



Payments System Modernisation: Regulation of payment service providers

Consultation paper

December 2023

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Table of Contents

- 1. Introduction5**
 - 1.1. Background5
 - 1.2. Summary of proposed reforms5
 - 1.3. Objectives of reforms6
 - 1.4. Risks the reforms seek to address6
 - 1.5. Next steps7

- 2. Proposed payment functions8**
 - 2.1. Functions summary8
 - 2.2. Updated payment functions10
 - 2.3. Incorporating functions into law28
 - 2.4. Overseas providers31

- 3. Excluded and exempted activities32**
 - 3.1. Exclusions proposed to be removed or amended32
 - 3.2. New exclusions and exemptions34

- 4. Licensing processes40**
 - 4.1. AFS licensing approach40
 - 4.2. Streamlining licensing processes40
 - 4.3. Interactions with other regulatory frameworks42
 - 4.4. Information gathering powers43

- 5. Financial services obligations44**
 - 5.1. Overview44
 - 5.2. General obligations47
 - 5.3. Financial requirements47
 - 5.4. Compensation49
 - 5.5. Design and distribution obligations49
 - 5.6. Hawking prohibition49
 - 5.7. Disclosure50
 - 5.8. Client money rules50
 - 5.9. Obligations for low value payment products52

- 6. Regulatory framework for SVFs53**
 - 6.1. Criteria for Major SVFs53
 - 6.2. Ministerial designation powers54
 - 6.3. Regulatory obligations to apply to all SVFs55
 - 6.4. Regulatory obligations to apply to Major SVFs56
 - 6.5. Additional regulatory obligations to apply to PSCs58

- 7. Common access requirements60**
 - 7.1. Background60
 - 7.2. Application to PSPs61
 - 7.3. Proposed regulatory model62

8.	Industry standard-setting framework.....	65
8.1.	Background.....	65
8.2.	Objectives.....	65
8.3.	Lessons from overseas jurisdictions.....	66
8.4.	Standard-setting framework.....	66
9.	ePayments Code.....	73
9.1.	Ministerial rule-making power.....	73
9.2.	Future review of the ePayments Code.....	74
10.	Transitional arrangements.....	75
10.1.	AFSL transition issues.....	75
10.2.	Other transition issues.....	75
10.3.	Transition issues for PPFs.....	75
	Appendix 1 – Consultation questions.....	77
	Appendix 2 – Glossary.....	82

Consultation process

Request for feedback and comments

The purpose of this consultation paper is to seek feedback on the proposed licensing framework for payment service providers.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or PDF format. An additional PDF version may also be submitted. All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails are not sufficient for this purpose. If you would like only part of your submission to remain confidential, please provide this information clearly marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982* (Cth), may affect the confidentiality of your submission.

Closing date for submissions: 02 February 2024

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate and are subject to legislative design and advice.

The implementation of the proposed framework is subject to future legislative design and development. The focus of this paper is to seek feedback on the policy of the framework. There will be public consultation on the text of the draft legislation. This will provide stakeholders with the opportunity to comment on the particular wording of the reforms.

1. Introduction

1.1. Background

As set out in the Strategic Plan for Australia’s Payment System, the Government is updating the payments regulatory framework to ensure it is fit for purpose for the modern economy. The Government is addressing policy issues posed by new payments technologies by updating the *Payments Systems (Regulation) Act 1998* (Cth) (PSRA)¹ and introducing a licensing framework for payment service providers (PSPs).

In June 2023, the Government released a consultation paper (CP1) inviting feedback on the proposed list of payment functions that would be regulated under the licensing framework and preliminary feedback on the licensing framework.² Stakeholder feedback has informed changes to the proposed list of functions (in **Section 2**) and the proposed regulatory obligations set out in this paper.

1.2. Summary of proposed reforms

Table 1 provides a summary of the structure of the proposed framework. Financial services regulation will apply to the proposed payment functions. In addition, prudential regulation by the Australian Prudential Regulation Authority (APRA) will apply to Major Stored-value Facilities (SVFs), and certain designated Payment Facilitation Services. In addition, the ‘common access requirements’ that provide a new pathway for non-bank PSPs to directly access payment systems will be prudential-like obligations overseen by APRA. Technical industry standards will apply to a broad range of participants and operators of payment systems.

Table 1: Proposed regulatory framework

Prudential regulation Major stored-value facilities and designated PSPs	APRA	Manage financial and stability risks
Prudential regulation Common access requirements for payments clearing and settlement		Improve access to payment systems
Financial services regulation All PSPs performing a payment function	ASIC	Protect payment service users
Technical industry standards All payment system participants and payment system operators where a standard applies	Industry body authorised by RBA	Broad and consistent adoption of core standards

¹ Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023, Schedule 8.

² Treasury, [Licensing of payment service providers – payment functions](#), Treasury, June 2023.

1.3. Objectives of reforms

As set out in CP1, the objectives of the payments licensing framework include:

1. Ensuring consistent and appropriate regulation of PSPs
2. Improving regulatory certainty for PSPs
3. Better targeting regulatory obligations based on the level of risk posed to customers and the wider financial system by PSPs
4. Streamlining the process for businesses that require multiple licences or authorisations
5. Supporting a more level playing field for PSPs seeking to access payment systems
6. Better aligning Australia's payments regulatory framework with international jurisdictions

The payments licensing framework seeks to set regulatory obligations that allow for sufficient flexibility, is 'future-proofed' for future developments, and adequately balances the objectives of the reforms.

1.4. Risks the reforms seek to address

CP1 set out three categories of risk – financial risks, operational risks and misconduct risks – and a preliminary mapping of the risks associated with each payment function. Stakeholder feedback largely supported the presentation of risks in the first consultation.

After incorporating feedback from stakeholders and undertaking a deeper analysis of risks, this consultation paper outlines a high-level taxonomy of key risks associated with the payments ecosystem that the licensing regime seeks to address (**Table 2**). This taxonomy recognises the relationship between the target state of the payments ecosystem (an ecosystem that is safe and resilient, has appropriate customer protections, and promotes competition), the risks that threaten the attainment of this target state, and the poor outcomes that may result if these risks are realised. Some risks are addressed by other regimes (for example, risks associated with money laundering and terrorism financing). Some risks may fall within the scope of other regimes, but may be only partly addressed by those regimes, and are therefore included for consideration below.

Table 2: Key risks in the payments system

Target State	Risk	Poor Outcomes
 System-wide safety	Operational risk Fraud Cyber and data security Technology and systems Governance and people Process and compliance External events	System Systemic disruption Loss of confidence in system
 Customer protection	Financial risk Credit risk Liquidity risk	Customers Loss of funds Data privacy breaches Disruption of services
 Competitive market	Lack of interoperability Barriers to access	Customer Limited choice Less innovation Higher cost of payments

1.5. Next steps

The Government intends to introduce legislation for the payments licensing regime in 2024.

Following the passage of primary legislation, certain detailed elements of the reforms will be subject to further consultation. They include the design of supporting regulations for the mandatory revised ePayments Code, common access requirements, and mandatory technical standards.

2. Proposed payment functions

2.1. Functions summary

This section proposes an updated list of payment functions. The intent of these functions is to ensure that the regulatory perimeter reflects the nature of the industry in Australia and appropriately addresses key risks, whilst being technology neutral and ensuring competitive neutrality.

The functions as described below are not finalised legal definitions and are intended to demonstrate the policy intent. Examples are provided for illustrative purposes only and are not exhaustive. It is intended that these functions will be incorporated into law as defined financial products and services, and that each will need to be individually authorised. **Section 2.3** discusses how these functions could be operationalised into the regulatory framework.

Compared to the functions proposed in CP1, the following key changes have been made:

- The 'Payment Facilitation, Authentication, Authorisation, and Processing Services' function has been split into two distinct functions: (i) 'Payment Facilitation Services'; and (ii) 'Payment Technology and Enablement Services'.
- The 'Payments Clearing and Settlement Services' function has been removed.
- The 'Money Transfer Services' function has been replaced with a 'Cross-border Transfer Services' function, to provide clarity and clearer delineations between functions.
- Additional clarity has been provided on all functions, including on the interactions between functions.

Table 3: List of payment functions

Payment function	Description	Illustrative examples
Stored-value Facilities ('traditional SVFs')	Funds loaded onto an account or facility. Customers are able to direct the movement of these funds, for the purposes of paying for goods or services, transferring to another person, or withdrawing the funds.	Current Purchased Payment Facilities, digital wallets that store value, value stored on online accounts, virtual and physical pre-paid cards.
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 Instruments	A personalised or individualised set of procedures that allows a payer to instruct an entity with which its funds are held to initiate a transfer of funds to a payee.	Issuers of digital and physical cards (e.g. debit and credit cards, Buy Now Pay Later cards), cheques.
Payment Initiation Services	The initiation of payments from a payer to a payee by a third-party entity, at the request of a customer. The entity initiating a payment is a third party to the payment account where the payer's funds are held.	PayTo services, recurring payments initiated by a third party, direct debit or credit services.
Payment Facilitation Services	The process of entering into the possession of funds for the purpose of facilitating a transfer between a payer and payee. This includes for the purpose of acquiring, aggregating, disbursing, or otherwise transferring of funds within Australia.	Merchant acquirers, payment facilitators and aggregators, certain marketplaces and platforms, payout providers, certain payment processors, domestic money transfer service providers.
Payment Technology and Enablement Services	Payment specific services provided by third parties that enable payments to be made. These services enable a transfer of funds to occur but do not enter into possession or control of the funds.	Passthrough digital wallets, payment gateways.
Cross-border Transfer Services	A service that transfers or enables the transfer of funds from Australia to a payee outside of Australia, and/or of funds from outside of Australia to a payee in Australia.	Certain remittance providers, or international money transfer service providers.

2.2. Updated payment functions

2.2.1. Stored-value Facilities (SVFs)

Submissions were broadly supportive of a standalone SVF payments function. However, further clarity on various aspects of the definition was requested. Key themes are set out in this section.

Distinguishing SVFs from banking business

Stakeholders requested that the regulatory approach to SVFs be clearly distinguished from bank deposit-taking activities. Reference was made to the approach in the United Kingdom (UK) where a clear distinction is made between e-money and deposit-taking activity, in view of the specific character of e-money as an electronic surrogate for coins and banknotes, which is to be used for making payments, usually for a limited amount and not as a means of savings.³

Two options for the treatment of SVFs are outlined below:

1. **Separate the definition of SVFs from ‘banking business’ (preferred approach).** Currently, Purchased Payment Facilities (PPFs) are considered to be a special class of authorised deposit-taking institutions (ADIs) that undertake ‘banking business’.⁴ This preferred approach will require repealing the current PPF definition and defining SVFs as a stand-alone class of regulated entities. To prevent regulatory arbitrage, and reflect that SVFs are not equivalent to banking business, SVFs will be prohibited from paying interest on stored funds (see **Section 6.3**).
2. **Continue status quo approach.** SVFs to remain a special class of ADIs that undertake ‘banking business’ as is currently the case for PPFs.

Feedback is welcome on the above options, including any unintended consequences that may arise. PPF products are currently input taxed under the Goods and Services Tax (GST) framework; i.e. businesses do not charge customers GST. One potential impact of option 1 may include the classification of SVF products as non-financial supplies under the GST regulations, so that all SVF products are subject to GST.⁵ Any potential changes to the GST base will need to be subject to further consultation and approval by state and territory governments.

Consultation question

1. **Feedback is welcome on the proposed approach to distinguish SVF products from banking business. Are there any unintended consequences, and are there suggestions on how to mitigate those?**

The concept of e-money

A small number of submissions noted that the term ‘SVF’ is now out of step with overseas regulatory frameworks and that ‘e-money institutions’ is the more contemporary term that better reflects the nature of the function and risks. Some stakeholders proposed that the SVF definition be amended to

³ UK Financial Conduct Authority (FCA), [FCA Handbook](#), PERG 3A.3: The definition of electronic money, ‘Q15. How does electronic money differ from deposits?’.

⁴ *Banking Regulations 2016* (Cth) reg 6.

⁵ See *A new Tax System (Goods and Services Tax) Regulations 2019* (Cth) (*GST Regulations*) s 40-5.09(3).

more clearly reflect the function and purpose of a facility for making payments, by tying the definition to funds held or using an 'e-money' concept.

E-money is used in a number of jurisdictions such as the European Union (EU), the UK and Singapore. However, the payments regulatory frameworks in the EU and UK are subject to ongoing review and the interactions between the 'e-money' framework and other payments functions have been cited as an area of ambiguity and complexity.⁶

Defining money is a complex and evolving topic; recent proposed reforms to the PSRA have moved away from using terms such as 'circulation of money'.⁷ Therefore, this paper proposes that the term SVF continue to be used for clarity.

Storing funds in transit

Some submissions noted the proposed definition of SVFs in CP1 was overly wide and captured a range of PSP activities, including for example:

- Merchant acquiring, where funds are commonly held by PSPs in a merchant account, which are set up primarily for: (i) the purpose of recording and receiving funds for goods and services provided by the merchants; and (ii) apportionment of funds between an online marketplace and its sellers, in connection with underlying transactions for goods and services. Submissions requested that merchant acquiring be carved out from the SVF definition, through for example, a criterion that SVFs involve payments to 'third parties' (i.e. parties other than persons providing the goods or services which the funds relate to).
- PSPs that hold funds for a short period of time for the purpose of facilitating a payment. Submissions queried whether such activities are to be captured under the SVF definition.

The SVF payment function does not intend to capture the above activities, which are proposed to be captured under the s processed function. However, further defining the nature of each party (through a 'third party' criteria) may add unnecessary complexity and may not be sufficiently flexible to accommodate all SVF business models.

CP1 proposed that, to qualify as an SVF, funds need to be held for longer than 2 days, to distinguish SVFs from other PSPs that may hold funds in transit. This proposal received mixed views. Some submissions noted 2 days represented a good estimate of payments processing times. Others noted the arbitrary nature of this timeframe and suggested it did not reflect a functional and risk-based approach. Submissions noted that many PSPs take more than 2 days to settle transactions. Some recommended that the 2 days be extended to a longer timeframe such as 3 or 10 days. This paper proposes that the 2 day criteria for SVF funds be removed, and that a principles-based distinction, through the changes proposed below, be used to delineate between SVFs and other payment functions.

⁶ For example, European Banking Authority's (EBA) submission to the Call for Advice for the review of PSD2 provides a summary of the difficulty in distinguishing between 'payment accounts' and 'electronic money accounts'. See [Opinion on EBA's response to the call for advice on the review of PSD2](#), 23 June 2022, p 27.

⁷ Treasury, [Reforms to the Payment System \(Regulation\) Act 1998](#), Treasury, June 2023, p 6.

Proposed changes to the SVF function

The following characteristics are proposed for describing SVFs:

- involves funds loaded onto an account or facility;
- customers are able to direct the movement of these funds, for the purposes of paying for goods or services, transferring to another person, or withdrawing the funds; and
- includes funds stored on online accounts, or on a physical or virtual device or card.

The SVF proposals refer only to 'value' or 'funds' and remain agnostic as to what is stored. It is also agnostic to the legal arrangement between a customer and the SVF. A range of legal arrangements could be accounted for under the SVF function. For example, SVFs may involve the storage of funds pending use of those funds by the consumer for payments, or may involve a contractual promise to the consumer for the SVF provider to make payments.

Feedback is welcome on whether further characteristics should be included in the SVF description. For example, that SVFs offer the functionality where funds can be stored without an onward payment instruction or transaction associated with the funds held. This could better distinguish SVFs from Payment Facilitation Services which will, for example, hold funds in transit for the purpose of an onwards transaction.

Consultation question

- 2. What are your views on the proposed changes to the SVF function and whether additional characteristics or principles are needed to distinguish SVF products? Should there be an additional principle that funds can be stored without any onward payment instruction?**

Activities outside the scope of SVFs

To avoid doubt, the following activities are out of scope of the SVF definition:

- credit facilities;
- facilities that store value but cannot be used as a payment, for example, debentures or interests in managed investment schemes;
- PSPs that are intermediaries in a payment transaction that hold funds for a short period of time for the purpose of facilitating a payment (these will fall within the Payment Facilitation Service function);
- merchant acquiring activities (a Payment Facilitation Service function);
- the storing of digital assets e.g. crypto;⁸ and

⁸ See Treasury, [Regulating digital asset platforms](#), Treasury, October 2023.

- deposit products.⁹ Note however, that payments functionality attached to these products (e.g. the ability to make payments from the account) may be captured by other payment functions in this paper.

Consultation question

3. Are there any further activities that should be out of scope of the definition of SVF?

2.2.2. Payment Stablecoins (PSCs)

CP1 sought views on whether the proposed definition of PSCs appropriately separates itself from other types of stablecoins and digital assets. CP1 also sought views on whether the proposed SVF framework is appropriate for the regulation of 'Payment Stablecoins'.

Definition of Payment Stablecoin

In the absence of an agreed global taxonomy of digital assets, jurisdictions have taken different approaches to defining stablecoins that are backed by a single fiat currency. CP1 defined PSCs as:

- a) a digital representation of monetary value intended or purported to maintain a stable value relative to a fiat currency;
- b) issued by a payment stablecoin issuer; and
- c) capable of being redeemed for:
 - i) Australian dollars (AUD); or
 - ii) another fiat currency only where there is active marketing or selling in Australia, at face value through a claim provided by a *payment stablecoin issuer* to a customer.

Overall, most submissions broadly agreed with the proposed definition, with some minor changes suggested. Most entities in the digital asset industry also agreed that the proposed SVF framework is an appropriate framework to regulate these types of stablecoin arrangements.

Feedback received also suggested that the term 'Payment Stablecoins' be changed to fiat-backed stablecoin or fiat-collateralised stablecoins to refer to the type of assets backing these stablecoins or to use a term similar to 'electronic money token' or 'Stored-value token' to signify the underlying technology used. This paper continues to use the term 'Payment Stablecoins', but the adoption of another term such as Fiat-Backed Stablecoin will be considered to adequately distinguish stablecoins that are backed by fiat currency and can be used as a store of value or a means of payment.

Closed loop stablecoin operations, that can only be used within a particular environment or are limited to a specific platform, are not considered a PSC and hence are not intended to be regulated under the proposed SVF framework.

The rationale for regulating PSCs under the proposed SVF framework is that PSCs offer certain features which makes them functionally similar to fiat currency held in traditional SVFs. These features

⁹ *Corporations Act 2001* (Cth) (*Corporations Act*) s 764A(1)(i).

include the ability to be accepted as a means of payment or held as a store of value. Issuers of these stablecoins typically hold cash or cash-equivalent reserves to support the stability of the value of the stablecoin, relative to the fiat currency to which it is linked.

2.2.3. Overview of regulatory framework for PSCs

The need for separate treatment of Payment Stablecoin arrangements

Payment Stablecoin arrangements are a type of ‘token-based system’.¹⁰ A ‘token-based system’ is a method of record keeping where a right, benefit, or claim (entitlement) accrues to the holder of a particular token (token holder).¹¹ A theatre ticketing system is an example of a token-based system (i.e. any person in possession of a particular piece of paper (token holder) is entitled to enter the relevant theatre (entitlement)). A Payment Stablecoin arrangement involves the holder of a particular crypto token (token holder) being entitled to redeem that token for a fixed amount of ‘fiat currency’ (entitlement).¹²

The need for different regulatory treatment of Payment Stablecoin arrangements compared to traditional SVF facilities arises because, as with any token-based system, the business responsible for the issuance and redemption of entitlements has no role in facilitating the transactions that take place in relation to the associated token.¹³ Transactional functions are facilitated by third-party service providers who have chosen to accept the relevant token for some purpose. The purposes are not set by the issuer. For example, a merchant may be willing to accept certain tokens as payment, a derivatives issuer may be willing to accept certain tokens as collateral, or a borrower may be willing to borrow certain tokens in return for interest payments. In all cases, the business responsible for issuance and redemption of an entitlement remains responsible only for the issuance and redemption of entitlements.¹⁴

¹⁰ For example, a secondary market for physical theatre tickets can exist without being facilitated by the issuer of that ticket. Crypto tokens are used for stablecoins because they act like digital versions of physical tokens, in a way that would not be possible with a conventional digital ticket (such as a pdf ticket sent by email). For an overview of token-based systems, see Treasury, [Regulating digital asset platforms](#), Treasury, October 2023.

