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Australian Payments Network (AusPayNet) welcomes the opportunity to respond to Treasury's consultation on *Payments System Modernisation (Licensing: Defining Payment Functions)*.

AusPayNet is the industry association and self-regulatory body for the Australian payments industry. We manage and develop standards and guidelines governing payments in Australia. Our purpose is to create confidence in payments by setting enforceable industry standards for a safe, reliable and effective payments system; leading transformation in payments to drive efficiency, innovation and choice; and being the home for ecosystem collaboration and strategic insight. AusPayNet currently has more than 150 members including financial institutions, payment system operators, major retailers and financial technology companies.

## Introduction

AusPayNet supports Treasury's work on ensuring that Australia has appropriate regulatory and governance frameworks to support the continued development and safety of the payments system, in line with the recommendations of the Payments System Review.

The Australian payments ecosystem is considerably more complex than when the current regulatory arrangements were put in place, with many more entities in the payments value chain. Non-ADI payment service providers in particular now play a significant role in the payments ecosystem. While these developments have delivered many benefits for Australian consumers and businesses, some new risks and issues have also been introduced. At the same time, existing regulatory frameworks have not kept pace with these developments, leading to potential inconsistencies in customer outcomes and an uneven playing field between different providers of payment services.

A tailored licensing regime for all payment service providers (PSPs) will help promote access and competition while appropriately controlling risk. Defining the payment functions that should be captured is a critical first step in establishing the foundations for this licensing framework. We therefore welcome Treasury's consultation on this topic, and provide our feedback on key proposals noted in the consultation paper below.

This submission has been prepared by AusPayNet in consultation with its members. In developing this submission, interested members participated in a consultation process to discuss key issues and

provide feedback to inform our response to the consultation paper. Any comments reflecting the views of AusPayNet Management only have been noted as such.

## Defining Payment Functions

International experience shows that there are several effective ways of classifying the many different activities undertaken by PSPs. We note that Treasury has proposed to follow the European approach, where the payment services regulation is well established and regularly reviewed to ensure it remains fit-for-purpose. Based on our analysis to date, we are broadly supportive of the proposed list of payment functions, including the high-level differentiation between stored-value facilities (SVFs) and payment facilitation services (PFSs). However, we have noted a number of observations on the proposals below.

### *Payment stablecoins*

A broadly consistent approach to regulating payment stablecoins and traditional SVFs appears to be appropriate. As noted in the consultation paper, payment stablecoins offer certain features that make them functionally similar to fiat currency held in traditional SVFs, and generate a similar set of core risks. However, payment stablecoins do carry several unique risks that may need to be addressed through tailored obligations that may not apply to traditional SVFs.

We understand that the Government is simultaneously carrying out work on broader crypto asset regulation. Payment stablecoins will need to be carefully defined during the legislative drafting process to ensure clarity around the specific entities or facilities that should be captured under the PSP licensing framework. For example, tokenised deposits (which can only be issued by ADIs) may meet the proposed definition on a payment stablecoin in the consultation paper, and it has been queried whether it is Treasury's intention to capture these under the PSP licensing regime.

We also note that PFSs for payment stablecoins are not proposed to be captured under the PSP licensing framework. However, the consultation paper highlights that payment stablecoins have the potential to be widely used as a means of payment and/or stored value. While this is not currently the case in Australia, there may be benefit in retaining the regulatory flexibility to include payment stablecoin PFSs under the PSP licensing regime in the future, perhaps once the use of such stablecoins for payments exceeds a certain threshold.

Once the regulatory frameworks are in place, public education or awareness initiatives may be required to ensure that customers understand the different types of protections available to them for different types of stablecoin arrangements and payment mechanisms.

### *Payment facilitation services*

As in the case of traditional SVFs and payment stablecoins, the risks posed by different types of PFS functions can vary significantly. In particular, there may be benefit in splitting out the 'facilitation, authentication, authorisation and processing' category to ensure that the licensing obligations applicable to each of these types of PSPs remains appropriate.

We also note that the term ‘facilitation’ may currently be broad enough to capture organisations like telecommunications companies that indirectly facilitate payment services but, we assume, are not intended to be captured under the licensing framework. We suggest that Treasury consider clarifying the definition and/or providing additional guidance on the scope of the ‘facilitation’ function. This may include a set of criteria to assist entities in understanding whether they fall into this category.

Greater clarity may also be required for entities that are likely to fit into more than one functional category, such as payment system operators. Consistency of licensing – and hence the obligations that apply – across such entities will be important.

In terms of comprehensiveness, the storage of payment and transaction data and the provision of security services do not appear to be captured within the list of payment functions proposed in the consultation paper. Given the importance of ensuring the integrity and security of payments data, and the potential impact that such service providers could have on end users and other participants in the payments value chain, we encourage Treasury to consider whether (and if so, how) these entities should also be included under the licensing framework.

