



Application for revocation and substitution

Authorisations A91560-A91562

Lodged by:

NPP Australia Limited

14 January 2022

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1 Executive Summary

- 1.1 NPP Australia Limited (**NPPA**) is an unlisted public company established in August 2014 to manage and operate the New Payments Platform (**NPP**), a centralised platform that facilitates real-time clearing and settlements of payments between participating Australian financial institutions.
- 1.2 The NPP is national infrastructure for payments that commenced rolling out to the Australian public in February 2018. It provides the Australian financial services and payments industry the ability to offer smarter, faster and simpler payments to businesses and consumers, including PayID. The NPP infrastructure supports the development of overlay services to offer payment solutions to end-users.
- 1.3 NPPA's objectives (as noted in its Constitution)¹ include establishing and operating the NPP in a manner that promotes the public interest in the NPP by:
 - a) ensuring the safe, reliable and efficient operation of the NPP;
 - b) facilitating fair access to the NPP as a mutually owned utility infrastructure; and
 - c) ensuring ongoing investment in the NPP to meet the changing needs of financial institutions and users of Australian payments systems.
- 1.4 The Australian Competition and Consumer Commission (**ACCC**) provided authorisation for certain provisions of the NPP Regulations concerning eligibility requirements and settlement provisions (authorisation number A91562) and suspension and termination of NPP participants (authorisation number A91560 and A91561).²
- 1.5 The current authorisation relating to the suspension and termination provisions of the NPP Regulations (authorisation numbers A91560 and A91561) is due to expire on 27 April 2022, and NPPA seeks revocation and substitution of a new authorisation on substantially the same terms as previously granted. The proposed conduct is outlined below at paragraph 4.
- 1.6 NPPA submits that the proposed conduct should be authorised on the basis that:
 - a) the suspension and termination provisions, if adopted, will not substantially lessen competition in any market; and
 - b) the scope of the application of the suspension and termination provisions is limited to the minimum necessary to protect the efficiency and integrity of the NPP system which amounts to a clear public benefit.
- 1.7 NPPA reiterates its position that enforcing the suspension and termination provisions are considered a 'last resort' and enforcing them is only contemplated if a participant's continuing participation would impair the efficiency and / or integrity of the NPP system. This is supported by the fact that since the launch of the NPP system, these provisions have not yet been relied upon. NPPA will continue to adopt this approach.
- 1.8 NPPA also seeks interim authorisation should that be necessary if the revocation and substitution process is not finalised prior to the expiration of authorisation numbers A91560 and A91561 (by 27 April 2022).
- 1.9 NPPA is part of a transaction that will amalgamate ownership of BPAY Group Holding Pty Ltd, eftpos Payments Australia Limited and NPPA under a new entity, Australian Payments Plus Ltd (**AP+**) by way of share acquisitions (the **Amalgamation**). This Amalgamation was authorised by the ACCC on 9 September 2021³ and following the withdrawal of an application for review before

¹ See para 2.1 (Objects) of the NPP Constitution, publicly available at: <https://nppa.com.au/wp-content/uploads/2019/10/NPPA-Constitution-as-at-17-October-2019-1.pdf>.

² Decision available at: <https://www.accc.gov.au/system/files/public-registers/documents/D17%2B43242.pdf>.

³ MA1000020-1.

the Australian Competition Tribunal on 6 December 2021⁴, the ACCC's determination is now effective. The NPP Regulations will remain fundamentally unchanged following the Amalgamation⁵ including decisions relating to access applications and changes to the NPP Rules and Regulations will continue to be made in the same way as they currently are made.

2 The Applicant

2.1 Details of the applicant:

Name: NPP Australia Limited (ABN 68 601 428 737)

Address: Level 1, 255 George Street
Sydney NSW 2000

2.2 Contact person:

Name: Michelle Gleeson

Position: Acting General Counsel, NPPA

Telephone: [REDACTED]

Email: [REDACTED]

2.3 Description of business activities:

Management, implementation, operation and governance of the NPP.

2.4 Email address for service of documents in Australia:

Please serve any documents directly to NPPA's contact person at: [REDACTED].

3 Authorisations

3.1 Authorisation to be revoked (the existing authorisation)

- a) On 17 October 2016, NPPA lodged applications for authorisation of certain provisions of the NPP Regulations concerning eligibility requirements and settlement provisions, and suspension and termination of NPP participants, with the ACCC.
- b) Specifically, NPPA sought authorisation for Regulations 9.2 to 9.5 (inclusive) (suspension and termination provisions), Regulations 4.3 (a), 4.3 (c), 4.4 (a) 4.6(h) (eligibility criteria provisions) and Regulations 3.5(c), 4.3 (f), 4.4 (b), 4.5, 7.1 and 7.3 (settlement provisions) of the NPP Regulations.
- c) On 5 April 2017, the ACCC issued a determination decision authorising the following:
 - a. authorisation number A91562 - the eligibility requirements and settlement provisions were authorised in perpetuity; and
 - b. authorisation numbers A91560 and A91561 - the suspension and termination provisions were authorised for five years until 27 April 2022.