¹¹ This can be compared to an ‘account-based system’ where entitlements accrue to a particular person named in an account entry (and where transactions between account holders must be facilitated by the person that manages the accounts).

¹² Unlike the asset-backed tokens that can be created pursuant to the digital asset platform framework, a Payment Stablecoin arrangement does not provide a token holder with ownership or beneficial ownership of underlying assets. Rather, it is a ‘token-based system’ version of a traditional SVF, such as a payment network.

¹³ If the business responsible for issuing and redeeming entitlements can facilitate transactional functions, the arrangement is not a token-based system (it is an ‘account-based system’ and can be regulated under conventional frameworks). Digital tokens (including many stablecoins) created in a certain way can effectively replicate physical tokens in this respect. See Treasury, [Regulating digital asset platforms](#), Treasury, October 2023.

¹⁴ The business responsible for issuance and redemption will often have the ability to freeze tokens in response to requests from law enforcement or to comply with sanctions or anti-money laundering/counter-terrorism financing obligations. However, they cannot facilitate transactions. If they can facilitate transactional functions, it would not be a token system and would be covered by the traditional SVF framework.

Except for true peer-to-peer transactions (i.e. those that do not involve an intermediary business), transactions involving tokens are facilitated by third party intermediaries that (at least temporarily) hold tokens on behalf of one or more of the transacting parties.¹⁵

This section provides details on the interaction between the SVF Framework and the proposed framework for regulating 'digital asset facilities'.

Accommodating the potential benefits of token-based payments (such as settlement efficiency and encouraging a competitive ecosystem of third-party service providers) requires a regulatory model that: (i) acknowledges the split between the issuance/redemption functions and the transactional functions; and (ii) does not weaken the regulatory coverage compared to non-token payment products. The proposed framework adopts the approach proposed to be taken for digital assets generally under the 'digital asset facility' framework. This splits the regulatory model into the following two elements:

- ensuring the integrity of the 'entitlement' underlying the Payment Stablecoin arrangement (i.e. regulating Payment Stablecoin SVFs (PSC facilities) to ensure the proper issuance and redemption of entitlements, minting and burning of tokens, and capacity of the entity to meet its obligations); and
- ensuring the integrity of 'transactional functions' facilitated by third-party service providers that accept Payment Stablecoin tokens (PSC tokens).

Under the proposed model, the relevant entitlement attached to PSC tokens would be limited to a simple 'right to exchange a PSC token for a fixed amount of fiat currency'.¹⁶ This entitlement (and therefore the PSC token itself) would not comprise a financial product. Rather:

- the issuance and redemption *functions* facilitated by PSC facilities would be regulated as financial products under the SVF framework; and
- the transactional functions facilitated by third-party intermediaries would be regulated as financial products under the 'digital asset facility' framework.

Regulating PSC facilities through the SVF framework

The framework for regulating PSC facilities will focus on the business responsible for the issuance and redemption of entitlements (facility provider).¹⁷ The proposed regulations and obligations for PSC facilities will largely replicate those that apply to traditional SVFs, including the holding of client monies, disclosure obligations, and the general and conduct obligations that attach to Australian Financial Services Licence (AFSL) holders.

The geographical scope of the SVF framework would encompass facility providers 'carrying on a financial services business in Australia' in the same way as traditional SVFs. However, the split between issuance/redemption and transactional functions introduces one key difference. It may be

¹⁵ This is because parties to a token transaction only have two options: (i) do it themselves; or (ii) use an intermediary token holder. If either party uses an intermediary token holder, the transaction is not peer-to-peer.

¹⁶ It could not, for example, be structured such that the entitlement is a unit in a managed investment scheme or a derivative.

¹⁷ i.e. the person controlling the supply of Payment Stablecoins with responsibility for ensuring that the issuance and redemption of entitlements matches the 'minting' and 'burning' of PSC tokens.

possible for a fiat-backed stablecoin to be accepted by a third-party business in Australia without the foreign facility provider ‘carrying on a financial services business in Australia’. For example, a secondary market for such stablecoins can exist in Australia without any steps being taken by the foreign facility provider or without the facility provider ever facilitating issuance or redemption for an Australian consumer directly.

Under the proposed framework, holding and transacting in a PSC token on behalf of a customer would not be considered ‘dealing in’ a PSC facility. In the secondary market example above, the secondary market operator would be regulated through the digital asset facility framework, rather than the PSC facility framework.

However, businesses that act more like brokers between PSC token holders and PSC facilities would need to be licensed to deal in PSC facilities. This may include, for example, a digital asset platform that automatically redeems any PSC token deposited by customers (as opposed to most platforms, which simply hold the PSC tokens that are deposited, like any other token).¹⁸

Regulating PSC tokens through the digital asset facility framework

The framework for regulating PSC tokens relies on the digital asset facility framework, which covers third-party intermediaries holding tokens on behalf of customers. Given token transactions can only be initiated and facilitated by token holders, the focus on intermediary token holders under the digital asset facility framework inherently covers all businesses offering:

- products used by merchants to accept payments in tokens;¹⁹
- token custody products (such as ‘wallets-as-a-service’);
- products designed for ‘savings’ or ‘investments’ (e.g. interest bearing ‘earn’ accounts);
- other financial products and services that involve tokens (e.g. a derivatives issuer that accepts tokens as collateral or a managed investment scheme holding tokens for members); and
- products that involve the trading of digital assets (e.g. trading platforms for digital assets).

The digital asset facility framework does not distinguish between tokens issued in Australia and tokens issued abroad. This means that a digital asset facility could facilitate transactions (e.g. make available for sale) PSC tokens created under the SVF framework, together with other types of stablecoins. The Government does not propose to prohibit other types of stablecoins. However:

- stablecoins created outside the SVF framework will be assessed against the ‘financial product’ definitions in the usual manner (e.g. an entitlement attached to a stablecoin may itself be a financial product, which could bring the issuer into the financial services regulatory perimeter

¹⁸ Another example of dealing in a PSC facility would be a specific third-party redemption service (e.g. a business that buys PSC tokens slightly below face value and redeems them at par). Depending on structure, these businesses might also be considered market makers or liquidity providers for a digital asset facility.

¹⁹ This would not cover all payments made between buyers and sellers (for example, a peer-to-peer transfer could still be agreed between parties). However, it would cover the third-party products typically used by merchants to facilitate these payments.

and may require the token to be transferred, traded and settled pursuant to the frameworks that apply under the existing financial services framework); and

- PSC tokens created pursuant to the SVF framework will be able to be referred to and advertised as being in compliance with the SVF framework.²⁰

Consultation question

- 4. Do you agree with the proposed framework for PSCs and how it interacts with the Digital Asset Platform Framework? Are there any considerations that should be given or issues that can arise which have not been captured in this proposal?**

2.2.4. Payment Instruments

Proposed conceptual definition

A personalised or individualised set of procedures that allows a payer to instruct the entity with which its funds are held to initiate a transfer of funds to a payee.

Purpose and scope

This function captures any entity that provides a financial service involving a payment instrument (including providing advice and dealing). The rationale for capturing these entities is to address the operational risks associated with this service, particularly the risk of misconduct or fraud by an entity that comes into contact with a customer's security credentials or other details that are linked to the customer's payment account, as well as ensure consumer protections are applied.

Examples

Entities captured by this function are likely to be performing one or more of the following activities:

- Entering into a contract with a customer to provide an instrument. This includes setting the terms and conditions that govern the use of the instrument.
- Providing personalised security credentials to a customer and instructions to activate a payment instrument e.g. providing a customer with a personal identification number (PIN) and a website link where a new credit or debit card can be activated.
- Setting the parameters of a payment instrument e.g. spending limits, restricting the use of the instrument to particular merchants.
- Providing program management services for a payment instrument e.g. issuing replacement payment instruments in the event the original is lost, PIN generation or PIN reset services.
- Arranging for the issuance of a payment instrument.

²⁰ This could replicate the approach taken by the Monetary Authority of Singapore (MAS) whereby various stablecoins can be sold but only those regulated under a particular framework can use a special notation of 'MAS regulated' or similar.

Examples of entities that would be captured by this function include:

- Issuers of cheques, debit cards, credit cards, Buy Now Pay Later cards and virtual payment instruments. This includes banks, credit unions or other entities that provide customers with a card that can be used to initiate payments from an account the customer holds with that entity or another entity.²¹
- Entities that sell payment instruments to consumers or otherwise arrange for the issuance of the payment instrument. Although these entities are not the issuer, they distribute the instrument to the consumer.

This function is **not** intended to capture:

- Entities that administer systems or provide infrastructure for the operation of payment instruments, but are not involved in the individual issuance of a payment instrument. For example, the operator of a card scheme that does not also provide the services listed above for the cards that are certified by the scheme.
- The issuance of a token that is linked to an underlying payment instrument or payment account (a 'payment token'). In this context, 'payment token' is referring to the concept of a token resulting from the tokenisation of payment instrument or account data.²² This activity is currently captured within the Payment Technology and Enablement Services function described in **Section 2.2.7**.

Consultation question

- 5. Do you agree with the scope of the 'Payment Instruments' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?**

2.2.5. Payment Initiation Services

Proposed conceptual definition

The initiation of payments from a payer to a payee by a third-party entity, at the request of a customer. The entity initiating a payment is a third party to the payment account where the payer's funds are held.

Purpose and scope

This function captures any third party that performs payment initiation to address the operational risks associated with the ability to initiate funds transfers from a payer's payment account. Although the initiation of a payment primarily involves sending instructions (and not possession of the funds),

²¹ Note, however, that no changes to the exclusion for credit facilities in *Corporations Act* s 765A(1)(h)(i) are proposed, see **Section 3.1**.

²² A payment token is only a subset of the more general concept of tokens in account-based or token-based systems. These are defined in Treasury, [Regulating digital asset platforms](#), Treasury, October 2023. A payment token is also a distinct concept from a Payment Stablecoin, which is defined in **Section 2.2.2**.

the possibility of operational errors or deliberate misconduct may have implications for the security of a customer's funds.

Examples

Some examples are listed below (noting that this is not an exhaustive list):

- **Entities that perform PayTo services in the New Payments Platform (NPP).** That is, entities that are authorised by a PayTo agreement (mandate) to initiate one-off or recurring payments from a payer's account, on behalf of the payer. This service may be performed by NPP direct participants, identified institutions, connected institutions or PayTo Users. If, for example, an identified institution sponsors a third party as a Payto User, this function captures both the initiation message sent from the Payto User to the identified institution, as well as the message sent from the identified institution to the payer's bank. This function therefore also captures the institution that creates the PayTo agreement and verifies the agreement before it sends a payment initiation request to the payer's bank.
- **Entities that provide direct debit services, or direct credit services in the Bulk Electronic Clearing System (BECS²³).** I.e. entities that are able to send payment initiation messages that implement direct debit or direct credit requests on behalf of a payer. This could include direct participants in BECS or other PSPs providing direct entry services.

This function is not intended to capture merchants that contract a third-party service provider to perform PayTo, direct debit or direct credit services, but are not themselves able to request payments associated with a PayTo or direct debit/credit agreement. It is also not intended to capture digital wallets, Point of Sale (POS) terminals, payment gateways and mobile devices. These examples cannot be used to execute a payment without the use of a payment instrument and therefore present different risks to payment initiation.

See 'Interactions with other regulatory frameworks' (**Section 4.3**) for a discussion of the interaction between the reforms and the framework for action initiation under the Consumer Data Right (CDR).

Consultation question

- 6. Do you agree with the scope of the 'Payment Initiation Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?**

2.2.6. Payment Facilitation Services

Proposed conceptual definition

Services that enter into the possession of funds for the purpose of facilitating a transfer between a payer and payee. This includes for the purpose of acquiring, aggregating, disbursing, or otherwise transferring of funds within Australia. This includes through accounts held at other financial institutions or service providers but controlled by the PSP.

²³ Note that the Government is supporting an industry-led, phased transition away from BECS.

Purpose and scope

This function captures service providers that possess funds for the purpose of transferring them between a payer and payee. A PSP may possess funds if they hold or control funds for any amount of time as part of facilitating a payment. A description on the proposed delineation between these services and SVFs is provided in **Section 2.2.1**.

The purpose of capturing these services is to address not only the operational risks that they pose, but also the financial risks associated with the possession of a customer's funds. These risks could result in a variety of adverse outcomes that may impact a variety of customers and other system participants depending on the nature of the service provided. It could, for example, result in a loss of customer funds, loss of data, or failed payment transactions, and these risks could impact other participants in the payment system more broadly. The failure of a large, or highly interconnected provider could also result in trust and reputational issues, and potentially pose broader stability risks.

This function is intended to be agnostic of the technology, business model or payment system used to transfer funds. This recognises that there are a range of business models and use cases for such services, and that these may pose broadly comparable risks by possessing funds for the purpose of enabling a payment to be made.

In addition, this function is intended to capture PSPs regardless of the customer that the PSP acts on behalf of. This includes PSPs that act on behalf of a payer or a payee, or as an intermediary in a particular transaction. For example, this includes:

- PSP A (the payment facilitator) that by entering into possession of funds enables a payer to make a payment from their payment account at PSP B (an SVF) to a payee; and
- a PSP that enables a payee to acquire a transaction such as a merchant acquirer or payment facilitator.

Payment Facilitation Services are not intended to capture SVFs whereby a consumer can direct the movement of funds to other parties without the existence of a predetermined transaction.

While the risk profiles of individual service providers will vary based on a variety of factors, there does not appear to be a clear need to disaggregate this function based on whether a PSP offers services to a payer or a payee.

Alternative options that were also considered include dividing the function into two separate functions based on whether a PSP acts on behalf of a payee or payer. For example, where payment acquisition services and funds transfer services from a payment account are two separate functions. Given the justification provided above, and that principles-based licence obligations are likely to be similar across these two groups of entities, such an approach may not be required.

Examples

This function is intended to capture a variety of different service providers. This could include (but is not limited to):

- merchant acquirers;
- payment facilitators and aggregators;
- certain marketplaces and platforms;

- salary processors and superannuation clearing houses;
- payout providers;
- other payment acceptance providers; and
- domestic remittance providers.

In CP1, domestic and international remittance providers were captured together under a single 'Money Transfer Services' function. This has been replaced by a more narrowly defined 'Cross-border Transfer Services' function to provide clarity on the scope of the functions. Whether a remittance provider is captured by the 'Payment Facilitation Services' function or the 'Cross-border Transfer Services' function depends on whether the funds are transferred within Australia or overseas. It is considered that the risks and nature of domestic remittance providers are appropriately captured under the 'Payment Facilitation Services' function. Cross-border Transfer Services capture remittance providers that offer services into and out of Australia. Money laundering and terrorism financing (ML/TF) risks are addressed by other regulatory frameworks.

Consultation questions

- 7. Do you agree with the scope of the 'Payment Facilitation Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?**
- 8. Is there merit in disaggregating this function? If so, why and how should this be done?**
- 9. Are there any other principles that should be used to define this function?**

2.2.7. Payment Technology and Enablement Services

Several submissions highlighted that the 'Payment Facilitation, Authentication, Authorisation and Processing Services' function proposed in CP1 was too broad. In response, this function has been replaced by a 'Payment Facilitation Services' function (as described in **section 2.2.6**) and a 'Payment Technology and Enablement Services' function.

Stakeholders noted there is complexity when determining the regulatory perimeter for service providers that do not control or hold funds, but increasingly play a material role in enabling a payment to occur. This section sets out the rationale for the 'Payment Technology and Enablement Services' function and the high-level principles that could define the scope of this function.

Proposed conceptual definition

Payment Technology and Enablement Services are payment-specific services provided by third parties that enable payments to be made. These services enable a transfer of funds to occur but do not enter into possession of, or control of, the funds. Such services may be customer or merchant facing or engage with other PSPs. This function excludes Payment Initiation Services which are captured under another function.

This may include entities that perform services such as authentication, authorisation, routing and the capture and transfer of payment credentials (whether tokenised or not) and other payment data. This function is also intended to include pass-through digital wallets and payment token service providers.

This function is not intended to include certain technical services that may be provided to PSPs but do not themselves directly enable a payment to be made or are not specific to a payment transaction. For example, cloud storage services, telecommunications networks, mobile phone devices, and e-invoicing.

In principle this function includes, but is not limited to, entities that provide the following:

- services that are preliminary or necessary to send or receive funds;
- the transfer and custody of data associated with a payment; and
- the operation and management of payment platforms, pass-through digital wallets and other similar services.

Some stakeholders suggested that entities that would fall under this function should not require a licence. Although entities providing Payment Technology and Enablement Services do not hold funds, these services can still be critical to the effective processing of payment transactions. For this reason, some jurisdictions do regulate such entities as PSPs.²⁴

Discussion and further considerations

There are a number of principles that have been considered to determine the scope of this function, the risks different types of service providers present, and the nature of regulatory requirements.

Principle: Payment-specific

One principle included in the proposed definition is that this function is only intended to capture providers that offer payment-specific services rather than more general technical services. For example, the definition is not intended to capture services such as cloud storage, telecommunications networks, and other data services. Such services may pose risks within the financial system, including payments. However, the payments licensing framework is not considered to be the appropriate mechanism to address such risks given their use across a variety of other services beyond payments.

It is important to clarify that this does not exclude services such as pass-through digital wallets that could store other credentials or offer various other functionality, as they also offer payment-specific services. Services such as these enable a payment to occur, and play a material role in the transaction process, and are therefore proposed to be within the scope of this definition. Likewise, various processing services, authentication services, gateway services, and token services would be considered to provide a payment-specific service.

The principle is intended to provide a clear payments nexus for this function, whilst also acknowledging the technological innovation and increased interconnectedness that has resulted in a range of new and emerging businesses offering payments services that pose risks but may not possess funds. The regulatory treatment of these services is intended to be proportional to the risks these services pose and address gaps where oversight is necessary.

²⁴ For example, Indonesia's payment services regulations apply to payment gateway providers, see Makarim & Taira S, *The Implementing Regulation of the Payment Systems Regulation: Payment Services Providers*, August 2021. See also Bank of Canada, *Retail Payments Advisory Committee – Registration Scope*, September 2021.

Principle: User facing vs non-user facing service providers

A second principle in determining the scope or nature of regulatory obligations is the interactions that the PSP has with a customer (individuals and merchants). It may be possible to delineate between entities that are customer facing, front-end providers that interact with the payee and/or payer, and non-customer facing, back-end providers who may provide payment-specific services to other PSPs. Although both types likely introduce risk, there may be an argument to consider differential regulatory treatment for each.

Front-end providers could include services such as pass-through digital wallets, payment gateways, services relating to card-acceptance on commercial off-the-shelf (COTS) devices or certain 'soft POS' services, and providers that accept or onboard customers for the purpose of enabling payments but may not possess funds. The risks these businesses could present include operational risks such as privacy, data protection, cyber security, and internal and external fraud. In addition, consumer protection, liability concerns and clarity over who the customer believes is providing a payment service may warrant certain licence obligations and potential requirements under an updated ePayments Code for example.

Third-party payment initiators are also captured under the framework (see Payment Initiation Services) and appear to present a similar risk profile, whilst also not entering into possession of funds. Certain front-end providers may also control the initiation or authentication stage of a transaction. Licensing of these providers would be consistent with ensuring a level playing field.

