

Committee Secretary
Senate Standing Committee on Economics (Committee)
Department of the Senate
PO Box 6100
Parliament House
Canberra, ACT 2600



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Via: [APH Committee Website](#)

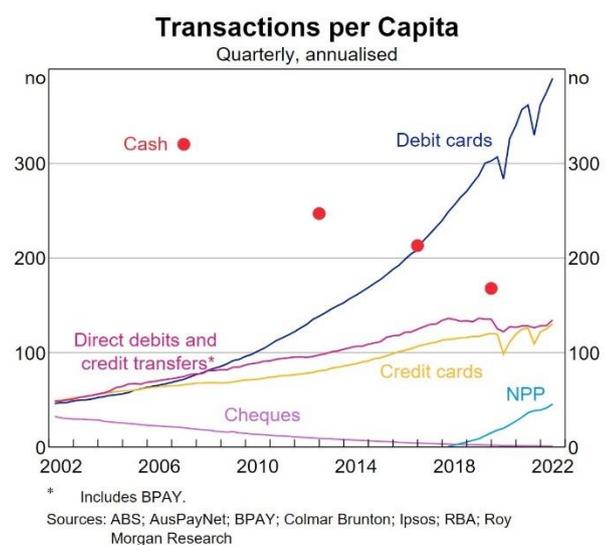
Australian Payments Network (AusPayNet) thanks the Committee for the opportunity to make a submission in relation to the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022 (**Bill**). We support the proposed changes in Part 3 of Schedule 1 of the Bill, which aim to facilitate the greater use of electronic payments by removing outdated restrictions that preserve where or how a payment may be made. We suggest extending this work programme to modernise the *Cheques Act* and the remaining six pieces of Commonwealth legislation that prescribe outdated payment methods (i.e. the mandated use of cheques). We note that updating this legislation to reflect payment neutrality will ensure that it is future-proof.

About AusPayNet - Membership and role

AusPayNet is the industry association and self-regulatory body for the Australian payments industry. We manage and develop procedures, policies and standards governing payments in Australia. Our purpose is to enable competition and innovation, promote efficiency, and control and manage risk in the Australian payments ecosystem. AusPayNet currently has over 150 members, including financial institutions, operators of Australia's payment systems, merchants, and financial technology companies.

Context – Consumer preference for electronic payments

The size of the payment industry and digital economy has grown significantly and will continue to do so as Australians increasingly prefer to make payments electronically. According to the Reserve Bank of Australia (RBA),¹ Australians made more than twice as many electronic transactions per person on average (650) in 2021/22 compared to a decade earlier. Correspondingly, cash and cheques are rarely used (see graph from RBA Payment System Board Annual Report 2022.) This trend has been reinforced by changes in payment behaviour through the COVID-19 pandemic.² Notably, cheques now constitute less than 0.2% of non-cash retail payments.³ Notwithstanding



¹ RBA, 28 September 2022, 'Payments System Board Annual Report' ([link](#)).

² Ibid.

³ Ibid.

that, the impact on economic productivity of the use of cheques rather than modern, real-time payment systems is approximately \$1B per day, the daily value of cheques drawn. ⁴

Support for proposed legislative changes in the Bill

In favour of payment method neutrality in legislation, AusPayNet supports the Bill's recommendations to repeal s129C(2)(a) of the *Excise Act* and s 32 of the Small Superannuation Accounts Act 1995, including repealing s 32(2) of the latter, which prescribes the use of cheques.

Support for further changes in the *Cheques Act 1986* and other Commonwealth legislations.

AusPayNet suggests that Treasury continue its legislative change programme to complete the removal of any instances where use of cheque, bank cheque or money order is referred to and change the wording to reflect payment method neutrality.

In addition to the Cheques Act, there are six remaining pieces of Commonwealth legislation that either have strict requirements for the provision of or processing of cheques under specific circumstances or stipulate cheques as the only allowed payment method. We suggest the following changes:

- Modernising the *Cheques Act 1986* (Cth) to take into account that cheques no longer operate in a pure paper environment. That is, the *Cheques Act* should recognise that cheques exist alongside many other electronic forms of payment and recognise that many banking services are delivered using electronic means.
- Amending the *Health Insurance Act 1973* (a 2021/22 budget initiative to achieve efficiencies of \$4.4 million over four years⁵)
- Updating the list of identified legislation below to reflect payment method neutrality:

