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To whom it may concern

The Australian Payments Network (AusPayNet) is an industry association and self-regulatory body for the Australian payments industry. AusPayNet manages and develops regulations, procedures, policies and standards governing payments clearing and settlement within Australia.

AusPayNet welcomes the opportunity to respond to the Council of Financial Regulators (CFR) Issues Paper, *Review of Retail Payments Regulation: Stored-value Facilities*. Given this is an initial consultation and the short timeframe involved, AusPayNet has provided high-level comments for consideration.

### Summary Overview

- Given the strong consumer trend in Australia towards uptake of digital payments and fintech solutions, it could be assumed that use of stored-value facilities (SVFs, in particular digital wallets) will become ubiquitous and be used for a variety of purposes.
- A number of international jurisdictions have developed SVF frameworks and eMoney licences. Despite this, no single approach has emerged. Locally, there is a need for greater clarity and information on the regulatory regime requirements for SVFs. The current multi-regulator model for PPFs could be replaced by a single SVF regulator, with easily understood and identifiable licensing requirements.
- The CFR should explore a graduated regulatory framework for SVFs that offers temporary relaxation of requirements for new entrants within a restricted environment, for testing purposes (similar to APRA's restricted ADI licensing framework<sup>1</sup> and ASIC's Regulatory Sandbox<sup>2</sup> for fintechs). This approach is preferable to a framework with permanently differentiated tiers of regulatory obligations for different entities. A graduated approach could be based on the type of payment activities offered and appropriately risk assessed accordingly. This would complement and align with other Government frameworks and approach in the financial services sector (outlined above).

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<sup>1</sup> APRA, *ADI Licensing: Restricted ADI Framework*, <https://www.apra.gov.au/sites/default/files/information-paper-adi-licensing-restricted-adi-framework-20180504.pdf>

<sup>2</sup> ASIC, *Regulatory Sandbox*, <https://asic.gov.au/for-business/your-business/innovation-hub/regulatory-sandbox/>

- Alternatively, there may be benefit in continuing to apply exemptions for some low-value, single-use products such as gift cards – where activities pose little systemic risk to the broader payment system.
- The emergence of eMoney, and the associated eMoney licencing regime in some international jurisdictions, including the EU, presents an opportunity to test different terminology to determine which is best understood by Australians.
- Mandating the ePayments Code (the Code) for SVFs and all senders and receivers of payments would help ensure consistent consumer protections for across the payments industry. The ePayments Code will need to be revised and updated prior to being mandated.

## 1) What is the outlook for SVFs in Australia?

As highlighted in AusPayNet’s six-monthly *Digital Economy*<sup>3</sup> reports, Australian consumers have and continue to embrace digital payments. Likewise, the *EY FinTech Adoption Index* identified that Australia has one of the fastest fintech adoption rates globally.<sup>4</sup> Australian fintech payment models include (among others): ‘buy now pay later’, financial advice and management tools and international remittances. The CFR should assume that SVFs will become ubiquitous, as has been seen internationally, and they could continue to develop to be used for a variety of purposes.

In some international jurisdictions, such as the UK, SVF regimes have been used by fintechs as an entry point into the market. Greater regulatory clarity in this area could produce similar outcomes for Australia.

The introduction of the consumer data right (CDR), envisaged to commence in the banking sector on 1 July 2019 has the potential to accelerate both digital payments and new entrants. As such, the interoperation of the CDR and SVFs should be included in the CFR’s consideration of SVFs.

## 2) How do you view the environment in relation to innovation and competition?

Across the Asia-Pacific, there is a trend towards rapid expansion of eMoney licences granted by regulators and a rapid up-take of digital in-app payments. Domestically there is a competitive market with many new entrants, including start-ups as well as established but non-traditional players.

A snapshot of regional trends includes:

- **Malaysia** has seen a rapid increase in non-banks being licensed as eMoney issues, up from 5 in 2016 to 31 currently. There are now more non-bank licences on issue than bank licences. Examples of large players include Boost, Grab, Vcash and Bigcash. Malaysia is also the first country outside of China to enable WeChat payments.
- The **Canadian** Government is exploring the introduction of a regulatory regime for retail payment service providers (PSPs) similar to the UK model. This will subject retail PSPs to operational soundness and safeguarding measures and is intended to level the playing field.
- In **Singapore**, increasing consumer choice in payments has shifted more payments outside of the traditional banking regime and onto e-wallets such as Grab.
- In 2017, **Thailand** enacted the *Payment Services Act*. This Act introduced a new category of ‘supervised payment services’, including electronic money, payment and fund transfer services.

