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Director
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By email: paymentslicensingconsultation@treasury.gov.au

Hamilton Locke Submission – Payments System Modernisation: Regulation of payment service providers

Dear Treasury,

We welcome the opportunity to submit a response in relation to Treasury's Payments System Modernisation: Regulation of payment service providers consultation paper (**Consultation Paper**).

We strongly support the Government's multi-stage reform agenda for developing appropriate regulatory settings for the payments sector. We understand that for many in the sector, regulation is anticipated and welcomed, and we stand committed to assisting the sector and the Government in developing a fit for purpose payments regulatory framework. We have previously assisted industry associations such as FinTech Australia with previous consultations on the payments landscape.

We recognise that this Consultation Paper serves as an opportunity to ensure that the appropriate legislative framework is developed to:

- provide regulatory certainty and consistency to support the continued growth of the industry;
- protect consumers;
- promote competitive offerings;
- align the Australian regulatory framework with international jurisdictions;
- facilitate technology development and innovation;
- help encourage capital flows to Australia; and
- help solidify Australia as a competitive market that can grow and attract talent.

We welcome any feedback you may have in respect of this submission, and we look forward to the outcome of this consultation process. We would be happy to discuss any aspect of this submission or the consultation with you.

Yours faithfully

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Hamilton Locke

Submission Paper

Payments System Modernisation: Regulation of payment service providers

About Hamilton Locke – Funds and Financial Services

Hamilton Locke is Australia's fastest growing law firm, which is focused on transforming the traditional approach to corporate and commercial legal services. Hamilton Locke is a full-service corporate law firm, which is a part of the HPX Group, that delivers essential corporate services across legal, governance, risk and compliance helping businesses grow and thrive.

The Funds and Financial Services Team at Hamilton Locke (formerly, The Fold Legal) has become one of the go-to teams for payments, cryptocurrency, blockchain, fintech and insurtech businesses seeking regulatory advice. Our Funds and Financial Services team is also one of Australia's largest as a result of the merger between The Fold Legal and Hamilton Locke.

We are known for our technical expertise and industry knowledge, which we use to provide practical solutions for a range of sectors, including payments, wealth management, credit, crypto and general insurance. Our expertise in financial and credit services is recognised by our ranking in Chambers and Partners Asia-Pacific and FinTech Legal Guides and The Legal 500. Reflecting our commitment to client service, we also won Best Law & Related Services Firm (<$30mil) across several specialist categories the past 3 years based on direct feedback from our clients.

Collectively, we have been deeply steeped in the fintech space since early 2013 and we continue to deepen and strengthen this experience as one of Australia's largest and most diverse financial services practices.

We are technical and industry-focused specialists that have a broad and deep understanding of the Australian regulatory environment and the impacts that is has on our client's products and service offerings. Our financial services expertise is market leading, and we use our industry knowledge and expertise to deliver practical, compliant, and innovative solutions for our clients. We work with participants across the full range of payment services including regulated and unregulated payment providers, card issuers, merchants of record, transaction processors and acquirers.

We are a partner and member of FinTech Australia, Blockchain Australia and InsurTech Australia.

This submission was prepared by Jaime Lumsden (Partner), Michele Levine (Partner), Jessica Smith (Special Counsel) and Nicholas Pavouris (Senior Associate).

Executive Summary

The consistent regulation of the payments industry is a significant development for both local and global industries. As we have seen with other industries (most notably new energy and digital assets), uncertainty stifles innovation, and a clear regulatory approach provides the strongest foundation for true innovation, growth, consumer protection and a competitive market.

We support Treasury's proposed approach in the Consultation Paper and are encouraged by the efforts Treasury has made to proactively engage with industry to ensure that the development of regulation broadly aligns with the realities and risks of the industry as well as the expectations of key stakeholders.

The proposed regulatory framework delivers welcomed regulatory clarity for payment service providers (**PSPs**), however if the reforms wish to level the playing field to PSPs and drive competition, they must leverage Australia's existing regulatory structures and regulator expertise and avoid "reinventing the wheel". This will significantly reduce the time, cost and increased complexity associated with creating new legal concepts and regulatory bodies as well as create a regulatory regime that is fit for purpose and easy to adopt by those regulated.

1. Objectives of reforms

We support a tiered framework for licensing that reflects the different roles and risks to consumers whilst still maintaining financial stability throughout the payments sector. We see this as translating to entities who provide 'Payment Technology and Enablement Services' as being subject to less rigorous obligations than what is proposed, especially where these entities are non-customer facing.

In contrast with the current 'non-cash payments' definition and interpretation, the payment functions identified in the Consultation Paper are very broad. If adopted as proposed, businesses playing minor roles in the movement of money (or the provision of technology to enable the movement of money) will be captured by the regime.

This will result in a disproportionate regulatory burden where multiple industry participants will need to hold licences and comply with conduct and disclosure requirements, regardless of the ancillary or operational role they are performing.

We encourage Treasury to consider the impact to competition and innovation in Australia's payments industry by imposing a licensing regime that, as proposed, could regulate most of the industry in a single wave. It is anticipated a significant number of payment providers will need to apply to the Australian Securities and Investments Commission (**ASIC**) for an Australian financial services licence (**AFSL**) and potentially be subject to regulatory reporting and oversight by the Australian Prudential Regulation Authority (**APRA**). ASIC will require significant upskilling to understand the nuances between each of the new payment functions to then be able to appropriately assess the massive influx in new applicants who may be applying for authorisations that are not suitable or required.

To avoid significant disruption to Australia's payments industry this influx will need to be effectively managed through increased transitional periods, updated guidance, longer implementation timeframes and streamlined processes.

2. Proposed payment functions

Stored Value Facility Products

The use of SVFs as alternatives to bank account is prevalent in industries which experience de-banking (e.g. the crypto industry), but also many SVFs position themselves as 'banking as a service' providers and compete with banks for the banking business of businesses across many industries. It is our observation that the customers of SVFs do not always appreciate or understand that their account with an SVF is not identical to a bank account with an ADI.

As such, SVFs should be treated like deposit-taking activities for the purposes of determining what is “banking business”. We propose SVFs should be removed from the PSRA and separately regulated in the Banking Act as a limited banking activity.

When defining an SVF’s functions and characteristics, there is a need to distinguish between a SVF where money is loaded without a payment destination or pending future payment instructions and SVFs that are used for point in time payments. In particular, Treasury should specifically confirm whether escrow arrangements are (or should be) caught by SVF and, if so, what limitations or conditions should apply to escrow arrangements.

Lastly, the SVF proposals refer only to ‘value’ or ‘funds’ and remain agnostic about what is stored. Additional clarity is required as to how these proposals apply to loyalty or reward points programs that are available for purchase or have ‘cash back’ components.

Payment Stablecoins

We recommend that if a stablecoin meets the definition of a PSC, it must comply with the requirements without the ability to opt out of the PSC regime. Under this proposal, stablecoins could be designed to avoid regulation as a PSC if they choose (and in that sense could opt out), but in doing so it is unlikely they would be able to function comparably with regulated PSCs and they may also run the risk of meeting the definition of a financial product. In our view, an issuer of a stablecoin that meets the definition of a PSC should not be able to opt out of the PSC regime without changing the design of the stablecoin such that it no longer meets that definition, otherwise it may result in regulatory arbitrage where issuers able to opt-out without consequence. For the same reason, issuers of stablecoins that do not meet the definition of a PSC should not be able to use the term “Payment Stablecoin” or any similar term which Treasury adopts, such as “fiat-backed stablecoin”, in order to distinguish a regulated PSC from a token which resembles a stablecoin, but which is not regulated as a PSC.

