

Email response to: [paymentslicensingconsultation@treasury.gov.au](mailto:paymentslicensingconsultation@treasury.gov.au)

19 July 2023

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

Dear Director,

### **Payments System Modernisation (Licensing: Defining Payment Functions)**

Thank you for the opportunity to provide feedback on the Payments System Modernisation consultation paper dated June 2023.

As an introduction, Ailo Pty Ltd (Ailo) is a software company that is 100% owned by Ailo Holdings Pty Ltd (Ailo Holdings). Ailo has developed a multi faceted software platform that allows for users (any entity that has agreed to Ailo's Terms of Service) within the property management industry (i.e. property managers, principals of real estate agencies, tenants, landlords, tradies, suppliers and utility providers) to undertake workflow activities related to property management inclusive of processing of payments (Ailo® Platform). We are often called a PropFinTech.

The payments function is held via a wholly owned subsidiary of Ailo Holdings called Ailo Pay Pty Ltd (Ailo Pay). Ailo Pay is an Authorised Representative (Authorised Representative No 001280515) of Flexewallet Pty Ltd ACN 164 657 032 (AFS Licence No 448060) and operates a Non-Cash Payments Facility (NCPF) under that licence.

Ailo makes it clear in its Terms of Service and its Combined Product Disclosure Statement and Financial Services Guide that:

- The Ailo Platform, provided by Ailo Pay, operates as a NCPF;
- The Ailo Platform (as a software assistance tool) facilitates users managing property management workflows and making payments directly to other users of the platform;
- Ailo Pay does not act as a real estate agent;
- Ailo Pay is not a party to, and does not have responsibility or liability for, the goods or services to which payments made through the platform relate; and
- Charges users for NCPF services provided.

Essentially Ailo sells itself, as do a number of other FinTechs, as a software company that provides "assistance tools" to manage workflow (inclusive of payments) but takes no responsibility for the products or services to which the workflow or payments relate. Other companies which operate broadly similar models to Ailo (but do not necessarily operate a NCPF) include:

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Industry	Company
Real Estate	Kolemo, Managed App, PropertyMe, SimpleRent, Rental Rewards, Bambora
Travel	Booking.com, Webjet, BYOjet, Siteminder, Mint Payments
Schools	Compass, PaySmart
Childcare	Xplor, Genius, Goodstart
Gyms	Clubware, Clubfit
Food Delivery	Ubereats, Doordash, Menulog
Events	Trybooking, Ticketek

Below we have replied to a number of the questions posed by the consultation paper. We have decided to provide a submission to provide an insight into some of the challenges and uncertainty that Ailo has experienced when attempting to understand the regulator framework by which it should operate under, hoping that these uncertainties can be rectified under any new legislation.

If you would have any questions or like to discuss our submission please feel free to reach out to us on the below contact details.

Yours Sincerely

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## Response to questions

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

The principles considered in developing the list of payment functions is sufficiently broad.

In terms of the outcome of drafting further legislation, we submit that such legislation:

- Should be technology and branding agnostic to allow for the further evolution of both. For example, designating “EFTPOS”, which is often referred to as a process, is also a technology, brand and payment type
- Need to define terms precisely. For example, “remittance” is a broad term; broader than international money transfers. It should be made clear which categories of remittance activities are caught by legislation and which are not. “Trust accounts” have existed for a number of years and are regulated by both state and federal legislation and may be unregulated. It may be unclear on the face of an account, whether it is a trust account.
- Should better align with the Anti Money Laundering and Counter Terrorism Financing (AML/CTF) legislation, specifically:
  - Consistent definitions between the proposed new legislation and the AML/CTF Act.
  - Which payment functions require Austrac regulation, i.e. is it just International Money Transfer.
  - The AML/CTF Act’s definition of Remitters is so broad it could encompass all payment functions.
- Should consider industry specific state based legislation and regulation, i.e: each state has its own legislation around real estate and property management. Offices of Fair Trading and other state regulators need to understand the regulation around the payments systems and NCPF so that not only are consumers protected, but legislation meets the requirements of today’s business environment (not that of last century) and innovation by PropFinTech companies is not stifled by multiple regulation points and unnecessary complication and inconsistency amongst regulatory regimes.

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

The listing of payment functions could be expanded by the inclusion of various other payment services. See Question 7 response.

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**3) Should all payment functions be treated as financial products under the corporations legislation or should some be treated as a financial service?**

We submit that all payment functions should be treated as financial products.

**4) Does the term ‘payment stablecoins’ accurately describe the types of stablecoins this paper seeks to capture for regulation or are there other terms that may be more appropriate?**

No comment

**5) Does the proposed definition of ‘payment stablecoins’ adequately distinguish itself from other stablecoin arrangements?**

No comment

**6) Is regulation as an SVF an appropriate framework for the regulation of payment stablecoin issuers? If not, why? What would be an appropriate alternative?**

No comment

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

We submit that the current list of proposed payment functions does not fully cover the range of payment services available in Australia. In particular the list does not cover payment aggregation.

