

Director – Payments Strategy and Policy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

19/07/2023

Via email: paymentsconsultation@treasury.gov.au

Treasury Consultation - Licensing of payment service providers – payment functions

Dear Treasury,

Australian Payments Plus (**AP+**) supports the Government's ongoing efforts to update the regulatory architecture governing payments to ensure the framework is fit-for-purpose now and into the future.

AP+ is aligned with the Government's vision of a world-class payments system that serves the needs of its users and participants while supporting Australia's economic growth. AP+ remains a committed supporter of the findings from the 2021 Treasury's Payment System Review. The review's recommendations provide a pathway for Australia to update, grow and strengthen our Australian payments ecosystem.

AP+ operates several domestic payment schemes, namely the New Payments Platform (**NPP**), eftpos and BPAY schemes. In the case of the NPP, the deliberate design of this 24/7 real-time payments system, facilitates the access of non-bank payment service providers (**PSPs**) (as does another AP+ payment platform - eftpos) - however the proposed licensing reforms is intending to make this access easier. Since its launch in 2018, the NPP now has 110+ participating organisations, of which 14 are direct participants, who each have an authorised deposit-taking institution (**ADI**) licence from APRA. The NPP has been intentionally designed to be 'open access', encouraging broad participation of appropriately regulated participants (See Appendix 1).

We welcome the consultation paper (**CP**) on Payments System Modernisation. In the attachment to this letter AP+ has provided a response to the questions posed, we also raise the following key issue for AP+:

The CP proposes that under the proposed new licensing regime that ASIC would be the sole regulator of both Standard and Major Payment Facilitation Services (**PFSS**) providers and Standard Stored-value Facilities (**SVFs**) providers. AP+ strongly recommends one modification to the proposed regulatory licensing model that would adopt the best of overseas models of payments regulation and continues to meet the Government's objectives of protecting the security of the payments system while promoting access, innovation, and competition.

AP+ seeks this amended approach, as without the appropriate regulatory oversight needed for a small number of new Non-Bank Major Payment Service Providers (**PSPs**) entrants who seek direct access to payment infrastructure (which may be systemically important) – it will not be possible for AP+ and potentially other payment system operators to adopt *as-is* the RBA Common Access Requirements without additional operator specific obligations and standards being applied to these new Non-Bank Major PSPs who seek that direct access. It is the lack of appropriate regulatory oversight that would necessitate the imposition of additional risk mitigation obligations by each payment system operator. This outcome would not improve 'transparency' in access to payment-



systems and the additional compliance costs (incurred individually by each new Major PSP entrant seeking direct access) is something which the 2021 Treasury's Payment System Review highlighted as an undesirable outcome and which AP+ also seeks to avoid.

For clarity, it remains the firm ambition of AP+ to adopt the Reserve Bank of Australia's (RBA) Common Access Standards¹ without additional AP+ specific standards being applied to new Non-Bank Major PSPs who wish to connect directly to AP+ infrastructure. However, this AP+ position is predicated on an effective regulatory oversight regime for that small number of Non-Bank Major PSPs who, due to their size and/or functions (e.g., direct access including payment initiation, settlement² and in particular clearing³), introduce significant new risks for the operators and regulators of payment infrastructure (which may be systemically important)⁴ and therefore we believe that greater regulatory oversight of these entities is needed than is currently envisioned in the CP.

The AP+ recommendation

- An ADI (full or restricted) supervised by the Australian Prudential Regulation Authority (APRA) can apply to connect directly to payment platforms, including (where approved by RBA) have an exchange settlement account (ESA) and the ability to sponsor indirect participants. These participants will conduct their clearing and settlement in accordance with their obligations, including scheme rules, RBA obligations, and applicable laws.
- New Non-Bank Major PSPs (or Major SVF Providers) seeking to connect directly to payment platforms should be authorised as a 'Non-ADI Major Payment Service Provider' or a 'Major Stored-Value Facilities Provider' respectively. These entities would then be subject to an appropriate level of prudential style supervision - APRA (via ASIC) being the primary licensing and oversight authority. These entities could then apply to connect directly to payment platforms, and (where approved by RBA) have an ESA. These participants, like ADIs, would also conduct their clearing and settlement in accordance with their obligations, including scheme rules, RBA rules, and applicable laws. These participants could also connect directly to the NPP to initiate payments (but not clear and/or settle payments) as a 'Connected Institution' (which is possible today under the current NPP approach).
- The APRA supervision intensity should be appropriately tiered depending on the risks inherent in the functions, size and/or activity, and the need to promote financial resilience of Australian payment infrastructure (which may be systemically important). A Non-Bank Major PSP ('major' defined on their activities (functions) and the risk that function presents to systemic stability) would be subject to prudential style supervision by APRA (less intense than if they were an ADI). APRA would use their Supervision Risk and Intensity (SRI) Model to assess risk and determine that supervisory intensity.