Secondly, we recommend that stablecoins that meet the definition of a PSC should be specifically excluded from being any other type of financial product, whether under the general definition or a specific financial product, as there is currently a lack of clarity about whether some stablecoin structures may amount to a financial product such as a debenture (which is a security). Similar exclusions are already in place for other financial products, such as the definition of a managed investment scheme in section 9 of *the Corporations Act 2001* (Cth).

Payment Instruments

Many of the activities associated with ‘Payment Instruments’ seem very administrative heavy and not payments focussed. We note that whilst a ‘payment product’ is defined to include payment instruments, the actual definition of payments instruments merely refers to a set of procedures which enable the transfer of funds. It is difficult to contemplate circumstances where a payment instrument would be provided in isolation to other financial products, and as such we query whether this category is appropriate at all or, if it is, should be categorised as a financial service rather than a financial product. It is possible that this category, like ‘Payment Technology and Enablement Services’, is better handled as an outsourced function of a PSP providing a financial product (in which the PSP will hold an AFSL) and that PSP would be responsible for ensuring the provider of the payment instrument complies with certain requirements. See our later commentary on outsourcing.

Payment Initiation Services and Payment Facilitation Services

Additional clarity is required to draw a clear distinction between ‘Payment Facilitation Services’ and ‘Payment Initiation Services’, with a specific focus on how funds are processed and by whom.

Additionally, it is unclear whether ‘Payment Facilitation Services’ encompass intra-platform payments recorded on a general ledger but where no actual movement of funds outside of the platform occur e.g. as is typical for crypto exchanges.

Payment Technology and Enablement Services

There is significant overlap between the scope of 'Payment Technology and Enablement Services' and 'Payment Initiation Services'. 'Payment Technology and Enablement Services' are those services which are provided by third parties and could be both user facing and non-user facing (i.e. services being provided to other PSPs). 'Payment Technology and Enablement Services' which are being provided to other PSPs should be excluded from the proposed regulatory regime, as these are more akin to outsourced services provided to a PSP, and because the risk posed by such services is disproportionate to the proposed level of regulatory oversight. In our view, the PSP that holds the AFSL in this case should be responsible for making sure any 'Payment Technology and Enablement Services' it uses to operate its payment products meet certain standards (as is the case for any licensee who outsources core functions).

This also raises the question of to whom these services are being provided, and who is the 'client' who is afforded the protection under regulations? If the client for the purposes of the provision of 'Payment Technology and Enablement Services' is a fellow PSP, licensing should not be required. If the 'client' is instead deemed by law to be the end user making the payment, then in circumstances where the provider of the 'Payment Technology and Enablement Services' is not visible to the client, we query of what benefit it is for the provider of the 'Payment Technology and Enablement Services' to provide an FSG to the client – and this is part of why we consider this is better treated as an outsourced function of the licensed PSP that uses that service to deliver a product to the end user. Where 'Payment Technology and Enablement Services' are provided directly to the client by the provider, then we agree that licensing is appropriate.

3. Excluded and exempted activities

Exclusion for payments debited to a credit facility

In our view it is necessary to distinguish between the situation where:

- a credit card is linked to a credit facility and that credit card is being used (in which case the credit facility issuer is providing a payment facilitation service and would be required to hold an AFSL as a PSP); and
- Where a credit facility is disbursing loan funds to a third party (e.g. a lender disbursing funds to a motor vehicle dealer on behalf of the borrower) which should continue to be exempt.

Limited network exclusion

To avoid exploitation of the exemption, the term "limited" requires further clarification, specifically in respect of the service provider and goods and services that are meant to be limited. Additionally, further consideration is warranted for the regulatory treatment of certain marketplaces i.e. (marketplaces for selling gift cards) that deal in these exempt products.

Commercial agent exclusions

There is benefit in introducing a commercial agent exclusion, however careful consideration as to who should fall within this exemption is important. A notable example of an agent that should be exempt are insurance brokers, who facilitate payments for insurance policies on behalf of their insured clients, and who would otherwise be captured by the reforms.

To avoid the situation where entities may artificially design solutions to fit into this exemption, this exclusion should only apply where it is an 'incidental' service of the agent to accept / make payments.

4. Financial Services Obligations

Unregulated PSPs

Functions such as 'Payment Technology and Enablement Services' have very limited involvement in the payment process and may be overly regulated proportionate to their involvement and the risks associated with the service.

For PSPs (particularly those who are currently unregulated), additional guidance is needed as to what experience is relevant to support an application for an AFSL for currently unregulated payment services.

Additionally, we foresee there will be difficulties for many PSPs (particularly those currently unregulated) to maintain organisational competence that meets the standards prescribed by ASIC in RG 105, given that there will be limited personnel in unregulated PSPs that have regulated experience. Accordingly, PSPs that are currently unregulated should be able to rely on their unregulated experience, in providing an unregulated service that is about to be regulated, to satisfy the organisational competence obligation.

Financial requirements

The proposal effectively imposes the client money rules and the ASLF requirement on the same payment product. The ASLF requirement does not currently apply to any liability of a financial product issuer where that issuer holds client money in a trust account in full satisfaction of the liability owed to the client.

Therefore, the ASLF requirements should not apply to any payment provider, such as payment facilitation services or cross-border transfer services, where the client money rules will already apply and the funds will be held in a designated trust account.

Compensation Arrangements

Professional indemnity insurance may not be appropriate for PSPs because it is unlikely to address the relevant risks that these business face, specifically relating to cybersecurity and access to payment infrastructure issues (as these matters are not risks that are insured under professional indemnity insurance).

Whilst we think that requiring licensees to maintain cybersecurity may be appropriate to manage risk, however the market has not matured in Australia to date, and it is difficult to source and unaffordable to obtain.

5. Regulatory Framework for Stored Value Facilities (SVF)

We support consumers' rights to redeem funds from SVF products, however, the Consultation Paper is silent as to whether this right also extends to situations where the funds belong to someone else besides the consumer. For example, in many card programs the funding source (often a corporate) is different to the individual who is issued a card. Additional clarity is required to confirm who has the entitlement to redeem funds at any time in this case – is it the cardholder, the corporate, or both?

6. Industry standing setting framework

We recommend the ASSB be a newly formed independent body that is preferably a government agency where appeals of enforcement decisions can be resolved through the Administrative Appeals Tribunal (**AAT**).

Alternatively, should Treasury preference the ASSB to be a private body, it should be subject to AFCA membership and oversight. However, we think a private body is more likely to be subject to conflicts of interest which may affect its neutrality.

For consistency purposes, Treasury should align this proposal with the operation of the Data Standards Body and its interaction with Consumer Data Right.

7. Transitional Arrangements

The proposed transition period is not an adequate grace period. At a minimum, a transition period of 2 years should apply. This extension of time reflects the fact that many organisations that may be in-scope of the new law are starting from a place of no regulation and will therefore need to develop and implement infrastructure and compliance arrangements.

Additional resourcing for ASIC will be required to ensure they are able to assess and approve the number of licence applications in the relevant period (particularly if other unregulated sectors become regulated in the same period, including BNPL and digital asset facilities).

We noted that ASIC struggled to assess the applications for claims handling and settling services when introduced and that industry was much smaller, and the majority of that industry was already regulated.