In contrast, back-end or non-user facing entities could be considered to primarily provide payment services to other PSPs (rather than consumers or merchants). This could include, for example, services related to authorisation, authentication, issuance of payment tokens, orchestration services, storage and transmission of credentials and data, fraud and security services. These services could present comparable operational risks such as cyber security, data protection, and system or technology risks. Whilst not user facing, the failure of these services could still materially impact the provision of a payment service to a customer by a PSP, influence trust, and flow through to other PSPs in the value chain. However, PSPs that utilise such services may have a degree of oversight (contractual or otherwise) over these providers and could assume liability in their failure to provide a service to a customer. Depending on the nature, interconnectedness, and scale of these entities, they could introduce financial stability concerns as well.

Principle: Role in enabling a payment to occur

The role that an entity plays in enabling a payment to occur may also help to inform the regulatory perimeter and appropriate regulatory obligations. A proposed principle to define this function is whether an entity performs a required step of a transfer of funds, rather than provide a supporting service to another PSP.

For example, an entity that controls any of the steps or processes required for a transaction to be initiated, authenticated, accepted or for the transaction to otherwise proceed, and could therefore have a material impact on the ability of the payment to occur, would be captured under this function. The failure to perform this service could result in a failed transaction, introduce fraud or security risks, and impact the broader payments chain. It follows that there is merit in explicitly capturing these services as they play a direct role in enabling a payment to occur.

Conversely, services that play a comparatively limited supporting role that enables another PSP to perform their function may not necessarily present the same degree of risk or adverse outcome. There may be justification in either excluding these entities from licensing, or subjecting them to

fewer regulatory obligations under the licence. For example, services that are outsourced by a PSP, where the outsourcing PSP can reasonably be expected to be responsible for the performance of the service, and the outsourced service does not control a required or discrete step in a transaction. For example, certain data services or fraud and security services provided to another entity. Licensing requirements for these entities may not achieve a material policy outcome, may introduce unnecessary complexity and burden, and the obligations on the PSPs using these services may already appropriately address the associated risks. However, depending on the nature of the business, interconnectedness and market concentration of such services may still contribute to overall risk in the system.

Accounting for different levels of risk

Any regulatory obligations should be proportionate to the degree of risk posed as far as possible. This paper presents principles that could be used to group entities with similar risk profiles of entities within the 'Payment Technology and Enablement Services' function. Further tailoring regulatory obligations based on which group an entity belongs to (or to exclude some groups from the licensing requirement altogether) may be required.

This paper seeks views on the degree of risk posed by entities that could be captured under this definition, and whether certain types of entities – such as non-user facing providers and entities that do not directly enable a payment – should be captured under the definition, and if so, what obligations should apply. In particular, this paper invites feedback on the following high-level questions based on the principles outlined above.

Consultation questions

- 10. Do you agree with the scope of the 'Payment Technology and Enablement Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?**
- 11. Are the principles used to define the function appropriate?**
- 12. Should a certain subset of entities captured under this function be subject to less rigorous obligations than what is proposed, and what should those be? Should the definition of this function be narrowed to exclude certain types of entities that do not pose significant risks, and if so, how?**

2.2.8. Cross-border Transfer Services

Proposed conceptual definition

A service that transfers or enables the transfer of funds from Australia to a payee outside of Australia, and/or of funds from outside of Australia to a payee in Australia.

Purpose and scope

This function is intended to capture service providers that enable cross-border payments into and out of Australia, regardless of the technology or currency used to perform this service. This function is intended to capture only PSPs that facilitate cross-border payment services and is not intended to include some PSPs that only provide domestic services (such as merchant acquirers). Domestic remittance service providers will be captured under Payment Facilitation Services.

The definition is intended to capture the movement of funds into or out of Australia. For example, a person/payee physically in Australia who receives funds in an account in their name outside of Australia is captured under the definition, if the PSP is carrying on a financial services business in Australia (see **Section 2.4**)

This definition is intended to be technology neutral and be inclusive of PSPs regardless of the technology or business model they employ. This includes, but is not limited to, PSPs that utilise correspondent banking networks and/or closed loop models (for example, a network of bank accounts in multiple jurisdictions). The definition is also intended to be flexible enough to account for new and emergent business models.

This function is not intended to replace or duplicate existing frameworks that regulate remittance providers, including on anti-money laundering/counter-terrorism financing grounds. It is however expected that remittance providers would be captured under this definition if they are involved in facilitating cross-border payments.

Some service providers may offer both international and domestic payment services, and the risks presented by these services may be similar depending on the business model. In cases where multiple functions are performed, such as Cross-border Transfer Services and Payment Facilitation Services, a service provider may be expected to require separate authorisation to perform each function.

Risks

The risks associated with this function are considered to be primarily operational and financial risks that may share similarities with other functions. However, there may be heightened complexities given that these service providers engage with frameworks in multiple jurisdictions, are required to integrate with domestic infrastructures in multiple jurisdictions and may therefore have business models and technologies that are more complex and sophisticated. In addition, these service providers may be exposed to exchange rate risks (i.e. the risk of exchange rate fluctuations after a payment has been initiated), settlement risks across multiple currencies, disparate standards and interoperability risks, and the complexities and costs of operating under multiple regulatory regimes in different jurisdictions. These risks may vary depending on the nature of a particular business, for example some businesses may require the holding of larger idle balances, leading to higher exchange rate risk.

The failure of a cross-border transfer service may result in the loss of customer funds, and could impact other service providers in domestic systems given increasing levels of interconnectedness.

Whilst the risks of these services share similarities with other payment functions, given the additional complexities and heightened risk associated with these businesses, a separate function for this activity is appropriate and provides clarity on the regulatory perimeter. This is also consistent with approaches taken in other jurisdictions such as Singapore, and the EU's Payment Services Directive 2 (PSD2).

It is acknowledged that Cross-border Transfer Services present clear ML/TF risks. However, the Australian Financial Services (AFS) framework has not been designed to directly address this risk, as it is already managed under other existing frameworks. These risks will continue to be addressed under separate regulatory frameworks.

Consultation questions

13. Do you agree with the scope of the 'Cross-border Transfer Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?
14. Excluding ML/TF risks, are there any unique risks that Cross-border Transfer Services present, and should there be any tailored regulatory requirements for this function?
15. Is there a need for a separate function for Cross-border Transfer Services or should these services be captured together with domestic transfer services?

2.2.9. Interactions between functions

To provide clarity on interactions between individual payment functions, and recognising that many service providers are likely to perform multiple functions, illustrative examples are provided below.

Payment Initiation Services and Payment Facilitation Services are intended to be differentiated by the principle that a payment initiator is not considered to possess funds. However, a PSP that offers Payment Facilitation Services may also offer Payment Initiation Services if, for example, they provide PayTo functionality to their customers, as well as other payment services involving the possession of funds. The risks associated with Payment Facilitation Services are likely to be greater than Payment Initiation Services, and a streamlined approach to authorisations is intended to recognise such interactions.

Payment Technology and Enablement Services may have a number of interactions with other functions under the framework. In particular, various PSPs may perform this function as part of their integrated product offering. For example, a merchant acquirer may also offer gateway services to its customers as part of its suite of products or as an additional standalone service. In these cases, it is expected a PSP that is authorised to provide SVFs or Payment Facilitation Services, that also sought authorisation to provide Payment Technology and Enablement Services, would not be subject to duplication in regulatory requirements (see also discussion in **Section 4**). This function poses a lower level of risk, and therefore it is not anticipated that additional obligations would be required.

As outlined above, the 'Payment Technology and Enablement Services' function is not intended to capture Payment Initiation Services, as this is already a separately defined function. A Payment Initiation Service provider that also offers additional services may still be captured by the 'Payment Technology and Enablement Services' function, noting that this is not intended to result in regulatory duplication.

Further discussion on the AFSL authorisations approach is in **Section 4.1**.

2.2.10. Removed function: Clearing and Settlement Services

The 'Clearing and Settlement Services' function proposed in CP1 has been removed from the list of functions. This is on the basis that the risks associated with clearing and settlement are managed by the requirements imposed by payment system operators, and the common access requirements (see **Section 7**).



Consultation question

16. Is the proposed removal of the 'Clearing and Settlement Services' function appropriate, given the risks associated with these activities are intended to be addressed by payment system access arrangements and proposed common access requirements?

2.3. Incorporating functions into law

As set out in CP1, the general definition of a ‘financial product’ currently includes the concept of a facility through which a person makes non-cash payments.²⁵ Entities dealing in these facilities are generally providing a ‘financial service’. The provision of financial services involving a financial product triggers additional regulatory requirements, compared to the provision of other financial services not involving a financial product (see **Section 5**).

Financial product laws include disclosure requirements, design and distribution obligations, and the ability for ASIC to make product intervention orders. The obligations associated with financial products generally attach to the issuer of a financial product.

‘Financial service’ is defined to include nine activities and any conduct specified in the *Corporations Regulations 2001 (Cth) (Corporations Regulations)*.²⁶ Three of the nine financial service activities relate to financial products (i.e. providing financial product advice, dealing in a financial product and making a market for a financial product). The concept of ‘dealing’ includes ‘issuing a financial product’, which is why issuers of non-cash payment facilities are regulated as a financial service.²⁷

In CP1, feedback was sought on how the proposed functions ought to be regulated, including which functions should be regulated as a financial product. Stakeholders supported regulating SVFs as a financial product, and there were a range of views on how other functions should be regulated.

The existing concept of ‘makes non-cash payments’ is proposed to be replaced with a broader concept of ‘uses a payment product’ or similar wording and regulated as a financial product. This is proposed on the basis that particular payment functions do not fit within the concept of ‘makes non-cash payments’. The proposed list of payment products is intended to provide greater regulatory certainty. Existing references to ‘making a non-cash payment’ and related concepts would need to be updated.²⁸

Payment Initiation Services and Payment Technology and Enablement Services are proposed to be regulated as a new type of financial service, rather than as a financial product. **Table 4** below illustrates how the payment functions are proposed to be incorporated into the *Corporations Act*. The specific terms used are for illustrative purposes only.

²⁵ *Corporations Act* s 763A.

²⁶ *Corporations Act* s 766A.

²⁷ *Corporations Act* s 766C.

²⁸ For example, the exemption for facilities for the exchange and settlement of non-cash payments between providers of non-cash payment facilities would need to be updated (see *Corporations Act* s 765A(1)(k)).

Table 4: Proposed amendments

Current Law	Proposed Changes
<p>'Financial product'²⁹ includes:</p> <p>A facility through which a person 'makes non-cash payments'.</p> <p>Covers: cheque facilities, traveller's cheques, purchased payment facilities, stored-value cards, electronic cash, direct debit services, payroll cards, funds transfer services and electronic bill payment services.</p>	<p>Replace 'makes non-cash payments' with 'uses a payment product' or similar.³⁰</p> <p>A 'payment product' would be defined as: a Stored-value Facility (capturing traditional SVFs and PSC facilities), a Payment Instrument, a Payment Facilitation Service, a Cross-border Transfer Service or any other activity prescribed by regulation. This would replace the existing meaning of 'makes non-cash payments'.³¹</p>
<p>'Financial service'³² includes:</p> <ul style="list-style-type: none"> ● Providing financial product advice, ● Dealing in a financial product (includes applying for or acquiring, issuing, varying, disposing and arranging), ● Making a market for a financial product. 	<p>Advice, dealing and making a market for a financial product (in this case a payment product) would continue to be regulated as a financial service.</p> <p>Add 'providing payment services' as a new category of financial service.³³ A person provides a payment service if they provide:</p> <ul style="list-style-type: none"> ● Payment Initiation Services ● Payment Technology and Enablement Services, or ● any other activity prescribed by regulation. <p>Prescribe that the following are not payment services:</p> <ul style="list-style-type: none"> ● an activity that constitutes providing financial product advice, dealing in a financial product, or making a market for a financial product, or ● any other activity prescribed by regulation.

Implications under the proposed approach

The proposed changes would mean more types of facilities, involving a broader range of payment functions, would be captured under the concept of a 'financial product'. As a result, the range of activities regulated as 'financial services' would expand. For example, the meaning of financial product advice would include advice about fiat-backed stablecoins.

²⁹ Noting that the definition of financial product also captures facilities for making a financial investment, or managing financial risk.

³⁰ *Corporations Act* s 763A(1)(c).

³¹ *Corporations Act* s 763D.

³² Noting that the definition of financial service also captures other activities not relevant to payments.

³³ Note the paper also uses the term payment service as a general term to refer to all payment functions.

The proposed treatment of Payment Initiation Services and Payment Technology and Enablement Services as a new form of ‘financial service’ is intended to reflect that product-based obligations may not be as appropriate for these activities.

The concept of ‘financial product advice’ does not extend to advice about a financial service not involving a product. This means, for example, that advice about Payment Initiation Services would not be financial product advice, but advice about an SVF could be financial product advice. Feedback is welcome on whether this outcome is appropriate.

Dealing, arranging and issuing

Some stakeholders raised concerns that the concepts of ‘dealing in’ and ‘arranging’ created confusion. Stakeholders also suggested that the concept of ‘issuer’ may be unclear. For example, in the context of physical cards, ensuring it does not refer to the entity that manufactures the card. The existing law provides that the issuer is the person who is responsible for the obligations owed under the terms of the product to the client.³⁴ Accordingly, manufacturing payment cards is not ‘issuing’.

Alternative options

An alternative option (Option B) would be to only regulate SVFs and Payment Instruments as a type of financial product, and treat all other proposed functions as a new type of financial service. However, this would change the product-based protections that currently apply to certain types of payment functions that are currently regulated as a non-cash payment facility, such as bill payment services.

Another option (Option C) would be to regulate all payment functions as a type of financial product. Compared to the proposed approach, this would substantially broaden the definition of financial product to include Payment Initiation Services and Payment Technology and Enablement Services (which under the proposed option, would be captured as a new ‘financial service’). Exemptions could apply from standard financial product obligations for certain functions.

As discussed in CP1, stakeholders have raised concerns about a lack of clarity around the concept of non-cash payment facilities. One option (Option D) could be to retain the concept of ‘makes non-cash payment’ as an overarching concept and broaden the meaning to include payment functions that are not currently captured. However, an overarching concept with a list of inclusions may provide less regulatory certainty compared to the proposed approach.

Consultation questions

- 17. Is the proposed approach the best way to incorporate the functions into the *Corporations Act*? Or is Option B, Option C, Option D or another option not canvassed by this paper preferable?**
- 18. Are there any functions that are proposed to be regulated as a product that should instead be regulated as a new type of financial service or vice versa?**
- 19. Are there any practical issues created by separating out different ‘functions’ and treating them as separate products and services? Would it be simpler to have fewer different functions that cover more payment services?**
- 20. What needs clarifying regarding the tests of ‘dealing in’ and ‘arranging’ for PSPs?**

³⁴ *Corporations Act* s 761E(4)).

2.4. Overseas providers

The proposed reforms are intended to apply to overseas-based businesses that actively solicit business in Australia. This reflects the following practice:

- The requirement for an AFSL applies to entities who ‘carry on a financial services business in Australia’. This includes conduct intended to induce people in Australia to use the financial services the entity provides.³⁵ Under the proposed licensing framework, this general test would apply.³⁶
- Similarly, APRA generally takes the position that solicitation into Australia and/or to Australian-located customers by a foreign entity would trigger the need for a licence. Major SVFs that wish to offer services in Australia, including Major PSC SVFs, should be a locally incorporated entity for authorisation by APRA (i.e. SVF branch operations will not be permissible).

Foreign financial service providers

There may be further interactions with the licensing exemptions for foreign financial services providers (FFSPs). The FFSP licensing exemption allows certain overseas financial services providers to offer their services to Australian clients without the need for a full AFSL. The exemption only applies to those providing services to professional and wholesale clients (not retail clients), aiming to facilitate cross-border financial transactions and enhance market efficiency.

The Government has introduced legislation to provide new exemptions for FFSPs, including:

- a comparable regulator exemption;
- a professional investor exemption;
- a market maker exemption; and
- an exemption from the fit-and-proper person assessment to fast-track the AFSL process for FFSPs authorised to provide financial services in a comparable regulatory regime.³⁷

These exemptions may be available to some PSPs.

³⁵ *Corporations Act* s 911D.

³⁶ See ASIC, [Regulatory Guide 121 Doing financial services business in Australia](#), 30 July 2013.

³⁷ Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023, Schedule 7.

3. Excluded and exempted activities

This section discusses existing exclusions and exemptions that are proposed to be removed or amended (**Section 3.1**), and proposes new exclusions and exemptions for consideration (**Section 3.2**). Proposed exemptions that relate to specific financial services obligations are discussed in **Section 5**.

3.1. Exclusions proposed to be removed or amended

The following existing exclusions are proposed to be removed or amended:

- **The exclusion for certain electronic funds transfers.**³⁸ The removal of this exclusion is consistent with the intention to capture Cross-border Transfer Services within the licensing framework.
- **The exclusion for where there is only one person to whom payments can be made by means of the facility (single payee exclusion).**³⁹ This exclusion was intended to apply to low-risk facilities such as store cards and phone cards that only allow payment to a single person. However, it may have been relied on for facilities that support payments to multiple payees, although each payer is only able to make payments to one person. Some single payee facilities may meet the limited network exclusion discussed below.
- **The exclusion for a facility for making non-cash payments, if payments made using the facility will all be debited to a credit facility.**⁴⁰ This exclusion ought to be narrowed as it presents a potential loophole. Although Australian Credit Licence (ACL) holders are subject to obligations that are broadly consistent with AFSL obligations, these obligations only apply to ‘credit activity’.⁴¹ Accordingly, these obligations may not provide protection for all payments that fall within this exclusion. Additionally, the exclusion may be able to be relied upon by entities that are not regulated as a credit facility. Importantly, the separate exclusion for credit facilities would remain, in recognition that the obligations that apply to ACL holders are broadly consistent with AFSL obligations. Credit facilities are excluded from regulation under the financial services regime on the basis that consumer credit is regulated under credit laws, and subject to general consumer protection provisions in the *Australian Securities and Investments Commission Act 2001* (Cth) (*ASIC Act*).⁴² Importantly, ACL holders also providing payment services that do not constitute a ‘credit facility’ (or meet another exemption/exclusion) would generally require an AFSL for those activities.
- **The exclusion for a facility that is a designated payment system under the PSRA.**⁴³ The current exclusion is no longer appropriate given the proposed expansion of the definition of ‘payment system’ and consequential broadening of systems and arrangements that may be designated by the RBA or the Minister under the PSRA. Further, designation and the imposition of standards or access regimes under the PSRA is not intended to achieve, and does not involve, regulation

³⁸ *Corporations Regulations* reg 7.1.07G.

³⁹ *Corporations Act* s 763D(2)(a)(i).

⁴⁰ *Corporations Act* s 765A(1)(h)(ii).

⁴¹ See, for example, *National Consumer Credit Protection Act 2009* (Cth) s 47.

⁴² Financial Services Reform Bill 2001, *Revised Explanatory Memorandum*, p 43.

⁴³ *Corporations Act* s 765A(1)(j); and *ASIC Act 2001* (Cth) (*ASIC Act*) s 12BAA(1)(e).

equivalent to licensing. This exclusion is proposed to be amended as part of the PSRA reforms (see below).

ASIC has also provided individual exemptions that cover specified entities and non-cash payment facilities. These exemptions may be reconsidered by ASIC if they are not consistent with the wider range of payment functions that are intended to be covered by the licensing regime.

Consultation question

21. Is the scope of the exclusion for payments debited to a credit facility in section 765A(1)(h)(ii) of the Corporations Act appropriate?