¹ The 2021 Treasury's Payment System Review recommended (Rec 11) that the single payments licensing framework should facilitate transparent access to payment systems and that the RBA should develop common access requirements in consultation with the operators of payment systems. The common access requirements will form part of the payments licence to facilitate access for licensees to those systems.

² NPP Scheme Rules already allow for Non-Bank Connected Institutions (of which this currently one on the NPP) to apply to be a Settlement Participant on the NPP, should the RBA choose to grant them an Exchange Settlement Account.

³ In October 2019, NPPA determined that an ADI authorisation is not required for direct settlement activities - just direct clearing. NPPA amended its eligibility criteria to remove the ADI requirement for Settlement Participants (with the primary criteria now just the entity being granted an Exchange Settlement Account with the RBA. The NPPA made that decision, as it determined that an entity that wants to join as an NPP Settlement Participant does not present the same operational or legal risks as a Full or Clearing Participant – this is because Settlement Participants are not directly involved in the clearing flow, do not connect directly to the infrastructure or to the NPP Addressing Service.

⁴ See later discussion of payment system designations arising from the *Security of Critical Infrastructure Act 2018* (SOCI) and BIS Principles for Financial Market Infrastructures.



As AP+ analysed how the proposed single tiered payments licensing framework could be implemented in Australia, it has become clear that Australia's twin-peaks model of financial system regulation has critical structural and legal differences from the regulatory models for payments in the UK, Singapore and EU and thereby requires a change to the recommended approach on how best to implement a payments licensing framework, fit for the Australian jurisdiction. The AP+ view is that the experience, supervision approach, toolkit and legislative authority of APRA is the most suitable mechanism to ensure appropriate oversight of that small number of Non-Bank Major PSPs – who seek direct access to a payment system to undertake activities including, payment initiation, settlement⁵ and in particular clearing.

AP+ operates several domestic payment schemes, namely the NPP, eftpos and BPAY schemes. AP+ anticipates that only a small number (circa ten or more) of new Non-Bank Major PSP entrants are likely to seek authorisation for direct access to initiate, clear and settle payments on the NPP. This is because the NPP has been built to allow entities to connect in multiple different ways. As an illustration of this, some large ADIs currently do not connect directly to the NPP, preferring to connect via a sponsoring institution which conducts their clearing and settlement obligations on their behalf.

AP+ considers that a new type of APRA authorisation for Non-Bank Major PSPs is necessary and appropriate for non-bank direct clearing⁵ participants. This would mean ADIs (and in the future Major PSPs regulated by APRA under a new licence) are subject to ongoing oversight and are required to comply with suitable prudential standards relating to governance, cyber resilience, capital adequacy, risk management, business continuity and information security, which serve to support the existing technical, operational and security frameworks of payment systems. This approach protects the overall integrity of payment infrastructure (which may also be designated systemically important) and satisfies some of the requirements of other regulators (the *SOCI Act* is discussed in the next section) whilst also mitigating some of the counterparty risk for other participants.

This is not a new AP+ position, in 2018 the NPP said:⁶ "*The requirement for a Participant, who clears and settles funds in real time, to be a regulated ADI is deemed necessary to ensure prudential safeguards for the platform, in line with well-established international standards for payments systems (as set out by the Bank for International Settlements)*". These principles for financial market infrastructures⁷ published by the Bank for International Settlements (**BIS**), remain the global standard today.

