Law Council
OF AUSTRALIA

Business Law Section

31 October 2025

Ms Kate Metz
Senior Executive Leader, Regulatory Reform and Implementation
Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001

By email: rrr.consultation@asic.gov.au

Dear Ms Metz

Consultation Statement 29 *Proposal to remake relief instrument for non-cash payment facility exemptions* (CS 29)

1. This submission is made by the Financial Services Committee of the Business Law Section of the Law Council of Australia (**Committee**) in response to CS 29, which was issued by the Australian Securities and Investments Commission (**ASIC**) on 12 September 2025.

2. The Committee thanks ASIC for the opportunity to provide feedback on CS 29 and for allowing the Committee some additional time to prepare this submission.

Background

3. ASIC indicates in CS 29 that it proposes to remake *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* (**NCPF Instrument**) for a period of five years. The NCPF Instrument is due to sunset on 1 April 2026.

4. ASIC did not provide a draft instrument with CS 29.

5. ASIC has noted that the NCPF Instrument was originally made in 2016 to consolidate multiple class orders providing relief to low-risk products pending resolution of policy settings for non-cash payment facilities. ASIC has assessed that the NCPF Instrument is operating effectively and efficiently and continues to form a necessary and useful part of the legislative framework.

6. ASIC also notes that a legislative reform process is currently underway in relation to payments, and ASIC will revisit the new instrument once the reform process concludes.

Submissions

Support for proposal

7. The Committee agrees that the NCPF Instrument should be remade because it provides industry participants with essential relief from financial services licensing, conduct and disclosure requirements. The Committee considers that the NCPF Instrument should continue in operation while the payments reforms are in progress.

8. The Committee submits that, for optimal public transparency, CS 29 ought to explain in greater detail what the relief does (e.g. what powers ASIC uses, what obligations the NCPF grants exemptions from, and what the consequences would be if the NCPF Instrument were not remade), and that a draft legislative instrument should be made publicly available as part of the consultation process.

Impact on inter-related ASIC resources

9. The Committee assumes that ASIC will make a technical update to Regulatory Guide 185 *Non-cash payment facilities* (**RG 185**) to replace references to the NCPF Instrument with references to the new instrument. This will avoid readers of RG 185 becoming confused by references to a legislative instrument that has ceased to operate (which could then cause them to believe the relief is no longer available). For the same reason, this process should similarly be followed for any other publicly available ASIC documents that make reference to the NCPF Instrument.

Observations of inter-related pending law reform

10. The Committee observes that, in each of the *Payments System Modernisation (Licensing: Defining Payment Functions) Consultation Paper* (June 2023) and the *Payment System Modernisation: Regulation of payment service provider Consultation Paper* (December 2023), Treasury proposed that the relief granted under the NCPF Instrument be moved into primary legislation or regulations to provide greater certainty to industry. Treasury also indicated that changes to the conditions of the relief may be made to ensure that only facilities that are for a genuinely limited purpose are exempt, and then stated, by way of example that:

    (a) the relief for loyalty schemes and gift cards was provided on the basis that they are usually an incidental part of a business, are well understood by customers, and the costs of compliance would likely be disproportionate to any risks to customers; and

    (b) this justification would be less applicable to issuers of open-loop gift cards and open-loop loyalty schemes.

11. The Committee agrees that it would be preferable for the relief currently conferred by the NCPF Instrument to be permanently enshrined in legislation.

12. The Committee also observes that Treasury has released exposure draft legislation for Tranche 1a of the regulation of payment service providers (PSPs) reforms (which is currently open for consultation), and that Treasury is progressing these reforms in two tranches.

13. Tranche 1 seeks to modernise the framework, including through:

    (a) requiring PSPs that perform certain functions to get an Australian financial services licence;

    (b) APRA powers relating to majored stored value facility providers and designated PSPs; and

    (c) a rule-making power to allow introduction of a mandatory ePayments Code

14. The draft legislation for Tranche 1 is being released in two sub-tranches: Tranche 1a covers core concepts and licensing obligations, and Tranche 1b will cover more licensing obligations such as safeguarding payment-related money, exemptions and exclusions, APRA powers, a framework for unclaimed monies, a new rule-making power to help introduce a mandatory ePayments Code, and transitional arrangements.

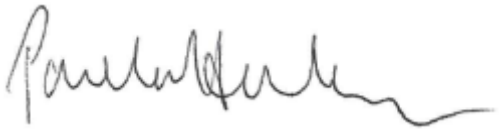
15. Tranche 2 will cover common access requirements and an industry standard setting body.

Conclusion and further contact

16. The Committee would be pleased to discuss any aspect of this submission with representatives of ASIC.

17. Please contact Co-Chair of the Committee Pip Bell [redacted] if you wish to do so.

Yours sincerely



Professor Pamela Hanrahan
Chair
Business Law Section