Unlicensed product issuers

Unlicensed product issuers are able to issue financial products by relying on a licensed intermediary.⁴⁴ In addition, a number of exemptions operate for unlicensed foreign product issuers that have arrangements with licensees in Australia to distribute products to Australian clients. They include:

- persons who deal in a financial product from outside the jurisdiction;⁴⁵ and
- persons who provide financial product advice, make a market or provide a custodial or depository service from outside the jurisdiction.⁴⁶

Feedback is sought on whether:

- Reliance on these exemptions should be restricted for SVFs, Payment Facilitation Services and Cross-border Transfer Services (the preferred approach). This means that entities performing these functions would be required to be licensed, and comply with client money obligations, even if they use a licensed intermediary; or
- These exemptions should remain available for all PSPs, but client money obligations should be extended to unlicensed product issuers to protect the safety of customers' funds. However, the application of client money obligations to unlicensed product issuers would likely be complex to implement and enforce. To ensure enforceability of client money obligations, it may be necessary to subject unlicensed product issuers to an ASIC notification requirement, if they seek to rely on the above exemptions. Unlicensed product issuers may also be required, as a condition of remaining unlicensed, to adhere to further obligations such as client money reporting rules, annual audit report requirements and ASIC's information request powers.⁴⁷

Consultation question

22. Should existing exemptions for unlicensed product issuers be restricted for certain payment functions?

⁴⁴ *Corporations Act* s 911A(2)(b). Dispute resolution obligations apply to unlicensed product issuers, under *Corporations Act* s 1017G.

⁴⁵ *Corporations Regulations* reg 7.6.01(1)(n).

⁴⁶ *Corporations Regulations* reg 7.6.01(1)(na).

⁴⁷ Which would be similar in effect to *Corporations Act* s 912C.

3.2. New exclusions and exemptions

The following section discusses a number of potential new exclusions and exemptions that may be appropriate. These exclusions and exemptions are intended to apply to payment functions regulated as a financial product, as well as functions proposed to be regulated as a new type of financial service.

3.2.1. Cash-based payment services

Cash-based payment services are currently excluded from regulation (through the non-cash payment concept). Cash-based services are not proposed to be captured given the lower risks they present.

3.2.2. Low value facilities

Low value non-cash payment facilities have conditional relief from licensing, conduct and disclosure obligations (including ongoing disclosure obligations and advertising provisions), and the hawking prohibition. This relief is currently available to non-cash payment facilities that satisfy the following test:

- a) the total amount available for the making of non-cash payments under all facilities of the same class held by any one client does not exceed \$1,000 at any one time;
- b) the total amount available for making non-cash payments under all facilities of the same class does not exceed \$10 million at any time; and
- c) the facility is not part of another financial product.

As outlined in CP1, it is proposed that ASIC's relief for low value facilities be moved into regulation. It is proposed that the terms of the relief be maintained (including the conditions for relief), except that the thresholds be updated. It is proposed that:

- \$1,000 be increased to \$1,500; and
- \$10 million be increased to \$15 million.

This proposed exemption would replace ASIC's current relief for low value non-cash payment facilities.⁴⁸ Additionally, the RBA's declaration for limited value and limited participant PPFs would be repealed.⁴⁹

Consistent with ASIC's current relief, the proposed exemption for low value facilities would exempt these facilities from licensing, conduct, disclosure and the hawking prohibition.

In submissions to CP1, stakeholders raised concerns that the third limb of the test, i.e. that the facility is 'not a component of another financial product', is difficult to understand. This limb is important for ensuring that the aggregate of the arrangements that makes up an offering or product does not fall under the exemption only because a component part of the product falls under the exemption.

⁴⁸ ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 s 9.

⁴⁹ RBA, [Declaration No. 2, 2006 regarding Purchased Payment Facilities](#), 2006.

However, further feedback is welcome on how clarity can be improved while maintaining the intended effect of this test.

Consultation questions

- 23. Should PSPs that process or facilitate transactions or store value below a certain amount have reduced requirements under the *Corporations Act*? If so, what should they be?**
- 24. Should the low value exemption apply at the controlling entity level, if there are a group of related entities?**
- 25. Are the proposed thresholds for low value facilities appropriate?**
- 26. Should the low value exemption be available for all payment functions?**

3.2.3. Limited network

It is proposed that a limited network exclusion be available for Payment Instruments that can be used only for a limited or specific purpose and meet one of the following conditions:

- a) allow the holder to acquire goods or services only in the issuer's physical premises; or
- b) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or
- c) may be used only to acquire a very limited range of goods or services.

Another option would be to prescribe that this proposed exclusion does not apply to entities with transactions or value issued over a certain threshold (such as \$2 million in 12 months).

This exclusion is intended to replace the need for various specific exemptions, for example:

- Gift vouchers or cards. It is intended that some gift cards would have the benefit of this exemption. However, 'open-loop' gift cards that are accepted by a number of different retailers would not be exempt. Similarly, gift cards for large online marketplaces would not be exempt because they can be used to acquire a broad range of goods.
- Prepaid mobile phone accounts.⁵⁰
- Other specific purpose instruments, for example, transport, fuel and printing cards.

Consultation question

- 27. How could a limited network exclusion be appropriately confined to avoid regulatory arbitrage? Are the conditions for this exemption appropriate? Should it apply to all payment functions?**

⁵⁰ ASIC currently provides unconditional class relief to persons providing financial services in relation to prepaid mobile phone accounts, see *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*.

3.2.4. Commercial agents

Some jurisdictions provide an exclusion for payment transactions between a payer and the payee, through a commercial agent authorised in an agreement to negotiate or conclude the sale or purchase of goods or services on behalf of either the payer or the payee, but not both the payer and the payee. This is known as the ‘commercial agent exclusion’. An example of a commercial agent would be a motor vehicle dealer who accepts payments for the vehicle company whose vehicles the dealer sells.⁵¹ It could also potentially apply to travel agents, resellers and buyer’s agents.

It is not available for commercial agents acting on behalf of both the payer and payee, such as online marketplaces that receive payments owed by buyers to sellers and commercial online fundraising platforms that accept donations before transmitting them to the recipient.

Consultation question

28. Should there be a commercial agent exclusion?

3.2.5. Internal transactions by related entities

Payment transactions carried out between PSPs, or their agents or branches, for their own account, are excluded from regulation in some other jurisdictions.⁵²

Currently, financial services involving non-cash payment facilities are excluded from licensing if payments can only be made to the issuer of the facility or a related body corporate.⁵³ A similar exclusion is proposed for all payment transactions between PSPs for their own account.

3.2.6. Operation of specified payment systems

The licensing regime is intended to regulate PSPs, not payment systems as a whole or payment system operators. Payment systems are regulated by the RBA and present different risks to PSPs. PSPs may also be ‘participants’ in a payment system.

As noted above, there is currently an exclusion from being a financial product for a facility that is a designated payment system for the purposes of the PSRA.⁵⁴ The following are currently designated payment systems: Mastercard, Mastercard prepaid, Visa, Visa prepaid, Visa Debit system, EFTPOS, EFTPOS prepaid, and the ATM system.⁵⁵ Payment activities performed by a designated payment system are typically excluded in other jurisdictions.⁵⁶

⁵¹ MAS, [Frequently Asked Questions on the Payment Services Act](#), MAS website, p 9.

⁵² See, for example, FCA, [FCA Handbook](#), PERG 15.5: Negative scope/exclusions, ‘Q37. Do the regulations distinguish between (i) payment transactions between payment service providers and (ii) payment services provided to clients?’.

⁵³ *Corporations Regulations* reg 7.6.01(1)(b).

⁵⁴ *Corporations Act* s 765A(1)(j).

⁵⁵ RBA, [Regulations](#), RBA website.

⁵⁶ See, for example, [Retail Payment Activities Act 2021](#) (Canada) s 7.

However, under the PSRA reforms, the meaning of ‘payment system’ will expand and the RBA may designate a range of other systems as a ‘payment system’.

To preserve the application of the existing exclusion for designated payment systems and provide a mechanism to exempt other systems as appropriate, the PSRA reforms propose to amend this exclusion, replacing it with an exclusion for designated payment systems or special designated payment systems that have been declared by regulations not to be a financial product.⁵⁷ The existing account-to-account payment systems and card schemes would then be prescribed as specified payment systems. It would also allow consideration to be given to whether any additional payment systems should be similarly exempted.⁵⁸ This change is intended as an interim measure to avoid unintended consequences from the PSRA reforms. However, given the complex and varied nature of payment systems today, it may be more appropriate to remove the exemption altogether, to avoid limiting ASIC’s ability to regulate designated payment systems if they should also be regulated under the *Corporations Act* and the *ASIC Act*. Alternatively, the interim exemption could be replaced by a more principles-based exclusion for the underlying operation of a payment system, whether designated or not.

The exclusion would only be for the underlying operation of the specified payment systems. Accordingly, if a payment system operator also provided merchant facing or customer facing services, such as issuing Payment Instruments, those services would be captured.

Consultation question

29. Is the proposed amended exemption for designated payment systems that have been declared not to be a financial product appropriate or should it be further revised, replaced or removed?

3.2.7. Global financial messaging infrastructure

Global financial messaging infrastructure that is subject to oversight by relevant regulators, such as the Society for Worldwide Interbank Financial Telecommunications (SWIFT), is not intended to be captured as a payment service. SWIFT is a global messaging system that is used to facilitate transactions between banks across national borders. SWIFT is excluded from payment services regulation in a number of jurisdictions on the basis that it is already subject to oversight by many major central banks, including the RBA.⁵⁹

Consultation question

30. Should there be an exclusion for global financial messaging infrastructure? For example, Singapore excludes from regulation ‘global financial messaging infrastructure which are subject to oversight by relevant regulators’.⁶⁰

⁵⁷ Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023, Schedule 8, s 127.

⁵⁸ Explanatory Memorandum, Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023, pp 159-160.

⁵⁹ RBA, [High Value Payments](#), RBA website.

⁶⁰ MAS, [Guidelines on outsourcing](#), MAS website, 27 July 2016, updated 5 October 2018.

3.2.8. Other specific exclusions

Some specific payment-related activities may be appropriate to exclude if they pose limited risks or are otherwise already subject to a regulatory framework. Feedback is sought on whether there should be any other specific exclusions, including for: (i) not-for-profit/charitable and religious activities;⁶¹ and (ii) electronic lodgement network operators.⁶²

Salary packaging and processing

Submissions in response to CP1 requested that a specific exemption be given for salary packaging and payroll services. For businesses such as salary packaging and payroll services whose activities may fall within one of the payment functions described in this paper, it is unclear what policy justification there is to warrant specifically excluding these businesses from holding an AFSL. In addition, many of these companies are likely to already hold an AFSL, where they provide a non-cash payment facility.⁶³ Submissions noted that payroll and salary packaging companies may be subject to other regulations including employment, superannuation and taxation laws, however such laws do not appear to provide the equivalent safeguards to the AFS framework.

Loyalty schemes

ASIC has declared that loyalty schemes are not financial products.⁶⁴ Loyalty schemes are typically issued at limited cost (if any) to the client and as marketing tools ancillary to other services (such as credit) provided by the issuer or its business partners. However, loyalty schemes that are widely used or involve large values may present risks. For example, a 'shopping voucher' loyalty scheme could present risks to consumers, particularly where scheme credits or points can be purchased by consumers. Feedback is welcome on the treatment of loyalty schemes.

Limited participant

Under the current law, ASIC can make regulations to exempt certain facilities from the concept of 'making non-cash payments', based on the number of people to whom payments can be made by means of the facility, or relating to the number of persons who can use the facility to make payments.⁶⁵ ASIC has not made regulations under this provision.

This provision is proposed to be removed, on the basis that a facility with a small number of users would not necessarily be low risk to those users. It is also proposed that the RBA 'limited participants' exemption for PPFs be discontinued as discussed in **Section 3.2.2**.

⁶¹ This would not include online fundraising platforms, which support charitable activities but are not themselves a charitable organisation.

⁶² Electronic lodgement network operators (ELNOs) provide financial services involved in electronic conveyancing systems. ELNOs are subject to state-based conveyancing laws. ASIC has provided ELNOs with conditional relief from the AFS licensing, disclosure and conduct obligations.

⁶³ [ASIC Statement Payroll Service Providers](#), Australian Payroll Association website, 21 July 2019.

⁶⁴ *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211* ss 6, 7.

⁶⁵ *Corporations Act* s 763D(2)(a)(ii).

Non-cash payment facilities used for third party payments

ASIC has provided licensing relief for advising a person in relation to a non-cash payment facility that the person may use to pay another person, or arranging for a person to deal (other than by way of issue) in a non-cash payment facility that the person may use to pay another person for goods or services.⁶⁶ For example, this relief could apply to a financial adviser providing advice to a client about how to pay for insurance via a particular payment method. This relief is proposed to be moved into regulation.

Consultation questions

- 31. Should the relief provided by ASIC for certain activities be moved into regulation or discontinued? For example, should loyalty schemes, road toll devices and electronic lodgement operators be exempted?**
- 32. Do loyalty schemes that allow credits or points to be purchased present particular risks?**
- 33. Should payment activities by not-for-profit/charitable and religious organisations be exempted?**

⁶⁶ ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 s 8.

4. Licensing processes

4.1. AFS licensing approach

This paper proposes that the usual AFSL authorisations process apply for businesses seeking to be licensed as a PSP. AFSL authorisations specify the types of financial products and/or services a licensee can provide. Prospective licensees will be required to seek an authorisation for each newly defined payment function the business is looking to offer, in place of existing authorisations for non-cash payment products.

In practice, many PSP offerings involve a range of products and services. The proposed licensing approach means that as a licensee expands to other products and services, it would seek a variation to its AFSL authorisation.

For PSPs that already hold an AFSL, transition arrangements are set out in **Section 10**.

4.2. Streamlining licensing processes

CP1 discussed potential benefits and drawbacks of ASIC acting as a single point of contact for PSP licence applications and presented an alternative approach involving the development of a single source of guidance or website portal describing regulatory requirements and processes for prospective PSP licensees.

Using the existing regulatory architecture for payments licensing processes remains appropriate. PSPs are proposed to be regulated by ASIC through the AFSL regime. The RBA's role with respect to PPFs under the PSRA will cease. Some PSPs will be subject to additional regulatory processes:

- Major SVFs, as well as any designated Payment Facilitation Services (discussed in **Section 6.2**), will require an additional APRA licence and be subject to ongoing prudential supervision; and
- PSPs that provide a designated service that includes remittance arrangements need to enrol and register with AUSTRAC and comply with relevant obligations.⁶⁷

There may be additional opportunities to streamline existing licensing and registration processes and reduce industry compliance burden. Feedback is welcomed on this issue.

Some submissions noted the lack of transparency and information regarding the regulatory obligations and payments licensing processes for prospective PSPs, particularly for new Australian market entrants. The majority of submissions supported additional guidance on licensing obligations as soon as possible. To address this, ASIC will create and maintain a single website portal and lead on publishing joint licensing guidance for prospective payments licensees. This joint guidance will provide a clear and comprehensive understanding of all regulatory licensing obligations that will apply to a PSP. This will necessitate coordination between regulators (ASIC, AUSTRAC, APRA, ACCC, and the RBA) to develop this guidance and ensure it remains up to date over time. The joint licensing guidance will

⁶⁷ Under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

be published after the payments licensing primary legislation is passed, to support the smooth transition to the payments licensing framework.

4.2.1. ASIC enhanced regulatory sandbox

Submissions requested that greater access be given to payments providers in relation to the enhanced regulatory sandbox (ERS) or that ASIC develop a dedicated ‘payments sandbox’ for smaller payments providers to determine their regulatory obligations and licensing pathways. Submissions also recommended regulators take an educational role for prospective licensees, similar to the role undertaken by regulators in the UK.

ASIC currently has in place an Innovation Hub to help innovative businesses navigate the financial services systems. As part of this, PSPs are currently able to use the ERS should they meet a number of entry requirements and ongoing conditions.⁶⁸

4.2.2. APRA/ASIC licensing processes

For APRA-licensed entities, existing exemptions from certain AFS obligations reduce duplication.⁶⁹ There are also existing licensing procedures which support engagement between regulators.⁷⁰

It is not proposed that ASIC act as a single point of contact for Major SVFs as it would unnecessarily delay the licensing process APRA has in place. APRA’s licensing approach relies on direct and open communication with entities. Nevertheless, submissions expressed concerns that SVF businesses may scale up rapidly and potentially face operational barriers while an additional APRA licence is required. **Section 6.1** proposes changes to the Major SVF definition in response to submission feedback, to better facilitate competition in the sector while reducing complexity and balancing safety.

The transition between Standard and Major SVFs should be an orderly and streamlined process, commensurate with risks, to support continued growth and competition in the SVF sector. This requires two factors: (i) for entities to be prepared and proactive in approaching APRA; and (ii) APRA to be clear of requirements for entities in transitioning to the Major SVF regime, including the time taken to process new applications. As APRA develops its licensing framework, transparency will be key.

It is important that entities can plan and understand what is required of APRA's licensing approach, so that they can manage their growth trajectory with minimal disruption as they transition from a Standard to a Major SVF. SVF licensing needs to be agile and applied in a risk-based nature, to facilitate innovation and competition within the sector.

The following proposals support greater streamlining in APRA's licensing processes:

- **Guiding legislative principles:** APRA licensing of Major SVFs will be subject to guiding principles in primary legislation. These principles include that (i) prudential expectations for Major SVFs are

⁶⁸ These entry requirements and conditions are set by Government through the *Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020*.

⁶⁹ For example, entities regulated by APRA are not required to comply with the general AFS requirements to have adequate financial, technological and human resources or adequate risk management systems, given duplication with APRA prudential requirements. See *Corporations Act* ss 912A(4)-(5).

⁷⁰ For example, procedural requirements under the *Corporations Act* s 914A.

commensurate with the risks of the sector; and (ii) APRA's licensing process takes into account the need to facilitate competition and innovation in the SVF sector.

Legislation may prescribe further factors APRA must take into account when assessing SVF applications. Such factors could include:

- prospective applicants have the capacity and commitment to undertake SVF business with integrity, prudence and competence on a continuing basis;
 - governance, risk management and internal control systems are adequate; and
 - an adequate level of capital and liquidity is held by the SVF to weather operational risks.
- **Greater transparency:** To facilitate a smooth transition process, SVFs would need visibility of APRA's expectations and assessment timeframes ahead of applying for a Major SVF licence. Threshold conditions and maximum assessment timeframes for decisions on licence applications could be specified in APRA authorisation guidelines. For example, in the UK, decisions on new banking licence applications are made within 6 months if the application contains all required information, and 12 months for incomplete applications. Feedback is welcome on what information or guardrails could assist a Standard SVF in making a smooth transition to Major SVF.

Consultation questions

34. Do the proposed options for streamlining licensing processes adequately balance safety with the need to foster competition in the SVF sector?
35. What further information or guardrails could assist a Standard SVF make a smooth transition to Major SVF?

4.3. Interactions with other regulatory frameworks

The payments regulatory framework will be appropriately linked with other frameworks:

- **PSRA** – The PSRA and payments licensing frameworks have different objectives and are complementary in nature. While the payments licensing framework is intended to set minimum obligations for PSPs, the PSRA on the other hand, enables powers for the RBA and the Treasurer to address specific issues in the payment system that are in the public or national interest respectively. The RBA is empowered to use their powers under the PSRA to control risk, and promote efficiency and competition in the payments system in the public interest. The Treasurer will have a national interest designation power to ensure that risks of national significance, that fall outside the public interest perimeters, can be brought within the regulatory net.
- **Credit** – Guidance is available for entities that are a credit licensee and AFS licensee to avoid duplicating processes.⁷¹
- **CDR** – The Government has introduced legislation to extend the CDR to action initiation, which would enable consumers to instruct accredited third parties to initiate actions, such as

⁷¹ ASIC, *Information Sheet 134: [Complying with your obligations if both credit licensee and AFS licensee](#)*, reissued July 2021.

payments, on their behalf.⁷² Subject to an assessment and public consultation, the Government would bring individual actions into the CDR via a declaration process, followed by the development of CDR rules and standards. If payment initiation was declared a CDR action type, CDR payment initiators would be captured by the proposed 'Payment Initiation Services' function, and therefore subject to the same general financial services laws as other payment initiators, as set out in **Section 2**.