The risks to be mitigated

Without appropriate oversight from a regulator empowered and experienced in using the supervisory tools required to promote financial system stability; the proposed ASIC-only regulation of some Non-Bank Major PSPs introduces significant new risks for payment system operators, their payment systems and participants.

These risks manifest in two ways, the first being payment system operators being unable to accept new Non-Bank Major PSPs as direct participants who seek to clear (and potentially conduct some payment initiation and settlement activities) without imposing substantial additional (but necessary) safeguards above the RBA Common Access Requirements.

⁵ NPP Scheme Rules already allow for Non-Bank Connected Institutions (of which there is currently one on the NPP) to apply to be a Settlement Participant on the NPP, should the RBA choose to grant them an Exchange Settlement Account.

⁶ NPP Australia's response to the RBA's NPP Functionality and Access Consultation, December 2018, Available at: [NPP Australia's response to the RBA's NPP Functionality and Access Consultation - NPPA](#)

⁷ Principles for financial market infrastructures, Committee on Payment and Settlement Systems, April 2012. Available at: [Principles for Financial Market Infrastructures \(bis.org\)](#)



Or the second, under the proposed⁸ lighter touch ASIC-only regulation where a Non-Bank Major PSP seeks direct access to conduct payment initiation activities on payment infrastructure (which may also be designated systemically important) this could force existing participants to respond to new and heightened risks in undesirable ways (e.g. having to slow certain transactions as they have legal obligations to detect and deter money laundering, prevent fraud and to also mitigate any clearing and settlement risks (counterparty risk). It is important to emphasise that these risks are considerably heightened where a new Non-Bank Major PSP which is directly accessing a payment system, is only subject to the proposed lighter touch ASIC-only regulation rather than a model of APRA-led, appropriately calibrated, ongoing prudential-style oversight - as is the case in the UK. In the UK, the Financial Conduct Authority (**FCA**) applies (to the payment institutions they authorise) prudential style obligations (e.g., capital, liquidity, governance) in addition to ongoing supervision and oversight. The supervision approach and quantum of FCA obligations are tiered based on the authorisation sought by the payment institution, an approach which AP+ would support being replicated here, via APRA, for Major PSPs.

The Australian regulatory environment is further complicated by the fact that some Australian payment systems have recently been deemed '*Critical Infrastructure and Systems of National Significance*' under 2021 amendments to the *Security of Critical Infrastructure Act 2018*⁹ (**SOCI Act**), so the duties and obligations of an operator to protect the payment infrastructure under their control has grown substantially.

However, there is regulatory efficiency benefit to be had with Treasury adopting an appropriate licensing regime for Non-Bank Major PSP entrants (who seek authorisation to directly access payment systems, including to clear and settle). Appropriate regulatory oversight (via an amended licensing framework) will help operators and participants meet those regulatory obligations (and the objectives) of the *SOCI Act* and the BIS Principles for financial market infrastructures (discussed below).

Increased regulatory oversight for 'Prominent Payment Systems'

At its February 2023 meeting, the Payment System Board of the Reserve Bank of Australia (**RBA**) extended the RBA supervision remit to include a new category of payment systems called '*Prominent Payment Systems*' (**PPS**). PPSs are payment systems currently designated under the *SOCI Act* and where the Payment System Board considers them "*payment systems where an outage could cause significant economic disruption and damage confidence in the financial system*".¹⁰ The payment systems that are expected to be imminently declared 'prominent payment systems' are the NPP, eftpos, Visa and Mastercard.

To begin, the RBA has selected two discrete principles from the BIS Principles for Financial Market Infrastructures (**PFMI**) to be initially applied to prominent payment systems, namely:

Principle 3: Financial for the comprehensive management of risks - requires an FMI (payment system) to take an integrated and comprehensive view of its risks, including those it bears from and poses to its participants, their customers and other entities.

Principle 17: Operational risk - strengthens the requirements on operational reliability and resilience. For example, business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.

⁸ See section 7: Overview of possible regulatory obligations, Page 29.

⁹ In December 2021, the *Security of Critical Infrastructure Act 2018* was amended to expand coverage to 11 sectors and 22 asset classes.

