



# Payments System Modernisation (Licensing: Defining Payment Functions)

Consultation paper

June 2023

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# Consultation Process

## Request for feedback and comments

The purpose of this consultation paper is to seek input into the list of payment functions that are intended to underpin a new licensing framework for payment service providers (PSPs). A further consultation process will follow, focusing specifically on the regulatory obligations that should be imposed under the licensing framework. However, preliminary views on the proposed licensing framework are welcome as part of this consultation.

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: 19 July 2023

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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.

# 1. Introduction

## Overview

The introduction of a modernised payments licensing framework is part of the Government's broader work to reform the payments system to ensure Australia's regulatory framework is fit for purpose.

This paper invites feedback on the foundations of a new tiered, risk-based licensing framework for PSPs, based on a defined list of payment functions and reflecting the recommendations of the Review of the Australian Payments System (Payments System Review).<sup>1</sup> The proposed payment functions include stored-value facilities (SVFs)<sup>2</sup> such as payment stablecoins. Payment stablecoins are a subset of stablecoins that aim to maintain a stable value with reference to a fiat currency. Issuers of payment stablecoins are proposed to be regulated as a type of SVF.

Further consultation on the regulatory obligations under the new licensing framework will take place later in 2023 with introduction of legislation for the new payments licensing regime in 2024. Following the passage of legislation, detailed elements of the payments licensing reforms will be subject to further consultation. They include the design of supporting regulations for the ePayments Code, common access requirements, and mandatory industry standards.

The proposed list of payment functions is set out in **Sections 2 and 3**. Proposed exclusions and exemptions are set out in **Section 4**. Risks associated with performing a payment function are set out in **Section 5** to inform how the licensing framework should be calibrated.

**Section 6** discusses the regulatory frameworks in overseas jurisdictions and how they have informed the proposed list of functions. **Section 7** and **Appendix 2** provide an overview of the proposed regulatory framework. A glossary of key terms is in **Appendix 6**.

## Objectives of the new regulatory framework

The objectives of the proposed payments licensing framework include:

1. **Ensuring consistent and appropriate regulation of PSPs** based on the payment function they provide.
2. **Improving regulatory certainty for PSPs** by making it clear when a PSP is providing a payment service that requires a licence and what the associated regulatory obligations are.
3. **Supporting a more level playing field for PSPs seeking to access payment systems**, promoting greater competition, diversity and innovation within the ecosystem.
4. **Better targeting regulatory obligations based on the level of risk posed to end users by PSPs**, balancing protections for consumers and businesses (collectively referred to as 'customers' in this paper) with regulatory burden.
5. **Streamlining the process for businesses that require multiple licences** or authorisations to minimise the regulatory burden.
6. **Better aligning Australia's payments regulatory framework with international jurisdictions**, helping to reduce barriers to entry for providers seeking to enter the Australian market.

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<sup>1</sup> Treasury, *Payments System Review*, Treasury, June 2021, p xiii.

<sup>2</sup> An SVF is a facility that can store value and be used as a means of making payments for goods and services or transferred to another person. This paper proposes that the term 'SVFs' replace the currently used term 'purchased payment facilities (PPFs)'.

## Existing regulatory framework

The financial services licensing framework governing some PSPs was introduced in 2001, as part of a package of reforms to transform the regulation of the financial services sector generally.<sup>3</sup> These reforms implemented the Australian Financial Services Licence (AFSL) regime for financial sales, advice and dealings in relation to financial products more broadly (i.e. products and services relating to investments, deposit products and insurance).

Currently, the *Corporations Act 2001* (Cth) (*Corporations Act*) typically requires those that deal in financial products to hold an AFSL. A financial product (with some exceptions) is a facility through which a person makes a financial investment, manages a financial risk, and most relevantly for PSPs, makes a non-cash payment.<sup>4</sup>

### Non-cash payment facilities

A person makes a non-cash payment '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'.<sup>5</sup> This concept only captures certain functions and services involved in a payments chain. The *Corporations Act* and *Corporations Regulations 2001* (Cth) (*Corporations Regulations*), as well as various Australian Securities and Investments Commission (ASIC) instruments, provide exclusions from the definition of a financial product or a non-cash payment facility and exemptions from AFSL requirements for some non-cash payment facilities (see **Appendix 3**).<sup>6</sup>

The lack of clarity around the scope of the existing regulatory perimeter means only some PSPs have an AFSL, and two businesses providing functionally equivalent payment services to customers may not be regulated consistently. For example, certain electronic funds transfers that do not involve a standing arrangement are exempt from being a financial product.<sup>7</sup> Some remittance service providers rely on this exemption, while others hold an AFSL. This means that two customers using the same type of service may have different protections, such as the ability to take a dispute to the Australian Financial Complaints Authority (AFCA).

In addition to uncertainties about the scope of the regulatory perimeter for non-cash payment facilities, stakeholders have also reported a lack of clarity about the application of some exemptions and exclusions.<sup>8</sup> For example:

- Facilities that are established under agreements between payees and service providers that enable the receipt of payments (e.g. merchant acquiring arrangements) may not be facilities for 'making' payments and therefore may not be licensed (although these facilities may incidentally also enable the merchants' customers to initiate the payment to the merchant).
- The scope of the exclusion for 'single payee' facilities is unclear and has been relied on by service providers such as direct debit agencies that set up individual facilities with a payer

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<sup>3</sup> Financial Services Reform Bill 2001 (Cth).

<sup>4</sup> *Corporations Act* s 763A.

<sup>5</sup> *Corporations Act* s 763D.

<sup>6</sup> In this context, 'exclusions' are when particular activities, products or categories of products are carved out of the definition, whereas 'exemptions' are when an entity providing a particular activity, product or categories of product is not obliged to comply with an obligation.

<sup>7</sup> *Corporations Regulations* reg 7.1.07G.

<sup>8</sup> Treasury, [Payments system review](#), Treasury, June 2021, p 25.

customer under which the payer will only pay one person. It is possible for customers to have multiple facilities that collectively enable payment to multiple persons yet still potentially fit within the exclusion.

- The scope of the exclusion for certain electronic funds transfer facilities is unclear, which has resulted in significant uncertainty for remittance service providers about their regulatory obligations and an uneven playing field for those service providers.

### Stored-value Facilities (SVFs)

Facilities that allow a holder of stored value to make a payment to another person on behalf of the user of the facility (i.e. SVFs) are currently regulated as purchased payment facilities (PPFs) under the *Payment Systems (Regulation) Act 1998* (Cth) (*PSRA*). Currently, regulatory oversight of PPF providers is split between ASIC, the Australian Prudential Regulation Authority (APRA), and the Reserve Bank of Australia (RBA).

APRA authorises large PPFs whose facilities are widely available and accepted as a means of payment and are redeemable for Australian currency on demand by the user. PPF providers currently form a special class of authorised deposit-taking institution (ADI) that is licensed to undertake a limited range of banking activities. The Council of Financial Regulators (CFR) recommended changes in 2019 to how SVFs are regulated, including reducing the number of responsible regulators and simplifying requirements commensurate with risks to customers and the payments system.<sup>9</sup>

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<sup>9</sup> Council of Financial Regulators (CFR), [Regulation of Stored-value Facilities in Australia: Conclusions of a Review by the CFR](#), CFR, 2020.



## Holistic reform of the regulatory framework

The Government is also concurrently updating the *PSRA* to ensure regulators and Government can address issues during times of stability, as well as in crisis. Together, the payments licensing and *PSRA* reforms will ensure the payments regulatory framework is fit for purpose now and into the future:

- **The payments licensing framework will regulate the broad and diverse population of PSPs involved in a payments value chain based on the specific payment function(s) that they perform.** The licensing framework will impose graduated regulatory obligations based on the different types of risks associated with performing each payment function. In addition, the licensing framework will set a clear baseline for consumer protection in the payments system and promote competition by making it easier for PSPs to obtain direct access to Australian payment systems. PSPs will also have to comply with core technical standards set by authorised industry standard-setting bodies. These standards will promote interoperability, security and accessibility. Mandating the standards is necessary to ensure consistency and a level playing field for PSPs.
- **The regulatory powers under the *PSRA* recognise that specific regulatory intervention may be warranted to address issues that arise in the payments ecosystem.** The *PSRA*, and the RBA's ability to regulate payment systems and participants in those systems, is not a licensing regime. The changes to the *PSRA* will allow the RBA to take regulatory action to address specific public interest concerns related to the competitiveness, efficiency, and safety of the payments system. Payment system participants as defined in the *PSRA* will encompass a broader range of entities than those PSPs subject to the payments licensing regime, also including, for example, operators of payment schemes or entities providing services to a payment system.

## 2. List of payment functions

This section seeks to establish the regulatory perimeter of the payments licensing reforms by proposing seven defined payment functions.

Lessons and insights from regulatory developments in other jurisdictions including the European Union (EU), United Kingdom (UK), Singapore and Canada have been considered in developing the proposed payment functions. More detail on these regulatory frameworks is provided in **Appendix 5**.

Understanding the risks associated with performing each payment function will help determine the appropriate level of regulation of those functions. **Table 1** below sets out the list of proposed payment functions for consultation. The precise wording and description of the payment functions will be considered as part of the legislative process.

PSPs may perform several functions across the proposed list of payment functions. PSPs performing several functions would only need one AFSL, which would specify the payment functions they are authorised to perform.

### Principles underlying the list of payment functions

The Payments System Review articulated several principles to drive the development of a list of payment functions requiring regulation. These were:

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

#### Consultation question

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

We are in complete agreement with the 4 underlying principles identified in the Payments System Review, we would propose an amendment to the following two points and add a few additional points:

Point number 2 (Targeting regulation to the risk posed), to also include “Targeting regulation to the risk posed *and professional services provided*: A functional approach assists with targeting regulation to appropriately address the differing levels of risk posed by payment services *and associated with the professional services being provided*.”

