

Treasury Consultation Paper
Payments System Modernisation
(Licensing: Defining Payment Functions)

Submission: EML Payments Limited (ASX:EML)



Introduction letter from the CEO Australia, EML Payments.

Director, Payments Licensing Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Lodged by email: paymentslicensingconsultation@treasury.gov.au

19th July 2023

Dear Director,

EML Payments Limited (ASX:EML) and its wholly owned subsidiary EML Payment Solutions Limited (AFSL licensee 404131) (together “EML”) is grateful for the opportunity to participate in the consultation process around the payments system modernisation, part of the very important Strategic Plan for Australia’s Payments System.

As a trusted non-bank issuer and processor in Australia for over 20 years, specialising in payments solutions, EML is deeply invested in the future of payments in Australia, which is undergoing a generational change through the introduction of real-time payments infrastructure and associated innovations including, but not limited to, the Consumer Data Right.

Ultimately, EML supports a new licensing framework for payment service providers to ensure the consistent and appropriate risk-based regulation of payment service providers based on the payment functions they provide.

While enhancing regulatory process may challenge one of the key foundations of the Strategic Plan for Australia’s Payments System – that being an uplift of competition – EML appreciates that consumer protection is of the utmost importance. EML anticipates that the principles will be enhanced later in the year with more specific regulatory obligations and guidance to ensure this is balanced with certainty for industry participants on how to apply and comply with the principles while operating in a competitive commercial environment.

It is also of importance to maintain the integrity of the financial system at large to avoid systemic failure in the future. Similarly, ensuring an appropriate investment in new infrastructure in addition to a new licensing framework will be essential in achieving this.

As such, our submission covers three key aspects to the consultation paper to highlight the importance of compliance, system integrity, and competition. Those being:

- Increased regulatory oversight without unnecessary or disproportionate obligations;
- Ensuring continued investment in new infrastructure by Government & Industry; and

- Ensuring price competitiveness and fair access to the new payments rails.

EML appreciate that these are broad statements in the context of the definition of payments functions that Treasury is seeking feedback on, but it is an important point of view when considering such matters and EML hope the feedback is welcomed.

In the interest of time, this submission addresses the consultation questions specific to these matters and look forward to continued involvement in future industry engagements. EML welcome an opportunity to engage directly with the Treasury at an appropriate time to discuss the recommendations within this submission in more detail.

Sincerely,



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About EML

EML is a home-grown Australian success story. Founded in Brisbane in 2003, EML is a leading non-bank issuer and processor operating proprietary platforms to enable banks, corporates, governments, non-government organisations (NGO), independent software vendors, merchants and fintech's in 32 countries to create instant, seamless and secure experiences for their customers (and their customer's / employees). EML issues over \$89.1bn in GDV across the globe per annum.

Within Australia, EML provides payment services to government, fintechs and private industry. EML has a ~90% market share in enabling salary packaging card spending, as well as significant market presence in enabling non-bank digital lending disbursement and government disbursements for stimulus and other disaster relief.

EML constantly invests in its platform, whether by building products ourselves, partnering with industry leaders, or acquiring best-in-breed companies. Their platform is modern, configurable, and offers a full suite of integrated solutions.

For more information, visit www.emlpayments.com/company

Payment Function Definitions

EML notes that the Payments System Review articulates several principles to drive the development of a list of payment functions requiring regulation. These are:

1. **Providing clarity and transparency:** It should be easy for PSPs to understand whether they are performing a function that requires a licence and their regulatory obligations.
2. **Targeting regulation to the risk posed:** A functional approach assists with targeting regulation to appropriately address the differing levels of risk posed by payment services.
3. **Ensuring the list can change and adapt:** The list should be able to change to ensure it remains fit for purpose as technological advancements gather pace.
4. **Consistency with other payment regulations:** To ensure a harmonised regulatory approach, payment functions will be aligned with definitions found in other legislation regulating payments.