¹⁰ Payments System Board Update: February 2023 Meeting, Available at: <https://www.rba.gov.au/media-releases/2023/mr-23-05.html>



The NPP as a Systemically Important Payment System (SIPS)

In the future, if the RBA decided the NPP (or another AP+ payment platform) was to be designated as a 'Systemically Important Payment System' (**SIPS**) – which is a designation higher than 'Prominent Payment System', the NPP would then be expected to observe all of the 24 PMFI Principles. The distinguishing feature of a SIPS is where it is: *“capable of triggering disruptions or transmitting shocks across the financial system domestically or even internationally”*.

It is highly likely that the NPP will be designated as a SIPS in the future.

With these new and potential future obligations, an effective regulatory oversight regime for some Non-Bank Major PSPs who, due to their size and/or functions (e.g., direct access including payment initiation, settlement and in particular clearing), introduce significant new risks for the operators of payment infrastructure, the participants in that system and the regulators of 'Critical Infrastructure and Systems of National Significance' (SOCI), 'Prominent Payment Systems (PPS) and/or Systemically Important Payment Systems (SIPS). Therefore AP+ believe the case for greater regulatory oversight of some Non-Bank Major PSPs (than currently envisioned in the CP) is clear and unequivocal.

Regulatory cost efficiency and avoiding regulatory costs for new entrants

In addition to regulatory efficiency there is benefit to be had with Treasury adopting an appropriate licensing regime for Non-Bank Major PSP entrants (who seek authorisation to directly access payment systems to clear and settle) - which will help operators and participants meet their obligations under the *SOCI Act* and the BIS Principles for Financial Market Infrastructures. A single licensing and supervision authority for Non-Bank Major PSPs also removes a significant regulatory cost from those potential new Non-Bank Major PSPs participants who, in the absence of the single regulator (APRA) with the powers to set appropriate standards, would likely also need to satisfy the multiple different access requirements (above the RBA Common Access Requirements) imposed by different individual domestic payment systems (e.g. data security, cyber resilience, governance, operational risk, capital adequacy, risk management and business continuity).

It is important to note, that while certain risks are more pronounced in a payment system like NPP where both settlement and clearing is in real-time; the same concerns arise for the other domestic payment schemes operated by AP+, namely the eftpos and BPAY schemes. It is the AP+ view that both appropriate licensing and regulatory oversight is required to mitigate the risks presented by some non-bank entities who would seek greater roles and participation in the authorisation, clearing and settlement flows between the members of all these schemes.

Unequivocally, AP+ strongly supports ASIC's greater role in the new licensing framework to facilitate the growth in the number of Standard PSPs and SVFs. As is the case today, these smaller (non-bank) operators can already access AP+ payment platforms, but the recommendations of the 2021 Treasury's Payment System Review seek to further improve transparent and direct access to payment systems, and APRA is well equipped to support that 'direct access' ambition for Non-Bank Major PSPs. The regulatory oversight approach of ASIC and APRA differs, APRA's approach to oversight is very similar to what the UK FCA uses for the UK payment license regime, hence the AP+ recommendation that APRA take the lead (in cooperation with ASIC) for supporting the entry of both Non-Bank Major PSPs and Major SVFs.



These consultations represent a very important step in ensuring we have a modern and robust payment system that delivers for the Australian economy and the Australian people. We greatly appreciate the significant efforts of Treasury in building a payment licensing regime fit for the Australian jurisdiction. Should the Treasury team have further questions, I can be reached at aidan.oshaughnessy@auspayplus.com.au.

Yours sincerely,

Aidan O'Shaughnessy
Public Policy, Government & Regulatory Affairs, AP+

Encl.

Australian Payments Plus (AP+) brings together Australia's three domestic payment providers, BPAY Group, eftpos and NPP Australia, into one integrated entity. Operating in the public interest, AP+ is a member-owned organisation. Members include banks, some of the country's largest merchants, payment service providers and payment processors.

The AP+ integrated product roadmap includes new offerings that support opening the domestic payment flow, connecting next generation experiences to traditional payments infrastructure, driving innovation through QR payments, building open wallet infrastructure and a national trusted identity exchange.



AP+ response to consultation questions

Q1: Are there any other principles that should be considered in developing the list of payment functions?

AP+ does not have any additional views on the stated principles underlying the list of payment functions.

