

19 July 2023

Nghi Luu
Assistant Secretary
Payments Systems and Financial Innovation Branch
The Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

Dear Ms Luu,

RE: Payments System Modernisation (Licensing: Defining Payment Functions)

The Financial Services Council (FSC) welcomes the opportunity to make a submission in relation to the modernisation of the payments system in Australia.

The payments system underpins the entire financial services sector with the FSC representing both payment service providers, and users of those services.

The FSC is largely supportive of the principles proposed to underpin the new licensing framework for the payments system but believes further and specific emphasis should be placed on encouraging innovation and providing functional and risk-based definitions that capture both existing and emerging payment methods. This would provide organisations with certainty about the regulatory requirements and limits of any product they create, and give consumers certainty in relation to the products and payment methods they utilise.

The FSC also notes that non-fiat currency backed stablecoin as well as non-stablecoin crypto currencies are specifically not captured by the payments licensing framework. The FSC submits that they should be captured within functional and risk-based definitions of payment functions. The FSC is not supportive of a separate regulatory regime for non-stablecoin crypto based assets where there are functional and risk-based similarities.

Summary of Recommendations

1. The principles underpinning the payments licensing system should include three further principles: 1) a specific focus on encouraging innovation, 2) ensuring technical neutrality, and 3) ensuring competitive neutrality. This ensures that the overarching guiding principle of the proposed licensing framework – that like functions are regulated similarly – is properly captured and that future innovations should be able to easily fit into the new scheme.
2. If the Government does not wish to capture non-fiat currency backed stablecoins in the proposed payments licensing scheme, then clarity should be given as to how these payment methods will be treated in Australia. The FSC submits that the proposed licensing framework should be updated so as to encourage and capture future innovation of the payments system, including non-fiat currency backed stablecoins.

3. Non-stablecoin crypto asset payment methods should be captured under a single payments licensing scheme to encourage innovation and provide certainty and clarity for operators. Crypto should not be treated differently to other forms of payment and instead, where it is functionally the same as other payment methods, fit into the proposed payments licensing regime.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

The Importance of An Innovative Payments Licensing System to FSC Members

The Payments System underpins the entire financial services industry. The types of payments being made in the industry vary from transferring of superannuation contributions from employers to super accounts, payments between investors and investment platforms, payments for investments, and pension payments to retired Australians.

FSC members are both users of payment service providers such as clearing houses and payment facilitation services, as well as some FSC members being payment facilitation services and store-value facility providers themselves.

Further, as Australia continues to evolve its sophistication with regard to digital currencies, the use cases for asset classes such as crypto and non-fiat-stablecoin investments being used directly as payment methods will continue to grow.

Principles Underlying the List of Payment Functions

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

The FSC is overall supportive of the principles underlying the list of payment functions. In particular the FSC is supportive of a regulatory parameter that is based on the risks associated with a particular activity, as opposed to a blanket regulation for all providers, and for a definition of payment service providers that allows future use cases to be easily slotted into the existing framework.

That said, the FSC believes that the list should also include principles relating to the following:

- Encouraging innovation;
- Assuring technological neutrality; and
- Ensuring competitive neutrality.

Although these may be interpreted to be captured by elements of the already defined principles, the FSC believes that it is warranted that these principles be enshrined in their own right in the list of principles underpinning the licensing system.

The addition of encouraging innovation will ensure that the new licensing system will be

shaped by a forward-looking approach and confirm that new innovations should, ideally, be captured by the system going forward. It will also acknowledge the speed at which payments service providers, and the methods of payment themselves, are modernising and encourage good consumer outcomes by creating certainty through the payments system.

Further, the addition of a principle of technological neutrality would encapsulate the objective of the definitions outlined in the paper – that is, to regulate payment functions by what they do, so that like functions are regulated the same. Ensuring an understanding of technological neutrality will ensure that this overarching guiding principle is enshrined completely in the new payments licensing framework.

Finally, adding a principle confirming competitive neutrality would further bolster the scalability of the system and ensure that there is an even competitive playing field with regard to both existing operators and new entrants to the market. A thriving and competitive payments system should be encouraged in order to deliver the best possible outcomes to customers and boost innovation and adoption of the latest payments technology. It will also ensure that loopholes within the payments licensing regime cannot be exploited by larger entities whilst pushing out smaller market players.

A focus on competitive neutrality will also confirm that the licensing scheme is function, not entity based, further underpinning the first principle of consistent and appropriate regulation of PSPs.