Point number 3 (Ensuring the list can change and adapt) to also include “Ensuring the list can change and adapt: The list should be able to change to ensure it remains fit for purpose as technological advancements gather pace *and global economic policies evolve*.”

Additional principles:

- A. Security and Risk Management: Establishing measures to protect the security and integrity of payment systems via security protocols and risk management frameworks.
- B. Innovation and Competition: Encouraging innovation and competition in the payment industry while ensuring that new technologies and business models do not compromise consumer protection or system stability.
- C. Providing Supervision and Enforcement: establishing a regulatory framework that includes supervision, monitoring and enforcement capabilities to ensure compliance for varied forms of payment services.

We have considered the general purpose of regulating payment services in Australia, which is chiefly to keep up with the changing payment systems landscape with the emergence of FinTech. However, it is our view that the regulatory oversight was to capture the kind of services contemplated within the business of payment services for clients in the context of delivery human resources & payroll. We are seeking clarification through this consultation.

**Table 1. List of Payment Functions**

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

<sup>10</sup> PSPs storing value for up to two business days are proposed to instead be regulated as payment facilitation services.

<sup>11</sup> Entities who are already prudentially supervised as ADIs would not have to meet major SVF requirements. However, ADIs would need to meet the general requirements for PSPs, including complying with mandated and revised ePayments Code obligations.

## Incorporating payments functions into law

There are different ways to incorporate the proposed payments functions list into the existing law:

1. **The list of payment functions could replace the existing concept of a facility through which a person makes non-cash payments.** This approach would be broadly consistent with functions-based approaches overseas. Under this option, arrangements under which payment functions are provided are financial products, and persons who deal in or advise on those arrangements would generally require an AFSL.
2. **Add the payment functions list as a non-exhaustive list of inclusions to a new definition of ‘payment services’, replacing the non-cash payments concept.** This option may provide greater capacity to capture payment services not specifically included in the list, but could provide less regulatory certainty for PSPs.
3. **Regulate SVFs as a type of financial product, replacing the concept of non-cash payment facility, and regulate payment facilitation services (PFSs) as a financial service.** This may better reflect that SVFs provide the customer with a product, for example an account, whereas PFSs typically do not.

It is anticipated that the proposed reforms will mean certain existing requirements in the corporations legislation, such as licensing, disclosure requirements, the design and distribution obligations, and the hawking prohibition, could extend to entities who may currently not be subject to these requirements. Feedback is sought on whether any of these requirements ought to be ‘switched off’ for particular functions or activities. For example, it is unlikely to be appropriate for many of these requirements to apply to payment functions that are not consumer facing (such as payments clearing and settlement). In contrast, it may be appropriate for all payments licensees to meet the general obligations that apply to AFSL holders.

### Consultation questions

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

In our view, the list of payment functions is sufficiently comprehensive. Other payment functions not included under the two types listed (i.e. stored-value facility and payment facilitation services), can be clearly exempted. We assume that all cash handled is fiat currency and there is no handling of cryptocurrencies, e-money or digital payment tokens. The list should be exhaustive and not inclusive.

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

It is our view that payment functions should be treated as financial services integral to the carrying out of a business of providing payment services.

## 3. Description of each payment function

### Stored-value facilities (SVFs)

An SVF is a facility that can store value and be used as a means of making payments for goods and services or transferred to another person. A traditional SVF issuer makes payments, usually on behalf of the customer, up to the amount of stored value that is available for use under the conditions applying to the facility.

Credit facilities that store value are not included in this function because SVFs are concerned with customers' own money that they have transferred as opposed to credit. The SVF function does not include facilities that store value but cannot be used as a payment, for example, debentures or interests in managed investment schemes.

The regulatory framework proposed for SVFs is based on the recommendations of the CFR's report on the *Regulation of Stored-value Facilities in Australia* and the Productivity Commission's report on *Competition in the Australian Financial System*.<sup>12,13</sup> The recommendations of these reports are aimed at modernising the regulatory arrangements for SVFs, recognising the potential for such facilities to play a more prominent role in the payments system. The CFR's recommendations also explicitly sought to simplify the existing regulatory framework in a way that would be conducive to innovation, while providing appropriate consumer protections. This is consistent with the recommendations in the Payments System Review.

The proposed SVF regulatory framework will replace the existing PPF regulatory framework. Within this category, two payment functions are proposed: (1) issuance of payment accounts or facilities ('traditional SVFs'); and (2) issuance of payment stablecoins ('payment stablecoin SVFs'). In addition, a two-tier regulatory approach is proposed for SVFs, with standard SVFs to be regulated by ASIC and major SVFs to be regulated by ASIC and APRA. See **Section 7** for further detail on proposed regulatory obligations for standard and major SVFs.

#### Issuance of payment accounts or facilities that allow money to be stored ('traditional SVFs')

This payment function is intended to capture payment accounts, facilities or instruments that store funds to be used to make payments. Pre-paid cards and some digital wallets are examples of products that store value to make payments.

This payment function is intended to capture facilities offering stored value functionality to provide assurance to customers that their funds are adequately protected. Protection can be ensured by requiring these facilities to comply with certain prudential standards determined by APRA or by requiring providers to hold funds in a trust account with an ADI for the benefit of the customer. The latter would prohibit the customer's funds from being co-mingled with the provider's own funds or working capital. It is not proposed to extend the Financial Claims Scheme (FCS)<sup>14</sup> to cover SVFs as the level of prudential regulation for SVFs would not be as strong as that of an ADI.

This payment function is not intended to capture services that store crypto assets, other than payment stablecoins which will be regulated as a separate function (see section below). The regulation of these services is being considered as part of the Government's crypto asset reforms which will look

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<sup>12</sup> CFR, *Regulation of Stored-value Facilities in Australia: Conclusions of a Review by the CFR*, CFR, 2020.

<sup>13</sup> Productivity Commission (PC), *Competition in the Australian Financial System Final Report*, PC, 2018.

<sup>14</sup> The FCS is an Australian Government scheme that provides protection to ADI deposit-holders, and general insurance policyholders and claimants, in the unlikely event that one of these financial institutions fails. The FCS is a government-backed safety net for deposits of up to \$250,000 per account holder per ADI.

at licencing and custody obligations for crypto asset service providers, as well as additional consumer safeguards.<sup>15</sup>

The payments regulatory frameworks of the EU, UK, Singapore and Canada specifically capture and regulate payment services that perform the SVF payment function.

### Issuance of payment stablecoins ('payment stablecoin SVFs')

A separate payment function is proposed for issuers of payment stablecoins under the SVF category. Payment stablecoins are viewed differently to traditional SVFs as they typically do not involve an underlying account being provided by the issuer to the customer for the purposes of making payments. Payment stablecoins can therefore be used without the direct involvement of the issuer. Payment stablecoins are considered to be a bearer instrument and can be transferred on a peer-to-peer basis.

Payment stablecoins offer certain features which makes them functionally similar to fiat currency held in traditional SVFs and bank deposit accounts. These features 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.

A payment stablecoin is:

- 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* ('*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,<sup>16</sup> at face value through a claim provided by an *issuer* to a customer.<sup>17</sup>

A payment stablecoin issuer is an entity that controls the total supply of payment stablecoins through issuance and redemption. The issuer is also the entity that is responsible for the stability mechanism which maintains the value of the payment stablecoin and is usually the counterparty to the contractual arrangement for redemption with the customer.

The definition of a payment stablecoin proposed above is intended to only capture stablecoins that aim to maintain a stable value with reference to a fiat currency. Regulation will seek to ensure that these stablecoins would be required to meet certain standards with respect to stability and redemption.

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<sup>15</sup> The Hon Dr Jim Chalmers MP Treasurer, [Work underway on crypto asset reforms](#) [media release], Ministers Treasury Portfolio, 22 August 2022.

<sup>16</sup> For clarity, this is intended to confine the regulatory perimeter of ASIC to **only** cover payment stablecoins that are actively marketed or sold in Australia.

<sup>17</sup> Currently, the promise of redeemability is typically made as part of an agreement between the issuer and customers. Not all holders of a payment stablecoin will be customers of the *issuer* (or entitled to be customers). Therefore, not all holders are entitled to redeem directly through the *issuer* but rely on 'redemption' through a secondary exchange. This process involves the holder selling the payment stablecoin in exchange for money.

It is **not intended** to capture stablecoins collateralised by other crypto assets, stabilised via other crypto assets (i.e. via algorithmically driven processes related to other crypto assets), or redeemable for commodities such as gold or another deliverable asset that is not an Australian or foreign currency. The rationale for not regulating these stablecoins as SVFs is that they are less likely to maintain a sufficiently stable value compared to a payment stablecoin which will be fully backed by cash or cash-equivalent reserves, thus making them less useful for payments or as stored value.

Stablecoin arrangements that do not meet the above definition of payment stablecoins may involve a different form of financial product that is regulated under the financial services regime – such as a financial product under the general definition (i.e. a facility for managing a financial risk or making a financial investment), debenture, derivative or interest in a managed investment scheme. Accordingly, it is anticipated that most issuers of stablecoins that are available in Australia will require an AFSL and be subject to regulatory requirements that are appropriate to the functionality of the product that is offered.

### Proposal to regulate payment stablecoins under the SVF category

The rationale for regulating issuers of payment stablecoins as a type of SVF is that the activity undertaken is similar to that of a traditional SVF – users transfer funds in return for stored value which can then be used to settle transactions or transferred to another person. Furthermore, stablecoins linked to a single fiat currency whose value is supported by an appropriate stability mechanism have the potential to be widely used as a means of payment and/or stored value.

The core risks posed by payment stablecoins are similar to traditional SVFs – in particular, the risk of losses due to failure of the *issuer* to meet their contractual obligations or promise to holders of the stablecoin (e.g. due to a failure to appropriately safeguard customer funds, illiquidity and/or insolvency). Besides these risks, stablecoin issuers are also exposed to operational risks, including IT risks, cyber-attacks, fraud and misconduct risk, and financial crime-related risks.