- **Digital asset (crypto) reforms** – a consultation paper on licensing of digital asset platforms (DAPs) was released in October 2023.⁷³ It is possible that DAPs undertake some of the defined payment functions in this paper. Both reforms propose to utilise the AFSL as the base licence. Feedback is welcome on how the reforms may interact for particular business models, and areas where regulatory duplication in the licensing processes can be streamlined.
- **ADI licensing** – although ADIs play a significant role in payments, they are already subject to a comprehensive regulatory regime; no specific additional prudential obligations are proposed for ADIs in this paper. The AFSL framework already provides exceptions from relevant *Corporations Act* requirements, such as financial requirements, for prudentially regulated entities.

4.4. Information gathering powers

The requirements under Part 7.6 of the *Corporations Act* would apply to PSPs once they are licensed. For example, ASIC may direct a licensee by written notice to give a written statement containing specified information about the services, business and information relevant to being a fit and proper person.⁷⁴ APRA has similar information gathering powers.⁷⁵

However, these obligations and powers do not apply to non-licensed entities, including prospective licensees. ASIC and APRA currently rely on the voluntary provision of information from prospective licensees. Additional regulatory powers are therefore necessary to facilitate compliance with the reforms.

To facilitate effective ASIC and APRA enforcement of the reforms, it is proposed that the existing information gathering powers be extended to enable ASIC and APRA to request information from an entity they suspect may be required to hold a licence.

⁷² Treasury Laws Amendment (Consumer Data Right) Bill 2022.

⁷³ Treasury, [Regulating digital asset platforms](#), Treasury, October 2023.

⁷⁴ *Corporations Act* s 912C.

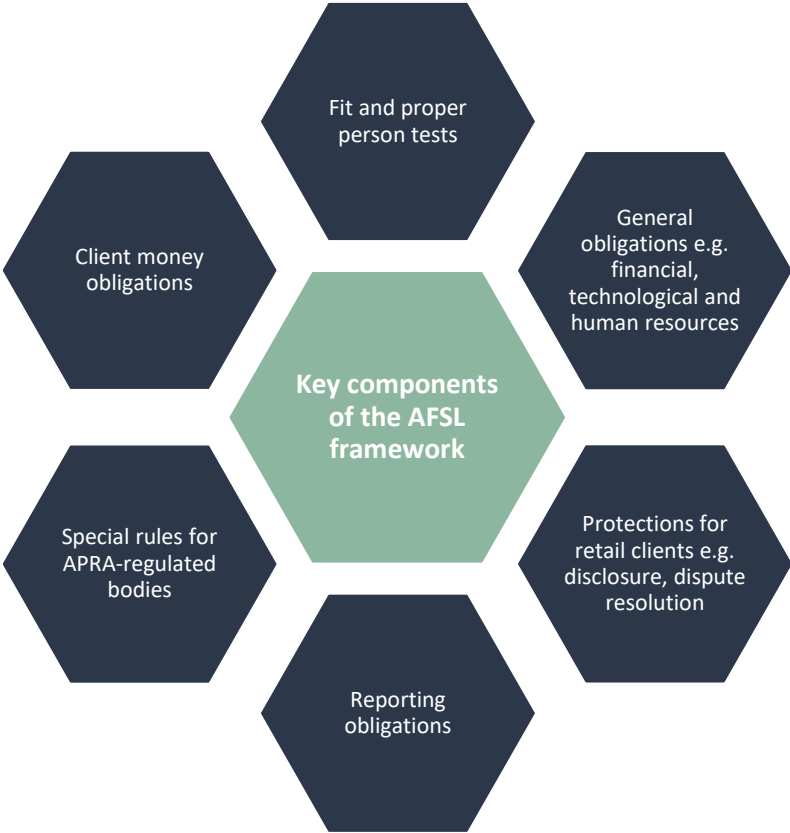
⁷⁵ *Banking Act 1959* (Cth) (*Banking Act*) ss 13 and 14D.

5. Financial services obligations

PSPs required to hold an AFSL under the reforms would be subject to the existing requirements in the *Corporations Act*, particularly Chapter 7, including the key components in the diagram below. In general, the requirements in Chapter 7 are designed to protect retail and wholesale clients whilst also prohibiting market misconduct.

Importantly, certain obligations, such as design and distribution obligations, disclosure obligations, and the requirement to have a dispute resolution system, only apply if a licensee provides services to retail clients. These obligations are directed to consumer protection.

Figure 1: Components of AFSL framework



5.1. Overview

The proposed key obligations for entities that provide a financial service are summarised in **Table 5**. Additional financial product obligations are summarised in **Table 6**. Refer to **Table 4** for the proposed incorporation of functions into the law, including which activities are proposed to be regulated as a financial product.

Importantly, the existing exemptions that apply to non-cash payment facilities will need to be updated.

Table 5: Key general obligations for providing financial services⁷⁶

Obligation	Proposed treatment of PSPs captured as a financial service	Existing relevant exemptions
Hold an AFSL, comply with licence conditions ⁷⁷	Obligation will apply, unless exempt.	Include limited dealing and advice services by a recipient of payments for goods or services. ⁷⁸
General obligations, ⁷⁹ including financial requirements	Obligations will apply, unless exempt. SVFs, Payment Facilitation Services and Cross-border Transfer Services to hold Adjusted Surplus Liquid Funds. All other PSPs to hold Surplus Liquid Funds.	APRA-regulated bodies are exempt from financial and risk obligations.
Have compensation arrangements for retail clients ⁸⁰	Obligation will apply, unless exempt.	Some APRA-regulated bodies and related entities. ⁸¹
Disclosure - Financial Services Guide (FSG) ⁸² (If servicing retail clients)	Obligation will apply. Provide an exemption for Payment Technology and Enablement Services. No other changes (except updating reference to non-cash payments).	Dealing in financial product advice about a basic deposit product, a facility for making non-cash payments related to a basic deposit product and other specified situations. ⁸³
Client money	Obligation will apply to all PSPs that hold funds.	Market participants subject to <i>ASIC Market Integrity Rules</i> can be exempt from reconciliation requirements.
Provide information and assistance to ASIC, notify client of reportable situations ⁸⁴	Obligation will apply.	APRA regulated bodies in some cases are exempt from requirements to notify ASIC.
Keep financial records, lodge statements, appoint an auditor ⁸⁵	Obligation will apply.	Limited AFS licensees have reduced requirements.

⁷⁶ This table summarises key general obligations. It does not cover financial advice obligations.

⁷⁷ *Corporations Act* ss 911A, 912A.

⁷⁸ See *Corporations Regulations* reg 7.6.01. This is in addition to the ASIC relief for low value facilities etc.

⁷⁹ *Corporations Act* s 912A, see also discussion below.

⁸⁰ *Corporations Act* s 912B, see also discussion below.

⁸¹ *Corporations Regulations* reg 7.6.02AAA(3).

⁸² *Corporations Act* ch 7, pt 7.7, div 2.

⁸³ *Corporations Act* s 941C.

⁸⁴ *Corporations Act* ch 7, pt 7.6, div 3.

⁸⁵ *Corporations Act* ch 7, pt 7.8, div 6.

Table 6: Additional obligations for financial services involving a financial product

Obligation	Proposed treatment of PSPs captured as a financial service involving a financial product	Existing relevant exemptions
Design and Distribution obligations, including making a target market determination (if servicing retail clients)⁸⁶	Obligation will continue to apply to debit cards, credit products and SVFs. No changes to existing exemptions (except updating reference to non-cash payment). ASIC would consider the reforms when it considers whether to provide relief.	Certain money products and credit facilities. ⁸⁷ Non-cash payment facilities (aside from debit cards, credit products and SVFs). ⁸⁸
Disclosure - Product Disclosure Statement (PDS) (if servicing retail clients)⁸⁹	Obligation will apply. No changes to existing exemptions (except updating reference to non-cash payments).	Basic deposit products, or a facility for making non-cash payments that is related to a basic deposit product, or a traveller's cheque. ⁹⁰
No hawking to retail clients⁹¹	Exempt payment products where the consumer initiates contact. No other changes to existing exemptions (except updating reference to non-cash payment).	Basic banking products (which include a facility for making non-cash payments ⁹²) if the consumer initiates contact. ⁹³

In addition to the above obligations, financial service providers are subject to prohibitions on certain conduct, including harassment or coercion in connection with supply or payment for financial services,⁹⁴ unconscionable conduct⁹⁵, and market misconduct.⁹⁶ Issuers and distributors of financial products can also be subject to Product Intervention Orders made by ASIC.⁹⁷

In addition, Division 2 of Part 2 of the *ASIC Act* applies to conduct in relation to financial services. This Division includes key consumer protections around: unfair contract terms; unconscionable conduct; misleading and deceptive conduct; and offering rebates and prizes.

⁸⁶ *Corporations Act* s 994B.

⁸⁷ *Corporations Regulations* reg 7.8A.20.

⁸⁸ *ASIC Corporations (Amendment) Instrument 2023/706*.

⁸⁹ See, for example, *Corporations Act* s 1012B.

⁹⁰ *Corporations Regulations* reg 7.9.07FA. The regulated person must instead provide certain information including regarding the cost of the product, and whether any amounts will be payable (i.e. fees).

⁹¹ *Corporations Act* s 992A.

⁹² *Corporations Act* s 961F.

⁹³ *Corporations Regulations* reg 7.8.21A.

⁹⁴ *ASIC Act* s 12DJ.

⁹⁵ *Corporations Act* s 991A.

⁹⁶ *Corporations Act* ch 7, pt 7.10, div 2.

⁹⁷ *Corporations Act* ss 1023D, 1023P.

5.2. General obligations

AFS licensees have general obligations to:

- do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly,
- have adequate arrangements in place for managing conflicts of interest,
- comply with the conditions on the licence,
- comply with the financial services laws,
- take reasonable steps to ensure that their representatives comply with the financial services laws,
- have adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence and to carry out supervisory arrangements,
- ensure that their representatives are adequately trained and competent to provide the financial services covered by the licence,
- have a dispute resolution system if they provide services to retail clients,
- have adequate risk management systems, and
- maintain the competence to provide the financial services.⁹⁸

Consultation questions

36. Are the general AFS obligations fit for purpose for PSPs?

37. Are the general risk management obligations sufficient, or should PSPs undertaking particular functions have additional or tailored risk management obligations?

38. For currently unregulated PSPs, are any aspects of the financial services obligations or compliance processes disproportionately burdensome?

5.3. Financial requirements

AFS licensees must meet certain financial obligations. These obligations vary depending on the financial products and services offered and are intended to ensure that entities have sufficient financial resources to conduct their business and there is a financial buffer that decreases the risk of a disorderly or non-compliant wind-up if a business fails. Standard financial requirements set by ASIC apply to most AFS licensees.⁹⁹ The adequacy of an AFS licensee's financial resources is guided by ASIC RG 166.¹⁰⁰

⁹⁸ *Corporations Act* ss 912A; See also ASIC, [Regulatory Guide 121 Doing Financial services business in Australia](#), July 2013.

⁹⁹ Entities regulated by APRA (which will include Major SVFs), are generally not required to comply with the requirements to have adequate financial, technological and human resources or adequate risk management systems, given the duplication with APRA requirements. See *Corporations Act* ss 912A(4)-(5).

¹⁰⁰ ASIC, [Regulatory Guide 166, AFS Licensing: Financial requirements](#), September 2023.

AFS licensees are subject to base level financial requirements:

- be solvent and have positive net assets;
- have sufficient resources to meet anticipated cash flow expenses; and
- unless exempt, include information about compliance with financial requirements in an annual audit report.

Additional financial requirements may also apply:

- **Surplus liquid funds (SLF)** – Ordinarily applies to AFS licensees that hold client money or property. These AFS licensees must hold at least \$50,000 in surplus liquid funds unless the value of the money and property for all clients in total is less than \$100,000.¹⁰¹
- **Adjusted surplus liquid funds (ASLF)** – Ordinarily applies if an AFS licensee incurs actual or contingent liabilities payable to clients by entering into transactions with clients. Licensees are required to hold:¹⁰²
 - \$50,000; plus
 - 5% of adjusted liabilities between \$1 million and \$100 million; plus
 - 0.5% of adjusted liabilities for any amount of adjusted liabilities exceeding \$100 million.
 - up to a maximum ASLF of \$100 million.

The following financial requirements are proposed to apply to PSPs:¹⁰³

- **PSPs performing any of the defined payment functions should hold SLF**, regardless of whether these PSPs hold client money. For the effective execution of payment transactions, it remains essential for any function across the payment chain to be able to perform its contractual obligation and hold an adequate level of liquidity to weather operational risk events.
- **That the ASLF requirement apply to all SVFs, Payment Facilitation Services and Cross-border Transfer Services.**¹⁰⁴ The disorderly failure of these functions pose heightened risks to their counterparties, causes greater consumer harm, and impacts the collective confidence of the payments sector. Hence these functions are proposed to be subject to heightened financial requirements.

Where more than one financial requirement applies, AFS licensees will need to comply with each requirement that is applicable. Assets meeting one financial requirement can be counted for another applicable requirement.

¹⁰¹ ASIC, [Regulatory Guide 166, AFS Licensing: Financial requirements](#), September 2023, p 27.

¹⁰² ASIC, [Regulatory Guide 166, AFS Licensing: Financial requirements](#), p 29.

¹⁰³ Made under *Corporations Act* s 914A(8).

¹⁰⁴ Unless these functions are prudentially regulated.

Consultation question

39. Are the proposed financial requirements appropriate for PSPs? Are there particular payment functions where financial requirements should be increased, or decreased?

5.4. Compensation

AFS licensees must have arrangements for compensating retail clients for losses they suffer as a result of a breach by the licensee or its representatives of their obligations in Chapter 7 of the *Corporations Act*.¹⁰⁵ This obligation will apply to all licensed PSPs with retail clients. Generally, AFSL holders meet this obligation by holding professional indemnity insurance, unless ASIC has approved alternative arrangements.¹⁰⁶

Consultation question

40. Are the standard compensation requirements appropriate for PSPs?

5.5. Design and distribution obligations

Issuers and distributors of financial products must comply with design and distribution obligations. The design and distribution obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to the design and distribution of products. These obligations also apply to securities, products that are not regulated under the *Corporations Act* but are within the scope of the *ASIC Act* definition of a financial product, such as credit contracts and short-term credit facilities, and other products prescribed by regulation.¹⁰⁷

As noted above, non-cash payment facilities (aside from debit cards, credit products and SVFs) are currently exempt from design and distribution obligations.¹⁰⁸

5.6. Hawking prohibition

Hawking of financial products to retail clients is generally prohibited, with a few exceptions, including for basic banking products where the consumer initiates contact.¹⁰⁹ The prohibition aims to protect consumers from unsolicited offers of financial products. Given the relatively simple nature of payment products, compared to other financial products, and the lower risk of consumer harm from hawking, it is proposed that PSPs should be permitted to hawk payment products where the consumer initiates contact, consistent with the exception for basic banking products.

¹⁰⁵ *Corporations Act* s 912B; See also ASIC, [Regulatory Guide 126 Compensation and insurance arrangements for AFS licensees](#), July 2022.

¹⁰⁶ *Corporations Regulations* reg 7.6.02AAA.

¹⁰⁷ ASIC, [Regulatory Guide 274 Product design and distribution obligations](#), December 2020, p 10.

¹⁰⁸ ASIC *Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784*.

¹⁰⁹ *Corporations Act* s 961F, *Corporations Regulations* reg 7.8.21A.

Consultation question

41. Is the proposed exemption to the hawking prohibition appropriate? Should it be broader or narrower?

5.7. Disclosure

AFS licensees, authorised representatives and product issuers are responsible for providing PDSs for financial products. The PDS is prepared by or on behalf of the issuer or seller of the product. The PDS should provide sufficient information for the retail client to make an informed decision about whether to purchase the financial product. Issuers who are required to provide a PDS have the option of giving retail clients a 'Short-Form PDS' in most cases, as long as a full PDS is available on request.

In addition, an entity providing a financial service to a retail client must provide an FSG. The FSG should provide sufficient information so that consumers can make an informed decision about whether to acquire a financial service. In some cases, an FSG is not required, for example, where the client has received a PDS and a 'statement' that together contain all of the information a new FSG would have had to contain. As noted above, certain dealings are exempt from the FSG requirement.

Payment Technology and Enablement Services are proposed to be exempted from FSG requirements on the basis that these services do not involve the holding or processing of funds and the requirements may not be well-suited to the technical nature of these services.

Consultation questions

- 42. Should the standard disclosure requirements not apply to any particular activities, for example, gift facilities (outside the existing exclusions)?**
- 43. Should the 'shorter PDS regime' apply to any activities?¹¹⁰**
- 44. How should the FSG and PDS disclosure exemptions for a facility for making non-cash payments related to a basic deposit product be updated?**

5.8. Client money rules

It is proposed that all PSPs that hold client money be subject to the standard obligations applying to client money.¹¹¹ This includes all SVFs (Standard and Major), Payment Facilitation Services and Cross-border Transfer Services.

The standard obligations in relation to client money include:

- requiring that AFS licensees hold money on trust with an ADI;
- restrictions are imposed on money that can be commingled;

¹¹⁰ As distinct from the Short-Form PDS rules. The Shorter PDS regime currently only applies to certain financial products, including superannuation and simple managed investment schemes. See The Hon Bill Shorten MP, [Shorter Product Disclosure Statements](#), 22 December 2011.

¹¹¹ Under *Corporations Act* pt 7.8.

- restrictions on use and investment of moneys held in, and withdrawal from, the trust account;
- statutory trust and statutory protection from attachment;
- AFS licensees that hold client money must hold additional surplus liquid funds (see ‘financial resources’);
- complying with record-keeping, reconciliation and reporting requirements;¹¹² and
- requiring auditors to verify licensees’ compliance with the client money provisions.

Client money rules are proposed to apply to PSPs regardless of the PSP’s operating model or legal arrangement for holding funds. For example, PSPs may store funds pending use of those funds by a consumer or user, or funds may be paid to a PSP in exchange for a contractual promise to the customer or user to be able to make those payments.

Feedback is sought on whether the existing provisions of the Corporations Act¹¹³ are broad enough for the intended application of client money rules to PSPs. The following amendments are proposed to ensure the proper application of client money rules to PSPs:

- funds held by PSPs for processing payments do not constitute money paid by way of remuneration, or money to which the licensee is entitled;¹¹⁴
- funds that are used for purchasing an ‘increased interest’¹¹⁵ in a payment product (such as an SVF) are not exempt from client money obligations in relation to those funds;
- a PSP licensee is not a person entitled to money or property under r 7.8.01 and 7.8.02 of the Corporations Regulations; and
- restrictions are proposed on the ability of a PSP licensee to seek general consents from clients to enable withdrawal of client money.¹¹⁶

Consultation questions

- 45. Is the proposed approach to applying client money rules on all PSPs that hold funds appropriate? Should APRA-regulated PSPs be subject to the standard AFSL client money obligations?**
- 46. To ensure the effectiveness of the standard obligations for client money, are additional changes necessary to tailor the client money rules for PSPs? If so, in what fashion?**
- 47. Should alternative approaches to client money rules be considered, for PSPs processing funds in transit?**

¹¹² ASIC, [Information Sheet 226 Complying with the ASIC Client Money Reporting Rules 2017](#), updated May 2022.

¹¹³ Including *Corporations Act* s 981A(1) (client money) and s 984A (other client property).

¹¹⁴ *Corporations Act* s 981A(2)(a).

¹¹⁵ *Corporations Act* s 981A(2)(c).

¹¹⁶ Currently permitted under *Corporations Regulations* reg 7.8.02(1)(a).

5.9. Obligations for low value payment products

Notably, although low value payment products are exempt from licensing, conduct and disclosure obligations, they are currently subject to alternative disclosure and dispute resolution obligations.