Q2: Is the list of payment functions comprehensive, or should other functions be included?

There is a need to ensure that the uptake of tokenisation in the Australian payment ecosystem does not introduce barriers to competition. AP+ believes tokenisation will continue to be an important area of ongoing policy focus for the regulators, particularly the RBA - as we are seeing tokenisation usage expanding to a wider set of payments functions. Tokenisation plays an important role in the security of payment transaction data.

AP+ considers that certain instances of token usage should be captured in the list of payment functions (security of transaction data) proposed by Treasury. Additionally, given the evolution of tokenisation mechanisms and their importance to the Australian payments system -in our submission to Treasury's consultation on reforms to the Payment Systems (Regulation) Act 1998 (PSRA), AP+ have called for the updated PSRA to have the ability to capture tokenisation solutions such that they can be appropriately regulated under the PSRA if deemed necessary.

Q3: Should all payment functions be treated as financial products under the corporations legislation or should some be treated as a financial service?

AP+ agrees that there are a number of existing requirements in the corporations legislation that are likely to be inappropriate to payment functions that are not consumer facing (such as payments clearing and settlement). AP+ does consider it appropriate for all payments licensees to meet the general obligations that apply to AFSL holders.

Treasury should consider an approach where the default position is that a defined list of obligations/prohibitions should not apply to payment functions. ASIC should however retain the power to 'switch on' certain obligations for certain payment functions or entities.

Q4: Does the term 'payment stablecoins' accurately describe the types of stablecoins this paper seeks to capture for regulation or are there other terms that may be more appropriate?

AP+ supports Treasury's proposed definition of a payment stablecoin which is intended to only capture stablecoins that aim to maintain a stable value with reference to a fiat currency.



Q7: Does the list of proposed payment functions adequately capture the range of payment services offered in Australia currently and into the future that should be regulated under a payments licensing regime?

Q8: Does the list need to be broken down in more detail, for example, should facilitation, authentication, authorisation and processing be separate functions?

Q9: Should any other payment functions be included?

In response Q7-9: AP+ believes Treasury has adequately captured the range of payment services offered in Australia currently. Please see our comments in response to Q2 regarding the tokenisation of payments.

AP+ does recommend that the Government commit to a periodic review on the effectiveness of the licensing regime, with the first review being within three years of the updated PSRA legislation being passed. The evolution of payments is proceeding at an extraordinary pace and there will likely be new or emerging trends or functions that should be captured by regulation.

AP+ notes that this recommendation for likely iteration is based on overseas jurisdictions taking a constant improvement approach to their payments licencing. The Financial Conduct Authority's (FCA) in their 16 March 2023 payments portfolio letter¹¹ flagged a significant update and iteration of their regulation of payments in the UK. The FCA also announced a consultation on strengthening requirements for safeguarding funds, held by payments and e-money firms to meet customer entitlements.

Q10: Would the removal of the identified exclusions create unintended consequences?

Q11: Which existing exclusions and exemptions applicable to non-cash payment facilities should be amended or removed to support regulation of the proposed payment functions? Do any existing exclusions or exemptions require updating, such as the relief for low-value facilities?

Q12: Should the incidental product exclusion apply to the proposed list of payment functions?

Q13: Should any exclusions or exemptions be revised to be more consistent with comparable jurisdictions? For example, should the 'single payee' exclusions and relief for loyalty schemes, electronic road toll devices, prepaid mobile phone account and gift cards be replaced by a general exclusion for payment instruments that can be used only in a limited way?

Q 14: Should the exclusion for low value facilities apply to any PFS, such as money transfer services? If so, what thresholds should be considered a low value PFS?

Q 15: Should any other exclusions or exemptions be provided?

In response Q10-15: AP+ is generally supportive of the existing exclusions and exemptions flagged in the CP being removed or amended to ensure consistent regulation of payment services.

¹¹ Financial Conduct Authority (FCA), *FCA priorities for payment firms*, 16 March 2023, Available at: <https://www.fca.org.uk/publication/correspondence/priorities-payments-firms-portfolio-letter-2023.pdf>



Q 16: Are there any other risk characteristics of a payment function that should be considered?

Q 17: What are the types of payment risks posed by the performance of each of the proposed payment functions?

