

Submission to the Treasury Consultation on Licensing of payment service providers – payment functions

About the Tech Council of Australia

The TCA is Australia's peak industry body for the tech sector. The Australian tech sector is a pillar of the Australian economy, contributing \$167 billion to GDP per annum and employing around 935,000 people. This makes the tech sector equivalent to Australia's third largest industry, behind mining and banking, and Australia's seventh largest employing sector.

The TCA represents a diverse cross-section of Australia's tech sector, including startups, venture capital funds, and a diverse array of paytech and fintech businesses.

Introduction

The TCA welcomes the release of the Government's Strategic Plan for the Payments System. The plan kick-starts a long overdue process of reform. Better payments regulation can drive more competition and innovation in our financial sector, which in turn means lower costs, greater choice and more convenience for Australians. The current regulatory regime creates barriers to competition and unfairly favours big banks over start-ups and scale-ups that are working to drive better outcomes for consumers. It is acting as a handbrake on growth of Australian FinTech businesses.

We welcome the consultation on reforms to the Licensing of payment service providers – payment functions as a priority initiative under the Strategic Plan. Broadly speaking we are supportive in-principle of the direction that has been outlined in the consultation paper.

Proposed licensing principles & taxonomy

We are supportive of the principles outlined in the consultation paper, which will support a technology agnostic payments system that is more likely to be adaptable to change. In addition to the four principles that have been outlined, we suggest one additional principle, which is that the regulatory approach should consider the needs of the payment system participants, in addition to the regulators.

The regulatory landscape for the payments system is complex and features multiple regulators. For new and innovative companies, building an understanding of these regulations and developing relationships with regulators is costly.

As an example, the proposed approach for regulating stored value facilities (SVF) would have companies regulated by ASIC while they are a standard SVF, but they would also be regulated by APRA once they cross the thresholds to be considered a major SVF. This will require them to develop new relationships with, and understanding of, a separate regulator. This may make sense from the perspective of the regulator (e.g. until such time as there are prudential obligations, the appropriate regulator is the corporate regulator). However, from the perspective of

the participants in the system, this introduces an unnecessary degree of complexity and regulatory overhead.

In terms of the payment functions themselves, we are broadly supportive of the direction outlined in the paper. We recommend increased granularity at this stage, rather than combining categories, as has been done under the payment facilitation, authentication, authorisation and processing services. While these categories may have similar regulatory treatment, this does not mean that the functions themselves are the same. Being more specific will reduce the risk of non-exclusivity of the categories and potential confusion over what is covered by the payment functions.

While granularity of payment functions is important to provide clarity of who falls within the regulatory net, it is equally important to ensure that businesses do not require separate authorisations for each payment function. It would be inefficient and costly to put regulatory barriers in place to limit the scope of the payments licence to a single payment function.

We recognise that it is challenging to derive a taxonomy that enjoys broad industry support, as different actors will have different emphases and perspectives. If you receive considerable and conflicting feedback on the details of the taxonomy, we recommend establishing a working group. This group, composed of industry experts, regulators, and government representatives, would be tasked with reaching a consensus. Meeting in person to promptly clarify and resolve any misunderstandings could be the most effective approach moving forward.

We support removing exemptions so that the payment system has comprehensive coverage. Where activities are low-risk, this should be handled through different regulatory obligations.

Risk categories

We support the risk categories that have been identified in the consultation paper and recommend an additional risk category for market or competition risks. As outlined above, the TCA strongly believes that the competition in the payments sector that has been driven by tech businesses has had strong pro-consumer benefits. We believe that this should be explicitly considered when designing regulatory obligations under the payment system.

Some payment functions will tend to inherently create significant barriers to entry and competition. While these may not create direct consumer, financial system or misconduct risks, they are likely to have significant potential for adverse consequences for the Australian economy and community. By explicitly considering these market or competition risks when designing the regulatory obligations, the risk of anti-competitive behaviour and the need for ex-post intervention by the competition regulator would be reduced.

Proposed regulator obligations

Finally, we would like to call out some specific areas for further consideration in terms of regulatory obligations:

- As discussed above, we do not support separate regulators for standard and major SVFs. While we understand the regulatory distinctions between the roles of ASIC and APRA, we believe that these should be overridden by a desire to have a more streamlined and participant-focused payments system. Multiple regulators for the payments framework puts Australia at a significant disadvantage compared to jurisdictions such as the UK and can act as a disincentive to grow and innovate.
- TCA member companies have repeatedly expressed frustration with capital requirements in excess of 100 per cent of stored funds. This is a prime example of where regulatory burden is being imposed that is not proportionate to the risks to consumers.
- Improved access to the New Payments Platform (NPP). As we argued in our submission to the strategic payments plan, we believe that incumbents play an outsized role in shaping the access to critical infrastructure such as the NPP. While we support an industry-led regulatory model, this must not mean a regulatory framework by and for incumbents. We recommend that the government open up the NPP to broader industry participants by removing the requirement to hold an Authorised Deposit-Taking Institution licence and reducing NPP Shareholding Requirements for new entrants.
- If the ePayments Code is to become mandatory as the consultation paper proposes, then we reiterate our previous calls for it be reviewed and updated in consultation with a contemporary cross-section of the payments industry.
- Consideration should be given to a transition period to allow industry time to adjust to the new compliance expectations.