As discussed in **Section 3.2.2**, the existing conditional relief for low value facilities is proposed to be moved into regulation. ASIC's current conditions for relief include a requirement that the issuer take reasonable steps to ensure terms and conditions are disclosed to retail clients (including regarding how unauthorised transactions are dealt with and fees and charges). Persons, other than issuers, who provide financial services in relation to low value non-cash payment facilities also have certain obligations.¹¹⁷ It is proposed that these conditions continue to apply to low value payment products.

Consultation question

48. Are the proposed obligations for low value payment products appropriate? Should these obligations apply to low value payment activities that are not proposed to be regulated as a payment product (such as Payment Initiation Services)?

¹¹⁷ ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211 s 9(4).

6. Regulatory framework for SVFs

This section proposes obligations to both traditional and PSC SVFs, unless otherwise stated.

6.1. Criteria for Major SVFs

SVFs will be subject to a graduated regulatory framework where Standard SVFs require an AFSL, and Major SVFs require an additional APRA licence. CP1 proposed the following Major SVF criteria:

- Major SVFs are facilities that store more than AU\$50 million in customer funds;
- Offer individual customers the ability to store more than AU\$1,000 for more than 31 days; and
- Allow their customers to redeem their funds on demand in Australian currency.

In response, many submissions were concerned with how SVFs are able to transition between Standard to Major SVFs in a timely manner with minimal business disruption. Proposals for streamlining licensing processes are discussed in **Section 4.2.2**.

To further reinforce a smooth transition process, it is proposed that the size threshold for Major SVFs be increased from \$50 million to \$100 million of stored funds. For some entities, the \$50 million marker could be a useful benchmark for entities to approach APRA and commence the application process. In all instances, entities would need to consider their own forecasts and growth plans, in the context of APRA's licensing approach.

Stakeholders noted that defining Major SVFs by amount of funds held was more consistent with international practice and any additional criteria introduced unnecessary complexity. In light of this feedback, this paper proposes the removal of the criteria for a person to hold more than \$1,000 per customer for greater than 31 days, recognising that duration thresholds introduce unnecessary additional complexity when transitioning between Standard and Major SVFs.

In summary, this paper proposes that Major SVFs:

- **Store more than AU\$100 million in customer funds, on a whole-of-group basis.** Applying the AU\$100 million criteria on a whole of group basis avoids arbitrage opportunities where a controlling entity may establish different brands (all under the Major SVF limit) to minimise their obligations.
- **Offer the functionality to allow their customers to redeem their funds on demand in AUD.** Feedback is sought on whether this limb should be retained. This limb may no longer be required if a general right to redeem funds is in place (see **Section 6.3**).

Under the proposed regime, an SVF with more than \$100 million in stored funds that has not received an APRA licence would be carrying out unauthorised business. It is important that entities are proactive in engaging with APRA well ahead of this threshold, to reduce the risk that they exceed \$100 million without an APRA licence. To assist SVFs in managing this risk, it is equally important that APRA is transparent on the time needed to assess new licensing applications.

Consultation question

49. Are proposed amendments to the Major SVF criteria appropriate? Should there be additional criteria retained or added?

6.2. Ministerial designation powers

It will be important for the regime to remain flexible and adaptable to emerging products and services. Accordingly, it is proposed that the Minister be given the following powers:

- **Amend the size threshold for Major SVFs.** This will allow for a considered review of the Major SVF size threshold, once comprehensive data on the size of stored funds across the SVF sector is received after the licensing regime is in place and operating for a period of time, such as five years.
- **‘Designate’ any particular SVF provider or Payment Facilitation Service as being subject to APRA’s prudential regulation** on the basis of: (i) protecting the interests of customers in ways that are consistent with the continued development of a viable, competitive and innovative payments sector; or (ii) protecting financial system stability in Australia. Payment Facilitation Services may hold significant volumes of funds and include businesses of sufficient scale, size and nature, to pose systemic risks. Hence, they may warrant prudential regulation.

This paper proposes that the Minister would be able to exercise the above powers after consultation with APRA and ASIC. APRA and ASIC should be able to recommend changes for the Minister’s consideration, as to the size threshold and designations of particular PSPs.

A designation approach allows for flexibility for the Minister to make a determination on a case-by-case basis, taking into account the business profile, nature and the potential impact of a PSP failure on financial system stability.

Implementing the proposed approaches for APRA regulation of PSPs may require a subset of PSPs be subject to ongoing reporting of funds held, so that regulators are able to monitor business transaction volumes (see ‘reporting requirements’ under **Section 6.3**).

Consultation questions

- 50. Is the proposed Ministerial designation power to amend the size threshold for Major SVFs appropriate? Are there alternative approaches preferred?**
- 51. Is the proposed approach to allowing the Minister to designate further SVF providers or Payment Facilitation Service as being subject to APRA’s prudential regulation appropriate? Are there alternative approaches preferred?**

6.3. Regulatory obligations to apply to all SVFs

In addition to their general AFSL obligations discussed in **Section 5**, this section sets out additional regulatory obligations proposed for SVFs.

6.3.1. Client money rules

All SVFs (including Major SVFs) are proposed to be subject to client money rules in part 7.8 of the *Corporations Act*. **Section 5.8** provides further detail on client money rules. Unlike other jurisdictions, the proposed regime does not provide an option for SVFs to choose how to safeguard their funds. Client money provisions require money to be held in an account with an ADI that is designated and operated as a trust account.¹¹⁸ Under the current framework, ASIC does not need to be notified about where client monies are held or changes in the way client monies are held (unlike other jurisdictions such as the UK and EU).

6.3.2. Disclosure and prohibited activities

To discourage arbitrage between SVF products and other types of regulated products, it is proposed that SVFs be subject to a general prohibition on paying interest in relation to the funds stored. This is consistent with the current practice for PPFs and reflects the practice in other jurisdictions.¹¹⁹ This prohibition reduces opportunities for regulatory arbitrage between SVFs, banking products and managed investment schemes.

SVF issuers are proposed to provide the following additional disclosures:

- confirmation of transaction provisions;¹²⁰
- issue periodic statements for retail clients;¹²¹
- disclose in the PDS that the SVF is not a deposit product; and
- disclose in the PDS that the stored value is not subject to the same level of protections that apply to depositors e.g. protection under the Financial Claims Scheme (FCS).

6.3.3. Reporting requirements

Reporting requirements were recommended in the 2019 Council of Financial Regulators' (CFR) report to address the lack of available information regarding the size of stored funds. Introducing a reporting requirement will help to identify SVFs that are nearing the prudential threshold, and encourage licensees to take more timely action to consider their options for further growth.

¹¹⁸ *Corporations Act* s 981B.

¹¹⁹ See for example *The Electric Money Regulations 2011* (UK) reg 45 and EU Directive 2009/110/EC article 12.

¹²⁰ Similar to *Corporations Act* s 1017F.

¹²¹ Similar to *Corporations Act* s 1017D.

It is proposed that all SVFs be subject to a reporting regime administered by APRA. Having APRA administer the reporting regime for all SVFs, rather than having APRA and ASIC administer two separate reporting collections for Standard and Major SVFs, will ensure consistency and clarity in reporting obligations across all SVFs. Maintaining a single reporting framework will also reduce complexity for SVFs that are ‘transitioning’ between Standard and Major SVF obligations. APRA will consult on further details of the SVF reporting requirements.

In addition, it is proposed that Payment Facilitation Services be subject to ongoing reporting requirements in relation to funds held and transactions processed, to support the Ministerial designation approach discussed in **Section 6.2**.

Consultation question

52. In order for regulators to retain visibility and to help determine which businesses may be designated for prudential regulation, should Payment Facilitation Services be subject to ongoing reporting requirements in relation to funds held and transactions processed?

6.3.4. Redemption rights

In providing consumer protections for customers of SVFs, it may be appropriate to introduce a consumer right to redeem the monetary value stored in SVFs at any time at par value. This will help preserve consumer protections and confidence in relation to SVF products. Feedback is sought on this approach and whether a right to redeem is appropriate for all types of SVF products.

Consultation question

53. Are the additional proposed obligations for SVFs appropriate? Should SVFs be subject to prohibited activities such as a restriction on paying interest? Should consumers have a general right to redeem funds for SVF products?

6.4. Regulatory obligations to apply to Major SVFs

The risks posed to the financial system by Major SVFs are higher than Standard SVFs, given the nature and size of these entities. The proposed prudential regulation reflects the risks that Major SVFs may pose to financial system stability.

A number of submissions queried why APRA regulation is needed for Major SVFs, arguing that it will be overly onerous for Major SVFs. However, it is notable that prudential regulation of SVFs is common in other regimes. In the UK for example, although the Financial Conduct Authority (FCA) is the sole regulator of e-money institutions, the FCA performs both conduct and prudential regulation functions; all e-money and payment institutions are subject to prudential requirements. This paper proposes a graduated regulatory framework in line with the risks certain entities pose. Hence, Major SVFs are proposed to be subject to prudential regulation.

6.4.1. APRA-administered requirements

In 2025, APRA intends to update and review Prudential Standard APS 610 following the passage of reforms for Major SVFs. The review of APS 610 will consider:

- Simpler and more targeted requirements for Major SVFs. For example, reviewing the range of prudential standards SVFs will be expected to comply with.
- Reviewing the capital requirement that applies to Major SVFs, calibrated for operational risks. In May 2023, APRA reduced the capital requirement from 5 per cent to 4 per cent of total outstanding stored-value liability, and flagged its intention to further review the capital requirement.¹²²
- Amending the reporting framework for all SVFs.

To enable effective APRA supervision of PSPs, this paper also proposes the extension of a number of APRA's existing powers and broader requirements to Major SVFs and any designated Payment Facilitation Service:

- The suite of APRA powers and requirements under the Banking Act. For example, application of directions powers, prudential standards-making powers, enforcement powers, resolution powers, and application of group regulation powers. However, as proposed in CP1, FCS protection will not be extended to SVFs.
- Transfer of business provisions under the *Financial Sector (Transfer and Restructure) Act 1999* (Cth).
- Restrictions on shareholdings under the *Financial Sector (Shareholdings) Act 1998* (Cth).¹²³
- The Financial Accountability Regime is proposed to apply to Major SVFs, consistent with the current treatment for PPFs.
- Consequential amendments to the *Australian Prudential Regulation Authority Act 1998* (Cth) (APRA Act).
- Enabling the collection of levies from Major SVFs through amendments to the *Financial Institutions Supervisory Levies Collection Act 1998* (Cth) and *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998* (Cth).

¹²² APRA, [APRA consults on minimum capital requirements for PPF providers](#) [media release], 14 November 2022.

¹²³ Consistent with other financial sector companies, this paper proposes that the *Financial Sector (Shareholdings) Act* limit shareholders of an individual shareholder or a group of associated shareholders in an SVF provider, whether held directly or through another entity or entities. The Treasurer, or in some cases APRA under delegated authority from the Treasurer, may approve a higher shareholding limit for particular entities on national interest grounds.

Consultation questions

54. Is the proposed extension of APRA-administered legislative powers and broader requirements appropriate for Major SVFs? Are there particular requirements that should be tailored for Major SVFs?

6.5. Additional regulatory obligations to apply to PSCs

6.5.1. Size threshold for PSCs

In light of the discussion in **Section 6.1**, the size threshold for Major PSCs is proposed to align with traditional SVFs and be amended from \$50 million to \$100 million. This will also provide issuers of PSC facilities more time to start preparing for an APRA licence as their business starts to grow.

Issuers of PSC facilities will be subject to the same regulatory obligations as traditional SVF facilities under the AFS regime. This includes client money rules for management of funds backing the PSCs, disclosure requirements, capital requirements, an appropriate risk management framework (including information technology (IT) and operational risks tailored to issuers of PSCs) and other AFS-related requirements. Requirements that are specific to PSC issuers are highlighted below.

6.5.2. Disclosure requirements

Issuers of PSC facilities will be required to publicly disclose the composition of reserve assets monthly along with proof of liabilities. Furthermore, issuers will be required to provide independent attestation of the composition of these assets and undertake an annual audit by a registered public accounting firm.

Under the SVF framework, the usual disclosure requirements will apply, which will include providing a PDS. Under the digital asset facilities framework, a customer acquiring a non-financial product digital asset from the secondary market would need to be provided with a document setting out the terms and conditions that apply to token holders. In the case of PSC tokens, this would be contained in the PDS created by the providers of the PSC facility.

6.5.3. Redemption rights

Most submissions suggest that PSCs should represent a claim of the customer on the issuer. It is proposed that all issuers of PSC facilities will provide PSC token holders a direct and clear legal claim to redeem PSCs for fiat currency at par value. Any restrictions placed on the redemption of the issued tokens should be clearly articulated in the PDS or a separate redemption policy. The issuers of PSC facility should not place unnecessary restriction for redemption of PSC tokens and should ensure any fees charged are reasonable and clearly communicated. They should also ensure that all redemptions are completed within a reasonable timeframe acknowledging the nature of near instant settlements on a Distributed Ledger Technology Platform.

6.5.4. Management of reserve assets

Issuers of PSC facilities will be required to maintain their reserves in high quality and highly liquid assets as determined under client money rules or as determined by APRA for Major PSCs. By applying the client money rules, all reserves assets backing the PSCs will be segregated from the issuers own assets that are not used for backing the PSC tokens, to ensure assets are not rehypothecated and are used for its stated purpose which is to collateralise the issued PSCs.

These assets must be marked-to-market on a daily basis, be equivalent to at least 100% of the par value of all the PSC tokens issued at all times, and be denominated in the same currency as the pegged currency.

6.5.5. Other obligations for Major PSC issuers

For Major PSCs, additional capital requirements will be determined by APRA under the enhanced prudential framework and will consider the holistic risks of the PSC arrangement, and how those risks are managed by the issuer. APRA will also consider prudential requirements commensurate with the risks of the PSC arrangement, with particular attention to the range of operational, including IT, risks.

6.5.6. Prudential treatment of bank issued stablecoins

Some submissions queried how bank issued stablecoins pegged to a single currency would be regulated under the proposed SVF framework. The prudential requirements under the SVF framework will **only** apply to non-bank issued stablecoins which require all non-bank issued stablecoins to be collateralised 1:1 with appropriate reserves. Banks that issue stablecoins by tokenising liabilities of the bank or by holding 1:1 reserves for each token issued are already prudentially regulated and subjected to a higher regulatory threshold. Furthermore, given the risk profile of a tokenised deposit (liability) could be different to that of a fiat-backed fully collateralised stablecoin, any additional prudential obligations for banks will be considered by APRA on an individual basis and will take into consideration the broader review of the prudential regime in 2025.

Consultation questions

55. Are the proposed obligations under the SVF framework appropriate for PSCs? Should there be additional obligations considered for the regulation of PSCs?

7. Common access requirements

The common access requirements (CARs) are a proposed set of regulatory obligations for non-ADI PSPs seeking direct access to Australian payment systems to clear and settle payments. It is proposed that APRA would be responsible for setting and supervising the CARs.

APRA would set the CARs as a new prudential standard, and entities that meet the CARs would be licensed and supervised by APRA under a new licence category. Entities undertaking payments clearing and settling would not require an AFSL for clearing and settling activity. However, they would generally require an AFSL if they are also performing one or more of the proposed payment functions.

Compliance with the CARs is not proposed to be mandated under legislation for PSPs seeking to clear and settle payments. Rather, relevant payment system operators could require non-ADI PSPs to meet the CARs to be eligible to clear and settle payments in their system. This approach preserves existing direct access pathways for non-ADIs that some payment systems already have.

Consistent with its PSRA powers, the RBA would be responsible for overseeing the conduct of payment system operators with regard to providing access to non-ADI PSPs that meet the CARs.

7.1. Background

7.1.1. Access to Australian payment systems

Australian payment systems include account-to-account payment systems (NPP, High Value Clearing System (HVCS) and BECS), the major card schemes (Eftpos, Visa and Mastercard) and Australia's settlement system (the Reserve Bank Information and Transfer System (RITS)). PSPs may participate in these payment systems directly or indirectly. Direct participation involves a PSP clearing and/or settling obligations in the payment system on its own behalf. PSPs that wish to settle their own obligations from any payment system must join RITS and hold an Exchange Settlement Account (ESA) with the RBA.

The current access requirements set by payment system operators typically favour ADIs, which are subject to prudential regulation. Non-ADI PSPs are not eligible to become direct participants in the NPP, and are subject to additional conditions in a number of other payment systems. This means that, to access payment systems, many non-ADI PSPs need to enter into arrangements with an ADI direct participant (a 'sponsor') that acts as a clearing and settling agent on their behalf. Indirect access to payment systems suits many PSPs, as the infrastructure and operational costs associated with direct access can be high. In feedback to CP1, stakeholders noted that for many PSPs, indirect access is preferable for these reasons. However, non-ADI PSPs have increasingly expressed interest in participating in payment systems directly.

For PSPs that are eligible to access the payment systems directly, the full extent of access requirements or the assessment process against the requirements may not be visible until they have commenced an application for membership. PSPs that wish to join multiple payment systems may also have to demonstrate their ability to meet similar (but not identical) requirements of several payment system operators. This duplication of effort leads to higher entry costs for PSPs and may deter prospective applicants.

7.1.2. Objective of Common Access Requirements

The primary objective of the CARs is to level the playing field for non-ADI PSPs seeking direct access, while managing the associated risks to the financial system and the economy. The CARs seek to appropriately manage common risks PSPs pose as direct participants, but not go beyond this. A secondary objective of the CARs is to make it easier and clearer for prospective applicants by standardising and centralising requirements that are similar across payment systems.

Lowering the barriers to entry for PSPs seeking to gain direct access to payment systems is intended to support a more diverse, competitive, and innovative payments ecosystem in Australia.

7.1.3. Nature of Common Access Requirements

The RBA has been considering what the CARs should involve, in consultation with payment system operators, PSPs and other financial regulators. This initial consultation indicates that the CARs should involve governance, risk management, compliance, financial and operational capacity, business continuity and security obligations.

Given the nature of risks involved in clearing and settling payments, it is proposed that APRA would be responsible for setting and supervising the CARs (discussed below). Oversight of PSPs under the CARs is expected to have many similarities with prudential regulation. APRA's approach would be commensurate to the risks of payments clearing and settlement, which would involve simpler and fewer prudential expectations compared to traditional banking activity. APRA would develop the CARs in consultation with stakeholders.

7.2. Application to PSPs

The CARs are intended to apply to non-ADI PSPs seeking direct access to payment systems to provide clearing and settlement of payments.¹²⁴ Only a relatively small number of PSPs (e.g. those looking to process a significant amount of payments) are expected to obtain the CARs licence given the costs associated with direct access.

There may be similarities between the requirements under the CARs and those for Major SVFs supervised by APRA, and an overlap between the entities seeking to perform the relevant activities. Given Major SVFs would already be prudentially regulated to a higher standard than entities holding the CARs licence, it is envisaged that there would be no additional requirements for a Major SVF when seeking a CARs licence. Alternatively, payment system operators could simply recognise Major SVFs as eligible for direct access.

It is proposed that the CARs would not be mandated in legislation. Instead, payment system operators could require PSPs to meet the CARs in their scheme rules to be eligible for access, as an alternative to being an ADI (or a Major SVF). This approach is more straightforward and preserves alternative pathways provided by some payment systems operators for non-ADIs. Mandating the CARs in

¹²⁴ For the avoidance of doubt, the licensing reforms are not intended to impact securities clearing and settlement. Securities clearing and settlement (referred to as 'clearing and settlement' in the *Corporations Act*) and payment systems operated as part of a securities clearing and settlement facility are excluded from the definition of financial product, see *Corporations Act* s 765A(1)(l).

legislation would increase requirements for access, which is not the objective of the CARs. For example, major card schemes have existing access pathways for non-ADIs.

In feedback to CP1, some stakeholders suggested that as payment systems develop, current distinctions between direct, indirect and other types of participants may change. It was suggested that the CARs framework should provide flexibility to scale access obligations for a range of different access types. However, there appears to be the strongest immediate need to provide a pathway for non-ADIs seeking direct access to clear and settle payments, particularly for account-based payment systems.