⁴ Decision available at: <https://www.judgments.fedcourt.gov.au/judgments/Judgments/tribunals/acompt/2021/2021acompt0006>.

⁵ Other than changes that relate to being a shareholder of NPPA - The operating rules of the NPP will be amended to remove the requirement that an 'NPP Participant' or 'Connected Institution' for the purposes of the NPP Regulations be a shareholder of NPPA, among other changes.

- d) This application is a request for revocation of authorisation numbers A91560 and A91561, which are in relation to suspension and termination provisions of the NPP Regulations.
- e) Since authorisation number A91562 (in relation to eligibility requirements and settlement provisions of NPP Regulations) was granted in perpetuity, NPPA does not wish to revoke or substitute it. NPPA would request for that determination decision to be unaltered to the extent it allows a perpetual Authorisation in respect of the eligibility requirements and settlement provisions.
- f) The current authorisation with respect to authorisation numbers A91560 and A91561 is due to expire on 27 April 2022.

3.2 **Authorisation to be substituted (the new authorisation)**

- a) NPPA is seeking revocation and substitution by replacement pursuant to section 91C of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

New NPP Participants⁶ and Connected Institutions⁷ since April 2017

- b) Since 5 April 2017, Wise Australia (formerly called TransferWise) has received approval from NPPA to become the first non-bank to plug directly into the NPP enabling it to clear and settle its own payments in real-time. Wise Australia's application to join NPPA as a shareholder and NPP Participant was accepted in August 2021.
- c) The NPP Regulations also permit institutions to plug directly into the NPP as a 'Connected Institution' via their own NPP payment gateway. Connected Institutions may use the NPP to send NPP payment initiation messages to financial institutions to request payments to be made from customers' bank accounts. While entities have always had the option of becoming a Connected Institution under the NPP Regulations (provided that they meet the eligibility criteria), it wasn't until October 2021, that NPPA approved the first application to become a Connected Institution, from Zepto. Zepto anticipates that it will go-live on the NPP as a Connected Institution by mid-2022.
- d) As at the date of this application, the parties to the proposed conduct will be the NPP Participants and Connected Institutions of NPPA, as listed at **Annexure 1**.

The role of the Reserve Bank of Australia

- a) Following the Amalgamation, the Reserve Bank of Australia (**RBA**), currently a shareholder of NPPA, will not acquire shares in AP+.
- b) The RBA has several distinct roles in the Australian payments system, including:
 - a. it owns, operates and participates in Australia's real-time gross settlement system, including the Fast Settlement Service which settles transactions made through the NPP;
 - b. it is a provider of transactional banking services to the Australian Government and its agencies, including for transactions using BPAY, eftpos and the NPP;
 - c. it has responsibility for issuing Australia's currency notes; and
 - d. it is the principal regulator of the payments system through the Payments System Board.

⁶ As that term is defined in the NPP Regulations

⁷ As that term is defined in the NPP Regulations

- c) The RBA has a Memorandum of Understanding (**MoU**) with NPPA which governs the relationship between NPPA and the RBA in its various roles⁸ and also appointed a director to the NPPA Board. The RBA participated as an observer through the Amalgamation process and as it became apparent that there was support for an amalgamation, it indicated to NPPA that it would seek to reach agreement on suitable arrangements under which it would remain a full participant in the NPP but redeem its existing shares in NPPA and not become a shareholder in AP+. It is likely that the MoU will be revised following transaction completion but the change in status of the RBA does not materially alter NPPA's Regulations. Further, the RBA's Banking Services Department will remain a full participant in the NPP and its involvement from an operational perspective will remain.

4 The proposed conduct

4.1 Description of the proposed conduct and any documents that detail the terms of the proposed conduct.

NPPA is seeking revocation and substitution of the suspension and termination provisions of the NPP Regulations (authorisation numbers A91560 and A91561), due to expire on 27 April 2022. This authorisation is sought on substantially the same terms as previously granted.

As described below, if triggered, the suspension and termination provisions could amount to a cartel provision and/or an exclusionary provision or might be considered to have the purpose or likely effect of substantially lessening competition in a market.

However, suspension can only occur in a limited range of circumstances (as set out in Regulation 9.2). The NPP Governance Committee, which consists of the CEO and the independent directors, will assess the grounds for any proposed suspension or termination of a participant under Part 9 of the NPP Regulations, and will provide its recommendation to the Board. The NPP Governance Committee does not have representatives from any of the participants which enables it to make recommendations to the Board that are independent from the views of any individual participant. Termination can follow suspension provided that the alleged breaches were not remedied, and the concerned participant was provided with the opportunity to make submissions regarding termination and the participant has been given written reasons for the termination. Otherwise, termination only occurs as a result of a participant resigning, becoming insolvent or ceasing to exist.