<sup>3</sup> AusPayNet, *Milestones: The Digital Economy*, <https://www.auspaynet.com.au/insights/digital-economy>

<sup>4</sup> Ernst & Young, *FinTech Adoption Index*, [https://www.ey.com/Publication/vwLUAssets/ey-fintech-adoption-index-2017/\\$FILE/ey-fintech-adoption-index-2017.pdf](https://www.ey.com/Publication/vwLUAssets/ey-fintech-adoption-index-2017/$FILE/ey-fintech-adoption-index-2017.pdf)

- The **Hong Kong** open loop transport *Octopus* card has evolved from transport into small-value payments in the retail sector, toll roads, parking, building access, among other things.

As more payment services utilise e-wallets and more consumer funds are held by non-banks, new risks or issues could appear that regulators will need to address. In Singapore, the key driver behind new payment legislation was to ensure the safety of e-wallets, both to consumers and financial system stability. The Singaporean payment system was becoming fragmented from the proliferation of e-wallets and point of sale devices; interoperability was seen as a primary focus for change.

### 3) How can regulation appropriately balance consumer protection aims while supporting an innovative and competitive industry?

Rather than viewing consumer protections and innovation as opposing paradigms requiring balancing, effective consumer protection should act as an *enabler* of innovation by engendering system-wide confidence.

This approach should include a common, best practice standard of security for consumers. Payments operate on a network basis, with the potential for flow-on impacts from disruption undermining confidence in the payments system. Ensuring consistent standards would provide consumers with appropriate confidence and protection in using a range of payment methods.

The ePayments Code would be an appropriate tool in achieving consumer protections for SVFs, provided it is appropriately revised and updated. It has the benefit of being widely understood by consumers and industry alike. However, the Code has not been fundamentally reviewed for over five years and needs to be updated to reflect changes in technology and payment services. AusPayNet agrees with the recommendation from the Productivity Commission (PC) that it should be updated, revised and made mandatory for all senders and receivers of payments.

### 4) Is there potential to clarify the definition of SVFs and the intended coverage of stored-value regulation?

AusPayNet has previously noted that the regulatory regime that has emerged to cover purchased payment facilities (PPFs) is inconsistent, complex and does not adequately incorporate new entrants.<sup>5</sup> AusPayNet agrees that there is an opportunity to provide further clarity in this area, including on questions relating to liability, and who ultimately bears liability should a new entrant fail, and how to protect funds that customers hold in PPFs.

AusPayNet welcomes the consideration of a clearer definition for these digital payment offerings. It is clear that the term 'PPF' does not resonate with consumers or fintechs. Whilst SVFs is an improvement, other definitions are likely to be more suitably. The CFR may wish to undertake further testing of terminology to determine which is most easily understood by Australians.

### 5) What regulatory boundaries or thresholds for SVFs are appropriate?

The CFR should adopt a graduated framework for entrance into this sector, that offers new entrants a temporarily lower set of regulatory requirements within a restricted operating environment. The expectation would be that the new entrants would have time to test their systems and processes, before becoming subject

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<sup>5</sup> APCA, *Submission to the Financial System Inquiry Interim Report*, [http://fsi.gov.au/files/2014/08/Australian\\_Payments\\_Clearing\\_Association\\_APCA.pdf](http://fsi.gov.au/files/2014/08/Australian_Payments_Clearing_Association_APCA.pdf) p10

to the full compliance obligations (or exiting the system). This approach would minimise any risk to consumers. A graduated approach could operate on a combination of the principles-based criteria with a payments activity-based risk assessment model.

A graduated approach is preferable to a permanently tiered and differentiated set of regulatory requirements that lowers the cost of doing business for one set of participants, as it has the advantage of adapting to the maturing nature of the business. However, there may be benefit in continuing to apply exemptions for some low-value, single-use products such as gift cards – where activities pose little systemic risk to the broader payment system.

## 6) Are there other criteria that could be used to define regulatory boundaries for stored-value facilities?

In future, we may see closed-loop systems take on some characteristics traditionally associated with open-loop systems. For example, some payment solutions are now closely integrating payment functionality with loyalty and gift cards, as well as facilitating person-to-person transfers. Likewise, gift cards and loyalty points are moving towards digital solutions that allow trading on online platforms. As noted above, the Hong Kong *Octopus Card* has become the *O Money* card.