We note that the proposed transition period is a “start to finish” transition period, which requires all participants to be licensed by the end. In general, we prefer a transition period where participants are required to have submitted by a certain date and can continue to operate while ASIC assess the application. This style transition period can have a shorter length, and we consider 12 months appropriate in this case. We do not think that the suggested 6 months period for participants to lodge their application is sufficient, given the above note about building infrastructure, but also because there is likely to be excessive demand for service providers to support licensing in such a short period of time.

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8. Response to Consultation Questions

We have provided responses to the specific Consultation Questions proposed by Treasury, to the extent that we are qualified to respond.

Number	Questions	Responses
Proposed Payment Functions		
1	Feedback is welcome on the proposed approach to distinguish SVF products from banking business. Are there are any unintended consequences, and are there suggestions on how to mitigate those?	In our experience, SVFs are currently used as quasi bank accounts. This is especially prevalent in the crypto industry given the common experience of de-banking and the lack of any consistent and reliable access to banking services. We also note there are SVFs in the industry who position themselves as banks to non-crypto businesses or "banking as a service" providers (e.g. fintechs). As such, it's unclear why SVFs should not be treated similar to deposit-taking activities for the purposes of determining what is "banking business". We appreciate it is confusing to classify SVFs as a form of deposit-taking activity in the *Banking Act 1959* (Cth) (**Banking Act**) and then have separate regulation in the *Payments Systems (Regulation) Act 1998 (Cth)* (**PSRA**). To simplify this, we recommend that SVFs are removed from the PSRA and separately regulated in the Banking Act. That is, SVFs should not be captured by the definitions of "banking business" or "deposit-taking". Rather, we recommend that SVF is defined as a limited banking activity in the Banking Act. This will assist with APRA prudential regulation in relation to major SVFs, which we considered further below in question 54. Before implementing this change, we recommend that the tax concerns outlined on page 10 of the Consultation Paper are further considered and any required tax changes are adopted to ensure this recommendation is tax neutral. Further, we also recommend that Treasury consider whether SVFs should be precluded from lending under the Banking Act. The reason for this is that SVFs would essentially be providing "banking business" if it could pair lending with SVF services. In our view, SVFs should not be permitted to provide any lending without first obtaining a full ADI licence.
2	What are your views on the proposed changes to the SVF function and whether additional characteristics or principles are needed to distinguish SVF products? Should there be an additional	In our view, a simple distinction between an SVF and a payment in progress, is that in an SVF funds can be received without an onward payment instruction (though may not always be received as such) whereas a payment in progress always has a destination at the time that it is received. That is, if an entity can never

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	principle that funds can be stored without any onward payment instruction?	receive the funds without a destination for those funds, that is not an SVF. If an entity can receive the funds without a payment destination (even if some users choose to use the service by providing a destination at the same time as the funds), then that is an SVF. Anomalies that we have identified under the current regime include businesses that: • Take and hold funds, but will only ever pay it back to the person it was received from – this is arguably unregulated currently under the purchased payment regime, because no third-party payments can be made e.g. saving apps or wallets; • take and hold payments and pay a return on funds credited to the account or wallet – which may currently be regulated as a miscellaneous financial facility. In our view, it would be preferable to incorporate these anomalies into the SVF definition. Under the proposals, the function of stored value will be separated from payment functionality, and accordingly these anomalies involve similar risks relating to the holding of funds, such that there is merit in regulating them identically. It is also important to consider facilities that hold funds for extended periods but that are used for point in time payments (i.e. payment instruction with a clear destination made at the time funds are loaded). A typical example is an escrow arrangement, which are increasingly used to manage counterparty risk for even arrangements like a tradesperson performing work but wanting the certainty of being paid. In this case, funds are received and held by an entity for what might be days or weeks (or longer), but which always have a destination, pending confirmation of onward payment. We encourage Treasury to further consider and specifically address whether escrow arrangements are (or should be) regulated as an SVF and, if so, what limitations or conditions should apply to escrow arrangements. Please see our response to question 3 for more on this. In addition, the SVF proposals refer only to 'value' or 'funds' and remain agnostic about what is stored. As addressed in our response to question 31, there may be situations where the ability to buy loyalty or reward points or participate in 'cash back' opportunities that have many use cases (e.g. certain airline points) will effectively form an SVF. We recommend that Treasury

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<table>
<tr><th>Number</th><th>Questions</th><th>Responses</th></tr>
<tr><td></td><td></td><td>considers whether it intended to capture such activities within the definition on an SVF and whether there is any need to distinguish between loyalty and rewards programs that can only be ‘earned’ and those that can be purchased.</td></tr>
<tr><td>3</td><td>Are there any further activities that should be out of scope of the definition of SVF?</td><td>In our view, it is important to consider the different types of escrow services available in the market and whether it is appropriate to regulate those escrow services as a SVF or some other payment product or service. This should be further explored.

Different types of escrow services include:
holding money in escrow as agent for a provider / merchant;
holding money in escrow for a customer and directly facilitating payment between a customer and provider / other person; and
holding money in escrow for a customer and enabling transfer of payment intra platform and for the recipient to withdraw funds out of the platform.
In our view, all of these should be regulated as an SVF because they carry similar risks. We note that the first bullet point brings these arrangements into regulation, but the commercial agent exclusion which we have supported may then exclude a number of these.</td></tr>
<tr><td>4</td><td>Do you agree with the proposed framework for payment stablecoins (PSCs) and how it interacts with the Digital Asset Platform Framework? Are there any considerations that should be given or issues that can arise which have not been captured in this proposal?</td><td>We broadly agree with the proposed framework, however the proposed approach for PSCs does raise a number of issues that need to be further considered.

First, it appears that issuers of stablecoins may “opt out” of the PSC regime – no information is provided as to in what circumstances this is available. In our view, allowing providers to opt in or out of the regime will create regulatory arbitrage, because:
Overseas issuers, in particular, may choose not to opt in; and
It may be possible to choose to be regulated as either a PSC or a financial product (for the same structure). In our experience, issuers are likely to deliberately design and structure their stablecoins to fall within the regulatory requirements that are more favourable. This is something that we are currently seeing with stablecoin design at present in relation to the financial services regime.
For this reason, we recommend that if a stablecoin meets the definition of a PSC, it will be regulated as a PSC and must comply with the requirements. That is,</td></tr>
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		issuers cannot "opt out" of the PSC regime. The only wat to "opt out" would be to redesign the stablecoin so that it no longer meets the PSC definition (in which case it may be regulated as a financial product and will no longer have identical functionality to a PSC). We suspect this will be a live issue for foreign stablecoin issuers that are subject to different regulatory requirements offshore and may not seek to create a local PSC that complies with local requirements but rather continue to offer existing stablecoins that may or may not be a financial product. Naturally, any regulatory reform should not dissuade local issuers from designing compliant PSC nor should it favour foreign issuers that can issue stablecoins offshore without needing to comply with PSC regulation. This is an important consideration and may be ameliorated by some of our recommendations below. Second, it is unclear whether a stablecoin that meets the definition of a PSC will be excluded from any other kind of financial product. We recommend that stablecoins that meet the definition of a PSC be specifically excluded from being any other type of financial product, whether under the general definition or a specific financial product. This will create certainty in a market where there is current uncertainty about whether stablecoins may be a financial product, for example, a debenture which is a security. We have seen similar exclusions for other financial products.[1] Third, consideration as to whether "PSC" (or whatever equivalent term is settled on, such as 'fiat-backed stablecoin') should be a restricted term that can only be used by PSC issuers that meet the definition of a PSC and are appropriately licensed to issue PSCs. In this way, while issuers can choose to restructure their token so it does not meet the definition of a PSC, there are consequences to doing so, which include that they cannot market / promote their stablecoin as identical to a regulated PSC. Fourth, accessing banking services for stablecoins remains an issue with de-banking. As a solution, we urge Treasury to consider whether PSCs should be allowed to bank with an SVF in order to hold their fiat reserves. We note that overwhelmingly majority of the crypto industry currently banks with SVFs. Fifth, consideration should be given as to whether

[1] For example, the definition of a managed investment scheme in section 9 of *the Corporations Act 2001* (Cth) excludes debentures and the definition of a derivative in section 761D of *the Corporations Act 2001* (Cth) excludes any other financial product covered by section 764 of t of *the Corporations Act 2001* (Cth).