Q 18: While having regard to the obligations proposed to be imposed on the payment functions (outlined in Section 7), are the risks posed by the performance of each payment function appropriately mitigated by the payments licensing regime? Or are they more appropriately addressed by a framework outside of the payments licensing regime such as the PSRA or AML/CTF Act?

Q 19: Is the proposed risk-based approach to applying regulatory obligations appropriate?

In response Qs 16 - 19: Treasury has proposed that the risks posed by specific payment functions are grouped within three broad categories - financial, operational and misconduct risks. As a payment system operator, AP+ considers that Treasury has not adequately considered “systemic risk” as a risk characteristic of a payment function.

Scheme rules for payment systems cover and mitigate financial, operational and misconduct risks. AP+ does not agree with Treasury that risks like data security are adequately addressed through privacy laws.

In addition, AP+ does not agree with Treasury that system-wide risks to the payments system may be addressed through the PSRA. The AP+ view as a payment system operator, is that the proposed licensing regime also has a significant role in the mitigation of systemic risk.

Some Australian payment systems have recently been deemed ‘Critical Infrastructure and Systems of National Significance’ under 2021 amendments to the *Security of Critical Infrastructure Act 2018*¹² (SOCI), so the duties and obligations of an operator to protect the payment infrastructure under their control has grown. At its February 2023 meeting¹³, the RBA’s Payment System Board extended RBA supervision to include a new category of payment systems called “Prominent Payment Systems”. Prominent Payment Systems are those currently designated by the SOCI Act and are: “*payment systems where an outage could cause significant economic disruption and damage confidence in the financial system.*” The payment systems that are expected to be declared ‘prominent payment systems’ under the BIS Principles of Financial Market Infrastructure (PFMI) are the NPP, eftpos, Visa and Mastercard.

In the future, if the NPP (or another AP+ payment system) was to be designated as a Systemically Important Payment System (SIPS) – which is a rating much higher than “Prominent Payment System” the NPP would be expected to observe all of the 24 Principles of Financial Market Infrastructure (PFMI)¹⁴. It is highly likely that the NPP will be designated as a SIPS in the future.

A systemically important payment system distinguishing feature is where it is: “*capable of triggering disruptions or transmitting shocks across the financial system domestically or even internationally.*”

¹² In December 2021, the Security of Critical Infrastructure Act 2018 was amended to expand coverage to 11 sectors and 22 asset classes.

¹³ Payments System Board Update: February 2023 Meeting, Available at: <https://www.rba.gov.au/media-releases/2023/mr-23-05.html>

¹⁴ Principles for financial market infrastructures: Disclosure framework and Assessment Methodology



The RBA has stated in its *Policy Statement on the Supervision and Oversight of Systemically Important Payment Systems*¹⁵ that it takes into account the following considerations when assessing whether a payment system is systemically important in Australia:¹⁶

- **High aggregate value** - whether the aggregate value of Australian dollar payments processed through the system is high relative to other payment systems.
- **Handles time-critical payments** – whether the system mainly handles time-critical payments.
- **Handles high-value payments** – whether the system mainly handles high-value payments.
- **Settlement** – whether the system is used to settle payments that effect settlement in other systemically important FMs.
- **Other factors** – whether there are any other factors indicating that the system has the potential to trigger or transmit systemic disruption.

With these new and potential future obligations, an effective regulatory oversight regime for some (non-bank) Major PSPs providers who, due to their size and/or functions (e.g., direct access including payment initiation, settlement and in particular clearing), introduce significant new risks for the operators and regulators of “Critical Infrastructure and Systems of National Significance” (SOI), “prominent payment systems” (PPS) and Systemically Important Payment Systems (SIPS) therefore AP+ believe the case for greater regulatory oversight of these entities (than currently envisioned in the CP) is clear and unequivocal.