While some aspects of these are being considered within the scope of other legislation,<sup>6</sup> CFR should consider if these models could be accommodated under a new SVF framework.

## 7) What are your views on a ‘tiered’ approach to prudential supervision for stored-value facilities?

A permanently tiered framework could reduce protections for customers who hold funds with lower-tiered SVFs. It may be that consumers would not understand that some SVFs hold a lower level of protection than others.

A graduated approach for SVFs would be consistent with, and complement, related Government initiatives to promote new entrants into the financial system. APRA’s Restricted ADI (RADI) licensing regime and ASIC’s FinTech Sandbox both adopt a graduated approach. Consistent with the RADI licensing scheme, a graduated approach would allow certain restrictions to appropriately targeted towards lesser developed new entrants, whilst ensuring more established and well-resourced organisations must to meet normal compliance obligations from the outset.

If a permanently tiered system were adopted, the CFR should adopt activity-based risk-assessments rather than relying solely on the size of funds held by the SVF. Activity-based assessments could include a range of areas including consumer protection and dispute resolution, AML/CTF processes, governance mechanisms, cyber security arrangements and data protection regimes. The Singaporean model could (if appropriately modified to Australian conditions) provide a basis for an Australian SVF framework.

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<sup>6</sup> For two examples, see: NSW Fair Trading, *Gift Cards and Vouchers*, <https://www.fairtrading.nsw.gov.au/buying-products-and-services/ways-to-pay/gift-cards-and-vouchers>; and Treasury exposure draft, *Competition and Consumer Amendment (Gift Cards) Bill 2018*, <https://treasury.gov.au/consultation/c2018-t312986/>

## 8) What is the appropriate regulatory approach to emerging products and services?

Given the rapid evolution of product offerings and business models in this space (as evidenced in some overseas markets), there should be semi-regular (if not ongoing) assessment of the SVF regime, to ensure that it remains fit-for-purpose.

There is a related issue of AML/CTF obligations. Given the potential for foreign SVFs to enter the Australian market, SVFs should be subject to normal AML/CTF requirements – including appropriate sanctions screening requirements.

Furthermore, one of the core objectives of the PC recommendation is to create a simplified and more easily understood regime. The CFR should ensure that any approach reflects this consideration.

## 9) How could the transparency and communication of regulation be improved?

In our capacity as a self-regulatory body for the payment system, AusPayNet regularly engages with new and potential entrants into the payments industry to listen to their views. Many fintechs have noted that they have significant payment knowledge gaps. This gap exists on multiple fronts, including:

- A lack of knowledge in general about payment system regulation – including both the requirements and rationale for existing compliance obligations;
- Difficulty in understanding where to go to get information about regulatory systems;
- Uncertainty about which regulator is responsible for their service offering; and
- Uncertainty as to the type of/need for licence requirements.

These concerns are compounded with respect to SVFs. The specific difficulties of the current PPF regime were acknowledged in both the *Financial System Inquiry* (2014) and Productivity Commission Inquiry, *Competition in the Australian Financial System* (2018):

- *...the scope of the prudential regime for PPFs is unclear because it involves a number of exemptions and declarations. The current PPF regime also involves significant compliance costs and does not provide competitive neutrality with other ADIs.*<sup>7</sup>
- *PPFs face complex and potentially stunting regulation that can deter entry and expansion.*<sup>8</sup>

The current multiple regulator model for SVFs could be overseen by a single regulator, with easily understood and identifiable licensing requirements.

## 10) Are there other issues relating to the regulation of retail payment service providers which could potentially be improved or clarified?

Given the pace of change in payments business model and Australian financial system regulation, it is important that CFR consider the cumulative impact of these trends, and that the SVF regime continue to be monitored to ensure that it is fit-for-purpose.

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<sup>7</sup> Financial System Inquiry (2014), *Final Report*, [http://fsi.gov.au/files/2014/12/FSI\\_Final\\_Report\\_Consolidated20141210.pdf](http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf), p165

<sup>8</sup> Productivity Commission Final Report, *Competition in the Australian Financial System*, July 2018, <https://www.pc.gov.au/inquiries/completed/financial-system/report/financial-system.pdf>, p498

AusPayNet would welcome further discussions with the CFR on any of the issues raised in our submission.

Yours sincerely

Leila Fourie

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**Australian Payments Network**