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Number	Questions	Responses
		stablecoins that are not regulated PSCs should be precluded from certain use cases e.g. clearing and settlement.
5	Do you agree with the scope of the 'Payment Instruments' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?	We broadly agree with the scope of the 'Payment Instrument' function, however we note many of the activities associated with Payment Instruments seem very administrative in nature and not directly related to payments. We also note that it appears that Payment Instruments will need to be paired with another payment product e.g. payment facilitation services or SVF, to have any function or utility. For this reason, it appears that 'Payment Instruments' may be better treated as a financial service, rather than a financial product, or alternatively, if it should be treated as an outsourced function of the payment product provider, who is responsible under their AFSL for the payment instrument provider meeting certain standards. See our commentary elsewhere on the concept of outsourcing for 'Payment Technology and Enablement Services'. We appreciate Treasury is seeking to address the operational risk associated with 'Payment Instruments', however we question whether ASIC is best placed to provide the appropriate oversight for this payment category. In our view, these risks are better addressed through the proposed Industry Standard Framework with ASSB oversight.
6	Do you agree with the scope of the 'Payment Initiation Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?	In our view the current definition of the 'Payment Initiation services' function is confusing, and the scope of the function is unclear. We suspect that this function is intended to capture entities who outsource payments processing, but who themselves give the instruction to debit an account, and it also includes an entity that holds a direct debit or PayTo authorisation. It is unclear to us if this category is intended to be limited to these services, or if there are other examples that might be caught. Further, we appreciate this function is not intended to capture merchants who are not able to request payments themselves, however it's unclear whether this function would apply to the concept of the 'merchant of record' and whether these 'merchants' who are responsible for the authorisation and processing of customer payments would be captured under this definition – although we suspect such merchants of record are intended to be captured under 'Payment Facilitation Services', we suggest this be clarified so that it's understood that 'merchant' is not the same as 'merchant of record'.

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7	Do you agree with the scope of the 'Payment Facilitation Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?	We agree with the scope of the 'Payment Facilitation Services' function as it is currently defined. However, we suggest that additional clarity is required to draw a clear distinction between 'Payment Facilitation Services' and 'Payment Initiation Services' with a specific focus on how funds are being processed and by whom. We appreciate this function is not intended to capture SVFs where consumers can direct the movement of funds to other parties without the existence of a predetermined transaction, however, consistent with the stated policy intention to separately regulate stored value and payments, we assume that an SVF that also wishes to make payments using the stored funds would also need to be authorised to provide at least a 'Payment Facilitation Service'. We note this function is intended to capture PSPs that act on behalf of a payer or a payee, so there is no need to distinguish between payment facilitation services provided to payees and payer. It may be necessary to consider if a merchant of record service is itself a 'Payment Facilitation Service', or if such a service will always be provided by someone who is, in any case, providing other 'Payment Facilitation Services'. Additionally, we would welcome further clarity on how this function would apply to intra platform payments recorded on a general ledger but where no actual movement of funds outside of the platform occur e.g. exchanges.
8	Is there merit in disaggregating this function? If so, why and how should this be done?	As mentioned in our response to question 7 additional clarity on how merchant on record services would be treated is needed.
9	Are there any other principles that should be used to define this function?	We would suggest greater focus be placed on the processing of funds and specifically call out the nexus between this function and the movement of funds.
10	Do you agree with the scope of the 'Payment Technology and Enablement Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?	In our view there is significant overlap between the scope of 'Payment Technology and Enablement Services' and 'Payment Initiation Services'. This is evident in the Consultation Paper where is states that *Payment Technology and Enablement Services' functions includes entities that provide services that are preliminary or necessary to send or receive funds.* Additional clarity is absolutely required here because this function will not be a "payment product" but rather a new and separate service and its important this is appropriately defined to ensure no unintended

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		consequences or regulatory arbitrage. Additionally, the proposed scope of these services is extremely broad encompassing services which may be customer, merchant or other PSP facing even though the risk profile differs greatly between a customer facing service vs what could effectively be considered a PSP outsourced function. In our view 'Payment Technology and Enablement Services' provided to other PSPs (i.e. non-users) should be excluded from the proposed regulatory regime because the risk posed by such services is disproportionate to the proposed level of regulatory oversight. Where this is the case, the PSP that holds an AFSL should be treated as outsourcing a function necessary to provide their payment product, and should be responsible for making sure any 'Payment Technology and Enablement Services' it uses to operate its payment products meet certain standards (as is the case for any licensee who outsources core functions). This also raises the question of to whom these services are being provided, and who is the 'client' who is afforded the protection under regulations? If the client for the purposes of the provision of 'Payment Technology and Enablement Services' is a fellow PSP, licensing should not be required (i.e. the entity with whom the provider of the 'Payment Technology and Enablement Services' has a contract). If the provider of the 'Payment Technology and Enablement Services' is customer-facing and therefore has a contract directly with the payer, then the 'client' is the payer, we agree that licensing is appropriate. If the provider of the 'Payment Technology and Enablement Services' is not visible to the client, we query of what benefit it is for the provider of the 'Payment Technology and Enablement Services' to provide an FSG to the client – and this is part of why we consider this is better treated as an outsourced function of the licensed PSP that uses that service to deliver a product to the end user. If Treasury wish to address the risks posed by such services, we consider this is best achieved through the imposition of outsourcing standards when such services are being provided to PSPs.
11	Are the principles used to define the function appropriate?	We agree with the principles used to define the functions but suggest more emphasis and regulatory oversight be placed on user facing service providers who exercise a higher degree of control over payment transactions as opposed to entities which are merely

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		providing support services to existing PSPs.
12	Should a certain subset of entities captured under this function be subject to less rigorous obligations than what is proposed, and what should those be? Should the definition of this function be narrowed to exclude certain types of entities that do not pose significant risks, and if so, how?	In our view and for the reasons outlined above, this definition should exclude entities who are acting as an outsourced provider of a PSP and providing what are essentially support services.
13	Do you agree with the scope of the 'Cross-border Transfer Services' function as it is currently defined? Are there any services that have not been captured by the definition, but should be included (or vice versa)?	We agree with the scope of the 'Cross-border Transfer Services' function although we do not understand the policy reason behind distinguishing this activity from the scope of Payment Facilitation Services which could easily capture the movement of funds into or out of Australia. Unless this authorisation will be subject to additional regulation, we do not see this distinction as useful.
14	Excluding ML/TF risks, are there any unique risks that Cross-border Transfer Services present, and should there be any tailored regulatory requirements for this function?	We do not think there are any other risks that 'Cross-border Transfer Services' present which should result in tailored regulatory requirements for this function. Separately, we note some of the risks listed on page 25 of the Consultation Paper as requiring this to be a separate function may not be true for PSCs, for example settlement risks, disparate standards and interoperability risks.
15	Is there a need for a separate function for Cross-border Transfer Services or should these services be captured together with domestic transfer services?	In our view, unless there will be separate meaningful regulatory requirements designed to address the identified risks (i.e. foreign currency, interoperability etc) then there is no need for 'Cross-border Transfer Services' to be a separate function.
16	Is the proposed removal of the 'Clearing and Settlement Services' function appropriate, given the risks associated with these activities are intended to be addressed by payment system access arrangements and proposed common access requirements?	We do not have any comments on this question.
17	Is the proposed approach the best way to incorporate the functions into the Corporations Act? Or is Option B, Option C, Option D or another option not canvassed by this paper preferable?	In our view, Option A is the preferred approach, although we query if 'Payment Instruments' should be a financial product, as it does not relate to the movement of funds – rather, like the other financial services, it appears to be a way of interacting with a financial product.