#### *Incorporating payment functions into law*

Given the rapid pace of change in the payments ecosystem, some flexibility to update the list of regulated payment functions in the future will be important. A non-exhaustive list of inclusions to support a new ‘payment services’ definition may be one effective method of incorporating the list of payment functions into the legal framework. This will allow for flexibility to add new payment functions in the future, as well as note any particular activities that are excluded (as is the case for other definitions under Chapter 7 of the *Corporations Act 2001*). Alternatively, an initial complete list of payment functions could be specified in the legislation, accompanied by a mechanism to allow for additional functions to be incorporated relatively easily at a later stage. This may provide greater legal certainty to industry participants while still providing regulators with the flexibility to respond to future changes in the payments landscape.

We also suggest that any definition in the law should retain a focus on payment ‘functions’, rather than differentiating between payment ‘products’ and/or ‘services’. The delineation between products and services in the payments industry can be unclear, so seeking to make a distinction between a payment product and a service in the legislation could lead to challenges around interpretation, categorisation and capturing all of the relevant entities under the new licensing framework.

## Licensing Requirements

The consultation paper seeks feedback on whether PFSs that are not consumer facing should be required to hold a licence, or whether these PFSs should only have to comply with relevant industry standards. This appears to be linked to the proposal that the payments licence be implemented through the existing AFSL regime, which has a strong focus on consumer protections and may therefore not seem applicable to PFSs that do not have a direct consumer relationship.

AusPayNet’s view is that all PSPs should be licensed, regardless of whether there is a direct consumer relationship or not. As noted in the consultation paper, it is important to focus not only on consumers, but all end-users of the payments industry, including businesses (together referred to as ‘customers’).

Furthermore, while some PSPs might not have a direct customer relationship, the interconnected nature of the payments industry means that most functions could ultimately have an impact on customer outcomes. Broad licensing is also critical to ensuring industry-wide participation in, and compliance with, relevant industry standards and other obligations. Without consistent licensing, the enforcement of industry standards and obligations across all relevant PSPs is unlikely to be effective. As noted in the consultation paper, inconsistent licensing is also one of the key criticisms of the existing regime, particularly as end-users have no option for redress if a problem has arisen due to the actions on an unlicensed entity.

A base licence applicable to all entities performing a payment function would ensure clarity, consistency and certainty for all industry participants, including end-users, regulators and standards-setting bodies. The different risks associated with each payment function should then be addressed through tailored licence obligations (for example, customer disclosure obligations may not need to apply to clearing and settlement facilities). A time-limited regulatory sandbox could also help balance regulatory burden for new entrants with protection of end-users and the broader financial system. As part of the second consultation on the PSP licensing framework, further consideration will also need to be given to whether the AFSL is an appropriate base licence for all PSPs.

#### *Exemptions and exclusions*

AusPayNet generally supports the proposals related to excluded and exempted activities in Chapter 4, where these align with the objectives and scope of the proposed licensing framework, including the definitions of payment functions. However, we note the following observations:

- *Unlicensed product issuers that use licensed intermediaries:* We agree that this exemption should be removed, as it is inconsistent with the intention to directly capture all SVF providers. Some members have also questioned whether the concept of ‘sponsorship’ for PFS functions remains appropriate under the new licensing framework, noting that this practice can generate significant risks especially if there are a large number of entities being sponsored by one licensed PSP.
- *Low-value payment facilities:* To ensure consistency and customer certainty, we consider that it would be appropriate for these facilities to require a base license, with obligations commensurate to the risk associated with the facility. All ADIs, for example, must hold a licence regardless of size, with the intensity of supervision by APRA varying in line with the level of risk posed.
- *Limited-purpose facilities:* We agree that it would be appropriate to retain conditional relief for incidental non-cash payment facilities that are for a genuinely limited purpose. However, issuers of facilities such as open-loop gift cards should not fall under this exemption (in line with the feedback on low-value payment facilities above). The delineation will need to be clearly specified in the relevant legislative instrument.

## Payment Function Risks

AusPayNet supports regulation based on the principle of ‘same risk, same rules’. The effective application of this principle requires a clear understanding of the types and levels of risks posed by the entities being regulated. We therefore welcome Treasury’s objective of better understanding the risks posed by different entities in the payments system, as this will help ensure that any future payments licence obligations are appropriately tailored to address the relevant risks.

The consultation paper provides a useful high-level categorisation of the key risks that may be generated by carrying out different payment functions. However, we encourage Treasury to consider other factors that may affect a PSP's risk profile, particularly for PFS providers. These could include factors such as scale, nature of business, customer base, transaction values and volumes, and enabling technology. AusPayNet will carry out further work ahead of the second round of consultation to provide Treasury with a more detailed overview of the risks posed by different industry participants.

## Licensing Obligations

This section sets out AusPayNet's preliminary observations on the high-level overview of regulatory obligations under the PSP licensing framework, as proposed in the current consultation paper. This feedback may be subject to change once further details on the proposed regulatory obligations are provided in the next round of consultation.