Similar to traditional SVFs, the regulation of payment stablecoin issuers will follow a two-tier approach, with standard payment stablecoin issuers to be regulated by ASIC and major payment stablecoin issuers to be regulated by ASIC and APRA. While the proposed size threshold for payment stablecoins regulation is yet to be determined, taking this approach will ensure the regulation remains commensurate with the risks posed by payment stablecoin issuers.

A key component of the stabilisation mechanism of a payment stablecoin is the ability of the issuer to meet the redemption requests of customers at par with the fiat currency to which it is linked (accounting for any fees as part of the transaction). An issuer of a payment stablecoin will be expected to meet the regulatory obligations of managing reserve assets in ways that will support stability of value.

It is proposed that payment stablecoin issuers be subject to similar obligations proposed for traditional SVF providers (including prudential and consumer protection obligations). It is likely that some obligations will need to be tailored to payment stablecoin issuers (e.g. the requirement to provide clear redemption rights to holders of payment stablecoins). These are not part of the scope of this consultation paper (which is focused on defining the payment functions) and will be covered in more detail through further consultation later in 2023.

Stablecoin arrangements often involve multiple entities playing different roles such as the issuers of stablecoins, operators of secondary exchanges on which stablecoins are traded and crypto asset custody providers. Work is commencing on identifying appropriate regulation of crypto asset service providers and exploring how to clarify the regulatory perimeter that applies to crypto assets and crypto service providers. Treasury has recently released the Token Mapping paper which will be used to understand the variety of crypto assets (including payment stablecoins) in the context of the



existing legal framework and will inform the development of a licensing and custody regulatory framework for crypto asset service providers.

PFSs in relation to payment stablecoins, such as an instrument for making a payment using payment stablecoins, are not proposed to be captured under the payments licensing framework.

#### Consultation questions

- 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?**  
We have no comments on this question as the concept of “payment stablecoins” is not relevant to our current business
- 5) **Does the proposed definition of ‘payment stablecoins’ adequately distinguish itself from other stablecoin arrangements?**  
We have no comments on this question.
- 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?**  
We have no comments on this question.

## Payment facilitation services (PFSs)

PFSs involve payments from a variety of sources, including those made from an SVF or a credit facility. Within this category, five payment functions are proposed.

### Issuance of payment instruments

This payment function is intended to capture issuers of payments instruments that are unique or personalised to a customer and can be used to make a transaction or provide instructions on their account or facility.

This payment function is intended to capture payment services such as the:

- Issuance of payment instruments (such as cheques and cards).
- Issuance of a set of procedures or credentials (such as a PIN, password, biometric data or customer consent process) to initiate a payment instruction.

For example, in a scenario where a digital wallet does not store value but is linked to a debit card issued by a third-party:

- The debit card is an issued payment instrument.
- The debit account that is linked to that debit card is covered by the SVF function.
- The digital wallet is covered by the payment facilitation function (which is discussed in more detail below) as it facilitates payments on behalf of the customer.

The payments regulatory frameworks of the EU, UK, and Singapore specifically capture and regulate entities that issue payment instruments.

### Payment initiation services

This payment function is intended to capture services that allow the instruction of a payment transaction at the request of the customer (payer or payee) through a payment account or facility held at another PSP, or from some other source of value or a credit facility.

This payment function is intended to capture payment services such as:

- Services that allow customers to request a payment transaction be initiated, such as services that initiate payments, including recurring payments.
- Other third-party payment initiation services, including those that may be established by the Consumer Data Right (CDR) in the future.

The payments regulatory frameworks of the EU and UK regulate ‘payment initiation services’.<sup>18</sup> Similarly, Canada’s functions include ‘initiation of an ‘electronic funds transfer’ at the request of an end user’.<sup>19</sup>

### Payment initiation under the Consumer Data Right

The Government has introduced legislation into the Parliament to extend the CDR to action initiation, which would enable consumers to instruct accredited third parties to initiate actions, such as payments, on their behalf. 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.

Where the CDR framework interacts with the payments system, the Government will work to align regulatory requirements with the payments licence where appropriate and reduce regulatory duplication where possible. Any changes to the CDR framework will be subject to public consultation.

### Payment facilitation, authentication, authorisation and processing services

This payment function seeks to capture services that enable payment instructions to be transferred (facilitation), provide the verification of credentials (authentication), payment authorisation, and/or the processing or transmission of payment instructions. This includes services that facilitate the transfer of funds to enable the payment or receipt of payment by way of:

- direct debits, including one-off direct debits
- payment transactions through a payment instrument
- credit transfers, including standing orders
- payment transactions where the funds are covered by a credit line.

This payment function is intended to capture PSPs such as:

- Pass-through digital wallets: services that enable payment instructions to be transferred (facilitated).
- Card issuers: who issue cards to customers and provide verification and authorisation of a transaction.

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<sup>18</sup> Payment initiation is defined in the UK as ‘an online service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider’, Financial Conduct Authority (FCA), [Regulatory Guides: The Perimeter Guidance Manual, 15.3 Payment services](#), FCA, 2001.

<sup>19</sup> *Retail Payment Activities Act 2021* (Canada) s 2.

- Merchant acquirers: who authenticate, process and then transfer the purchase amount to the merchant.
- Payment gateways: services that read, encrypt and securely transfer payment data at the point of sale and verify that a charge has been approved by the customer's bank.
- Payment processors: services that relay the transaction details to and from the customer's payment instrument-issuer bank and the merchant's acquirer.
- Payment routing: services that offer the merchant options to route payments through different payment networks.

### Payments clearing and settlement services

This function is intended to capture entities performing direct clearing and settlement of financial obligations between financial institutions arising from the processing of customer transactions within a payment system. These services are essential to the accurate and timely transfer of funds from payer to payee customers.

This payment function is intended to capture PSPs such as:

- Clearing services involving the transmitting, reconciling and confirming of information between direct participants in a payment system about financial obligations to be settled between the participants.
- Settlement services involving the actual exchange of funds to extinguish obligations agreed during the clearing process with other direct payment system participants.

The payments regulatory framework in Canada specifically captures and regulates entities that provide clearing and settlement services.

### Money transfer services

This payment function captures services that send or receive money overseas or within Australia for a customer. This is intended to capture remittance service providers.

Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's primary regulator of remittance service providers, however such regulation is targeted to anti-money laundering and counter-terrorism financing (AML/CTF) measures. The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (*AML/CTF Act*) definition of 'designated remittance arrangement' is broader than the proposed 'money transfer service' and some AUSTRAC-regulated remittance service providers may provide services that fall under other proposed categories of SVF or PSP services. AUSTRAC regulation does not extend to consumer protection, conduct, prudential or competition regulation. AUSTRAC regulation implements the recommendations of the global inter-government body responsible for setting the AML/CTF standards, the Financial Action Task Force (FATF).<sup>20</sup>

Remittance or money transfer businesses perform a crucial role in financial inclusion by offering services to countries that have limited financial sectors. However, they have also been identified globally as potentially being exposed to higher money laundering and terrorism financing (ML/TF) risk. These risks include the use of cash and offsetting that supports money laundering typologies and these services involve transferring funds to higher risk jurisdictions.

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<sup>20</sup> FATF, [The FATF Recommendations](#), 2012, p 17.

To mitigate and manage ML/TF risk, the registration of remittance service providers under Australia's AML/CTF regime is focused on ensuring that the entity and key personnel are free from criminal influence or exploitation and the operators have the technical capacity to meet AML/CTF compliance and reporting obligations. AUSTRAC registers remittance service providers as one or more of the following: remittance network providers, affiliates of a remittance network provider, and an independent remittance dealer. This payment function would capture these payment services if they are sending or receiving money overseas or in Australia for a customer. Remittance dealers would have the option of becoming an authorised representative of a licensee (as would other PSPs), rather than holding a licence directly. This may be particularly attractive to smaller remittance service providers.

The payments regulatory frameworks of the EU, UK, Singapore and Canada specifically capture and regulate entities that perform money transfers.<sup>21</sup>

#### Consultation questions

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?**

Notwithstanding our comments to question 2, it is our view that there are other payment services offered in Australia.

We specifically would like to bring your attention to the professional outsourcing services industry (the "Industry"), more particularly the payroll outsourcing service providers (the "POSP"), in connection with the Human Resources and Payroll Outsourcing Services (HRP services). We would like to take this opportunity to provide The Treasury with a brief description of what HRP services entail:

- A. Generally, provision of HRP Services involves POSPs providing assistance to clients who wish to outsource their payroll functions to an external provider for operational efficiency and/or confidentiality reasons.
- B. Clients who have subscribed to the HRP Services may, for an additional nominal fee, have POSPs assist in making salary disbursements to its employees and payments to statutory authorities (such clients who subscribe to the HRP Services, the "Payroll Clients").
- C. POSPs would review the Payroll Client's payroll file and prepare and submit a fund request to the Payroll Client for their approval. The Payroll Client would transfer the necessary funds for disbursement from their bank account to a POSP bank account which has a sub-account that is set up for that particular Payroll Client.
- D. POSPs would generate the payment file in accordance with the relevant bank format for internal checks and approval. After the payment file has been successfully verified and authorised, POSPs will execute the payment file, and the funds from the sub-account will be disbursed to the Payroll Client's employees in accordance with the payment file.

Given the above points which relate to the core of HRP services carried out by POSPs, there is the element of domestic money transfers ie POSPs accepting money for the purpose of executing, or arranging for the execution of payment transactions between a payee and payor where neither the payee nor the payor is a financial institution.

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<sup>21</sup> In the EU and UK, 'money remittance services' are regulated under each jurisdiction's respective payments regulatory frameworks. In Singapore, 'cross-border money transfer services' is a regulated payment service.