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18	Are there any functions that are proposed to be regulated as a product that should instead be regulated as a new type of financial service or vice versa?	Our view is the proposed separation of payment products and payment services seems appropriate as there is a clear distinction between the products involved in the movement of funds and services which are preparatory to or merely facilitate movement of money.
19	Are there any practical issues created by separating out different 'functions' and treating them as separate products and services? Would it be simpler to have fewer different functions that cover more payment services?	We appreciate these proposals are designed to promote payment system safety and enhance consumer protections by addressing operational and financial risks such as fraud, cyber and data security, credit, and liquidity risk. However, we wish to reiterate our earlier comments where if a 'financial service' is being provided to another PSP (for example a non-user facing provider of 'Payment Technology and Enablement Services') we see no benefit to requiring such entities to be licensed as this activity should be more appropriately monitored as an outsourced service. If the entity is not customer facing than it is unclear who the 'client' would be that the entity would be "liable" to under the Act. If a PSP requires a third party to perform a function or an activity to the PSP's platform, then the PSP should be accountable to the client for whichever third parties they choose to use and should be responsible for making sure they meet certain requirements.
20	What needs clarifying regarding the tests of 'dealing in' and 'arranging' for PSPs?	In our view, "arranging" is an amorphous concept when considered in the context of payments products. The authorisation of 'arranging' is rarely used for both licensees and corporate authorised representatives, and it is unclear when someone would be 'arranging'. It is possible that there are entities in the market that are 'arranging' now that are not treated as such by industry, likely due to a lack of guidance on this point. Presumably merchants (e.g. retail stores etc) are exempt from arranging but given that there is no guidance this remains unclear. It seems more arguable that entities that could provide payment service sin-house, but who choose to outsource, are "arranging", but industry is not currently managing it in this way. In our view, practical guidance, and examples to clarify who will be 'arranging' as a financial service for PSPs would assist in understanding whether the arranging concept is required.
Excluded and Exempted Activities		
21	Is the scope of the exclusion for payments debited to a credit facility	We are of the view that where a credit card is linked to a credit facility and that credit card is being used, then

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	in section 765A(1)(h)(ii) of the Corporations Act appropriate?	the credit facility issuer is providing a payment facilitation service and would be required to hold an AFSL as a PSP. We agree that the risks attached to “providing credit” should be separately dealt with under the National Credit Code (if applicable), but that the payment risks should be addressed under the financial services regime. Where a credit facility is disbursing loan funds to a third party (e.g. a lender disbursing funds to a motor vehicle dealer on behalf of the borrower) this should not attract regulation as a PSP and should continue to be exempt under the credit facility exemption.
22	Should existing exemptions for unlicensed product issuers be restricted for certain payment functions?	This exemption is currently not commonly used among the industry because it requires someone else to be interposed in the distribution chain between the PSP and the customer. For this reason, the exemption should be removed completely.
23	Should PSPs that process or facilitate transactions or store value below a certain amount have reduced requirements under the Corporations Act? If so, what should they be?	We are of the view that low-value facilities operating under the proposed limits should continue to have conditional relief from licensing, conduct and disclosure obligations and the hawking provision. We do think clarity is needed on whether the design and distribution obligations apply to all of the proposed PSP products. We assume it will not apply to the PSP functions that are financial services, as design and distribution is a financial product obligation.
24	Should the low value exemption apply at the controlling entity level, if there are a group of related entities?	We believe that the low-value facility exemption should apply at the controlling entity level. There is a risk that an entity could avoid regulation by splitting its activities amongst multiple subsidiaries. We understand that this is a practice that is commonly exploited (whether correctly or not) for stored value facilities, with payment providers forming a view that the $10 million SVF threshold applies on a per facility basis as opposed on an aggregated basis.
25	Are the proposed thresholds for low value facilities appropriate?	We agree that these values are appropriate. Further, we believe that there should be a legislated mechanism for review of the thresholds on a 5 yearly basis for inflation and appropriateness.
26	Should the low value exemption be available for all payment functions?	We are of the view that it can be difficult to apply the low-value exemption to some of the proposed payment functions. The low-value exemption readily applies to ‘Payment Facilitation Services’, ‘Cross-border Transfer Services’ and SVFs. We do not think that it is appropriate to apply the

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		exemption to any of the payment functions that are financial services, unless the payment financial product to which the service is attached is also exempt i.e. any exemption for a financial service, flows from the exempt nature of the financial product.
27	How could a limited network exclusion be appropriately confined to avoid regulatory arbitrage? Are the conditions for this exemption appropriate? Should it apply to all payment functions?	We agree with the development of a limited network exclusion. We believe that the term "limited" requires further clarification, specifically in respect of the service provider and goods and services that are meant to be limited. Failing to do so will likely result in exploitation of the exemption. We are also of the view that this exemption should only be accessible to SVFs and 'Payment Instruments'. We do not think that this exemption should apply to all payment functions, specifically it should not apply to 'Payment Initiation' and 'Payment Facilitation' services as it would be difficult to limit these services given that the functionality associated with these services is likely to be provided only with other payment services and it would be difficult to limit their use. We also believe that 'Payment Technology and Enablement Services' is effectively an outsourced step for 'Payment Initiation' and 'Payment Facilitation' and it would be difficult to restrict or limit these services for the same reason. We also believe further consideration is warranted for certain marketplaces that deal in these exempt products. As an example, a marketplace for selling gift cards is fully exempt from the need to hold an AFSL, however these marketplaces are essentially selling redeemable cash. Whilst we agree that a gift card should continue to be exempt, we question whether online marketplaces dealing in gift cards should be regulated or at the very least marketplaces that issue Payment Instruments, specifically Visa, MasterCard or EFTPOS debit cards are not able to access this kind of exemption to avoid the need for regulation.
28	Should there be a commercial agent exclusion?	We believe that there is benefit to including an agent exclusion. We do think that there is a risk that entities will artificially design solutions to fit into this exemption i.e. escrow arrangements for supplier payments. We are of the view that to avoid this potential misuse of the exemption, it should only apply where it is an 'incidental" service of the agent to accept / make payments. As an example travel agents are only accepting payments in relation to goods/services that they are facilitating the purchase of and the payment that is made is incidental to the main business provided.