### *Graduated obligations*

One of the stated objectives of the new licensing regime is to better align regulatory obligations to the level of risk posed by a PSP. In line with this, the consultation paper initially indicates that the licensing framework will impose graduated regulatory obligations, and notes that proportionality will be an important consideration. However, Chapter 7 then proposes that only SVFs would have tiered licensing requirements, while all entities providing a given PFS function would be subject to the same set of obligations regardless of scale or any other indicator of risk. AusPayNet's preliminary view is that some level of tiering or gradation (of licences and/or obligations) is likely to be required to achieve the important objective of balancing end-user and financial system protection with regulatory burden, and better aligning with the principle of 'same risk, same rules' regulation.

Relatedly, we also support the proposal that common access requirements should only be mandatory for non-ADI PSPs seeking to become direct clearing and/or settlement participants. Some of the risks associated with clearing and settlement would be unique to those activities (particularly risks to the broader payments ecosystem), so it would not seem appropriate to place obligations that address those risks on PSPs that are not direct participants in a payment system, simply because they meet a certain size threshold.

### *Regulatory responsibility*

With the exception of mandatory industry standards set by an authorised standards-setting body (ASSB), the proposed obligations framework relies on other existing regulatory regimes to address the risks posed by PSPs. We understand that this approach is intended to reduce regulatory duplication, drive regulatory consistency across the financial services sector and, for the many payments entities that already have an AFSL, eliminate the need to apply for a new licence. However, some members have questioned whether trying to retrofit the updated set of payment functions into a range of existing regulatory regimes would deliver the streamlined, fit-for-purpose licensing framework that the reforms are aiming to achieve (with the regulatory framework for purchased payment facilities brought up as an example of how such an approach could create significant challenges). This approach would also remain complex for PSPs to navigate, particularly since some obligations under a given regulatory regime may apply to some payment functions but not others.

We also note the proposal that each regulator would remain responsible for ensuring compliance within their own remit. This appears to be particularly relevant for major SVFs, which would be regulated by both ASIC and APRA under the current proposals. The ‘twin peaks’ model of regulation is well established in Australia. Nonetheless, several members have raised concerns about the complexities that might be raised by this approach, including duplication of reporting and potential differences in regulatory outcomes. Given the complexities and unique risks in the payments ecosystem, a member did question whether there may be benefit in setting up a dedicated payments system regulator (as has been done in the UK); however, many others have noted that there are disadvantages associated with a siloed regulatory approach as well. Regardless of the model adopted, it will be important to ensure that the relevant regulators have sufficient resources and expertise to effectively carry out their role in the payments ecosystem.

If the approach proposed in the consultation paper were to be adopted, a thoughtful implementation of the proposed ‘single point of guidance’ would be useful to help participants understand what obligations apply to them under which regulations. Several members have noted that a single point of contact is unlikely to be effective in practice, and may delay licensing applications and other communication with relevant regulators.

Relatedly, the transition to any new licence and the associated obligations framework will be a significant task for both the industry and the relevant regulators, and so will need to be carefully considered and managed. This will be relevant for all entities meeting the new payment function definitions, regardless of whether or not they currently hold any existing licences. Consideration will also need to be given to how to efficiently facilitate any changes in authorisations for a given licensee, as their business activities evolve over time.

#### *Risk management requirements*

Operational risk has been identified as a common key risk across all payment functions. For PSPs that are not subject to APRA’s prudential supervision framework (major SVFs) or common access requirements (clearing and settlement providers), the consultation paper suggests that operational risks related to specific payment technologies could be addressed through mandatory technical industry standards. However, operational risk encompasses losses and disruptions caused not only by inadequate or failed technology systems, but also processes, people and external events. Technical standards addressing the interoperability and security of specific payment technologies will not be sufficient to address all operational risks posed by a PSP. Most PFSs will also have some level of financial and misconduct risk.

We note that the AFSL includes a high-level obligation for licensees to have adequate risk management systems in place. We would encourage Treasury to consider whether more detailed risk management requirements should apply to all PFSs, particularly around operational risk. This would align with the approach taken in jurisdictions such as Canada, Singapore and the UK. These requirements could be set and enforced by the relevant regulator or by an ASSB, though it would need to be clarified that the ASSB’s scope extends beyond ‘technical’ or technology-specific standards to include more general risk management and customer benefit outcomes. Indeed, the Payments System Review noted that industry standards play a necessary role in ensuring outcomes not just around interoperability and security, but also accessibility and consumer protection.

## Conclusion

AusPayNet appreciates the opportunity to respond to Treasury's consultation on defining payment functions, as the first step in establishing the new PSP licensing framework. This is a critical step in updating the payments regulatory framework to ensure that it can continue to support the ongoing development and safety of the Australian payments ecosystem for the benefit of all users. AusPayNet looks forward to continuing its engagement with Treasury as it progresses its work on payments system reform over the coming months.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Andy White', with a horizontal line underneath the name.

Andy White  
Chief Executive Officer  
Australian Payments Network