In addition, the business currently carried out by POSPs involves payment for goods or services where the payment is funded from an identifiable source. It is our opinion that such HRP services should be exempt from being regulated under a payments licensing regime, and/or considered low-risk based on the principle of a risk-based approach. POSPs should therefore not be required to hold an AFSL

HRP Services' value proposition is to provide administrative outsourcing assistance for the Payroll Client's non-core business activities such as human resources and payroll functions. HRP Services primarily deal with the administrative aspect of calculating accurate payroll requirements (e.g. superannuation, allowances, leave loading, commission, etc.), preparation and/or distribution of payslips and preparation of bank files to facilitate timely payments to the employees and the corresponding statutory authorities.

For the sake of administrative ease and operational efficiency, some (but not all) Payroll Clients prefer to transfer payroll funds to POSPs' designated trust accounts for POSPs' disbursements after the necessary checks, verifications and authorisations. However, such disbursement activities are purely incidental to POSPs core business of HR payroll data processing and would not have been offered on a stand-alone basis. It is this incidental fund disbursement that seems to fall under the Payment Initiation Services, thus resulting in HRP Services falling under the ambit of the regulatory oversight and licensing requirement.

Given the above, we strongly believe that it was not the regulatory framework's intent for the regulation under a payments licensing regime to apply to POSPs (in relation to the requirement of holding an AFSL)

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

Based on our response to question 7, we believe it is necessary for separate functions to be broken down in order to better apply the four principles underlying the list of payment functions. Each function should be tested against the principles for robustness in application.

9) **Should any other payment functions be included?<sup>22</sup>**

It is our view that the definition of the Payment Initiation Services under the Payment Facilitation Services should be further clarified to exclude HRP Services, as described in our response to question 7.

Additional Comment - Financial Services Reform Act 2001 (FSR Act)

We note that 'non-cash payments' were included as a financial product under the Corporations Act by the introduction of the Financial Services Reform Act 2001 (FSR Act) referenced at the beginning of this consultative paper and introduced for the purposes of, inter alia, the reduction of systematic risk. The explanatory memorandum to the FSR Act contained a list of examples of non-cash payments however, as technology and business models have evolved, there is now a wider range of services that may fall into the category of non-cash payment service – many of which were not contemplated when the FSR Act was introduced, and some which may not neatly fall within the definition.

The aim of the FSR Act, as stated in the Explanatory Memorandum to the FSR Act was, among other things, to 'facilitated innovation and promote business, while at the same time ensuring adequate levels of consumer protection.'

There is no consumer detriment or harm in the service offered by TMF, as HRP services are administered in strict accordance with TMF's Payment Standard Operation Procedures (SOP). TMF can provide a copy of this SOP to Treasury if required. Compliance with SOP ensures that payroll data is processed in a

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<sup>22</sup> For example, the EU is reviewing whether certain services ought to be added to their list of payment services, see EC, [Targeted Consultation on the Review of the Revised Payment Services Directive \(PSD2\)](#), EC, pp 18-19.

manner that is timely, complete and accurate. All payments are subject to a tiered approval process as an extra safeguard, meaning that there are multiple levels of approval before any payments are made. Further, stored client and employee data is subject to TMF's robust cyber-security controls. These controls sufficiently protect sensitive information from unauthorised third-party access.

For these reasons while TMF does not have an AFSL, there has been no harm to any client or consumer, and in providing these services, TMF has contributed to the innovation in the payments industry

## 4. Excluded and exempted activities

A key part of designing the new payments licensing framework involves considering proportionality, whilst ensuring consistent regulation of payment services. As part of these reforms, the Government is considering whether:

- **existing legislative provisions** that exclude certain payment services from being a financial product, or from the requirement to obtain an AFSL, ought to be removed, modernised, or replaced with principles-based exclusions; and
- **new legislative provisions** are required to exempt or exclude certain payment services.

In determining the above issues, the Government will take into account whether the risk posed by a service is minimal and whether regulation would be unnecessary or disproportionately burdensome. The Government will also consider the approaches of other jurisdictions.

It is proposed that existing exclusions and exemptions in the *Corporations Act* or *Corporations Regulations* (see **Appendix 3**) be retained, except for the exclusions and exemptions discussed below. In addition, it is proposed that the existing relief for low-value and limited-purpose facilities be maintained (see further discussion below).

### Exclusions and exemptions proposed to be removed or amended

It is proposed that the following existing exclusions and exemptions be removed or amended to ensure consistent regulation of payment services. Further exemptions or exclusions may be identified through consultation.

#### Exchange and settlement between non-cash payment providers

Currently, the definition of ‘financial product’ under the *Corporations Act* excludes facilities for the exchange and settlement of non-cash payments between providers of non-cash payment facilities.<sup>23</sup> This exclusion appears to be inconsistent with the proposed ‘payments clearing and settlement services’ function.

#### Certain electronic funds transfers

Currently, although some money transfer services and providers may need an AFSL, there is an exclusion in the *Corporations Regulations* that is relevant to remittance service providers with products that meet the following criteria:<sup>24</sup>

- the issuer is an operator of a payment system or an ADI (e.g. well-established and substantial remittance dealers);
- payment is made (i.e. money is available to the recipient) within two business days;
- the funds are transferred electronically; and
- there is no standing arrangement with the client under which funds may be transferred electronically.

This exclusion appears to be inconsistent with the proposed ‘money transfer services’ function.

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<sup>23</sup> *Corporations Act* s 765A(1)(k).

<sup>24</sup> *Corporations Regulations* reg 7.1.07G.

### Payments debited to a credit facility

Currently, non-cash payment facilities are not treated as financial products if payments made using the facility will all be debited to a credit facility, for example, payments made using a credit card.<sup>25</sup>

This exclusion may be inconsistent with the intention to cover providers of one or more of the proposed PFSs, such as payment initiation services.

### Unlicensed product issuers that use licensed intermediaries

The *Corporations Act* allows product issuers to issue financial products without a licence if the issuer relies on a licensed intermediary that it has authorised to make offers to arrange for the issue of the product.<sup>26</sup> Currently, some non-cash payment facility providers rely on this exemption.

Reliance on this exemption may be inconsistent with the intention to capture SVF providers and impose specific requirements to ensure customer funds are protected, and accordingly may need to be restricted for providers of these payment functions.

### Relief given to specified entities and non-cash payment facilities

ASIC has also provided individual exemptions that cover specified entities and non-cash payment facilities. It is anticipated that these exemptions may no longer apply if they are not consistent with the wider range of payment functions that are expected to be covered by the licensing regime.

## Moving existing carve-outs into primary law or regulations

The following payments services are not proposed to be captured as a regulated payment function based on the limited risks they present.

### Low-value payment facilities

ASIC has granted conditional relief to persons providing financial services in relation to low-value non-cash payment facilities.<sup>27</sup> The relief applies to low-value non-cash payment facilities that satisfy the following test:

- 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 \$1000 at any one time;
- 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
- the facility is not part of another financial product.

The justification for relief for low-value non-cash payment facilities is that they are generally simple, easy to use, well understood by retail customers, and that the costs of obtaining and complying with an AFSL are likely to be disproportionate to the income derived by the non-cash payment facility

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<sup>25</sup> *Corporations Act* s 765A(1)(h)(ii).

<sup>26</sup> *Corporations Act* s 911A(2)(b).

<sup>27</sup> ASIC *Corporations (Non-cash Payment Facilities) Instrument 2016/211*.



provider and the risk to any individual client.<sup>28</sup> The RBA has also issued an exemption for limited-value and limited-participant facilities from the *PSRA*.<sup>29</sup>

It is proposed that this ASIC conditional relief be moved into primary legislation or regulations to provide greater certainty to industry. The Government is considering whether changes to the terms of this relief ought to be made, including whether the monetary thresholds remain appropriate.

### Limited purpose facilities

ASIC has granted conditional relief for the following products where they constitute non-cash payment facilities and are not part of other financial products:<sup>30</sup>

- gift facilities (e.g. vouchers or cards)
- prepaid mobile phone accounts
- loyalty schemes
- electronic road toll devices.

The RBA has issued a similar exemption from the *PSRA* for these types of products.<sup>31</sup>

It is proposed that this ASIC conditional relief be moved into primary legislation or regulations to provide greater certainty to industry. Changes to the conditions of the relief may be made to ensure that only facilities that are for a genuinely limited purpose are exempt. For example, the relief for loyalty schemes and gift cards was provided on the basis that they are usually an incidental part of a business, are well understood by customers and the costs of compliance would likely be disproportionate to any risks to customers. This justification would be less applicable to issuers of open-loop gift cards and open-loop loyalty schemes.<sup>32</sup>

### Proposed exclusions for cash

Payments executed wholly in cash are currently excluded from the definition of non-cash payment. It is proposed that an exclusion be added to the list of payment functions for payments made in cash, given that cash payments do not present the same risks for customers as other payment types. Similarly, it is proposed that an exclusion be provided for the physical transport of cash and coins.

#### Consultation questions

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

No, the proposed reliefs should remain in order to “exempt” transactions that carry insignificant risks. Removing the Relief given to specified entities and non-cash payment facilities may inadvertently prohibit POSPs from applying for exemptions towards HRP services that should not fall under the regulatory payment licensing regime.

<sup>28</sup> ASIC, *Regulatory Guide 185: Non-cash payment facilities*, ASIC, 2005, p 10.

<sup>29</sup> RBA, *Declaration No. 2, 2006 regarding Purchased Payment Facilities*, 2006.

<sup>30</sup> For more details see ASIC, *Regulatory Guide 185: Non-cash payment facilities*, ASIC, 2005.

<sup>31</sup> RBA, *Declaration No 1, 2006 regarding Purchased Payment Facilities*, 2006.

<sup>32</sup> Closed-loop gift cards are accepted or honoured at a single retailer, whereas open-loop cards typically use a payment system and can be used at a wide variety of retailers.

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 have no comments on this question.

12) **Should the incidental product exclusion apply to the proposed list of payment functions?<sup>33</sup>**

We have no comments on this question.