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		We agree that it should include travel agents, resellers and buyers agents and be extended to insurance brokers who facilitate payments for insurance policies who would otherwise be incidentally caught by the proposed reforms and require a payments licensing. This is not intended to be an exhaustive list.
29	Is the proposed amended exemption for designated payment systems that have been declared not to be a financial product appropriate or should it be further revised, replaced or removed?	We believe that the approach proposed in the Consultation Paper is sensible and appropriate. We do believe that a significant issue with payment system infrastructure is common access, which will fall outside of the *Corporations Act 2001*.
30	Should there be an exclusion for global financial messaging infrastructure? For example, Singapore excludes from regulation 'global financial messaging infrastructure which are subject to oversight by relevant regulators'.	We believe that the approach proposed in the Consultation Paper is sensible and appropriate.
31	Should the relief provided by ASIC for certain activities be moved into regulation or discontinued? For example, should loyalty schemes, road toll devices and electronic lodgement operators be exempted?	We believe that the specific exclusions should be moved into regulation and retained. In respect of salary packaging and payroll we are of the view that where it involves embedded payment solutions (i.e. there is no need to separately initiate the payments from a bank using an ABA or CSV file from the platform) then this should not be exempt. If a platform produces an ABA or CSV file to initiate payment in a third-party banking app, then these should be exempt. In respect of loyalty schemes and reward schemes, we believe that an exemption should continue to apply. However, where there is an ability to buy loyalty or reward point, then the loyalty/reward points represent cash and is effectively a form of SVF which should be regulated as this becomes higher risk. Loyalty/rewards points that are issued for free have limited use and therefore have a small and manageable risk. Further, where the loyalty/rewards points have very large use case (e.g. certain airline points) then this increases the risk profile of the loyalty points. We agree that the limited participant exemption should be removed.
32	Do loyalty schemes that allow credits or points to be purchased present particular risks?	Yes, we are of the view that these pose a significantly higher risk. The points are effectively a proxy for cash payments and therefore are analogous to SVFs and should be regulated accordingly.

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33	Should payment activities by not-for-profit/charitable and religious organisations be exempted?	We note that further detail as to how this exemption is intended to operate is required as the Consultation Paper does not provide information on the intention. We are of the view that there are no obvious reasons for why an exemption should exist in this case as the risk profile is not lower. Based on our understanding, it is unlikely that fundraising activities would be caught under the proposed reforms, meaning that it is likely outbound payments that are intended to be captured. There is also a risk that charitable or religious organisations that operate exempt banking systems, but which attached payment functionality would be exempt from regulation despite having the same risks as those are regulated.
Licensing Processes		
34	Do the proposed options for streamlining licensing processes adequately balance safety with the need to foster competition in the SVF sector?	Aside from transitional arrangements referred to on page 76 of the Consultation Paper is it unclear what additional streamlining has been proposed. We note that SVFs will now require an AFSL and APRA oversight with Major SVFs requiring an additional APRA licence and Standard SVFs being subject to additional APRA reporting. Additionally, there are standards that are also required to be complied with from the AASB and RBA. Therefore, aside from increasing the dollar limit for Major SVFs and removing the RBA's role with respect to PPFs it's difficult to see what additional streamlining will result. To ensure competition continues to be fostered in the SVF sector we recommend increased formal collaboration between the regulators with published guidance and records of decisions as well as formal recognition of entities who are already halfway through the lengthy process with APRA to become a purchased payment facility.
35	What further information or guardrails could assist a Standard SVF make a smooth transition to Major SVF?	Whilst we anticipate industry may have concerns with this approach, we consider regular reporting on SVF volumes would assist APRA identify Major SVF candidates or assist providers to design and embed controls to manage this. We have discussed this further in our response to question 52. At a more practical level, it would be extremely worthwhile if APRA would publish guidance in the form of a 'checklist' to assist Standard SVF transition to Major SVF. It would be useful if the checklist incorporated major milestones and estimated time

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		frames for both licence preparation and decision making. This would be similar AFS licence preparation guidance published by ASIC.
Financial Services Obligations		
36	Are the general AFS obligations fit for purpose for PSPs?	We agree that the general AFS obligations should apply to PSPs. We do recommend further specific consultation is taken with industry to confirm whether there are any bespoke risks that are more prevalent with PSPs and which should be addressed with additional principle-based obligations. In particular obligations to manage cybersecurity, fraud and data security.
37	Are the general risk management obligations sufficient, or should PSPs undertaking particular functions have additional or tailored risk management obligations?	We believe the current general risk management obligations are sufficient for PSPs and they are based on the Australian Standard. We believe that any risk management framework should have regard to the size, scale, nature and risks of the business. Given this, we think there is no need to impose additional or tailored risk management obligations except where prudential requirements are imposed by APRA (e.g. for Major SVFs). We do believe that generally most PSPs should be able to adapt and comply with the general risk management obligations, given the number of PSPs that are already PCI DSS compliant.
38	For currently unregulated PSPs, are any aspects of the financial services obligations or compliance processes disproportionately burdensome?	We note that currently unregulated PSPs have not been required to comply with these obligations and processes and as such it is difficult to pre-emptively comment on whether they are burdensome. We do believe that certain payment functions (e.g. 'Payment Technology and Enablement Services') which have a very limited involvement in the payment process (other than providing a gateway) may be overly regulated proportionate to their involvement and risks associated with the service. We note that it will be difficult for many PSPs (particularly those currently unregulated) to maintain organisational competence that meets the standards prescribed by ASIC in RG 105, given that there will be limited personnel in unregulated PSPs that have regulated experience. There will need to be guidance on what experience is relevant to support an application for an AFSL for currently unregulated payment services and what kinds of unregulated payment experience (particularly for services like 'Payment Technology and Enablement Services', which have limited exposure to payment services). In

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		particular, persons who have been working inside unregulated businesses that are to now become regulated should be able to rely on their unregulated experience to demonstrate organisational competency for those businesses.
39	Are the proposed financial requirements appropriate for PSPs? Are there particular payment functions where financial requirements should be increased, or decreased?	We believe that the general financial requirements are appropriate for PSPs. Given that the SLF requirements do not fluctuate based on how much client money is held, PSPs should have certainty and predictability with forecasting and managing their financial obligations. The ASLF requirement does not currently apply to any liability of a financial product issuer where that issuer holds client money in a trust account in full satisfaction of the liability owed to the client. Accordingly, we do not think it is appropriate that it should apply to any financial product where the client money rules will apply and funds are held in a designated trust account. Currently, the proposal effectively imposes the client money rules and the ASLF requirement to the same payment product and we do not consider this appropriate. However, we suggest consideration be given to whether some form of ASLF could be used for Standard SVFs as a proxy for prudential capital requirements that will help assist the transition to a Major SVF.
40	Are the standard compensation requirements appropriate for PSPs?	We believe that there are different risks that are relevant to each of the proposed payment functions. The insurance market for financial service providers is increasingly tightening with many insurers withdrawing from the market or limiting their risk profile. We understand that ASIC has been reluctant to grant any alternative compensation arrangements and therefore we believe that prescribing in legislation broad methods to comply with the requirements rather than leaving it to regulator discretion may be more appropriate (this applies broadly across all financial services and is not limited to PSPs). Further, we are not convinced that professional indemnity insurance is appropriate for PSPs. We are of the view that this insurance is unlikely to address the key risks presented by payment providers. The current requirements in RG 126 impose a maximum obligation to hold $20m (noting that a licensee could voluntarily hold more), however this may not be sufficient to address the risks that may be in place given the volumes of money moved by PSPs. We are also not convinced that professional indemnity insurance will respond to many events that require compensation for

