

Payments System Modernisation (Licensing: Defining Payment Functions)

Submission to Treasury Consultation Paper

July 2023

Introduction

The Reserve Bank ('the Bank') strongly supports the introduction of a licensing framework for payments service providers (PSPs) as part of the Government's agenda to modernise payments regulation in Australia. Successful implementation of the new tiered PSP licensing framework should promote competition and innovation in the supply of payment services, while at the same time require the appropriate management of risks to payments users.

This submission focuses on some specific aspects of the proposed PSP licensing framework that are relevant to the Bank.

Payments definitions

The Bank welcomes the Government's proposed list of payment functions. This list is intended to make clear those activities for which a PSP licence would be required, helping to address some of the regulatory uncertainties that many PSPs currently face when entering the Australian payments market.

In practice, there could still be complexities for some individual PSPs when determining whether they are performing a prescribed payment function. Given this, the Bank considers that there is merit in the Government also clarifying that certain types of payments participants are *not intended* to lie within the regulatory perimeter of the PSP licence. For example, consideration could be given to clarifying that participants that do not interact with end users, such as payment system operators and payments infrastructure providers, are not covered by the licensing framework. Close attention will also need to be paid to the definitions of the payment functions to minimise regulatory uncertainty.

Consideration could also be given to developing a process for updating the list of payment functions in the future that does not require significant legislative change. An appropriately streamlined approach to update the payment functions may be necessary if, for example, technological change alters the nature of payment activities being performed by PSPs.

Stored-value facility licensing arrangements

Stored-value facilities (SVF) are one type of payment function defined in the consultation paper. Currently, SVFs are known as purchased payment facilities (PPFs). The RBA has regulatory responsibility for some PPFs under Part 4 of the PSRA. Under the proposed licensing framework, ASIC and APRA will become the responsible regulators for SVFs as well as payment stablecoins. One consequence of the PSRA reforms preceding the proposed licensing framework is that the Government may need to consider interim arrangements for PPFs, to facilitate a smooth transition from the PSRA PPF regime to

the new licensing framework. Removing the PSRA PPF provisions before the licensing framework is legislated would result in a regulatory gap, and licensing of SVFs under the new regulatory framework may take some time.

Common access requirements

The Bank has a longstanding interest in PSPs having competitive access to payment systems when providing services to their customers, while managing the associated risks. Many PSPs connect to payment systems indirectly through a sponsoring institution. While indirect access suits many providers, some may prefer to participate directly in clearing and settling payments on behalf of their customers without reliance on another financial institution.¹ There has been increasing interest from non-bank PSPs in becoming direct participants in payment systems over recent years. Yet some payment systems currently have access criteria that make it difficult, if not impossible, for non-bank PSPs to gain direct access. In particular, payment system operators often rely on the risk management requirements imposed on banks and their supervision by APRA to mitigate risks to the payment system and its participants.

The Payments System Review recommended that the Bank develop a set of common access requirements to help facilitate direct access to Australian payment systems for non-bank PSPs. The intention is that these requirements would be incorporated into the new tiered PSP licensing framework. Accordingly, the Bank has been consulting with payment system operators, PSPs and other financial regulators about a possible set of requirements for PSPs seeking to clear or settle payments in Australia. The Council of Financial Regulators has also been considering the role of Council agencies in setting regulatory standards for and supervising PSPs that seek direct access to payment systems.²

The aim of this reform initiative is to create a more level playing field for non-bank PSPs, while managing the risks that they may pose as direct participants to the relevant payment systems and the economy. Lowering the barriers to entry faced by PSPs seeking to directly participate in Australian payment systems through the introduction of appropriate risk-based regulation would be expected to support a more diverse, competitive, and innovative payments ecosystem in Australia.

Mandatory industry standards

The Payments System Review considered that industry bodies are best placed to set technical standards for participants in the payments ecosystem, given the pace of change in payments technology, market structures and business models. It recommended that all relevant participants across the payments system should be required to adhere to a 'core' set of industry technical standards. This broad adherence is aimed at maximising the system-wide benefits of the standards and ensuring a level playing field across participants. Given the mandatory nature of core technical standards, the Bank would be provided with the power to authorise and oversee the effectiveness of industry bodies setting mandatory standards for payments. The Bank does not view its role as extending to enforcing compliance with individual mandatory standards developed by authorised bodies.

1 In 1999 the Bank was one of the first central banks to liberalise access by allowing non-ADI providers of third-party payment services to apply for an Exchange Settlement Account at the RBA to settle clearing obligations with other providers.

2 See Quarterly Statement by the Council of Financial Regulators – June 2023, available at: <https://www.cfr.gov.au/news/2023/mr-23-02.html>.

The Bank has been working with Treasury on the design of the proposed new regulatory regime for industry standard setting, including consulting with other regulators and industry stakeholders. In fulfilling this new responsibility, the Bank would have regard to a standard-setting body's governance, independence and capabilities, and ensure that it performs its functions in a way that is consistent with broader payments policy objectives.

Reserve Bank of Australia
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