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?<sup>34</sup>**

We have no comments on this question.

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?**

We have no comments on this question.

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

It is our view that HRP services should be exempt from being regulated under a payments licensing regime, and/or considered low-risk based on the principle of a risk-based approach.

Further, we note above on page 20 of this consultation paper that there has been no consumer harm in the provision of this services and since TMF is providing a service that both benefits business model of POSPs is well understood by customers and customers are aware of our high standards and is demonstrative of KYC and AML/CFT measures across all business innovation, any alternative regulatory action would be inappropriate in the circumstances.

TMF considers that there may be room for doubt as to whether it is required to be licensed to conduct HRP services

This is because:

- it is unlikely that the Australian Parliament intended for HRP Services to be regulated as a financial product (i.e. non-cash payment flows facility) under the Corporations Act – this type of product would not necessarily have been contemplated as technology and payment services have evolved considerably since the law was introduced; all payments are initiated by the business client itself (and not consumers) and will only ever be directed to a consumer’s nominated account (noting that the vast majority of the time, consumers will not change these account details and in any event, these details are routinely checked by TMF and therefore, the risk of consumer detriment is limited)
- the HRP are relatively simple and easy to use – it simply allows an employer to outsource payment of its employees’ salaries and given the limited accounts being used, the risk of consumer detriment is extremely low; while payments may be directed by TMF, the actual transfer of funds occurs through external (and licensed) banking providers – it is an administrative service only; the service is not dissimilar to a real estate agent who manages rental payments on behalf of landlords;
- the payments do not ‘manage a financial risk.’

With the above being the case, it was not immediately apparent to TMF that we required a licence to offer the HRP services. TMF’s lack of apparent compliance was due to inadvertence, and not negligence or a wilful disregard for the law.

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<sup>33</sup> *Corporations Act* s 763E.

<sup>34</sup> See, for example, *Payment Services Regulations 2017* (UK), sch 1, pt 2, s 2(k).

Notwithstanding the present uncertainties, TMF has taken proactive steps to ameliorate the issue at hand, including:

- making the business decision to no longer continue the use of the trust account for all aspects of the business, including for new and existing clients
- making the decision to close the trust account at the earliest opportunity, and no later than 31 December 2023; and
- approaching ASIC proactively about this matter.

TMF has no history of non-compliance and any incidents would arise from business expansion.

TMF remains fully committed to running a compliant business in Australia in all respects.

## 5. Characterising the risk of each payment function

This section discusses the risks associated with each payment function and how risks in the payment system may impact individual consumers, businesses, and the financial system at large.

PSPs present different levels and types of risk to customers, other payment participants and the financial system. Feedback is sought on the risks associated with each payment function. The purpose of identifying the risks PSPs present is to inform consideration of the obligations that could apply under the payments licence.

The risks posed by specific payment functions are grouped below, within three broad categories (financial, operational and misconduct risks), with these risks impacting on two stakeholder groups (the financial system, and individual consumers and businesses).

PSPs are already subject to various regulatory frameworks designed to mitigate certain risks. Accordingly, not all risks that a PSP presents will be addressed by the proposed payments licensing framework if it would result in duplication of existing regulatory obligations, or if it is more appropriately addressed elsewhere. For example, risks like data security, irresponsible lending, and money laundering and terrorism financing are addressed through privacy laws, credit laws, and AML/CTF laws respectively. In addition, system-wide risks to the payments system may be addressed through the *PSRA*. Some risks may be more appropriately addressed by other regulatory reforms, such as the work underway on the development of a licensing and custody regulatory framework for crypto asset service providers. Furthermore, some activities may not pose a sufficient risk to warrant regulation under the payments licensing regime.

### Categories of risk

#### Financial risks (solvency and liquidity)

Financial risks include those related to solvency and liquidity. Solvency risk is the likelihood that an institution cannot fully meet its debts as they come due, even by selling all of its assets. Liquidity risk is the likelihood that an institution does not have sufficient readily accessible assets to meet its current liabilities. The consequences of financial risks are that customers lose their funds stored with the respective institution or are not able to access their funds as agreed under the arrangement.

Financial risks can also lead to settlement risk. This is the risk that participants in the transaction will not be paid for an outstanding claim. These participants include the counterparties themselves, the issuer of the settlement medium, and any intermediaries involved in the transaction.

#### Operational risks

Operational risks include factors such as technical malfunctions, operational mistakes or cyber risks that could cause or exacerbate the risk that non-cash payments are not completed.

These risks are often interlinked with other risk types. For example, 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. Operational risk can also lead to settlement risk.

## Misconduct risks

Misconduct risks cover losses arising from the inappropriate supply of financial services, including cases of wilful or negligent misconduct. This risk may be caused by an imbalance of power, information and resources between an institution and its customers, which places the latter at a disadvantage. Misconduct risks also include the risk that service providers are facilitating or turning a blind eye to misuse of financial services for financial crime, and/or have inadequate controls or processes in place to identify such activity.

The ways in which misconduct risk can manifest are vast and include mis-selling products, raising barriers to switching financial products, and processing customer complaints in an unfair manner, or colluding with criminals when providing services.

## Stakeholders impacted by risks

Two stakeholder groups are impacted by risks in the payment system, each in different ways: individual consumers and businesses, and the financial system as a whole.

### Individual consumers and businesses

Customers should be able to understand the products and services they are offered, to use them as intended, and to have recourse in case something does not work as intended. Impacts on customers can include direct loss of money or compromise of sensitive customer data, the cost of redress (in terms of money and time), or the opportunity cost of using a second-choice alternative, such as cash.

A key feature of this group of stakeholders is that it is difficult for consumers and businesses to determine the safety of the payment systems they rely on, partly as a consequence of the technology and business models involved in the facilitation of payments being complex.

In most cases, consumers and businesses do not have information readily available to reliably assess all the risks associated with a particular payment service or PSP. This information asymmetry can lead to consumers and businesses being vulnerable to financial losses arising from fraud and scams, privacy breaches, and insolvency of, or misconduct by, the PSP.

### The financial system (system-wide)

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

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

Systemic risk can also arise from entities being so deeply ingrained in the payment system, either by virtue of their size, interconnectedness or role in the payment system, that their failure has broader financial stability implications.

## Consultation question

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

- A. It is our view that one of objectives of the regulatory payments licensing regime is to ensure PSPs conduct their operations and business activities in conformity with high ethical standards and assisting law enforcement authorities in guarding against Money-Laundering and Terrorism Financing (“ML/TF”).

Most POSPs such as TMF would have in effect ML/TF compliance policies and know your client (KYC) processes that reflect the generally accepted industry standards. These include but are not limited to:

- (i) Processes to collect and verify information relating to potential client(s) and/or client(s), the nature of its business, the ultimate beneficial owner(s), the origins of the funds used within the relevant structure of which they are part, and more generally any other information which POSPs are or may be required by applicable law(s) to collect, update or may be required to maintain for the KYC files.
- (ii) Background checks against databases containing information about criminals, terrorists and politically exposed persons where further investigations are done through publicly available sources. Criminals and terrorists would be immediately declined as Payroll Clients, while other persons may require further investigation.

#### B. Payment Initiation Services with low risk product features

As it relates to POSPs such as TMF, Funds for the purpose of salary disbursement would be transferred from Payroll Clients to POSPs into designated trust account maintained by POSPs with safeguarding institutions i.e. regulated financial institution (that may be incorporated or established in or outside Australia) compliant with standards set by the FATF and is subject to, and supervised by an authority (including the AUSTRAC) for ML/TF requirements. This serves as the main line of defence against ML/TF risk.

The purpose of payment initiation services provided by POSPs such as TMF can be reliably determined (being payment of salaries including statutory payroll deductions). POSPs generate a payroll file which will be submitted to the Payroll Client for confirmation as part of the transfer and approval of funds for distribution. The payroll file which is relied upon by POSPs to facilitate payments of salary to the relevant Payroll Client’s employees serves as confirmation to POSPs by the Payroll Client that the employees in that file are indeed employed and are entitled to receive a salary for carrying out their duties in the course of employment.

## Risks associated with each payment function

The key risks associated with performing each of the proposed payment functions appear to be:

- **Issuance of payment accounts, facilities, or instruments that allow value to be stored:** financial and operational risks, reflecting the expectation that customers should be protected in such a way that the insolvency or liquidity issues of these PSPs does not result in losses for their customers. Misconduct risk can also affect customers, such as mis-selling of a payment facility.
- **Issuance of payment instruments, payment initiation services, and money transfer services:** operational risks, including failures that result in a customer suffering a loss of funds for a transaction they did not authorise, or being unable to use their payment instrument to make a payment (e.g. if a card issuer is unable to authorise transactions) or being unable to recover a

payment their financial institution mistakenly sent to the wrong recipient. There are also risks associated with potential compromise of customer data. Misconduct risks can also affect customers, for example, if a service engages in misleading or deceptive conduct such as misrepresenting the cost of using their service.

- **Payment facilitation, authentication, authorisation and processing services:** operational risks, as an outage or compromise in one of these functions can have cascading impacts on entities relying on these services.
- **Payments clearing and settlement:** financial and operational risks, such as a direct payment system participant being unable to clear or settle due to operational problems or because of insufficient settlement funds.

#### Consultation questions

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

18) We have no comments on this question.

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

Based on our feedback to our response to question 7, it is our view that the payments licensing framework should not apply to POSPs providing HRP services that currently tends to fall under Payment Initiation services, and that such POSPs be exempted from holding an AFSL licence.

## 6. International regulatory frameworks

A number of jurisdictions including the EU, UK, Singapore and Canada have implemented functional definitions of payment services as part of their payments system regulatory frameworks. While there are a number of similar objectives in these frameworks to the Government's proposed regime, jurisdictions have taken differing approaches to defining and regulating payment services. For example, Canada has a very high-level list of payment functions, whereas the EU has a much more detailed list of functions. **Appendix 5** provides a list of payment services defined under each jurisdiction's framework.