The CP proposes that under the proposed new licensing regime that ASIC would be the sole regulator of both Standard and Major Payment Facilitation Services (PFSs) providers and Standard SVF providers. As per the covering letter to this AP+ submission. AP+ strongly recommends one modification to the proposed regulatory licencing and oversight model detailed by the CP. AP+ seeks this amended approach, as without the appropriate regulatory oversight needed for a small number of new Non-Bank Major PSP entrants who seek direct access to payment infrastructure (which may also be systemically important) – it has become apparent that it could become impossible for AP+ and potentially other payment system operators to adopt *as-is* the RBA Common Access Requirements without additional operator specific obligations and standards being applied to these new Non-Bank Major PSPs who seek that direct access to a particular payment platform. It is the lack of appropriate regulatory oversight that would necessitate the imposition of additional risk mitigation obligations by each payment system operator. This outcome would not improve ‘transparency in access’ to payment systems and this additional compliance cost (incurred by each new Non-Bank Major PSP entrant seeking direct access) is something which the 2021 Treasury’s Payment System Review highlighted as an undesirable outcome and AP+ also seeks to avoid.

¹⁵ <https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/high-value-payments/policy-statement-on-supervision-and-oversight-of-systemically-important-ps.html>

¹⁶ Refer also to the suggested criteria and guidance in section 4.1.3 of the *Principles of Financial Market Institutions*.



Q 20: Should payment functions that are not customer facing be required to hold a payments licence? Should providers of these non-customer facing payment functions have different regulatory obligations, such as only having to comply with relevant industry standards?

AP+ believes that Treasury should design a risk-based licensing regime which has tiered obligations. The AP+ view is that just because a function does not have a “customer facing” element, that function could still introduce financial, operational, and systemic risks into the payment ecosystem.

There is regulatory efficiency benefit to be had with Treasury adopting an appropriate licensing regime for non-customer facing payment functions and as discussed, those who seek authorisation to directly access payment systems to clear and settle. Appropriate regulatory oversight (via an amended licensing framework) and supervision will help operators and participants meet similar regulatory and risk-mitigation obligations arising from the Security of Critical Infrastructure Act 2018 and the BIS Principles for financial market infrastructures.

Treasury should consider an approach where the default position is that there is a defined list of obligations which should not apply to payment functions. ASIC should however retain the power to ‘switch on’ certain obligations or remove certain exemptions for certain payment functions or entities.

Q 21: Should the common access requirements and industry standards be linked to the payments licence? For example, would it be appropriate for some entities to only be required to comply with mandatory industry standards but not be required to hold an AFSL or comply with the ePayments code?

Yes, the common access requirements and industry standards should be linked to the payments licence.

Q 22: What types of businesses should be subject to the common access requirements? There is limited information available on the number and size of non-bank PSPs interested in directly participating in Australian payment systems to clear and settle payments. If this is something that your business is interested in, please provide further information (including via a confidential submission).

AP+ operates several domestic payment schemes, namely the NPP, eftpos and BPAY schemes. In the case of our platform the NPP, the deliberate design of this 24/7 real-time payments system, like eftpos, facilitates the access of non-bank payment service providers – however the proposed licensing reforms may make access easier. Since its 2018 launch the NPP now has 110+ participating organisations, of which 14 are direct participants, who each have an ADI licence from APRA. The NPP has been intentionally designed to be ‘open access’, encouraging broad participation of appropriately regulated participants (See Appendix 1).

AP+ notes that it is likely that only a small number (circa ten or more) of new non-bank Major PSP entrants would likely seek authorisation to directly access to clear and settle on the NPP. This is based on the fact that the NPP has been built to allow entities to connect in multiple different ways. For example, currently some very large ADIs do not currently connect directly to the NPP, preferring to connect via another sponsoring institution which conducts their clearing and settlement obligations on their behalf.



For clarity, it remains the firm ambition of AP+ to adopt the RBA Common Access Standards¹⁷ without additional AP+ specific standards being applied to new Non-Bank Major PSPs who wish to connect directly to AP+ infrastructure. However, this AP+ position is predicated on an effective regulatory oversight regime for that small number of Non-Bank Major PSPs providers who, due to their size and/or functions (e.g., direct access including payment initiation, settlement¹⁸ and in particular clearing¹⁹), introduce significant new risks for the operators and regulators of systemically important payment infrastructure and therefore we believe that greater regulatory oversight of these few entities is needed than is currently envisioned in the CP.