7.3. Proposed regulatory model

7.3.1. APRA regulation

Participants undertaking clearing or settlement activity can pose risks to the financial system and economy that extend beyond potential harm to their consumer and business customers. An inability of a PSP to meet their clearing or settling obligations arising from the clearing and settlement process could result in material disruption to the economic activity facilitated by a payment system or systems. These risks can be managed through proportionate regulation and supervision of the financial and operational soundness of participants.

It is proposed that APRA be the primary regulator for the CARs. APRA is best placed to ensure non-ADI PSPs directly accessing payment systems meet requirements for financial and operational safety. APRA would be responsible for setting the CARs, setting reporting requirements, licensing CARs entities, and supervision.

In undertaking this role, APRA's focus would be on ensuring that these entities manage their financial and operational risks in a sound way. Such oversight would provide assurance that the entities are able to provide safe and reliable services to the payments system. APRA's role would not be focussed on an entity's ability to meet specific requirements to clear and settle payments or assess specific risks that they might pose to particular payments system infrastructure.

APRA's existing regulatory approach focuses on financial and operational soundness, which is necessarily whole-of-entity-based rather than activity-based. As such, it may not be practical for APRA to regulate an entity for which payments activities (including clearing and settlements) is a small part of its activities, where it may be mostly engaged in activities unfamiliar to APRA supervision – for example, a large diversified international telecommunications company. Accordingly, APRA's CARs regulations would likely need to require a PSP to be predominantly engaged in Australian payments activities. The PSP may need to be an Australian legal entity set up for this purpose. In applying CARs to that PSP, APRA's supervision would not be focussed on risks to the PSP arising from being part of a larger group.

Consistent with APRA's current approach for the entities it supervises, APRA would publish a list of entities supervised under the CARs. APRA would also publicly announce if it revoked a CARs licence. APRA's decisions would be reviewable to the Administrative Appeals Tribunal.

Supervising PSPs under the CARs is consistent with APRA's role to promote financial system stability whilst balancing the objectives of financial safety, efficiency, competition, contestability, and competitive neutrality.¹²⁵

An APRA CARs licence would not automatically provide access to payment systems; the decision to grant access would remain the responsibility of the payment system operator.

7.3.2. RBA powers in respect of operators and support to APRA

As noted in the first consultation, it is not proposed that payment system operators would be obliged to grant access to licensees that simply meet the CARs, as they may have additional system-specific requirements (for example, related to technical connectivity or operational procedures) and are best placed to manage the risks of accessing their system.

However, the RBA would work with relevant payment system operators to meet the key objectives of the CARs, namely that:

- PSPs holding the CARs licence are eligible to join their system, just as ADIs are;
- there is no imposition of additional access requirements that discriminate against non-ADI PSPs holding the relevant licence (relative to ADIs); and
- operators remove requirements that duplicate the CARs for entities that hold the CARs licence.

As noted above, a key objective of the new CAR framework is that the operators would treat CARs entities the same as ADIs in their direct access arrangements. In the event that a payment system operator imposed additional access requirements contrary to the above objectives, the RBA could consider exercising its existing powers under the PSRA, including to impose an access regime on participants in a designated payment system, if it would be in the public interest to do so.

In addition, RBA would support APRA by providing technical payments expertise and payments system intelligence. The RBA's experience would provide insight on risk drivers arising from an entities' clearing and settlement activity and involvement in payments systems, particularly where risks may lead to financial loss. The RBA would provide this experience to support calibration of reporting metrics and prudential requirements.

7.3.3. Interaction with AFSL

It is proposed that CARs licensees would not require an AFSL specifically for the clearing and settlement activity.¹²⁶ APRA-regulated entities who provide financial services to wholesale clients only are currently exempt from the requirement to hold an AFSL.¹²⁷ It would be inconsistent with this approach to require CARs licensees to also hold an AFSL.

¹²⁵ APRA Act s 8.

¹²⁶ Note also in the discussion above, it is not proposed that any entity undertaking payments clearing and settling should require an AFSL (which is a separate question to whether CARs licensees should require an AFSL).

¹²⁷ Corporations Act s 911A(2)(g).

Where a PSP held a CARs licence and an AFSL for other activities, the existing provisions for APRA-regulated entities would apply to minimise regulatory duplication.¹²⁸

7.3.4. Next steps

Following the passage of legislation giving APRA the ability to set the CARs, APRA would undertake further consultation to implement the CARs through prudential standards. APRA's objective is that the proposed draft CARs are designed collaboratively with industry. There will be a need to work closely with payment system operators, non-ADIs seeking direct access to payment systems and the RBA to develop the requirements.

Following the passage of legislation, further information on APRA's licensing expectations for CARs would be released in due course.

Consultation questions

- 56. What are the different risks associated with payments clearing and settlement? How should these be managed?**
- 57. The CARs are intended to increase access to payment systems while managing the risks of direct access. How can both of these objectives be achieved?**
- 58. Should CARs be legislatively mandated for all non-ADI PSPs seeking direct access for payments clearing and settlement, or should it be optional? Why?**
- 59. APRA would have the power to set the CARs through prudential standards setting powers. To enable effective APRA-supervision of entities subject to CARs, what other APRA powers should be extended to the CARs regime and why? For example, should it include resolutions powers, enforcement powers, directions powers and application of group regulation powers?**

¹²⁸ See, for example, *Corporations Act* ss 912A(4)-(5).

8. Industry standard-setting framework

8.1. Background

Technical standards in the payments industry are necessary to achieve interoperability, security, reliability, accessibility, customer protection, and promote competition in the payment ecosystem. Improving these aspects of the system can reduce the cost of processing payments, provide more choice or convenience for customers, and boost safety and confidence in the Australian payments ecosystem. To achieve these system-wide outcomes, technical payment standards that are not adequately addressed through voluntary industry standards are proposed to be mandatory for all relevant PSPs. Any mandatory technical standards should be underpinned by strong governance arrangements to ensure that they are developed in the best interests of the customers of the payment system.

The current standards landscape in Australia involves a mix of voluntary guidelines that PSPs can choose to adopt (e.g. QR code guidelines), rules governing access to shared infrastructure and arrangements (e.g. rules governing participation in BECS, the NPP and card schemes), and rules that members of particular payment systems or communities are contractually obliged to comply with (e.g. Australian Payment Network's card-not-present fraud mitigation framework). There are currently no technical standards that PSPs are legislatively required to comply with.

The proposed standard-setting framework is not intended to cover all of these types of rules and obligations, which would be expected to continue to operate unchanged. The standards developed under this framework will be referred to as 'technical standards', to differentiate these from the standards set by the RBA under the PSRA. The scope of the mandatory technical standards is discussed in more detail further below.

8.2. Objectives

There are a few key reasons why it may be beneficial to introduce a formal standard-setting framework for certain mandatory technical standards. The pace of change in the payments industry has been rapid, with traditional methods of payment being impacted by the development of new technologies and business models, and increasing diversity in the type of entities providing payment services. In this environment, there is a risk that technical standards become more fragmented across systems and across participants in the absence of a centralised, coordinated approach to standard setting. Introducing a framework with an authorised standard-setting body (ASSB) or bodies that have a clear mandate to set technical standards in the public interest will achieve:

- Broad and consistent adoption of technical standards across the payments industry.
- The development of technical standards that provide a common approach to dealing with issues in the payments ecosystem.
- A level playing field for PSPs.
- Certainty on the process for mandating key technical standards, and clarity on the roles of industry and the public sector in this process.

- A transparent means of resolving differing views of various industry stakeholders in the development of technical standards.
- A framework for the timely management of risks that may arise in the future.

A key component of this framework is the level of industry involvement in technical standard setting. Industry bodies may be best placed to develop technical standards because they are likely to be more agile and have more technical expertise and industry knowledge than regulators. These advantages also imply that greater industry participation is likely to lower the overall costs of the standard-setting process. On the other hand, providing an industry body with the authority to set mandatory technical standards for not just its own members but the wider industry involves the risk that this body faces actual or perceived conflicts of interest. For example, there may be a concern that technical standards are being specified in a way that favours incumbents at the expense of new entrants, and raises barriers to entry. Even with safeguards in place, in practice it is difficult to completely mitigate the risk of conflicts of interest. Increased public sector involvement in the process of standard setting could mitigate some of these risks. Establishing the optimal framework for standard setting may therefore involve striking a balance between industry and public sector involvement.

8.3. Lessons from overseas jurisdictions

There appears to be no jurisdiction in which an industry body is authorised to set mandatory standards that apply across different payment systems and methods. In the few jurisdictions in which payment standards are centrally coordinated and are legislatively mandatory for all PSPs through a licensing regime (for example, Brazil and Indonesia), the regulator responsible for administering the licensing regime (which in these cases is the central bank), is responsible for deciding which standards are made mandatory, and enforcing compliance with standards.

More broadly, international experience in standard setting in the payments and other industries (for example, the securities industry) indicates that issues around conflicts of interest and governance tend to arise in models in which industry has a greater degree of involvement in the setting of standards. It might therefore be beneficial to the standard-setting framework to decouple standards development, which can be led by the industry, from standards setting, which can have a greater degree of involvement from regulators.

8.4. Standard-setting framework

8.4.1. Legal mechanism for enforcing compliance with standards

CP1 invited feedback on whether some PSPs should only be required to comply with mandatory technical standards, and should not be required to hold an AFSL. Feedback on this question was mixed; some respondents indicated support for this approach for services that are not customer-facing, while others noted that all payment services introduce operational risk that cannot be addressed by compliance with technical standards alone.

The licensing regulatory perimeter does not include all payment-related services as it takes a risk-based approach to regulation. However, to maximise the benefits of broad and consistent application of technical standards, some entities that do not require an AFSL may still need to comply with

particular technical standards. As a result, there is a need to define a broader regulatory perimeter for mandatory technical standards than the cohort captured by the list of payment functions.

It is proposed that the revised PSRA definition of payment system ‘participants’ would be used to define the population of entities that are required to comply with relevant mandatory technical standards. The proposed revised PSRA defines a participant in a payment system as a constitutional corporation that:

- (a) operates, administers or participates in the payment system; or
- (b) provides services that enable or facilitate one or more of the following:
 - (i) the operation or administration of, or participation in, the payment system;
 - (ii) the making of payments, or the transfer of funds, under or pursuant to the payment system;
 - (iii) the transmission or receipt of messages under or pursuant to the payment system, being messages that effect, enable, facilitate or sequence the making of payments or the transfer of funds (whether or not those payments are made, or those funds are transferred, under or pursuant to the payment system).¹²⁹

This population will be required by law to comply with relevant technical standards, and may face penalties for a breach of these standards. While the PSRA definition of ‘payment system participants’ is proposed to be used, there will not be any interactions of powers under the PSRA and the payments licensing regime.¹³⁰

It is proposed that compliance with relevant technical standards will also be a licence condition for those PSPs that are required to hold an AFSL.

The technical standards themselves would need to clearly specify the PSPs that are required to comply with each technical standard.

8.4.2. Standard-setting framework

In recognition of the benefits and costs associated with industry participation in standard-setting, this consultation paper proposes a framework that allocates the various steps involved in standard-setting to either the ASSB or a regulator. The final framework will be informed by consultation feedback on the optimal level of industry and public sector involvement.

The primary steps involved in standard setting are: the development of a standard (i.e. identifying a need for a standard, and determining the detailed technical specifications and the subset of PSPs to whom it will apply), the decision to make a particular standard mandatory, monitoring compliance with mandatory standards, enforcing compliance with standards (e.g. developing and monitoring remedial plans to rectify breaches or imposing penalties if a PSP breaches standards) and oversight of the standard-setting body (i.e. if an industry body is involved, ensuring it is performing its role adequately).

¹²⁹ Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023, Schedule 8, pt 1, s 5.

¹³⁰ However, note the proposed exclusion for designated payment systems under PSRA that have been declared not to be a financial product, see **Section 3.2.6**.

Table 7: Standard-setting framework

Standard-setting Step	Entity
Who develops the standard?	ASSB
Who decides if the standard will be mandatory?	RBA
Who monitors compliance?	ASSB
Who enforces the standards?	ASSB (minor breaches), Regulator (major breaches)
Who oversees the standard-setting body?	RBA

Under the proposed framework, the ASSB would develop and recommend mandatory technical standards to the RBA. A recommended technical standard would require approval from the RBA before it is made mandatory (the rationale for this is discussed further below). The ASSB would be responsible for monitoring compliance with mandatory technical standards. The ASSB would also enforce minor breaches of standards, and would have the required administrative penalty powers to perform this role. The ASSB would refer any major breaches to a regulator.

The enforcing regulator refers to the RBA or ASIC. The paper proposes one regulator will enforce the technical standards rather than sharing that responsibility between the RBA and ASIC. The Government will decide which regulator is most appropriate for this role once the design of the framework is more developed.

Oversight of ASSB

The RBA would authorise industry standard-setting bodies and oversee the ASSB's effectiveness in performing its functions. This role would be consistent with the RBA's broad public interest mandate for payments system regulation. The role would involve setting regulatory requirements in relation to the ASSB's independence, governance, capabilities and processes for developing mandatory technical standards, and monitoring compliance with them. To perform this oversight role effectively, the RBA will need to have the following legislative powers:

- Authorise and revoke authorisation of an ASSB
- Direct an ASSB to facilitate any changes to adhere to authorisation criteria
- Sanction an ASSB
- Provide guidance on the development of technical standards
- Direct an ASSB to develop a standard or amend a technical standard
- Disallow a technical standard before or after it has come into force
- In the event that authorisation of an ASSB is removed, and no suitable alternative entity exists, the RBA may perform the critical functions of the ASSB.

An industry body seeking to develop mandatory technical standards for payments would need to apply to the RBA for authorisation. The RBA would consider the applicant against its criteria and any other factors that it considers relevant for the authorisation decision. There will be no explicit limit on

the number of ASSBs that may be authorised, but the RBA will consider how multiple ASSBs may coexist effectively and efficiently when each additional candidate applies. In practice, the number of ASSBs is expected to be small. The decision to avoid restricting the number of ASSBs is to increase flexibility and allow for the possibility that industry bodies may have expertise in different types of technical payment standards.

Authorisation criteria and ongoing oversight

Once the regulatory framework for industry standard setting has been established, the RBA would establish various authorisation and oversight requirements and processes, in consultation with Treasury, other regulators and industry. These arrangements would be subject to a public consultation.

To guide stakeholders, the RBA's requirements for an industry standard-setting body to be authorised could include the following:

- The body has appropriate governance, membership composition and funding arrangements in relation to its standard-setting activities (see below for further discussion on the funding model). These arrangements would, in particular, avoid conflicts of interest that could arise from other roles the body may have, and ensure alignment of the standard-setting function with public interest objectives for the mandatory standards regime.
- The body has the capabilities and processes to set mandatory technical standards. This would include: an appropriate level of expertise and resources to develop technical standards; thorough, transparent, consultative and fair standard-setting processes; and processes for periodically assessing the effectiveness, and potentially revising, individual mandatory standards.
- The body has an independent compliance function to oversee PSPs' adherence to the mandatory technical standards set by the body. This function needs to be adequately separated from the body's standard-setting activities, as well as any other activities it may perform. The compliance function would be responsible for monitoring PSPs' compliance with mandatory technical standards, implementing measures to assist licensees' compliance with technical standards, and maintaining appropriate processes to address complaints or appeals from payment system participants or users. In the event that a PSP believes a complaint or appeal has not adequately been addressed by the ASSB, it is proposed that there be an avenue (likely subject to a fee) for the complaint or appeal to be escalated to the regulator involved in enforcement.
- The body will be subject to periodic formal assessments by the RBA of its ongoing adherence to the regulatory requirements and effectiveness in setting mandatory technical standards.

Scope and threshold of standards

Mandatory technical standards should seek to promote efficiency and competition, and manage risk, in the payments system. Technical standards that enhance the interoperability, security, resilience, customer protection or customer accessibility in payments systems could meet this requirement. There must be a clear public interest case for a technical standard to be made mandatory. Following a separate consultation process to be undertaken by the RBA on the authorisation criteria and RBA oversight responsibilities, the RBA would publish guidelines on the necessary characteristics of a mandatory technical standard as well as the process for determining whether a technical standard should be mandated. These guidelines are likely to include the requirement that individual technical standards are developed and periodically reviewed through transparent, consultative and fair

processes. Technical standards should also be developed with a view to aligning with international standards where possible to avoid unnecessary regulatory burden.

Mandatory technical standards developed by the ASSB may raise competition law concerns under the *Competition and Consumer Act 2010* (Cth) (CCA). For example, competition law risks may arise:

- during discussions between competitors when forming agreements about common standards (e.g. if competitively sensitive information is shared); and
- if the mandatory standards raise barriers to entry or impact the ability for businesses to compete on their merits.

Therefore, the process for determining technical standards should include safeguards to manage competition law risks associated with the development and implementation of mandatory technical standards, including the impact of any technical standards on competition.

The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the CCA for arrangements that may otherwise risk breaching those provisions but are not harmful to competition and/or are likely to result in overall public benefits. The ASSB would need to determine in each instance whether it is necessary to apply to the ACCC for authorisation.

The RBA will continue to have the ability to set separate standards for designated payment systems under the revised PSRA. In the past, the scope of these standards has been fairly narrow, largely covering interchange fees, limiting card schemes' restrictions on merchants, and access regimes for card schemes. It is expected that standards that require detailed technical or industry knowledge to develop would be candidates for mandatory technical standards, while non-technical standards that meet the public interest test would be candidates for standards set by the RBA under its PSRA powers.

Mandatory technical standards will also be separate from CARs and other access rules set by payment system operators. Under the new CARs framework, payment system operators will continue to be able to set rules that are intended to manage risks associated with direct participation in their payments system (for example, risk management, governance, and financial and operational capacity requirements; see discussion in **Section 7**).

Enforcement of technical standards

Under the proposed framework, the ASSB would have some ability to impose administrative penalties to enforce minor breaches of technical standards. That is, the ASSB would have powers to direct an entity to comply with a particular technical standard, issue infringement notices or letters of warning, and impose fines. In the event of a major breach of technical standards that requires civil penalties, the ASSB could refer the entity to the regulator involved in enforcement. The regulator would be able to seek more severe penalties for a major breach of technical standards. An advantage of this approach is that it is likely to lower the overall costs of implementing the framework, given that the ASSB may have the existing technical and industry knowledge to be able to enforce minor, technical breaches.

Variation of proposed framework

Setting technical standards

Variation A: It is proposed that RBA approval is required for a technical standard to be made mandatory. Requiring formal regulator approval of a technical standard further mitigates the risk of conflicts of interest in the standard-setting process. An additional benefit of formal approval by an impartial regulator is that it reduces the risk of competition law concerns associated with an agreement between competitors about a standard. Therefore, in the event that ACCC authorisation of a standard is required, it is expected that the authorisation process may be more streamlined and faster if the RBA has approved a technical standard.

Variation B: An alternative option could involve the RBA having only a veto power over mandatory technical standards. That is, the RBA would be able to disallow a standard before or after it has come into force (as noted above). The ASSB would not be required to seek formal approval for mandatory technical standards. An advantage of this option is that it is likely to involve lower regulatory costs, and may be a suitable approach if RBA oversight of the ASSB (as described above) is a sufficient safeguard against conflict of interest concerns.

Criteria for evaluating the framework

The following criteria will be used to evaluate the design of the framework:

- Promotes efficiency and competition, and manages risk, in the payments system
- Promotes a level playing field for participants in the payments system
- Minimises regulatory costs – both compliance costs for those who are subject to technical standards, and costs to the government
- Minimises the risk of conflicts of interest and promotes transparency and impartiality in the standard-setting process

Minor and major breaches

There is a need to define what constitutes a ‘minor’ and ‘major’ breach of technical standards. It is proposed that a minor, technical breach of standards is one that does not cause major disruption and/or damage to the system, and can be remedied with administrative action (e.g. remediation plan, public infringement notices, or a lower-level fine). A major breach of technical standards would refer to repeated non-compliance (e.g. failure to comply with remediation plans) having major or systemic consequences and would require civil penalties (i.e. larger fines or the revocation of an AFSL for entities that are required to be licensed).