The EU is currently reviewing whether other services should be added to their list of payment services (e.g. digital wallet services, payment transactions using crypto assets, payment processing, operating payment systems, and Buy Now Pay Later services).<sup>35</sup> The UK is also reviewing its payment services regulations, including whether definitions and exclusions remain appropriate.<sup>36</sup>

The proposed list of payment functions in this consultation paper draws closely on the EU/UK list of payment services and their e-money institution authorisation framework. Differences between the proposed payment functions, and the EU/UK regulatory frameworks, are set out below.

### EU and UK regulatory frameworks

The EU has established comprehensive legal frameworks for payment services (the Revised Payment Services Directive)<sup>37</sup> and e-money issuance (the second E-Money Directive).<sup>38</sup> EU members are required to implement an authorisation regime for certain issuers of e-money (known as e-money institutions) who are not banks or building societies and implement conduct of business rules concerning the safeguarding and redemption of customers' funds for all e-money issuers.

The EU's Revised Payment Services Directive contains a defined list of payment services.<sup>39</sup> The UK's list of regulated payment services replicates the EU's list.<sup>40</sup> The UK's e-money laws also draw on the EU's framework.

Basing the proposed list of payment functions on EU/UK concepts has the following benefits:

- the EU and UK regulatory frameworks are well established and understood; and
- several PSPs operate in both Australia as well as the EU and UK and consistency in regulatory approach may assist these PSPs.

However, the payment functions for consultation in this paper are intentionally broader in scope than the EU/UK payment functions as they take into account more recent regulatory developments including Canada's new regulatory framework.

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<sup>35</sup> European Commission (EC), [Targeted Consultation on the Review of the Revised Payment Services Directive \(PSD2\)](#), EC, pp 18-19.

<sup>36</sup> HM Treasury, [Payment Services Regulations Review and Call for Evidence](#), UK Government, 2023.

<sup>37</sup> EU, [Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market](#), EU, 2015

<sup>38</sup> EU, [Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions](#), EU, 2009.

<sup>39</sup> EU, [Directive 2015/2366/EU of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market](#), EU, 2015, Annex 1.

<sup>40</sup> [Payment Services Regulations 2017](#) (UK), sch 1, pt 1. For more information see FCA, [Payment Services Regulations 2017 and Electronic Money Regulations 2011](#), FCA, 2023.



## Stablecoin international regulatory developments

Regulatory approaches taken by international jurisdictions have also been considered while developing the proposal to regulate payment stablecoin SVFs. The Monetary Authority of Singapore (MAS) has proposed to regulate stablecoins under their *Payment Services Act 2019* (PS Act) but not as e-money.<sup>41</sup> MAS views stablecoins as different from e-money given e-money is typically account-based where the user has an account with the e-money issuer. MAS has therefore proposed a new regulated activity, '**stablecoin issuance service**', under the PS Act and the aim of regulation is to maintain a high degree of stability in the stablecoin's value relative to the fiat currency it purports to represent. The EU and UK have also proposed a modified e-money-type/stored-value-type regime with additional obligations to address the risks posed by stablecoin issuers.

The United States (US) has highlighted that the increased use of stablecoins as a means of payment raises concerns related to the potential for destabilising runs, disruptions in the payment system, and concentration of economic power. To address these risks, the US Presidential Working Group report has proposed a requirement that payment stablecoin issuers become insured depository institutions (i.e. ADIs) to ensure they are prudentially regulated for adequate consumer protection.<sup>42</sup>

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<sup>41</sup> MAS, [Proposed Regulatory Approach for Stablecoin Related Activities](#), MAS, October 2022.

<sup>42</sup> President's Working Group on Financial Markets, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, [Report on Stablecoins](#), US Department of the Treasury, November 2021.

## 7. Overview of possible regulatory obligations

This section sets out at a high level proposed regulatory obligations to apply to each defined payment function, taking into account the risks posed by each function.

**Appendix 2** sets out an overview of the regulatory obligations that the Government is considering applying to PSPs who perform payment functions. It is based on the recommendations made by the Payments System Review and the CFR recommendations in the *Regulation of Stored-value Facilities in Australia*. The table below summarises the approach. As previously noted, there will be a separate consultation on the regulatory obligations for the payments licensing framework later in 2023. However, stakeholders are welcome to provide early views on these settings.

**Table 2. Summary of Proposed Risk-based Regulatory Approach**

Type of activity	How to mitigate the risk
Storing value	Prudential regulation and/or AFSL protections (including client money rules) would apply to address the risk of customers losing funds.
Consumer facing PSPs not storing value	Obligations that address consumer protections (e.g. mandating a revised ePayments Code for unauthorised transactions and mistaken payments, requirement to obtain an AFSL to enable access to redress under the AFCA and remedies under the <i>Corporations Act</i> ).  Obligations that address operational risks related to payments technologies (e.g. mandatory industry technical standards to ensure interoperability and security).
Non-consumer facing PSPs that do not store value	Obligations that address operational risks related to payments technologies (e.g. mandatory industry technical standards to ensure interoperability and security).
Payments clearing and settlement	Common access requirements, to address financial and operational risks.

### Base licence

The Payments System Review considered that the payments licensing framework could be implemented under the AFSL regime or through the establishment of a separate regulatory framework. It proposed that the payments licence be implemented through the AFSL regime to minimise the number of licences a PSP may need to hold and ensure payment services are regulated in a manner consistent with other financial services.

Feedback is sought on whether PSPs that are not customer facing and do not store value, such as certain payment facilitation, authentication, authorisation, and processing service providers, ought to hold a licence, or whether these services should only have to comply with relevant industry standards.

### Separate regulatory authorisations

It is proposed that PSPs would be authorised to provide only the specified payment functions under their licence (for example, money transfer services). This would be specified as a licence authorisation

condition. PSPs seeking to vary the payment functions they provide would need to vary their licence conditions.

In addition, it is proposed that there be separate regulatory authorisations for the provision of PFSs and the provision of SVFs. The separate authorisations are intended to reflect the different types of risks associated with the transfer and storage of value (see **Section 5**).

Under the proposed payments licensing framework, each regulator would remain responsible for ensuring compliance with and enforcing requirements within their remit. The Payments System Review described SVFs as ‘small’ and ‘large’, however the terminology ‘major’ and ‘standard’ is proposed to reflect the characteristics of these categories more accurately. This terminology is used under Singapore’s licensing framework. Consistent with the CFR’s recommendation in the *Regulation of Stored-value Facilities in Australia*, the intention under the new licensing scheme is that major SVF providers, including payment stablecoin issuers, be regulated by ASIC and APRA. ASIC would regulate PFS providers and would be solely responsible for regulating standard SVF providers.

## Possible set of regulatory obligations

This section sets out the proposed regulatory obligations for SVFs and PFSs. Issuers of payment stablecoins will potentially require more tailored regulatory obligations.

### Major SVFs

Major SVFs are facilities that store more than \$50 million in customer funds, offer individual customers the ability to store more than \$1,000 for more than 31 days, and allow their customers to redeem their funds on demand in Australian currency. These SVFs will be dual-regulated by ASIC and APRA.

The following regulatory obligations are proposed for major SVFs:

- obtaining an APRA licence. APRA’s prudential requirements could include:
  - safeguarding customer funds;
  - holding high-quality liquid assets;
  - meeting minimum capital requirements including an operational risk capital charge; and
  - complying with all relevant prudential standards (such as governance and risk management requirements, including in relation to IT risks).
- obtaining an AFSL;
- reporting the total value stored and transaction flow amounts to ASIC and APRA;
- complying with technical standards set by industry bodies authorised by the RBA; and
- complying with a legislatively mandated and revised ePayments Code.

### Standard SVFs

A standard SVF is a facility that stores customer funds, can be used for making payments, and is not a major SVF.

It is proposed that the storing of value in transit (value that is paid into a facility together with an instruction to initiate payment or a transfer of the value to another person or account) would be

excluded from SVF obligations and instead regulated as a PFS. It is proposed that this exclusion would apply for storing value for up to two business days.

The key characteristics of the SVFs that are prudentially regulated by APRA are that they are *both* large and offer functionality similar to that of a bank deposit. A major SVF that does not have such features (i.e. ability to store more than \$1,000 for longer than 31 days and redeemable in AUD) would not be prudentially regulated by APRA. It would instead be regulated by ASIC as a standard SVF. For example, an SVF that holds \$100 million in customer funds but only allows individual customers the ability to store their funds for 20 days would be a standard SVF regulated by ASIC and not APRA.

The following regulatory obligations are proposed for standard SVFs:

- obligations relating to the holding of value on behalf of clients, which includes:
  - being required to protect the stored value to ensure standard SVFs operate effectively and client funds cannot be used as the provider's working capital. This could be achieved through applying the client money provisions in the *Corporations Act* which are intended to ensure that funds are held in a trust account with an ADI for the benefit of the customer and cannot be co-mingled with the provider's own funds or working capital.
  - reporting the total value they store and transaction flow amounts to ASIC
- obtaining a licence;
- complying with technical standards set by industry bodies authorised by the RBA; and
- complying with a legislatively mandated and revised ePayments Code.

## PFSs

It is proposed that all PFSs, regardless of size, be subject to the following regulatory obligations:

- obtaining a licence and complying with general AFSL obligations (including client money provisions where applicable);
- complying with technical standards set by industry bodies authorised by the RBA; and
- complying with a legislatively mandated and revised ePayments Code (where relevant).

## Payments clearing and settlement providers

The Payments System Review recommended that the RBA should develop a set of common access requirements for payments systems to help support direct access to Australian payment systems for non-ADI PSPs. Over recent months the RBA has been developing a set of common regulatory requirements, in consultation with payment system operators, PSPs and other financial regulators. These requirements are intended to level the playing field for non-ADI PSPs that are seeking to pursue direct access to payment systems. The requirements need to appropriately manage the financial, operational and reputational risks PSPs pose as direct payment system participants, but not go beyond this.