RECOMMENDATION 1

The principles underpinning the payments licensing system should include three further principles: 1) a specific focus on encouraging innovation, 2) ensuring technical neutrality, and 3) ensuring competitive neutrality. This ensures that the overarching guiding principle of the proposed licensing framework – that like functions are regulated similarly – is properly captured and that future innovations should be able to easily fit into the new scheme.

Stored Value Facilities

Question 5. Does the proposed definition of ‘payment stablecoins’ adequately distinguish itself from other stablecoin arrangements.

The FSC is not supportive of regulation where products or services that have similar functions and risks, have different rules, simply because they are a different type of product.

Although risk does form an important part of determining if a product is functionally similar, if non-fiat currency backed stablecoins are not captured by the payments licensing scheme, the question is whether these would then be available for use as payment in Australia at all. If the answer is in the negative, the FSC believes this would be an untenable restriction to innovation. If the answer is in the positive, this may leave consumers at risk of not being protected by any regulation in relation to these payment methods.

That non-fiat currency backed stablecoins are pegged to “less stable” assets should not be a concern to the payments system any more than whether a person has sufficient funds in their account when utilising a bank debit card. The focus of the payments system should be on the reliability, useability, and safety of the infrastructure and the services that utilise it. Therefore, the FSC sees no reason to draw a functional boundary between non-fiat and fiat backed stablecoins.

If the purpose of the new regulations is to make the licensing system scalable, should non-fiat currency backed stablecoins become a popular method of payment elsewhere around the world, it would stand to reason that Australian's would seek to utilise them at home as well.

The FSC believes therefore, that consideration should be given to ensuring these are adequately captured by the proposed licensing scheme to encourage innovation and ensure the new licensing framework is future proof. This may be in the form of a higher risk stored value facility definition or other means.

RECOMMENDATION 2

If the Government does not wish to capture non-fiat currency backed stablecoins in the proposed payments licensing scheme, then clarity should be given as to how these payment methods will be treated in Australia. The FSC submits that the proposed licensing framework should be updated so as to encourage and capture future innovation of the payments system, including non-fiat currency backed stablecoins.

Question 6. Is regulation as an SVF an appropriate framework for the regulation of payment stablecoin issuer?

As noted above, the FSC is supportive of a regulatory framework based on function and risk. As such, anything that functionally meets the definition of a stored value facility and meets the same risk profile, should be regulated as such.

Proposed Payment Functions

Question 7. Does the list of proposed payment functions adequately capture the range of payment services offered in Australia currently and into the future that should be regulated under a payments licensing regime?

The FSC, in its submission to the Treasury's Token Mapping consultation¹, submitted that there are certain crypto tokens that are functionally financial products and the FSC was therefore supportive of the core principle of that consultation that technical neutrality should underpin the functional approach to financial services regulation in Australia.

Similar to the above on stablecoins that are backed by assets other than fiat currency, if non-stable coin crypto assets are, as a payment method, functionally similar to other payment methods, then there is no reason why these should be excluded from the payment regime. This was clearly considered within that consultation where it was noted that the functional approach to financial services regulation removes barriers to technological innovations and the broad functional definition, in theory, means that the functional perimeter adequately captures any "facility" through which a person makes a financial investment, manages a financial risk, or makes a non-cash payment.²

A clear regulatory framework will encourage benefits from the continued innovation and evolution in the uses of digital assets and blockchain technology. For this reason, the FSC is supportive of incorporating crypto assets into all existing regimes, including the proposed payments licensing framework and the financial services licensing regime and is not

¹ See:

² Australian Government: The Treasury. (2023). Token Mapping: Consultation Paper. [Link](#). p. 8

supportive of creating any entirely new scheme specifically for crypto assets. There is a risk that the creation of a new crypto licensing regime could leave retail consumers without the benefit of protections intended by the regulatory framework.

RECOMMENDATION 3

Non-stablecoin crypto asset payment methods should be captured under a single payments licensing scheme to encourage innovation and provide certainty and clarity for operators. Crypto should not be treated differently to other forms of payment and instead, where it is functionally the same as other payment methods, fit into the proposed payments licensing regime.

Conclusion

The FSC is supportive of a functional, risk-based approach to payments licensing that encourages innovation and remains scalable to future technological advances. The FSC is not supportive of shearing off non-fiat currency backed and non-stablecoin crypto payments and believes that these should be able to be captured within the new proposed licensing framework. This will provide greater clarity for creators of future payment methods as well as extend important consumer protections.

If you would like to discuss anything contained in this submission, please do not hesitate to contact me.

Yours sincerely,

Kirsten Samuels
Policy Manager, Superannuation and Innovation