the primary provider to the end user consumer is exempt from licensing.

4. Licence holder obligations

AGPCA considers the application of existing Australian financial services licensee obligations to regulated payment service providers is generally appropriate. However, it is submitted that the application of the client money regime is not appropriate in all circumstances.

In the context of closed loop gift cards and other closed loop prepaid cards, the facility is more akin to a prepayment for goods and services. A payment on account of future purchases from a specific supplier or closed loop of suppliers should not be characterised as a stored value facility. Otherwise this characterisation would apply to a multitude of other circumstances in which payment is taken on account of a future transaction (such as airline travel credits, prepaid streaming and subscription services, and even prepaid professional fees). For completeness, we note that a gift

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card that is redeemable at a selected group of merchants who may not be within the same corporate group and are otherwise unaffiliated, is functionally the same as a gift card that is redeemable within the same corporate group and which are readily characterised as closed loop gift cards and closed loop prepaid cards. Accordingly, it is submitted that any exemption provided to closed loop gift cards and closed loop prepaid cards should account for this similarity in functionality i.e. not be limited to cards redeemable at affiliated merchants.

In the context of open loop gift cards, card scheme rules adequately manage any insolvency risk by requiring card providers to hold float with an ADI equivalent to the aggregate amount issued under the facility. It follows that consumers are presently afforded adequate consumer protections and any additional safeguarding measures are unlikely to provide any additional benefit to consumers when factoring costs.

5. Some existing exemptions applied to new payment products and services

AGPCA submits that the existing gift facility exemption should apply to new payment products and services. The exemption should be set out in the principal legislation, including the 'single payee facility exemption' and an exemption available to issuers of facilities for making payments to the issuer and its related bodies corporate, which are referenced as examples of continued exclusions and exemptions in the explanatory materials of the Tranche 1 Reform.

Gift facilities should continue to be exempt for the following reasons:

- Gift facilities are already subject to consumer protections under Div 3A of Parts 3-2 and 4-2 of the Australian Consumer Law which has been effective in addressing the principal public policy concerns in relation to gift cards, namely breakage and fees which erode balances as well as early card expiry.
- There has been no market failure in the Australian gift card sector which would warrant further regulation of the sector or the imposition of a licensing framework. Consumer risks from gift card products are very low given:
    - the low prepaid limits (which generally need to satisfy thresholds to avoid "know your customer" requirements which would otherwise apply under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth));
    - simple functionality; and
    - consumer anonymity (recognising the necessary transferrable nature of a "gift" product).
- In relation to open loop scheme based gift cards, float risk posed is adequately managed by card scheme rules which require card providers to hold float with an authorised deposit taking institution equivalent to the aggregate amount issued under the gift facility.
- The imposition of a licensing regime for the gift card sector would impose a disproportionate compliance burden for ordinary retailers, the costs of which would inevitably be passed on to consumers in the form of higher upfront charges. This is problematic for the sector because the nature of a gift card is such that there is very little consumer appetite for anything other than a nominal upfront charge.

In addition to the gift facility exemption, the existing exemptions available for low value facilities (subject to a revised threshold alluded to in earlier consultation papers), road toll facilities, loyalty programs and prepaid mobile phones should also be retained given the policy rationale for exempting these facilities remains valid today and there has been no market failure to warrant any change.

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6. Major stored value facility providers and certain Payment Service Providers (PSPs) APRA regulated

AGPCA has no material concerns with the proposed replacement of the existing Purchased Payment Facility (**PPF**) framework (and the RBA's role) with the concept of APRA regulating 'major stored value providers'. Whilst AGPCA welcomes the increase in the threshold to qualify as a 'major SVF provider' to holding $200 million in stored value, it seeks further clarification on:

(a) whether the "*amounts standing to the credit of the facility can be redeemed in Australian currency*" includes redemption on Australian goods and services or is limited to cash redemption only; and

(b) "*whether the amounts standing to the credit of relevant facilities issued by related bodies corporate of the provider*" are limited to related bodies corporate carrying on business in Australia or extend to related bodies corporate carrying on business in foreign jurisdictions allowing redemption of credit in Australian currency.

AGPCA submits points (a) and (b) above should be clarified so that the concept of major stored value facility providers applies to issuers of "deposit-like" facilities and not to facilities which can only be redeemed for goods and services, that are carrying on business in Australia. It would be inappropriate to regulate related bodies corporate carrying on business in foreign jurisdictions given they would be subject to the regulatory framework of the foreign jurisdiction which may be inconsistent with the Australian regulatory framework. Furthermore, the duplication of regulation would be inconsistent with the intent of protecting consumers and would be disproportionately burdensome.

AGPCA considers the requirement for major stored value facility providers to register with APRA, instead of obtaining a license, is appropriate. AGPCA understands that APRA will amend its prudential standards to the extent they apply to major stored value providers having regard to their limited role and the risks they pose to financial stability. Such prudential standards should undergo extensive consultation before implementation to ensure they are appropriate for industry.

AGPCA also queries the appropriateness of allowing smaller stored value facility providers to "opt-in" to APRA supervision or the Minister designating APRA supervision in instances when the prescribed scale would not be reached. It is expected that the reforms would provide certainty as to how payments providers would be regulated but the ability for the Minister to prescribe APRA supervision at any time undermines such certainty.

7. ePayments Code

AGPCA supports the rule-making power to allow the Minister to mandate the ePayments Code. However, before the ePayments Code is made mandatory, considerable work will need to be undertaken to ensure the ePayments Code is fit for purpose as it is presently outdated and too technology specific.

For example, it fails to recognise biometric authentication in the context of transacting and provisioning digital wallets on mobile devices; is not adequately technologically agnostic to adapt to future payments systems; and does not appropriately protect consumers inputting passcodes to use data aggregation services.

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AGPCA thanks Treasury for the opportunity to respond to the Tranche 1 Reform. AGPCA looks forward to continuing to engage with Treasury as it progresses with updating the payments regulatory framework

For more details or questions about our feedback, please contact Kim Pattison at kim.pattison@au.gt.com.

Kind regards

William Feutrill
President

Australian Gift and Prepaid Cards Association