

REFORMS TO THE PAYMENT SYSTEMS (REGULATION)
ACT 1998

LICENSING OF PAYMENT SERVICE PROVIDERS –
PAYMENT FUNCTIONS

SUBMISSION TO THE TREASURY

July 2023

EXECUTIVE SUMMARY

1. We thank The Treasury (**Treasury**) for the opportunity to comment on its consultation papers on reforms to the *Payment Systems (Regulation) Act 1998 (PSRA)* and licensing of payment service providers – payment functions. This submission responds to both papers.
2. We welcome the Government’s Strategic Plan for the future of Australia’s payments system (**Strategic Plan**). Clarity on the Government’s policy objectives and priorities for the payments system will support industry to plan and implement the changes needed to meet these objectives.
3. The Strategic Plan sets out a prudent path to modernising the sector through the gradual phasing out of cheques, greater use of the New Payments Platform and ensuring that we have a regulatory framework that provides safety and access.
4. ANZ plays a significant role in the movement of money into, out of, and around, Australia. Each year, we secure and facilitate the movement of \$164 trillion, with payments made to and received from 149 countries in support of 8 million customers.
5. In March 2022, ANZ issued the first commercial bank stablecoin (**A\$DC**) referenced to the Australian Dollar. We foresee potential for stablecoins to facilitate reduced settlement times and mitigate settlement related counterparty risk when transacting digital assets. We welcome the consultation proposals and opportunity for increased regulatory clarity.
6. We support the Government’s objective to broaden and modernise the regulation of the payments system. The proposed reforms would provide clarity and consistency of regulatory oversight of the payments system and entities that play a role in the system.
7. We think there are some important factors to consider when modernising the regulatory framework. In particular:
 - Delineation of regulatory and enforcement oversight of payment systems and participants between regulators and industry.
 - Harmonisation with existing legislation, regulation and industry standards, including international alignment where appropriate (for example, stablecoins).
 - Applying a risk-based approach to regulatory obligations, including equivalent regulatory obligations for the same activity, which will support a level playing field.
8. To assist Government achieve its policy objectives, we set out our observations on selected proposals from the consultation papers.
9. We would be happy to discuss any aspect of our submission with Treasury.

DETAILED POINTS

Reforms to the PSRA

Updating definitions

10. Treasury has proposed to expand the regulatory coverage of the PSRA by updating the existing definitions of 'payment system' and 'participant'. We support this proposal as it would ensure that all payments systems and entities that play a role in payment systems are appropriately regulated.
11. We agree with principles-based definitions. The proposed approach to the definitions of 'payment system' and 'participant' is sufficiently broad to capture the types of arrangements and participants in the payments system.
12. As noted in the consultation paper, being within the scope of regulation does not mean a payment system or participant will be regulated. We support the continued philosophy that a decision to regulate in the 'public interest' or 'national interest' (if implemented) is made when non-regulatory options have been exhausted.

National interest test

13. Treasury has proposed a new Ministerial delegation power relating to issues in the 'national interest'. We believe the proposed approach to the 'national interest' test is appropriate to address any significant new and emerging issues in the payments system that are not within the remit of the RBA. We agree with the proposal to list relevant considerations the Treasurer should have regard to in exercising this power, and our view is that this list should be contained in the legislation.
14. The consultation paper asks whether the proposed consultation approach for Ministerial designations and directions is sufficient. We agree with the proposed approach. We support the proposal that the Treasurer would consult with affected parties before a designation or direction decision is made.
15. It is proposed that the Treasurer may allocate policy responsibility to a Treasury portfolio regulator to implement a particular policy position or direct a Treasury portfolio regulator to undertake a certain action under the PSRA. We think an important issue to consider is the framework guiding independent steps a regulator may take in responding to the Treasurer's instructions. We believe that the regulator should be required to consider how to efficiently achieve a particular outcome, including considering the costs and benefits of different actions.

Powers and enforcement

16. The consultation paper proposes additional powers for the Reserve Bank of Australia (**RBA**) to impose regulatory obligations on broader conduct. We agree with the principle that regulators should have the right toolkit to achieve the policy objectives set by Government. It would be worthwhile reviewing the statutory objectives that the RBA must have regard to when exercising its regulatory powers.¹ We suggest Treasury might consider whether it would be appropriate for the RBA to have regard to participants in the payments system, in addition to the functioning of the system. Similar objects are provided for Australian Securities and Investments Commission under subsection 1(2) of the *Australian Securities and Investments Commission Act 2001*.
17. We agree with the proposal that regulators should have access to a range of enforcement tools to address the seriousness of different types of misconduct. We note the suggestion that penalties could be introduced in the PSRA for breaches of standards and access regimes. We suggest consideration be given to the delineation of enforcement mechanisms between the RBA and industry where they may overlap. For example, participants of the New Payments Platform are subject to penalties for breaching the platform's mandatory compliance requirements. This is further discussed below.

Licensing of payment service providers – payment functions

Licensing framework

18. We welcome the proposal for a new tiered, risk-based licensing framework for payment service providers. This will support a safe and trusted payments system, a level playing field for participants and encourage competition and innovation.
19. The consultation paper outlines the proposed principles that drive the development of a list of payment functions requiring legislation. We agree with the articulated principles.