¹⁷ The 2021 Treasury's Payment System Review recommended (Rec 11) that the single payments licensing framework should facilitate transparent access to payment systems and that the RBA should develop common access requirements in consultation with the operators of payment systems. The common access requirements will form part of the payments licence to facilitate access for licensees to those systems.

¹⁸ NPP Scheme Rules already allow for Non-Bank Connected Institutions (of which there is currently one on the NPP) to apply to be a Settlement Participant on the NPP, should the RBA choose to grant them an Exchange Settlement Account.

¹⁹ In October 2019, NPPA determined that an ADI authorisation is not required for direct settlement activities - just direct clearing. NPPA amended its eligibility criteria to remove the ADI requirement for Settlement Participants (with the primary criteria now just the entity being granted an Exchange Settlement Account with the RBA. The NPPA made that decision, as it determined that an entity that wants to join as an NPP Settlement Participant does not present the same operational or legal risks as a Full or Clearing Participant – this is because Settlement Participants are not directly involved in the clearing flow, do not connect directly to the infrastructure or to the NPP Addressing Service.



Appendix 1: Current access arrangements for non-bank entities to connect to Australia's 24/7 real-time payments system

AP+ operates several domestic payment schemes, namely the NPP, eftpos and BPAY schemes.

In the case of NPP, the deliberate design of this 24/7 real-time payments system already facilitates the access of (non-bank) PSPs (as does another AP+ payment platform - eftpos). Since its 2018 launch the NPP now has 110+ participating organisations, of those only 14 are direct participants, who each currently have an ADI licence from APRA. The NPP has been intentionally designed to be 'open access', encouraging broad participation across the payment ecosystem.

Today, PSPs can (and do) access the NPP **indirectly** by becoming an identified institution via sponsorship of an existing Direct Participant (e.g., Cuscal, ASL, Indue, ANZ, etc), a "sponsoring institution". The Sponsoring Institution:

- a) takes on liability under the NPP Regulations and Procedures for all acts and omissions such as settlement and clearing failures, and all other breaches of the scheme rules which also cover obligations such as privacy, fraud, cyber security failures, and operational risk.
- b) requires upfront and ongoing compliance with requirements set out in a sponsorship and compliance framework which the sponsoring participant implements and monitors; and
- c) implements a range of specific technology and process controls to monitor, minimise or mitigate any risk this **indirect** participant presents to the 24/7 operation of a real time payment system.

AP+ considers that a new type of APRA authorisation for Non-Bank Major PSPs is necessary and appropriate for non-bank **direct** clearing²⁰ participants. This would mean ADIs (and in the future Major PSPs regulated by APRA under a new licence) are subject to ongoing oversight and are required to comply with suitable prudential standards relating to governance, capital adequacy, cyber resilience, risk management, business continuity and information security, which serve to support the existing technical, operational and security framework of payment systems. This approach protects the overall integrity of systemically important payment infrastructure and also mitigates counterparty risk for participants.

Further, a single licensing and supervision authority for Non-Bank Major PSPs also removes a significant regulatory cost for those potential new non-bank entrants who, in the absence of the single regulator with the powers to set appropriate industry-wide standards, would likely need to satisfy additional different access requirements imposed by different payment system operators (e.g. outsourcing, data security governance, operational risk, capital adequacy, liquidity management, risk management, BCP and information security). While the risks are more pronounced in a payment system like NPP where both settlement and clearing are in real-time; the same concerns arise for the other domestic payment schemes operated by AP+, the eftpos and BPAY schemes. It is the AP+ view that appropriate licencing and regulatory oversight is required to mitigate the risks presented by some non-bank entities who would seek greater roles and participation in the authorisation, clearing and settlement flows between the members of these schemes.

²⁰ In October 2019, NPPA determined that an ADI authorisation is not required for direct settlement activities - just direct clearing. NPPA amended its eligibility criteria to remove the ADI requirement for Settlement Participants (with the primary criteria now just being granted an Exchange Settlement Account by the RBA. The NPPA made that decision, as it determined that an entity that wants to join as an NPP Settlement Participant does not present the same operational or legal risks as a Full or Clearing Participant – this is because Settlement Participants are not directly involved in the clearing flow, do not connect directly to the infrastructure or to the NPP Addressing Service.