Ailo is considered to be a payments aggregator in the eyes of the suppliers of financial products such as BPay, Direct Entry, Merchant Acquiring and Virtual Bank Accounts. The following financial products have been supplied to Ailo Pay by either an ADI or a Merchant Acquirer:

- Inbound payments
  - A Direct Entry ID issued by an ADI for acceptance of inbound direct debit payments
  - A merchant facility issued by an Merchant Acquirer for the acceptance of card payments
  - A virtual bank account issued by an ADI for acceptance of cash, cheque and EFT payments
  - A BPay Biller ID by an ADI for the acceptance of inbound BPay payments

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- Outbound payments
  - A Direct Entry ID for the processing of outbound direct credits and NPP payments
  - A BPay Biller Batch ID by an ADI for the processing of outbound BPay payments

The Ailo Platform utilises the inbound financial products to aggregate payer funds into a operationally segregated settlement bank account (in the name of Ailo) and then uses the outbound financial products to disburse the funds to a payee. These funds can be stored for a period of time awaiting instructions from a payer or payee. In all cases the inbound and outbound payments are linked to contractual arrangements between the payer and payee to which Ailo is not a party.

This model is similar to that operated by organisations such as Booking.com, Webjet, TryBooking, Compass, Xplor and Siteminder, to name a few.

This model could be deemed to be a traditional SVF or a number of the PFS payment functions.

We believe it should be a payment function in its own right.

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

Yes, we believe the list should be broken down in more detail. See reply to question 7.

We believe the type of service providers should be carefully defined. As an example there are payment gateways that aggregate payments into their own bank account, i.e. IP Payments/Bambora. Whereas there are payment gateway that do not aggregate payment, i.e. PayDock. Is IP Payments/Bambora a payment gateway or a payment aggregator as it performs both functions.

**9) Should any other payment functions be included?**

We submit other payment functions should be included. See reply to question 7.

**10) Would the removal of the identified exclusions create unintended consequences?**

No comment.

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

We submit that regulation should not favour certain providers or technologies and that the exemptions and exclusions create or have the potential to create an uneven playing field. Those parties or technologies that are exempt or excluded, garner the following benefits as distinct from those that are regulated:

- Operate as a lower cost;
- Are able to offer lower fees and compete more vigorously (perhaps unfairly);
- Do not have to undertake the same AML/CTF compliance programs and are therefore able to on-board customers with less friction and at a significant cost advantage; and
- Result in customer confusion and preference - customers choose providers and technologies that require less of them in terms of regulation (even if regulation is for their benefit).

**12) Should the incidental product exclusion apply to the proposed list of payment functions?**

No comment

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

We submit that legislation that places Australian technology companies on, at least, equal footing with competitors operating in payment industries in comparable jurisdictions is advisable. See response to Question 11. Consideration of a tiered regulatory approach might be used where certain low risk, limited use or low volume products are placed in a legislative tier that has a lower level of operational compliance burden.

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

See response to Question 13.

**15) Should any other exclusions or exemptions be provided?**

No comment.

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

We submit the risk characteristics of a payment function are comprehensively detailed.

What we would add is that Misconduct Risk should also include anti-competitive behaviours by financial institutions who refuse to bank or provide financial products to a customer so that this customer will not compete against them. An example being a Merchant Acquirer will not allow a business to be an Payment Aggregator because that business could compete more efficiently at a lower cost against them. The Merchant Acquirer would cite risk as the reason for not servicing that business.

**17) What are the types of payment risks posed by the performance of each of the proposed payment functions?**

No comment

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

We submit that the key issue is that it is not clear whether regulation as a financial product requires that the regulated entity needs to AML/CTF its customers. If that is mandated that will be a significant overhead on businesses and entire industries that have not had to do this in the past.

The AML/CTF Act requires designated service providers to undertake AML/CTF on every customer. The Act requires simplification and a system allowing designated service providers to rely on a financial product that has already been set up, i.e. if a customer has a bank account and they have undergone AML/CTF verification and validation why should that have to undergo that process again. All that does is create inefficiency for the regulated entity, increasing the cost of service to the customer.

**19) Is the proposed risk-based approach to applying regulatory obligations appropriate?**

Yes

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

See response to Question 13 and the possibility of a tiered approach to regulation and licensing. For example, compliance with Industry Standards might be the lowest tier of licensing compliance.

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

See response to Question 13 and the possibility of a tiered approach to regulation and licensing. For example, compliance with Industry Standards might be the lowest tier of licensing compliance.

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

No comment

**23) Further information is sought to help identify the number and profile of participants that perform each payment function and therefore may potentially be affected by the new licensing framework.**

No comment

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

See our response to question 1.

Additionally, we believe there needs to be better communications between regulatory bodies and these bodies need to be more prepared to provide advice or assistance to entities looking to provide financial products, i.e. that the regulator is able to state or recommend what regulatory tier or framework is appropriate to that entity as opposed to the current approach, that is, it is up to the entity to seek legal advice and if you are wrong then you could be in breach. This approach causes entities to become regulated needlessly, increasing inefficiency and adding cost to the end consumer.

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

Central guidance and a website portal should be offered with a single point of contact.

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