Excerpt from the Consultation Paper:

Table 1. List of Payment Functions

Type	Payment function	Proposed Definition	Potential entities
Stored-value facility	Issuance of payment accounts or facilities ('traditional SVFs')	Providers of payment accounts or facilities that store value for more than two business days and can be used for the purpose of making payments. ¹⁰	ADIs, including entities currently regulated as Purchased Payment Facilities, ¹¹ digital wallets that store value, issuers of pre-paid accounts.
	Issuance of payment stablecoins ('payment stablecoin SVFs')	Issuers of payment stablecoins that store value and control the total supply of payment stablecoins through issuance and redemption activities.	Payment stablecoin issuers.
Payment facilitation services	Issuance of payment instruments	Issuers of a payment instrument that is unique to a customer and can be used to make a transaction or provide instructions on their account or facility.	Issuers of payment instruments (such as cheques and digital and physical cards). This includes Buy Now Pay Later providers that issue a virtual card. Issuers of a set of procedures/credentials (such as a PIN, password, biometric data) to initiate a payment instruction order.
	Payment initiation services	Services that allow the instruction of a payment transaction at the request of the customer (payer or payee) with respect to a payment account or facility held at another PSP, or from some other source of value or a credit facility.	Services that allow a customer to request a payment transaction be initiated. Examples include recurring payment services and third-party payment initiation services.
	Payment facilitation, authentication, authorisation and processing services	Services that enable payment instructions to be transferred (facilitation), provide the verification of customer credentials (authentication), payment authorisation, and/or processing of payment instructions.	Pass-through digital wallets, merchant acquirers, card issuers, payment gateways and processors, and payment routing.
	Payments clearing and settlement services	Services for clearing or settlement of payment obligations or for the exchange of payment messages for the purposes of clearing or settlement of payment obligations, including clearing and/or settling account to account payments.	Payments clearing and/or settlement providers.
	Money transfer services	Services that send or receive money overseas or within Australia for a customer, including through the creation of a payment account or without a payment account.	Remittance service providers and domestic money transfer providers.

Consultation Questions

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

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

EML supports the ability to adapt and change the suggested definitions as technology innovation continues. But it is also important to provide sufficient definitions, together with reasonable circumstantial use cases, to create certainty on the correct interpretation of payment functions at a functional level.

As highlighted within the paper, there can be several interpretations of an exclusion or definition that results in two providers offering the same service but with different licencing arrangements. These result in anomalies in outcomes for a consumer, including the adequacy of consumer disclosures. This is particularly the case where there may be overlapping requirements based on a variety of payment functions carried out by a provider and those carried out by their representatives or partners. Ultimately, this means that consumer protections are not applied in a consistent fashion.

EML are strongly aligned with the need for consistency with other payment regulations and would like to see the use cases developed and included so PSPs can have better clarity on regulatory obligations.

Further, EML suggest that these use cases are applied to wider stakeholders such as customers of PSPs to provide clarity and transparency about their responsibilities where appropriate.

Overall, EML supports that the payments licensing framework will regulate the broad and diverse population of PSPs involved in a payments value chain based on the specific payment function(s) that they perform.

EML Recommendation: Expand definitions and provide formal guidance that includes detailed use cases for clarity and consistency of application. Possibly facilitated through a wiki tool curated by the Inter-Agency Payments Forum under the 'single point of contact' model.

Overview of possible regulatory obligations

“The proposed SVF regulatory framework will replace the existing PPF regulatory framework... a two-tier regulatory approach is proposed for SVFs, with standard SVFs to be regulated by ASIC and major SVFs to be regulated by ASIC and APRA”.

To simplify the process of obtaining different authorisations, the Payments System Review recommended that PSPs should be able to apply for various authorisations through ASIC as the single point of contact, without the need to approach multiple regulators in the first instance.

Consultation Questions

How can the payments licensing processes across regulators be further streamlined?

Is the proposal to provide central guidance and a website portal for PSP licensing processes a good alternative to the single point of contact proposal recommended by the Payments System Review?

EML would be considered a Major SVF under the proposed definitions, requiring multiple regulatory licences. Bringing over 20 years' experience operating as a well-capitalised business with an existing AFSL, and regulated by both ASIC and AUSTRAC, EML understands the importance of the proposed changes to address the inherent risks emerging with new technology. Nevertheless, the possibility of red tape impacting the ability for PSPs to focus on game changing innovation and potentially just delivering a safe, trusted service that it has always done to the Australian market for two decades is such that this proposal is a concern.