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		PSPs. We believe that the biggest risk is likely to the result of cybersecurity and access to payment infrastructure issues. On the assumption that professional indemnity insurance does respond in this case, we think it will have minimal effect. Whilst we think that requiring licensees to maintain cybersecurity may be appropriate to manage risk, the market has not matured in Australia to date and it is difficult to source and is generally unaffordable to purchase (particularly as payments business would be classified as high-risk).
41	Is the proposed exemption to the hawking prohibition appropriate? Should it be broader or narrower?	We believe the proposal is consistent with the risk it is seeking to address.
42	Should the standard disclosure requirements not apply to any particular activities, for example, gift facilities (outside the existing exclusions)?	We believe that greater clarity is required as to who is receiving services. As an example, it is not clear who a Payment Technology and Enablement Service provider is providing their service to (i.e. a payer or a payment provider). We believe there is generally little merit and benefit in providing disclosure to a payment provider, or even to a payer where the financial services provider is not client-facing (as there is a risk the client will merely be confused by receiving disclosure from an entity they know nothing about).
43	Should the 'shorter PDS regime' apply to any activities?	Yes, we believe that payments are generally a simpler financial product than others and we do believe that it is appropriate for PSPs to produce a shorter PDS (as is done for non-basic deposit products).
44	How should the FSG and PDS disclosure exemptions for a facility for making non-cash payments related to a basic deposit product be updated?	We do not have any comment on this question. We recommend that Treasury further consult with industry on this point.
45	Is the proposed approach to applying client money rules on all PSPs that hold funds appropriate? Should APRA-regulated PSPs be subject to the standard AFSL client money obligations?	We believe that all PSPs should comply with the client money rules except for APRA regulated entities. We understand that APRA regulated SVFs will be subject to prudential standards set by APRA and as such there is no need to comply with client money rules (as they do not apply to other APRA regulated entities). However, if APRA regulated SVFs are not subject to prudential standards than it may be appropriate for the client money rules to apply.
46	To ensure the effectiveness of the standard obligations for client money, are additional changes necessary to tailor the client money rules for PSPs? If so, in what	We believe that the ASLF requirement should not be applied if the client money rules apply. We believe it may be appropriate for PSPs that are not APRA regulated be allowed/required to hold some of

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	fashion?	their own money in the trust account as a ‘float’ to manage any refunds, dishonours, chargebacks or client related refunds, this then allows the PSP to avoid using the funds that are held in the client money account for one client to cover a refund for another client. The funds that are held could be the SLF amount (or another amount calculated by reference to average transaction amounts).
47	Should alternative approaches to client money rules be considered, for PSPs processing funds in transit?	
48	Are the proposed obligations for low value payment products appropriate? Should these obligations apply to low value payment activities that are not proposed to be regulated as a payment product (such as Payment Initiation Services)?	We believe that the proposed obligations are appropriate.
Regulatory Framework for Stored Value Facilities (SVF)		
49	Are proposed amendments to the Major SVF criteria appropriate? Should there be additional criteria retained or added?	We consider the proposed amendments to the Major SVF criteria to be appropriate and do not consider additional criteria is required.
50	Is the proposed Ministerial designation power to amend the size threshold for Major SVFs appropriate? Are there alternative approaches preferred?	We consider Ministerial designation power to amend the size threshold for Major SVFs to be appropriate. However, we would encourage extensive consultation with industry, with publicly available reasoning should the power be exercised.
51	Is the proposed approach to allowing the Minister to designate further SVF providers or Payment Facilitation Service as being subject to APRA’s prudential regulation appropriate? Are there alternative approaches preferred?	We consider the proposed approach to be appropriate.
52	In order for regulators to retain visibility and to help determine which businesses may be designated for prudential regulation, should Payment Facilitation Services be subject to ongoing reporting requirements in relation to funds held and transactions processed?	We appreciate the need for regulators to have visibility and retain appropriate oversight and we recognise this can be achieved through ongoing reporting requirements. However, the effect of this proposal would mean entities who provide ‘Payment Facilitation Services’ will now have reporting obligations to both ASIC and APRA. We suggest that any APRA ongoing reporting requirements align or where possible leverage existing reporting obligations these entities may have to ASIC. However, we note there is precedent for this arrangement whereby other AFSL/ACL holding entities have reporting obligations directly into APRA without having any other oversight from APRA (e.g. insurance

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		underwriters/brokers and credit providers). In these circumstances it has been more effective to obtain the information from the source rather than ASIC.
53	Are the additional proposed obligations for SVFs appropriate? Should SVFs be subject to prohibited activities such as a restriction on paying interest? Should consumers have a general right to redeem funds for SVF products?	Whilst we agree consumers should have a general right to redeem funds for SVF products, the Consultation Paper is silent as to whether this right also extends to situations where the funds belong to someone else besides the consumer. For example, in many card programs the funding source (often a corporate) is different to the individual being issued a card. Additional clarity is required as to confirm if the corporate funding source is also entitled to redeem funds at any time, and if this is instead of the cardholder, or in addition to the cardholder. Furthermore, the practicalities of how this arrangement would work for gift card programs need to be considered as the right to redeem for cash is inconsistent with this model. This lends itself to further consideration as to whether 'redeem the monetary value… at par value' means cash. In our view, all APRA regulated SVFs should be allowed to pay interest although we note this may be difficult whilst client funds are being held in a trust account with a prohibition against investment. While we appreciate that this prohibition is designed to reflect that SVFs are distinct from banking products, it does not take into account when and how SVFs are being used by industry as a solution to de-banking (e.g. crypto businesses) and the commercial impact this has on customers.
54	Is the proposed extension of APRA-administered legislative powers and broader requirements appropriate for Major SVFs? Are there particular requirements that should be tailored for Major SVFs?	
55	Are the proposed obligations under the SVF framework appropriate for PSCs? Should there be additional obligations considered for the regulation of PSCs?	It is difficult to comment on this without having further details of the prudential requirements or standards that will apply to SVFs.
Common Access Requirements (CAR)		
56	What are the different risks associated with payments clearing and settlement? How should these be managed?	We do not have any comment on this question. We strongly recommend that Treasury further consult with industry on this and, in doing so, have regard to the nature of payment systems generally whilst avoiding APRA being seen as a regulator of payment systems.
57	The CARs are intended to increase access to payment systems while managing the risks of direct access. How can both of these objectives be	We do not have any comment on this question. We strongly recommend that Treasury further consult with industry on this and, in doing so, have regard to

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	achieved?	the nature of payment systems generally whilst avoiding APRA being seen as a regulator of payment systems.
58	Should CARs be legislatively mandated for all non-ADI PSPs seeking direct access for payments clearing and settlement, or should it be optional? Why?	We do not have any comment on this question. We strongly recommend that Treasury further consult with industry on this and, in doing so, have regard to the nature of payment systems generally whilst avoiding APRA being seen as a regulator of payment systems.
59	APRA would have the power to set the CARs through prudential standards setting powers. To enable effective APRA-supervision of entities subject to CARs, what other APRA powers should be extended to the CARs regime and why? For example, should it include resolutions powers, enforcement powers, directions powers and application of group regulation powers?	We do not have any comment on this question. We strongly recommend that Treasury further consult with industry on this and, in doing so, have regard to the nature of payment systems generally whilst avoiding APRA being seen as a regulator of payment systems.
Industry standing-setting framework		
60	What are the issues with the current mix of voluntary standards and payment system requirements? What would be the benefits of introducing a formal framework for mandatory technical standards? What are the key reasons why the current status quo of voluntary standards is insufficient to achieve the key objectives set out in the discussion of the standard-setting framework?	The current mix of voluntary standards and payment system requirements are outdated, complex and inconsistently applied across the industry. Whilst we appreciate that introducing a formal framework for mandatory technical standards would provide consistency, if we look at the recent introduction of mandatory technical standards in other industries, for example in CDR, these standards are overly prescriptive and impractical. We recommend that any standards are principle based and align with global standards where possible.
61	Is the PSRA bill definition of payment system 'participants' an appropriate regulatory perimeter for compliance with mandatory technical standards?	In our view the PSRA bill definition of payment system 'participants' is extremely broad and designed to capture all entities involved in the payments value chain, including entities with or without a direct relationship to a payment system. In our view mandatory compliance with technical standards may not be appropriate for all participants and the application to PSPs should be considered in light of any changes made to the ePayments Codes to ensure there isn't any duplication or inconsistency.