Funding models

Once the regulatory framework for the standard-setting process is established, the Government will consider the appropriate funding model for the framework, with input from relevant stakeholders. The optimal funding model should be fair and equitable, and minimise actual or perceived conflicts of interest. Funding raised through this model can only be allocated towards standards-setting processes (which include standards setting, monitoring compliance, enforcement and complaints handling), and not any other non-standards-setting function performed by the ASSB.

One option is to fund the monitoring and enforcement of technical standards using a fixed, tiered, mandatory annual fee for entities that are required to comply with particular standards; this fee would likely be adjusted depending on the number of standards that an entity is required to comply with, and the volume of the relevant payments activity performed by the entity. The development of standards would be funded by the ASSB.

Consultation questions

- 60. What are the issues with the current mix of voluntary standards and payment system requirements? What would be the benefits of introducing a formal framework for mandatory technical standards? What are the key reasons why the current status quo of voluntary standards is insufficient to achieve the key objectives set out in the discussion of the standard-setting framework?**
- 61. Is the PSRA bill definition of payment system ‘participants’ an appropriate regulatory perimeter for compliance with mandatory technical standards?**
- 62. Should complying with mandatory technical standards be an explicit condition for PSPs that are required to hold an AFSL?**
- 63. Are there any additional criteria that should be considered when evaluating the design of the framework?**
- 64. Are there any other options for the framework that should be considered; if so, why?**
- 65. This paper outlines a potential variation to the proposed standard-setting framework. What are the advantages or disadvantages of this variation (where the RBA has only a veto power, compared with being required to formally approve a standard)? Which approach is preferred and why?**
- 66. It is proposed that the ASSB is responsible for enforcement of minor breaches. Which body is best placed to resolve appeals to the ASSB’s enforcement decisions?**
- 67. Do you agree with the proposed scope for mandatory technical standards developed by an ASSB? Are there any type of technical standards that should not be within the scope of the ASSB?**
- 68. This paper proposes that the ASSB seek authorisation from the ACCC for a technical standard where necessary. Are there any issues with this approach, and if so, how might these be resolved?**
- 69. What should be considered ‘major breaches’ versus ‘minor breaches’ under the mandatory technical standards regime?**
- 70. What are the appropriate penalties for a major breach of technical standards?**
- 71. How should the mandatory technical standard-setting framework be funded?**

9. ePayments Code

A legislatively mandated ePayments Code would ensure that Australian consumers are better protected, reflecting the importance and necessity of baseline consumer protections that are available, where appropriate, across the payments ecosystem.

The ePayments Code provides important consumer protections but subscription is currently voluntary. The majority of ADIs and a small number of other businesses currently subscribe to the code. Submissions received were unanimous in noting that the ePayments Code should be subject to a comprehensive and detailed review before any of its contents can be mandated. The Government agrees with this approach, and will undertake a holistic review of the ePayments Code after the passage of the licensing reforms.

Reforms to the ePayments Code would be made through the creation of a rule-making power, which would allow the Minister to set a mandatory revised code. Obligations may apply across the payments sector or a cross-section of PSPs as appropriate. The ministerial rule-making power is proposed to be introduced alongside the broader licensing reforms. Further consultations on proposed revisions to the ePayments Code obligations will follow passage of the payments licensing reform legislation. In the meantime, the status quo should remain for the ePayments Code (i.e. its voluntary status, and adherence by subscribers).

9.1. Ministerial rule-making power

The ministerial rule-making power would allow the Treasurer to set mandatory, baseline consumer protections, in relation to the following subject matters:

- disclosure requirements;
- listing and switching rules;
- obligations (including apportionment of liability) with respect to unauthorised transactions, meaning transactions not authorised by the customer;
- obligations with respect to mistaken payments, meaning funds paid to an unintended recipient due to inputting of incorrect payee details by the customer or a third party initiator; and
- remedies available in the event an obligation is breached.

It is proposed that the rule-making power be applied to: (i) ADIs; (ii) PSPs defined through the payment functions in this CP, regardless of whether they hold an AFSL or not; and (iii) credit providers that perform a payment function. However, this approach does not mean that all entities will have obligations under the code. The holistic review of the ePayments Code will consider in detail the nature of obligations that should be applied.

Feedback is requested on whether the proposed subject matters are appropriate, and whether additional topics should fall within the scope of the rule-making power.

In addition, feedback is welcome on whether an ASIC rule-making power would be appropriate for technical matters under the ePayments Code. Subject matters could include password security guidelines for customers. An ASIC rule-making power for technical matters may allow for more agility in responding to technology changes. For example, use of biometrics in passwords.

9.2. Future review of the ePayments Code

The emergence of new technologies and business models, and the fragmentation of the payments value chain presents challenges for the code in its current form. Due to the emergence of PSPs that are not subscribers, many consumers may not receive protections afforded under the code in its current form.

For current subscribers and potential entities for which the ePayments Code could be made mandatory, existing obligations under the code may no longer be appropriate for or reflect the nature of many PSPs and how they interrelate within the payments ecosystem.

Current ePayments Code obligations mainly relate to protections for traditional card and account-based payments. It may be more appropriate for a mandated ePayments Code to provide consumer protections by considering all aspects of the payments chain.

The future review of the ePayments Code will need to consider:

- 'future-proofing' obligations to account for future developments in technology and setting regulatory obligations in a tech-neutral manner;
- the extent of duplication between requirements in the ePayments Code and the existing laws;
- determining to what extent certain obligations should be applied to non-bank PSPs, such as apportionment of liability for unauthorised transactions; and
- interactions with any payment initiation through the CDR and any screen scraping regulation,¹³¹ and the need to align with other relevant industry codes and standards such as the proposed Scams Code Framework, including bank-specific scams codes.¹³²

Consultation questions

72. Is the proposed application of the Minister's rule-making power for the ePayments Code appropriate?

73. Are the proposed subject matters for the Minister's rule-making power for the ePayments Code appropriate? Are there technical matters that are better dealt with through an ASIC rule-making power or by the ASSB?

74. Are there additional areas to consider in ensuring appropriate interaction between the proposed Scams Code Framework and the ePayments Code?

¹³¹ Treasury, [Screen scraping – policy and regulatory implications](#), Treasury, August 2023.

¹³² Treasury, [Scams – Mandatory Industry Codes](#), Treasury, November 2023.

10. Transitional arrangements

10.1. AFSL transition issues

It is proposed that the payments licensing requirements come into force 18 months after the passage of legislation, to allow sufficient time for businesses to transition to the new arrangements. To obtain the benefit of the 18-month transitional relief under the AFSL, it is proposed that entities submit an AFSL application within 6 months from the passage of legislation. By the end of the 6-month timeframe, new AFS licensees (including Standard SVFs) would be expected to have their applications lodged with, and accepted by, ASIC. Note that a lodgement being 'accepted' by ASIC is distinct from the licence being granted.

It is proposed that PSPs that already hold an AFSL are deemed by law to be authorised under the reforms. These entities would not need to apply to vary their existing licence, however, would need to notify ASIC of the payment functions they operate through a prescribed notification process administered by ASIC.

10.2. Other transition issues

Further information on APRA's licensing expectations for new Major SVFs and CARs would be released once APRA commences its consultation process regarding the new prudential policy framework for relevant PSPs. The RBA would consult with payment system operators about recognising the CARs in their access rules.

For ASSB, the RBA would consult on the authorisation criteria and more details on timelines will be provided as part of that process.

10.3. Transition issues for PPFs

Entities currently subject to a PPF class exemption made by the RBA under section 25 of the PSRA are expected to continue adhering to the conditions of this exemption until their relevant licences with ASIC and APRA have been granted.¹³³ These conditions relate to having the amount of stored funds guaranteed. Once APRA has notified an entity of the outcome of their application, the existing exemption applicable to that entity will be automatically cancelled for that entity and cannot be renewed. It is expected that APRA would provide updates to these entities during the application process so that they have reasonable time to organise their affairs before the exemption that applies to them is cancelled.

Furthermore, consistent with the removal of the RBA's regulatory role with respect to PPFs, no entity could apply for a PPF class exemption under section 25 of the PSRA once the payments licensing legislation has passed.

¹³³ RBA, [Exemption notice for Certain Guaranteed Holders of Stored Value Under Section 25](#), 4 March 2004.



Consultation questions

- 75. Is the proposed transition period (18 months) an adequate grace period for new prospective licensees?**
- 76. Is the proposed grandfathering process for existing AFS licensees adequate? Are there additional transition issues that should be addressed for existing AFS licensees and PPFs?**

Appendix 1 – Consultation questions


1. Feedback is welcome on the proposed approach to distinguish SVF products from banking business. Are there any unintended consequences, and are there suggestions on how to mitigate those?
2. What are your views on the proposed changes to the SVF function and whether additional characteristics or principles are needed to distinguish SVF products? Should there be an additional principle that funds can be stored without any onward payment instruction?
3. Are there any further activities that should be out of scope of the definition of SVF?
4. Do you agree with the proposed framework for PSCs and how it interacts with the Digital Asset Platform Framework? Are there any considerations that should be given or issues that can arise which have not been captured in this proposal?
5. Do you agree with the scope of the 'Payment Instruments' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?
6. Do you agree with the scope of the 'Payment Initiation Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?
7. Do you agree with the scope of the 'Payment Facilitation Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?
8. Is there merit in disaggregating this function? If so, why and how should this be done?
9. Are there any other principles that should be used to define this function?
10. Do you agree with the scope of the 'Payment Technology and Enablement Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?
11. Are the principles used to define the function appropriate?
12. Should a certain subset of entities captured under this function be subject to less rigorous obligations than what is proposed, and what should those be? Should the definition of this function be narrowed to exclude certain types of entities that do not pose significant risks, and if so, how?
13. Do you agree with the scope of the 'Cross-border Transfer Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?
14. Excluding ML/TF risks, are there any unique risks that Cross-border Transfer Services present, and should there be any tailored regulatory requirements for this function?
15. Is there a need for a separate function for Cross-border Transfer Services or should these services be captured together with domestic transfer services?

16. Is the proposed removal of the 'Clearing and Settlement Services' function appropriate, given the risks associated with these activities are intended to be addressed by payment system access arrangements and proposed common access requirements?
17. Is the proposed approach the best way to incorporate the functions into the Corporations Act? Or is Option B, Option C, Option D or another option not canvassed by this paper preferable?
18. Are there any functions that are proposed to be regulated as a product that should instead be regulated as a new type of financial service or vice versa?
19. Are there any practical issues created by separating out different 'functions' and treating them as separate products and services? Would it be simpler to have fewer different functions that cover more payment services?
20. What needs clarifying regarding the tests of 'dealing in' and 'arranging' for PSPs?
21. Is the scope of the exclusion for payments debited to a credit facility in section 765A(1)(h)(ii) of the *Corporations Act* appropriate?
22. Should existing exemptions for unlicensed product issuers be restricted for certain payment functions?
23. Should PSPs that process or facilitate transactions or store value below a certain amount have reduced requirements under the Corporations Act? If so, what should they be?
24. Should the low value exemption apply at the controlling entity level, if there are a group of related entities?
25. Are the proposed thresholds for low value facilities appropriate?
26. Should the low value exemption be available for all payment functions?
27. How could a limited network exclusion be appropriately confined to avoid regulatory arbitrage? Are the conditions for this exemption appropriate? Should it apply to all payment functions?
28. Should there be a commercial agent exclusion?
29. Is the proposed amended exemption for designated payment systems that have been declared not to be a financial product appropriate or should it be further revised, replaced or removed?
30. Should there be an exclusion for global financial messaging infrastructure? For example, Singapore excludes from regulation 'global financial messaging infrastructure which are subject to oversight by relevant regulators'.¹³⁴
31. Should the relief provided by ASIC for certain activities be moved into regulation or discontinued? For example, should loyalty schemes, road toll devices and electronic lodgement operators be exempted?
32. Do loyalty schemes that allow credits or points to be purchased present particular risks?

¹³⁴ MAS, [Guidelines on outsourcing](#), MAS website, 27 July 2016, updated 5 October 2018.

33. Should payment activities by not-for-profit/charitable and religious organisations be exempted?
34. Do the proposed options for streamlining licensing processes adequately balance safety with the need to foster competition in the SVF sector?
35. What further information or guardrails could assist a Standard SVF make a smooth transition to Major SVF?
36. Are the general AFS obligations fit for purpose for PSPs?
37. Are the general risk management obligations sufficient, or should PSPs undertaking particular functions have additional or tailored risk management obligations?
38. For currently unregulated PSPs, are any aspects of the financial services obligations or compliance processes disproportionately burdensome?
39. Are the proposed financial requirements appropriate for PSPs? Are there particular payment functions where financial requirements should be increased, or decreased?
40. Are the standard compensation requirements appropriate for PSPs?
41. Is the proposed exemption to the hawking prohibition appropriate? Should it be broader or narrower?
42. Should the standard disclosure requirements not apply to any particular activities, for example, gift facilities (outside the existing exclusions)?
43. Should the 'shorter PDS regime' apply to any activities?
44. How should the FSG and PDS disclosure exemptions for a facility for making non-cash payments related to a basic deposit product be updated?
45. Is the proposed approach to applying client money rules on all PSPs that hold funds appropriate? Should APRA-regulated PSPs be subject to the standard AFSL client money obligations?
46. To ensure the effectiveness of the standard obligations for client money, are additional changes necessary to tailor the client money rules for PSPs? If so, in what fashion?
47. Should alternative approaches to client money rules be considered, for PSPs processing funds in transit?
48. Are the proposed obligations for low value payment products appropriate? Should these obligations apply to low value payment activities that are not proposed to be regulated as a payment product (such as Payment Initiation Services)?
49. Are proposed amendments to the Major SVF criteria appropriate? Should there be additional criteria retained or added?
50. Is the proposed Ministerial designation power to amend the size threshold for Major SVFs appropriate? Are there alternative approaches preferred?
51. Is the proposed approach to allowing the Minister to designate further SVF providers or Payment Facilitation Service as being subject to APRA's prudential regulation appropriate? Are there alternative approaches preferred?

52. In order for regulators to retain visibility and to help determine which businesses may be designated for prudential regulation, should Payment Facilitation Services be subject to ongoing reporting requirements in relation to funds held and transactions processed?
53. Are the additional proposed obligations for SVFs appropriate? Should SVFs be subject to prohibited activities such as a restriction on paying interest? Should consumers have a general right to redeem funds for SVF products?
54. Is the proposed extension of APRA-administered legislative powers and broader requirements appropriate for Major SVFs? Are there particular requirements that should be tailored for Major SVFs?
55. Are the proposed obligations under the SVF framework appropriate for PSCs? Should there be additional obligations considered for the regulation of PSCs?
56. What are the different risks associated with payments clearing and settlement? How should these be managed?
57. The CARs are intended to increase access to payment systems while managing the risks of direct access. How can both of these objectives be achieved?
58. Should CARs be legislatively mandated for all non-ADI PSPs seeking direct access for payments clearing and settlement, or should it be optional? Why?
59. APRA would have the power to set the CARs through prudential standards setting powers. To enable effective APRA-supervision of entities subject to CARs, what other APRA powers should be extended to the CARs regime and why? For example, should it include resolutions powers, enforcement powers, directions powers and application of group regulation powers?
60. What are the issues with the current mix of voluntary standards and payment system requirements? What would be the benefits of introducing a formal framework for mandatory technical standards? What are the key reasons why the current status quo of voluntary standards is insufficient to achieve the key objectives set out in the discussion of the standard-setting framework?
61. Is the PSRA bill definition of payment system 'participants' an appropriate regulatory perimeter for compliance with mandatory technical standards?
62. Should complying with mandatory technical standards be an explicit condition for PSPs that are required to hold an AFSL?
63. Are there any additional criteria that should be considered when evaluating the design of the framework?
64. Are there any other options for the framework that should be considered; if so, why?
65. This paper outlines a potential variation to the proposed standard-setting framework. What are the advantages or disadvantages of this variation (where the RBA has only a veto power, compared with being required to formally approve a standard)? Which approach is preferred and why?
66. It is proposed that the ASSB is responsible for enforcement of minor breaches. Which body is best placed to resolve appeals to the ASSB's enforcement decisions?

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67. Do you agree with the proposed scope for mandatory technical standards developed by an ASSB? Are there any type of technical standards that should not be within the scope of the ASSB?
 68. This paper proposes that the ASSB seek authorisation from the ACCC for a technical standard where necessary. Are there any issues with this approach, and if so, how might these be resolved?
 69. What should be considered 'major breaches' versus 'minor breaches' under the mandatory technical standards regime?
 70. What are the appropriate penalties for a major breach of technical standards?
 71. How should the mandatory technical standard-setting framework be funded?
 72. Is the proposed application of the Minister's rule-making power for the ePayments Code appropriate?
 73. Are the proposed subject matters for the Minister's rule-making power for the ePayments Code appropriate? Are there technical matters that are better dealt with through an ASIC rule-making power or by the ASSB?
 74. Are there additional areas to consider in ensuring appropriate interaction between the proposed Scams Code Framework and the ePayments Code?
 75. Is the proposed transition period (18 months) an adequate grace period for new prospective licensees?
 76. Is the proposed grandfathering process for existing AFS licensees adequate? Are there additional transition issues that should be addressed for existing AFS licensees and PPFs?

Appendix 2 – Glossary

<u>Term</u>	<u>Definition</u>
Australian Financial Services Licence (AFSL)	This licence must be held by businesses that provide financial services. The licence is administered by ASIC.
Authorised Deposit-taking Institution (ADI)	A financial institution licensed by APRA to carry on banking business, including accepting deposits from the public.
Authorised industry standard-setting body (ASSB)	Industry bodies that are authorised by the RBA for the purpose of setting technical standards for licence holders under the reforms.
Common access requirements	A set of common requirements, that will help enable non-ADI PSPs to get direct access to Australian payment systems to clear and settle payments.
Consumer Data Right (CDR)	The Consumer Data Right (CDR) is a regulatory framework that enables consumers (including individuals and business customers) to more safely share the data Australian businesses hold about them for their own benefit.
Council of Financial Regulators (CFR)	The council is the coordinating body for Australia’s main financial regulatory agencies.
Customer	A person or business seeking to direct a payment transaction in his or her name, or in the name of the business.
ePayments Code	<p>A voluntary code that applies to electronic payments including ATM, EFTPOS, credit card, online payments, internet and mobile banking. The code is administered by ASIC. Amongst other protections, the code establishes processes for unauthorised transactions and mistaken payments.</p> <p>The Government will consult further to determine how the ePayments Code should be updated and brought into regulation.</p>
ML/TF	Money laundering and terrorism financing.
Non-cash payments	A person makes non-cash payments ‘if they make payments, or cause payments to be made, otherwise than by the physical delivery of Australian or foreign currency in the form of notes and/or coins’ (<i>Corporations Act</i> s 763D).

Participant	An entity that facilitates or enables payments to be made through a payment system. Participants include PSPs (see below), operators of payment systems and payments infrastructure providers.
Payment Account	An account or facility held by a payment service provider in the name of one or more user, for the execution of payment transactions. A payment account includes but is not limited to bank transaction accounts, SVF accounts, or accounts used for transferring funds between a payer and payee.
Payment Service Provider (PSP)	Organisations that provide a payment function defined in this paper. PSPs are a subset of the participants in the payments system.
<i>Payment System (Regulation) Act 1998 (Cth)</i> (PSRA)	The Act currently provides the RBA with the power to regulate payment systems and participants if it is in the public interest to do so. In the Act, public interest means the Bank must consider the desirability of payment systems being financially safe, efficient, competitive, and not causing risk to the financial system.