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

Please find attached the submission of the Emerging Payments Association Asia (EPA Asia) to the Payments System Modernisation (Licensing: Defining Payment Functions) Consultation Paper released by the Commonwealth Treasury in June 2023.

EPA Asia's goal is to unify the payments agenda in the region, drive business development and improve the regulatory landscape for all organisations within the payments value chain. We are a community of payments organisations whose goal is to strengthen and expand the payments industry for the benefit of all stakeholders. More information about EPA Asia can be found on our website [www.emergingpaymentsasia.org](http://www.emergingpaymentsasia.org).

Please note, that while we have consulted within our membership, any views expressed in this submission are solely the views of EPA Asia and do not necessarily represent the views of individual contributors, EPA Asia Ambassadors or EPA Asia Members.

EPA Asia has been supportive of the Government's payments reform agenda. We believe the Strategic Plan provides a robust framework within which the various Government and industry initiatives can be advanced to enable a vibrant, responsive and secure payments ecosystem for Australia.

EPAA is broadly comfortable with the approach outlined in the Consultation Paper. We appreciate the opportunity to comment on this and welcome the phased approach to engagement on PSP Licensing.

We elaborate on some of these matters raised in the Consultation Paper. Please note we have sought to follow the chapters as opposed to answering the specific questions as we feel this format better enables us to raise our concerns and suggestions.

- 1. List of Payment Functions** - The payment function terms and definitions in the Consultation Paper seem to be based on a mix of regulator and industry terminology. They can be difficult to interpret in places – in particular, the payment facilitation, authentication, authorisation and processing services definition is unclear. Simplified terms and definitions would be desirable and may present a better way forward. Payments are essentially about value and data, so consider an approach whether an entity either:
  - a) holds and/or
  - b) transmits and/or
  - c) validates / verifies value and / or data.This could be used to inform a simpler, more structured approach to what payment functions are caught that would be more adaptable as technologies and commercial models evolve.
- 2. Description of Each Payment Function** – We believe that regulation as a stored value facility is an appropriate approach for regulation of payment stablecoins, though care will be needed to distinguish between those stablecoins that exist for investment purposes and those that exist to also support payments.

We also believe there is some unnecessary complexity in seeking to align the new payments licensing regime with current regulatory responsibilities. The sharing of the regulation of Stored Value Facilities (SVFs) between ASIC and APRA based on whether it is "standard" or "major" creates all types of opportunities for regulatory arbitrage and things

falling between the cracks (as was identified in the HIH Royal Commission). Ideally primary or sole responsibility by one regulator is desirable wherever possible.

3. **Excluded and Exempt Activities** – We would propose that exclusions and exemptions be based on clear and consistent criteria that are easy to access and understand, do not create opportunities for arbitrage and are kept to a minimum, being based on managing both risk to end users as well as maintaining competitive neutrality between competitors. The current exemptions and exclusions have evolved over the better part of twenty years and require careful examination. Many of these exemptions now appear out of date. Overall, we believe that exemptions and exclusions should be kept as much as possible to genuinely incidental or low-risk / low value activities, for example single-purpose stored value cards used in relation to school tuck shops or library photocopiers.
4. **Characterising the Risk of Each Payment Function** – While we note that certain risks are more prevalent in certain types of functions, we would note that financial risk extends beyond stored value and that all PSPs carry a degree of financial risk whereby their insolvency could cause ripples across the ecosystem. On this basis we would propose minimum base obligations around managing financial / business failure risk for all PSP licensees with additional requirements imposed as licence obligations based on the risks associated with the particular payment functions they perform.

In the Consultation Paper at page 23, it has been noted that:

*“if a payment service is of significant size or plays a central role in the broader payments system, a large-scale operational failure could translate into problems for other PSPs that rely on, or interact with, its operations.”*

We would agree that size and centrality may be a factor that would mean an operational failure could cause problems elsewhere in the ecosystem. However, we would like to note that due to the interconnected nature of the payment system that a failure anywhere along the value chain could have an impact. This means that care is needed in terms of exemptions or exclusions from licensing as well as how the licensing obligations are allocated based on payment function.

5. **International Regulatory Frameworks** – We appreciate the efforts to seek to align Australia with international practice. However, we believe more can be done – for example seeking to align with other markets in the APAC region as well as exploring the potential for passporting so that it is easier for PSPs to operate across borders in a safe and secure fashion.
6. **Overview of Possible Regulatory Obligations** - The Consultation Paper does explore the future obligations on licensees. While the initial risk-based discussion make sense, further visibility of the actual licensee obligations will be critical. Treasury should be prepared to provide further details around the safeguarding of funds obligations as well as how any risk assessment will translate into the calibration of obligations (for example materiality and frequency of notifying the regulators of a change).

We do not believe there is significant merit in respect to excluding non-customer-facing entities from licensing altogether. As noted above, they still bring risk to the ecosystem that needs to be managed and the interconnectedness means that other ecosystem participants and end-users may be affected. We also believe “customer-facing” will be very difficult to define and that it leaves open opportunities for regulatory arbitrage.

While we would support a regime where licensing would be taken into consideration in respect to access to industry infrastructure, we do believe that operators of this infrastructure need to be fully involved so that the licensing obligations line up with the risk that they bring to the system.

Given the role that licensing will play in managing both risk to end-users and risk to the

ecosystem, we do not believe that licensing and adherence to industry standards can necessarily be interchangeable with each other, though adherence to industry standards could be taken into account in respect to whether a licensee is adhering to their licence conditions.

The Consultation Paper considers a streamlined approach to licensing. This is important as we would estimate up to 1500 new licensees (based on estimates coming out of Canada for their own licensing regime). A nimble approach to the licensing process is crucial. This means both a single point of contact (not just a portal but a real person who can answer real questions) and a facilitative and educative approach to licensing more akin to that taken by APRA than ASIC (regardless who actually does the licensing).

We are more than happy to expand further on the items raised in this submission or to provide further information. If you do have any comments or questions, please feel free to contact me at [camilla.bullock@emergingpaymentsasia.org](mailto:camilla.bullock@emergingpaymentsasia.org) or Dr Brad Pragnell at [brad.pragnell@34south45north.com](mailto:brad.pragnell@34south45north.com).

Kind regards,

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