It is anticipated that the requirements will involve governance, risk management, compliance, financial and operational capacity, business continuity and security obligations. There will be a separate public consultation on the common access requirements.

The Review recommended that the common access requirements should form part of the payments licence, and that major SVFs and PFSs should be required to comply with them. However, it is now proposed that the common access requirements should only be mandatory for non-ADI PSPs seeking direct access to payment systems for the purpose of performing clearing and settlement activity, rather than based on the size of a PSP. This may be preferable to the common access requirements applying to PSPs that do not want direct access. This approach could mean there would be no need for categorisation of PFSs as large or small.

Given major SVFs and ADIs would already be prudentially regulated, it is envisaged that there would be streamlined or no additional common access requirements for these entities performing clearing and settling of payments.

It is not proposed that payment system operators would be obligated to grant access to licensees that simply meet the common access requirements, 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, it is expected that operators of Australian payment systems would grant access in the same way as they currently do for ADIs to PSPs that meet the common access requirements.

## Single point of contact for authorisations

As noted above, under the current regulatory framework, a PSP may be required to engage with several regulators to obtain different authorisations, for more detail see **Appendix 4**.

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

Treasury is working with ASIC, APRA and AUSTRAC to identify opportunities to streamline the licensing and authorisation of PSPs. There may be drawbacks to ASIC acting as a point of contact for applicants who wish to be licenced by APRA as a major SVF provider. Contacting ASIC first may delay the iterative discussion process that APRA conducts with applicants, as ASIC requires applications to be complete before submission to ASIC. The benefits of ASIC acting as a single point of contact may also be limited as only a small portion of information provided by an applicant for the purposes of an AFSL will be relevant to other regulatory licensing processes, such as obtaining a separate APRA licence to operate as a major SVF.

Some entities, particularly ADIs, will continue to be regulated by multiple regulators given the services they provide. This includes being regulated by APRA in accordance with the *Banking Act 1959* (Cth) (*Banking Act*), by ASIC for the provision of financial services in accordance with the *Corporations Act*, and by AUSTRAC in accordance with the *AML/CTF Act*. Box 2.1 sets out some of the existing arrangements that streamline authorisation processes.

An alternative to the single point of contact approach is to provide prospective PSP licensees with a single source of guidance or website portal where PSPs can access information on licensing requirements and processes. Developing this guidance would require cross-agency coordination across PSP regulators.

Stakeholder views on any further opportunities for streamlining payments licencing processes are sought to assist with the development on a detailed proposal.

**Box 2.1 Examples of existing streamlined authorisation processes**

- ASIC streamlines the process of obtaining a credit licence when a person already holds an AFSL or is a body regulated by APRA.
- APRA oversees a restricted ADI licensing framework that provides an alternative pathway to a full licence for new banking entrants. This framework supports new entrants and different business models and facilitates entry into the market while not materially lessening entry standards that serve as important protections for the Australian community.
- The Australian Competition and Consumer Commission (ACCC) provides a streamlined process to become an accredited data recipient under the CDR regime where an applicant is an ADI but not a restricted ADI.

As previously noted, there will be a separate consultation on the regulatory obligations for the payments licencing framework. However, stakeholders are welcome to provide early views on the proposed regulatory obligations.

Consultation questions

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

Referring back to our response to question 7, it is our view that the payments licencing framework should not apply to POSPs providing HRP services that currently tends to fall under Payment Initiation services, and that such POSPs be exempted from holding an AFSL. 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?

It is our view that the payments licencing framework should not apply to POSPs providing HRP services that currently tends to fall under Payment Initiation services, and that such POSPs be exempted from holding an AFSL. In addition, POSPs such as TMF hold widely accepted industry standard certifications such as the ISO27001 and ISAE3402. ISO27001 and ISAE3402 certifications focus on risk management, information security and internal control. ISAE3402 certification relates specifically to financial service provision and the information security practices, policies and controls in place.

20) 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?

It is our view that it would be appropriate for some entities (for example POSPs such as TMF) to only be required to comply with mandatory industry standards such as continuing AML/CFT monitoring measures but not required to hold an AFSL.

21) 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).

Please refer to our response to question 7 detailing POSPs such as TMF and the underlying HRP services.

- 22) 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.

We hope to see more industry participation from POSPs such as TMF in consultation with The Treasury on this reform of the payments licensing framework. TMF is a global firm with presence in over 85 jurisdictions. We trust that many other firms carrying on POSP business are also coming forward worldwide. We help our clients operate safely around the world, and welcome invitations to participate in regulatory framework reforms and industry consultation papers such as this one.

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

It is our view that, as a progressive regulator of the financial industry, The Treasury is and should continue to be in regular contact with other well established and highly regulated jurisdictions such as the EU, UK, Singapore and Canada (as mentioned above) in respect of the final enactment of any relevant legislation and accompanying regulations as well as the challenges and issues relating to a roll out of the same

- 24) 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?

It is our view that a single point of contact, as proposed, would be a good recommendation.

## Appendix 1 – Consultation Questions

1. Are there any other principles that should be considered in developing the list of payment functions?
2. Is the list of payment functions comprehensive, or should other functions be included?
3. Should all payment functions be treated as financial products under the corporations legislation or should some be treated as a financial service?
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?
5. Does the proposed definition of ‘payment stablecoins’ adequately distinguish itself from other stablecoin arrangements?
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?
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?
8. Does the list need to be broken down in more detail, for example, should facilitation, authentication, authorisation and processing be separate functions?
9. Should any other payment functions be included?
10. Would the removal of the identified exclusions create unintended consequences?
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?
12. Should the incidental product exclusion apply to the proposed list of payment functions?
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?
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?
15. Should any other exclusions or exemptions be provided?
16. Are there any other risk characteristics of a payment function that should be considered?
17. What are the types of payment risks posed by the performance of each of the proposed payment functions?
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*?
19. Is the proposed risk-based approach to applying regulatory obligations appropriate?



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

# Appendix 2 – Proposed Licensing Framework

Payment function	Obligations
<p><b>All payments functions</b></p> <p>PSPs performing a defined payment function, being a stored-value facility (including the issuance of payment stablecoins*) and/or a PFS</p>	<p><b>Baseline requirements:</b></p> <p>Obtain an Australian Financial Services Licence (AFSL) &amp; comply with general financial services obligations</p> <p>Comply with client money rules (where relevant)</p> <p>Comply with the ePayments Code (where relevant)</p> <p>Comply with standards set by the industry bodies authorised by the RBA</p>
<p><b>Major stored-value facility</b></p> <p>Applies to issuance of payment accounts or facilities that meet the following:</p> <ol style="list-style-type: none"> <li>1. store more than \$50 million in customer funds;</li> <li>2. offer customers the ability to store more than \$1,000 for more than 31 days; and</li> <li>3. allow customers to redeem funds on demand in AUD</li> </ol> <p>Applies to issuance of payment stablecoins*</p>	<p><b>Prudential regulation</b></p> <p>(In addition to baseline requirements, where relevant)</p>
<p><b>Payments clearing and settling</b></p> <p>Non-ADI PSPs seeking direct access to Australian payment systems to perform clearing and/or settlement activity</p>	<p><b>Common access requirements</b></p> <p>(In addition to baseline requirements, where relevant**)</p>

\*The proposed size threshold for payment stablecoins regulation is yet to be determined. Payment stablecoin issuers may be subject to different obligations, see discussion in **Section 3**.

\*\* See consultation question 20 i.e. ‘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?’.

## Appendix 3 – Existing exclusions to the definition of financial product or non-cash payment facility and licensing exemptions

The following are not treated as making non-cash payments under the *Corporations Act*:

- making payments by means of a facility that only allows payments to be made to one person<sup>43</sup>
- facilities prescribed by regulation because of restrictions relating to 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<sup>44</sup>
- payments by a letter of credit from a financial institution<sup>45</sup>
- payments by cheque drawn by a financial institution on itself<sup>46</sup>
- payments by a guarantee given by a financial institution.<sup>47</sup>

The following are not financial products under the *Corporations Act*:

- incidental products<sup>48</sup>
- a credit facility<sup>49</sup>
- a facility by which payments will all be debited to a credit facility<sup>50</sup>
- designated payment systems<sup>51</sup>
- certain exchange and settlement facilities<sup>52</sup>
- a deposit-taking facility that is, or is used for, State banking<sup>53</sup>
- physical equipment or infrastructure through which something that is a non-cash payment facility is provided.<sup>54</sup>

The following are not financial products under the *Corporations Regulations*:

- Bank drafts<sup>55</sup>
- Australia Post money orders<sup>56</sup>
- certain electronic funds transfers where there are no standing arrangements between providers and customers.<sup>57</sup>

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<sup>43</sup> *Corporations Act* s 763D(2)(a)(i).

<sup>44</sup> *Corporations Act* s 763D(2)(a)(ii).

<sup>45</sup> *Corporations Act* s 763D(2)(b)(i).

<sup>46</sup> *Corporations Act* s 763D(2)(b)(ii).

<sup>47</sup> *Corporations Act* s 763D(2)(b)(iii).

<sup>48</sup> *Corporations Act* s 763E.

<sup>49</sup> *Corporations Act* s 765A(1)(h)(i).

<sup>50</sup> *Corporations Act* s 765A(1)(h)(ii).

<sup>51</sup> *Corporations Act* s 765A(1)(j).

<sup>52</sup> *Corporations Act* ss 765A(1)(i), 765A(1)(k), 765A(1)(l).

<sup>53</sup> *Corporations Act* s 765A(1)(t).

<sup>54</sup> *Corporations Act* s 765A(1)(x).

<sup>55</sup> *Corporations Regulations* reg 7.1.07B.

<sup>56</sup> *Corporations Regulations* reg 7.1.07F.

<sup>57</sup> *Corporations Regulations* reg 7.1.07G.