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62	Should complying with mandatory technical standards be an explicit condition for PSPs that are required to hold an AFSL?	It is unclear whether it is proposed that compliance with mandatory technical standards would be a specific licence condition or merely a prerequisite for obtaining a licence. Clarity would need to be provided on how continued compliance with these standards is monitored and enforced (to the extent applicable) In any event, if an entity is already required to comply with mandatory technical standards, then making this compliance an explicit condition seems redundant and raises concerns as to whether a breach of a technical standard could become a reportable situation as it relates to an entities licence condition or ability to competently provide financial services.
63	Are there any additional criteria that should be considered when evaluating the design of the framework?	When designing the framework, we strongly encourage Treasury to ensure consistency in the standards they set and the standards PSPs may already be subject to i.e. standards set by the Data Standards Body in relation to the CDR.
64	Are there any other options for the framework that should be considered; if so, why?	We have no suggestions for other options to be considered for the framework.
65	This paper outlines a potential variation to the proposed standard-setting framework. What are the advantages or disadvantages of this variation (where the RBA has only a veto power, compared with being required to formally approve a standard)? Which approach is preferred and why?	In our view, if Variation B (involving the RBA having only a veto power) reduces the regulatory costs and the administration involved in the operation framework this approach is preferred.
66	It is proposed that the ASSB is responsible for enforcement of minor breaches. Which body is best placed to resolve appeals to the ASSB's enforcement decisions?	We recommend the ASSB be a newly formed independent body that is preferably a government agency. We do not think it is appropriate for the powers, responsibilities and obligations of the ASSB to be given to a private organisation which is more likely to be subject to conflicts and be presented with challenges in maintaining neutrality. f the ASSB is an independent government body as we have recommended, appeals of enforcement decisions should be resolved through the Administrative Appeals Tribunal (**AAT**) who conducts independent merits review of administrative decisions made by Federal Agencies. If it is proposed that the ASSB not an independent government agency, then it should be subjected to AFCA membership and oversight. We note this may result in additional resourcing and upskilling of AFCA

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		staff.
67	Do you agree with the proposed scope for mandatory technical standards developed by an ASSB? Are there any type of technical standards that should not be within the scope of the ASSB?	In our view all technical standards should fall within the scope of one entity (whether that be the ASSB or ASIC in its capacity of ePayments Code)
68	This paper proposes that the ASSB seek authorisation from the ACCC for a technical standard where necessary. Are there any issues with this approach, and if so, how might these be resolved?	We note that the ACCC has a time frame of approximately 5 months to make decisions and already is required to make determinations on a number of other authorisation applications. Other than adding an additional layer of regulatory oversight in the industry, it is difficult to appreciate the value of seeking authorisation from the ACCC when compared with the need to deliver timely decisions which support business efficiency and promote competition.
69	What should be considered 'major breaches' versus 'minor breaches' under the mandatory technical standards regime?	Whilst we appreciate the importance of establishing a mandatory technical standards regime, we consider discussions around breaches and penalties of provisions to be premature especially because the content of such technical standards has not been established. In our view, queries about the content or operation of a mandatory technical standards regime would be better addressed once issues concerning the regulation and licensing of PSP are more established.
70	What are the appropriate penalties for a major breach of technical standards?	Please see our commences above in question 69. Additionally, we note that the major breaches suggested in the Consultation Paper are likely to be reportable situations, so in that sense, penalties are already in place and we need to question when 'double punishment' through additional penalties is necessary.
71	How should the mandatory technical standard-setting framework be funded?	We understand Treasury has proposed that the development of specific mandatory technical standards will be funded by the ASSB itself and entities will be required to pay a fixed annual fee which will be based on the number of standards the entity is required to comply with. In our view, any fees payable by industry should be tiered and based on transaction volume to 'level the playing field'. Significant fixed fees for smaller fintechs will only increase barriers to entry, discourage competition and

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		prevent innovation.
ePayments Code		
72	Is the proposed application of the Minister's rule-making power for the ePayments Code appropriate?	We consider the Minister's rule-making power for the ePayments Code to be appropriate. However, it is difficult to conceptualise how this rule making power will apply to: • ADIs; • PSPs defined through the payment functions in this Consultation Paper; and • credit providers performing payment functions. This is because not all of these entities will have obligations under the ePayments Code.
73	Are the proposed subject matters for the Minister's rule-making power for the ePayments Code appropriate? Are there technical matters that are better dealt with through an ASIC rule-making power or by the ASSB?	In our view, all technical matters are more appropriately addressed through the ASSB as such items never traditionally formed part of the ePayments Code remit. If technical matters are not going to be addressed through a mandatory technical standards framework under the oversight of an ASSB, then we question whether the framework really required and what function it is performing.
74	Are there additional areas to consider in ensuring appropriate interaction between the proposed Scams Code Framework and the ePayments Code?	In the absence of an updated draft ePayments Code, we do not have any comment on this question.
Transitional Arrangements		
75	Is the proposed transition period (18 months) an adequate grace period for new prospective licensees?	We do not consider the proposed transition period to be an adequate grace period. Given that legislation is expected sometime in 2025, new applicants would need to apply for an AFSL within the first six months following its introduction. This will result in an extremely busy period for the Payments Industry. Many organisations that may be in-scope of the new law are starting from a place of no regulation. Therefore, much of the infrastructure required to comply will need to be developed and implemented which will take time. Compliance frameworks will need to be built, implemented and integrated, staffing and resourcing requirements will need to be addressed and training

Hamilton Locke

Number	Questions	Responses
		will need to occur. At a minimum, a transition period of 2 years should apply. Providing sufficient time for proper industry implementation would be key to the smooth execution of any new regime. We note that the proposed transition period is a "start to finish" transition period, which requires all participants to be licensed by the end. In general, we prefer a transition period where participants are required to have submitted by a certain date and can continue to operate while ASIC assess the application. This style transition period can have a shorter length, and we consider 12 months appropriate in this case. We do not think that the suggested 6 months period for participants to lodge their application is sufficient, given the above note about building infrastructure, but also because there is likely to be excessive demand for service providers to support licensing in such a short period of time. We also have concerns that ASIC will be able to assess and approve the number of licence applications in the relevant period (particularly if other unregulated sectors become regulated in the same period, including BNPL and digital asset facilities). We noted that ASIC struggled to assess the applications for claims handling and settling services when introduced and that industry was much smaller and the majority of that industry was already regulated.
76	Is the proposed grandfathering process for existing AFS licensees adequate? Are there additional transition issues that should be addressed for existing AFS licensees and PPFs?	In our view, more information is required regarding the prescribed notification process. For example, who will monitor this process and will it operate on a 'use it or lose it' basis where authorisations are revoked if it is found they are not appropriate or not being used? In addition, further information is required in regard to the major SVF transition specifically whether recognition would be afforded to entities who are already in the process of obtaining a licence.