We would like to see a more detailed proposal for a single point of contact initiative or an alternative arrangement (such as a centralised portal and centralised guidance) to ensure PSPs are not subject to unnecessary administrative duplication and due process. As the paper highlights, if ASIC were to be the single point of contact across AFSL and APRA applications there are inherent drawbacks including delays in approval and the fact that required information and compliance differs significantly between each regulator.

EML Recommendation: The establishment of the Inter-Agency Payments Forum by Treasury involving ASIC, APRA and AUSTRAC is welcomed. Creating a longer-term inter-agency alliance that is responsible for providing PSPs with the guidance, information, and resources to obtain the required licenses would be a preferred long-term solution, noting this requires the necessary investment by the Australian government.

The Financial System (system wide): A more certain future.

Excerpt from consultation paper:

Payment systems connect financial institutions, PSPs, and the consumers and businesses that use them. As a result, payment systems form a channel through which financial disruption can be transmitted and amplified across the financial system and economy. The likelihood of this happening is known as systemic risk.

Systemic risk is the risk that financial or operational failure by one or more participants to meet their obligations, or a disruption in the system itself, or the failure of an important participant (due to their size or critical role in the system) could result in the inability of other system participants or financial institutions in other parts of the financial system to meet their obligations. These could lead to financial losses and affect the stability of the whole system, by causing widespread liquidity or credit problems that lead to a general loss of confidence in the payments system. A widespread operational outage, data loss, fraud or other criminality could also cause a loss of confidence.

Consultation Question

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?

EML considers that the proposed obligations are fit for purpose to mitigate perceived risks, but it is the potential for systemic failure that is becoming apparent through recent system outages and system exposure. EML would like to see a continued investment in the new payments infrastructure as current performance is not acceptable. Now that there are horizon dates outlined in the Strategic Plan for Australia's Payments System for wider adoption of the new payments infrastructure, it is also vital that the regulators have suitable tools to effectively enforce deadlines to avoid similar delays to those experienced with PayTo.

By way of framing an answer to this question, EML are excited by the planned modernisation of the payments system, such as a phased transition away from BECS for direct entry payments to move to the New Payments Platform. At the same time, consumer behaviour is shifting fundamentally, which is, in part, what the proposed definitions and updates in this paper represent – the emergence of the digital wallet and different payments services (for example, in-app and embedded finance).

For this significant shift to be successful, the Government and industry must continue to invest in the new payments infrastructure and surrounding ecosystem – evidenced by the recent commitment to a \$200 million investment in cybersecurity in FY23/24. Lastly, in the spirit of wishing to provide wholistic feedback to the wider Strategic Plan for Australia's

Payments System, the other critical component to replacing legacy payments infrastructure with the modern RTP rails is price competitiveness. PSPs continue to pay an NPPA cost recovery levy via a pass-through arrangement with directly connected institutions. Until this can be addressed, the wholesale commercial reality will limit adoption across the wider economy (enterprise and SME markets).

As per the *NPP Functionality and Access Consultation: Conclusions Paper* released by the Reserve Bank of Australia in June 2019 ^{*1}, the RBA recommended that, from its first pricing review after July 2019, NPPA should publish data on its wholesale transaction pricing. Further, prior to the introduction of full cost-recovery pricing, NPPA should publish the wholesale transaction fee that would be implied by full cost-recovery pricing. Following the introduction of full cost-recovery pricing, it should publish its wholesale transaction fee and the methodology it has used to determine that fee.

EML would welcome this transparency to encourage fair market conditions to prevail and ensure one of the principal foundations of the Strategic Plan for Australia's Payments System is honoured – that being an uplift of competition.

EML Recommendation: Ensure continued investment in the new payments infrastructure, together with the appropriate governance to ensure timely delivery by key players. Lastly, provide support to the wider sector by providing appropriate access to systems that promote competition and a vibrant marketplace for Australian businesses and consumers.

EML commends the Treasury and stakeholders involved in this Consultation Paper for very clear and sensible approach towards payment system modernisation and we are grateful for the opportunity to participate. EML also welcome an opportunity to engage directly with the Treasury to discuss our recommendations at an appropriate time.

^{*1} [NPP Functionality and Access Consultation: Conclusions Paper \(June 2019\)](#)