Legislation	Legal Text
Commonwealth Electoral Act 1918 s 299A	<p>299A Method of making payments</p> <p>Payment by direct credit or by cheque</p> <p>(1) If the Electoral Commission is required to pay an amount under section 298D or 298E to the agent of a party, the Electoral Commission must pay the amount:</p> <p>(a) if the party has nominated a bank account for the purposes of this section—to the credit of that account; or</p> <p>(b) otherwise—by cheque payable to the party.</p> <p>Note other ref / requirements re cheque payments in other subsections: Name on cheque</p> <p>(3) For the purposes of this section, a cheque is taken not to be payable to a party unless:</p> <p>(a) if the party is a registered political party—the cheque is made out:</p> <p>(i) if a determination under subsection (4) is in force in relation to the name of the party—in the special abbreviation of the name of the party; or</p> <p>(ii) otherwise—in the name of the party, being the name as it appears in the Register of Political Parties; or</p>

⁴ RBA, accessed Jan 2023, 'Payments data: C5 Cheques – Seasonally Adjusted Series' See Cell K262 ([link](#)).

⁵ Australian Government, 'Budget 2021-2022, Paper 2', p 110 ([link](#)).

	<p>(b) if the party is a State branch of a political party, and the branch is not a registered political party—the cheque is made out:</p> <p>(i) if a determination under subsection (4) is in force in relation to the name of the State branch—in the special abbreviation of the name of the State branch; or</p> <p>(ii) otherwise—in the name of the State branch.</p> <p>Abbreviation of party names</p> <p>(4) The Electoral Commission may, by notice published in the Gazette, determine that a specified abbreviation of the name of a party is a special abbreviation of the name of the party for the purposes of this section.</p> <p>(5) The Electoral Commission must publish a copy of a notice under subsection (4) on the internet.</p> <p>(6) Before making a determination under subsection (4) in relation to a party, the Electoral Commission must consult the party.</p> <p>(7) To avoid doubt, if a cheque under this section is made out in the special abbreviation of the name of a party, the cheque is as valid as it would have been if it had been made out in the name of the party.</p> <p>Dispatch of cheques</p> <p>(8) To avoid doubt, if a cheque under this section is payable to a party, this section does not prevent the Electoral Commission from dispatching the cheque to the agent of the party.</p>
<p>Defence Service Homes Act 1918 Schedule 1, cl 7.4</p>	<p>Schedule 1 - Agreement between the Commonwealth of Australia and Westpac Banking Corporation</p> <p>7. Application/Review - General</p> <p>7.4 Nominated Payee</p> <p>The Bank agrees that where it is specified in the Certificate of Entitlement that payment is to be made to a nominated payee, the Bank shall draw a bank cheque in favour of that nominated payee and make available same to the Borrower.</p>
<p>Defence Service Homes Act 1918 Schedule 1, cl 9.4</p>	<p>Schedule 1 - Agreement between the Commonwealth of Australia and Westpac Banking Corporation</p> <p>9. Excess Credits</p> <p>9.4 Loan Interest Offset Arrangement</p> <p>If the Bank provides a loan interest offset arrangement then:... 9.4.4 the Bank will permit the Borrower to withdraw funds at any time by way of cheque...</p>
<p>Defence Service Homes Act 1918 Schedule 1A</p>	<p>Schedule 1A - Agreement between the Commonwealth of Australia and Westpac Banking Corporation</p> <p>3. UNIT FEE</p> <p>3.5 Payment shall be made by depositing a cheque for the relevant amount with the Receiver of Public Monies, Department of Veterans' Affairs, Sydney, New South Wales or in such other manner as the Commonwealth may from time to time advise.</p>
<p>Dental Benefits Act 2008 s 14</p>	<p>14 Payment of dental benefits to dental providers if a request is made</p> <p>Dental benefit to be paid to the dental provider if a request is made</p>

	<p>(3) The person may request the Chief Executive Medicare to:</p> <ul style="list-style-type: none">(a) give the person personally; or(b) send by post to the address specified by the person; a cheque for the amount of dental benefit payable in respect of the dental service in lieu of a payment to the person under section 11 in respect of the dental service. <p>(4) The Chief Executive Medicare must comply with a request under subsection (3).</p> <p>(5) A cheque given or sent as requested under subsection (3) must be drawn in favour of the dental provider by whom, or on whose behalf, the dental service was rendered.</p>
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AusPayNet notes that in so doing, the Government's leadership will be helpful in encouraging State Governments, regulators and industry bodies to similarly modernise their legislation, regulations and rules.

Conclusion

AusPayNet again appreciates the opportunity to respond to the inquiry and highlight the issue of how outdated legislation is requiring both government and businesses to make payments in ways that are contrary to known consumer preferences and payment trends, and which impact economic productivity. We seek your assistance in modernising the *Cheques Act* and the six pieces of legislation.