Harmonisation of payment functions legislation, regulation and industry standards

20. The principle of 'consistency with other payments regulations', seeks a harmonised approach to payment function definitions across legislation. We suggest consideration be given to expanding this principle to include avoiding duplication of regulatory obligations

¹ *Reserve Bank Act 1959*, subsection 10(B)

across legislation, regulators and industry bodies, particularly where there is existing regulation of certain payment functions.

21. We believe this is Government's intent given, for example, the proposed payment function definition of 'traditional Stored Value Facility' would capture deposit accounts. While the consultation paper notes that ADIs would be captured under this definition, it also notes that entities which are prudentially supervised as ADIs would not have to meet major SVF requirements. We welcome further clarity on how the existing regulatory framework for activities that fall within the proposed payment functions definitions fit in with the proposed licensing framework.
22. As a related issue, care should be taken to avoid overlap in the characterisation of the regulated payment functions or products to provide certainty about the associated regulatory obligations. For example, our view is that a regulated payment stablecoin should expressly be excluded from also being another regulated product with different regulatory consequences or obligations that are incompatible with the product.
23. A similar situation arises between the proposed licensing regime and industry standards. Payment system industry bodies such as AusPayNet and AP+ require participants to adhere to regulations and mandatory compliance requirements. For example, these bodies set regulations and requirements for participants who settle payments on a payment system administered by them. Enforcement mechanisms are available to these bodies to take action against participants for non-compliance for example, penalties or suspension. The proposed licensing framework would cover payments clearing and settlement services. We would welcome clarity on how the licensing framework and regulatory oversight would harmonise with existing industry body requirements and enforcement.

Payment functions

24. We welcome the clarity of defining payment functions that would fall within the regulatory perimeter.
25. The proposed list of payment functions is comprehensive. Our view is that the list captures the functions across the payments value chain.
26. A strong regulatory framework will support a safe and trusted payments system. Regulatory oversight of all parts of the payments value chain will provide confidence to participants in the system and support competition.
27. Having a better understanding of the regulatory oversight of the activities of our customers, and potential customers, enables us to better tailor our products and services.

Payment stablecoins

28. The consultation paper asks for views on the term 'payment stablecoin'. We note that fiat-referenced stablecoins may be used for a range of activities beyond 'payments' (for example, borrowing and lending). We suggest that consideration is given to seeking alignment with terminology and definitions being developed internationally to ensure consistency. In this regard, see for example the Financial Stability Board's recent report, 'High-level Recommendations for the Regulation, Supervision and Oversight of Global Stablecoin Arrangements' (**FSB Report**).² It contains definitions for the terms 'Fiat-referenced Stablecoin' and 'Reserve-based Stablecoin'.
29. The consultation paper also asks whether the definition of 'payment stablecoin' distinguishes itself from other stablecoin arrangements. We agree it is appropriate to differentiate fiat-referenced stablecoins from other arrangements that are collateralised or stabilised by other crypto-assets or redeemable for commodities. It seems to us that the distinction drawn in the consultation paper in part relates to what may be adequate backing for fiat-referenced stablecoins (defined as payment stablecoins).
30. In terms of backing (or stabilisation) of fiat referenced stablecoins, we consider the regime should allow for payment stablecoins that are fully backed by dedicated cash or cash-equivalent reserves or by a redemption obligation from a prudentially regulated organisation (for example, an ADI). In this regard, see page 10 of the FSB Report.
31. Given the functional similarity to traditional stored value facilities (**SVF**), we consider that the regulation of stablecoin arrangements as an SVF is an appropriate framework. We support the consistent application of relevant prudential and consumer protection obligations to ensure a level-playing for payment stablecoin issuers.
32. Finally in relation to payment stablecoins, the consultation paper notes that payment stablecoins *are considered to be a bearer instrument that can be transferred on a peer-to-peer basis*. It follows that the regime should recognise this feature by allowing secondary transfer of payment stablecoins without triggering incompatible regulatory obligations (for example, disclosure), and allowing transferees to accept a stablecoin free from personal defences available to prior parties, akin to the rules that apply to certain negotiable instruments.

Risk-based approach to regulatory obligations

² <https://www.fsb.org/wp-content/uploads/P170723-3.pdf>

33. The consultation paper asks whether the proposed risk-based approach to applying regulatory obligations is appropriate. We agree with this approach and believe it reflects the principle of 'targeting regulation to the risk posed'.
34. In particular we suggest there should be equivalent regulatory obligations for participants who perform the same payment functions. For example, the consultation paper proposes that non-ADIs seeking direct access to Australian payment systems to perform clearing and/or settlement activity be subject to common access requirements. We note this will be subject to future consultation. Our broad view, consistent with the principle to target regulation to the risk posed, is that providing settlement services on critical infrastructure can introduce risks into the system that need to be carefully considered and have appropriate regulatory oversight.
35. We have not commented on possible regulatory obligations in this submission. We note there will be a separate consultation on regulatory obligations for the licensing payments framework. As a general comment, we suggest considering whether all types of payment facilitation services present the same risk, and if not, differentiating the proposed regulatory oversight and obligations. We note the proposal for common access requirements apply to 'payments clearing and settlement providers' and these requirements will be subject to consultation.