The following are exempt from the requirement to obtain an AFSL:

- limited dealing and advice services by a recipient of payments for goods or services<sup>58</sup>
- issue of a non-cash payment facility under which payments can only be made to the issuer or a related body corporate of the issuer<sup>59</sup>
- an Australia Post presentment and payment processing facility known as POSTbillpay or billmanager.<sup>60</sup>

ASIC provides exclusions from the definition of financial product or exemptions from the licensing requirement for the following classes of products through a legislative instrument:

- 'low value facilities' (where the maximum held by any one person is \$1000 and the maximum held in total is less than \$10 million)
- loyalty schemes
- electronic road toll devices
- pre-paid mobile phone accounts
- non-reloadable products that are only marketed as gift facilities<sup>61</sup>.

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<sup>58</sup> *Corporations Regulations* regs 7.6.01(1)(l)–(la).

<sup>59</sup> *Corporations Regulations* reg 7.6.01(1)(lb).

<sup>60</sup> *Corporations Regulations* reg 7.6.01(1)(lc).

<sup>61</sup> *ASIC Corporations (Non-cash Payment Facilities) Instrument 2016/211*.

## Appendix 4 – Regulatory authorities relevant to PSPs

Australian Prudential Regulation Authority (APRA)	
Authorised Deposit-Taking Institution (ADI) Licence	An ADI licence is necessary to conduct ‘banking business’ in Australia. Banking business consists of both taking deposits (other than as part-payment for identified goods or services) and making advances of money, as well as other financial activities prescribed by regulations made under the Banking Act. <sup>62</sup>
Restricted ADI Licence	Provides eligible applicants with a licence for a limited time and subjects them to specific requirements and restrictions, in order to develop the necessary resources and/or capabilities to pursue an ADI licence.  Allows institutions to conduct limited, lower risk banking business during their start-up phase for a maximum of two years before they must meet the prudential framework in full to qualify for an ADI licence.
Purchased Payment Facility (PPF)	A special class of ADI licence to undertake a limited range of banking activities.  A purchased payment facility (PPF) is a facility under which a holder of stored value makes a payment to another person on behalf of the customer of the facility.  APRA authorises PPF providers whose facilities are widely available as a means of payment and the balance held in the facilities is redeemable for Australian currency on demand by the customer. <sup>63</sup>  Holders of an ADI licence who are authorised to carry on general banking business can provide PPFs without meeting any additional requirements to those in place under the ADI prudential framework.
Australian Securities and Investments Commission (ASIC)	
Australian Credit Licence	Those that engage in ‘credit activities’ are required to be covered by a credit licence from ASIC, either as a credit licensee or as a representative of a credit licensee, unless exempt from the requirement to hold a credit licence. <sup>64</sup>
Australian Financial Services Licence (AFSL)	A person who carries on a ‘financial services business’ in Australia (including an ADI) is required to be covered by an AFSL from ASIC (either as a licensee or as a representative of a licensee) unless exempt from the requirement to hold an AFSL. <sup>65</sup>

<sup>62</sup> *Banking Act* pt 5.

<sup>63</sup> *Banking Regulation 2016* reg 6. APRA’s prudential requirements for PPF providers are set out in *Prudential Standard APS 610 Prudential Requirements for Providers of Purchased Payment Facilities*.

<sup>64</sup> ‘Credit activities’ are defined in *National Consumer Credit Protection Act 2009* (Cth) s 9.

<sup>65</sup> A person who carries on a ‘financial services business’ is defined in *Corporations Act* s 911A.

ePayments Code	<p>The ePayments Code provides important consumer protections in relation to electronic payments, including ATM, EFTPOS, credit and debit card transactions, online payments, and internet and mobile banking. Amongst other protections, the code establishes processes for unauthorised transactions and mistaken payments.</p> <p>Subscription to the Code is voluntary. The Government will consult further to determine how the ePayments Code should be updated and brought into regulation.</p>
<b>Australian Competition &amp; Consumer Commission (ACCC)</b>	
Consumer Data Right (CDR) Accreditation	<p>Under the CDR, data recipients – those approved to receive CDR data with the consumer’s consent – are required to be accredited by the ACCC.</p> <p>The Government has introduced legislation into the Parliament to extend the Consumer Data Right (CDR) to action initiation, which would enable consumers to instruct accredited third parties to initiate actions, such as payments, on their behalf. Any subsequent introduction of payment initiation will be subject to further consideration and consultation.</p>
<b>Australian Transaction Reports and Analysis Centre (AUSTRAC)</b>	
Anti-Money Laundering and Counter-Terrorism Financing Obligations	<p>Providers of ‘services’ designated under the <i>AML/CTF Act</i> must enrol with AUSTRAC and comply with general and reporting obligations under the <i>AML/CTF Act</i>.</p> <p>Providers of a remittance service or digital currency exchange service must register with AUSTRAC.</p>
<b>Reserve Bank of Australia (RBA)</b>	
All other (non-ADI) PPF providers	<p>The RBA has regulatory responsibility for all other (non-ADI) PPF providers – i.e. those that are not widely available or redeemable on demand in Australian currency – and is required to authorise or exempt non-ADI PPF providers from regulation.</p> <p>To date, the RBA has not authorised any PPF providers because the facilities that have been established have been relatively small and/or limited purpose. The RBA has granted class exemptions for certain low-value and limited-purpose facilities. The RBA may also exempt corporations and has exempted corporations that are guaranteed by an ADI or government authority.</p> <p>The RBA will have an expanded remit under the proposed changes to the <i>PSRA</i>. In addition, the Payments System Review proposed that the RBA will be responsible for authorising industry standard-setting bodies. These bodies will set core technical standards for PSPs.</p>

## Appendix 5 – Examples of international jurisdictions with functional definitions of payment services

Jurisdiction	Payment services defined
European Union and United Kingdom	<ul style="list-style-type: none"> <li>• Services enabling cash to be placed on a payment account and all of the operations required for operating a payment account</li> <li>• Services enabling cash withdrawals from a payment account and all of the operations required for operating a payment account</li> <li>• The execution of payment transactions, including transfers of funds on a payment account with the user’s PSP or with another PSP:               <ul style="list-style-type: none"> <li>(i) execution of direct debits, including one-off direct debits</li> <li>(ii) execution of payment transactions through a payment card or a similar device</li> <li>(iii) execution of credit transfers, including standing orders</li> </ul> </li> <li>• The execution of payment transactions where the funds are covered by a credit line for a payment service user:               <ul style="list-style-type: none"> <li>(i) execution of direct debits, including one-off direct debits</li> <li>(ii) execution of payment transactions through a payment card or a similar device</li> <li>(iii) execution of credit transfers, including standing orders</li> </ul> </li> <li>• issuing payment instruments or acquiring payment transactions</li> <li>• money remittance</li> <li>• payment initiation services</li> <li>• account information services</li> <li>• Electronic-money (‘e-money’) institutions who are authorised to issue e-money<sup>66</sup></li> </ul>
Singapore	<ul style="list-style-type: none"> <li>• Account issuance service</li> <li>• Domestic money transfer service</li> <li>• Cross-border money transfer service</li> <li>• Merchant acquisition service</li> <li>• E-money issuance service</li> <li>• Digital payment token service</li> <li>• Money-changing service</li> </ul>

<sup>66</sup> ‘E-money’ is electronically (including magnetically) stored monetary value, represented by a claim on the issuer, which is issued on receipt of funds for making payment transactions.

Canada	<ul style="list-style-type: none"> <li>• Provision or maintenance of an account that, in relation to an ‘electronic funds transfer’, is held on behalf of one or more end users</li> <li>• Holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity</li> <li>• Initiation of an ‘electronic funds transfer’ at the request of an end user</li> <li>• Authorisation of an ‘electronic funds transfer’ or the transmission, reception or facilitation of an instruction in relation to an ‘electronic funds transfer’</li> <li>• the provision of clearing and settlement services</li> </ul>
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## Appendix 6 – Glossary

Term	Definition
AML/CTF	Anti-money laundering and counter-terrorism financing.
Consumer Data Right (CDR)	The Consumer Data Right (CDR) is a regulatory framework that gives consumers, including individuals and business customers, the right to safely access certain data about them held by businesses.
Australian Financial Services License (AFSL)	This license must be held by businesses that provide financial services. The license 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	Proposed bodies that are authorised by the RBA for the purpose of setting technical standards for license holders under the new framework.
Common access requirements	A set of common requirements, that licensees under the proposed licensing regime can opt into that will help enable direct access to Australian payment systems.
Consumer	A person or entity who purchases goods and services for personal use.
Council of Financial Regulators (CFR)	The Council of Financial Regulators (CFR) is the coordinating body for Australia’s main financial regulatory agencies.
Customers	Collective term for both consumers and businesses engaged in providing and receiving payment services.
ePayments Code	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.  The Government will consult further to determine how the ePayments Code should be updated and brought into regulation.
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 s 763D</i> ).
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 Facilitation Services (PFSs)	Services that transfer funds or facilitate the transfer of funds (see section 2, Table 1).
Payment Service Provider (PSP)	Organisations that provide a stored-value facility or payment facilitation service. PSPs provide services to non-participants (including end users such as consumers, businesses, and government) for the purpose of enabling or facilitating a transfer of value using a payment system. PSPs are a subset of the participants in the payments system.
Payments sector	The payments sector comprises a combination of interacting entities during the payment transaction process. This includes, but is not limited to issuers and acquirers, credit card networks, payment processors, payment gateways and payment facilitators.
<i>Payment System (Regulation) Act 1998 (Cth) (PSRA)</i>	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.
Purchased Payment Facility (PPF)	A facility under which a holder of stored value makes payment to another person on behalf of the user of the facility.
Stored-value Facility (SVF)	Providers of payment accounts or facilities that store value that can be used for the purpose of payments.
User	End user of a payment facility (i.e. customer). May be a business or an individual.