Suspension and termination provisions are effectively "last resort" steps to be contemplated **only** if a participant's continuing participation would impair the efficiency and / or integrity of the system.

Relevant provisions

The relevant provisions for suspension and termination are set out in Regulation 9.2-9.5 of the NPP Regulations. See **Annexure 2** for an extract of Regulations 9.2-9.5 and a complete copy of the NPP Regulations is included at **Annexure 3**.

Background

Suspension and termination provisions are effectively "last resort" steps and to date, NPPA has not relied upon these provisions.

⁸ Available at <https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/pdf/memorandum-2021-04-13.pdf>.

They are intended to operate in a similar way to the suspension and termination provisions included in all of Australian Payments Network Limited (formerly, the Australian Payments Clearing Associations (**AusPayNet's**) clearing system regulations.⁹

The AusPayNet suspension and termination provisions have not been used or specifically contemplated being used since its establishment, yet they are considered necessary to safeguard the integrity and efficiency of payments clearing and settlement systems (eg, in case a participant becomes insolvent or unable to settle). They also provide a mechanism to ensure compliance with the Regulations and Procedures and to allow participants to have confidence in the system.

If triggered, the suspension and termination provisions have the effect of excluding the institution concerned from participating in, and receiving services through, the NPP system. Potentially, an excluded institution might have difficulty engaging other participants and accordingly exclusion from the system may have an adverse impact on the institution concerned.

However, suspension can only occur in a limited range of circumstances (as set out in Regulation 9.2). Two of these are if a participant's prudential supervisor requests suspension or if a participant agrees to suspension. The circumstances in which NPPA can unilaterally suspend a participant are as follows:

- a) if a participant no longer satisfies the participation criteria;
- b) if a participant is in material breach of its obligations under the NPP Regulations or the NPP Procedures and fails to rectify the breach or provide a satisfactory explanation within a prescribed time period;
- c) if a participant suffers an insolvency event; or
- d) if a participant engages in conduct reasonably regarded by the Board to be contrary to the interests of NPPA or which may adversely affect the NPP Basic Infrastructure. In lieu of suspending a participant, NPPA may impose conditions on the participation of that participant (including changing the capacity in which that participant may participate in the NPP or varying any provision of the NPP Procedures as may be reasonable and proportionate).¹⁰ The rights and obligations of that participant will then be subject to any such conditions or variations, which may be varied or revoked at any subsequent time by NPPA.

Termination of a participant¹¹ can follow suspension provided that any breach of the rules has not been remedied, the participant has been provided with the opportunity to make submissions to regarding termination and the participant has been given written reasons for the termination. Otherwise, termination only occurs as a result of a participant resigning, becoming insolvent or ceasing to exist.

4.2 **Outline of changes to the conduct between the existing authorisation and the new authorisation.**

NPPA does not propose to change the nature or extent of the conduct authorised in the existing authorisation numbers A91560 and A91561.

⁹ It is noted that on 29 November 2021, Australian Payments Network Limited applied for revocation of authorisations A91281, A91282, and A91283, and substitution for a new authorisation for similar conduct in respect of the High Value Clearing System (HVCS) for a further 10 years.

¹⁰ See *Regulations for New Payments Platform*, 9.4.

¹¹ See *Regulations for New Payments Platform*, 9.5.

4.3 Provisions of the Competition and Consumer Act 2010 (Cth) which might apply to the proposed conduct:

The proposed conduct relates to suspension and termination provisions, which:

- a) might be a cartel provision within the meaning of Division 1 of Part IV of the Act and/or an exclusionary provision within the meaning of s4D of the Act; or
- b) might have the purpose or likely effect of substantially lessening competition in a market within the meaning of s45 of the Act; or
- c) might constitute third line forcing within the meaning of s47(6) or 47(7) of the Act.

4.4 Rationale for the proposed conduct.

The ability to suspend or terminate a participant is critical for ensuring that the NPP avoids systemic failure, and maintains efficiency and integrity even in circumstances where one or more participants in the system are unwilling or unable to meet their obligations to other participants.

4.5 Term of authorisation sought and reasons for seeking this period.

The Applicant seeks new authorisation for a period of 5 years. A further period of 5 years would reduce the administrative and procedural costs of re-applying for authorisation given that the nature of the conduct will not change over that period of time.

4.6 Name of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant goods or services) and detail how or why they might be impacted.

Not applicable.

5 Market information and concentration

5.1 Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

The NPP typically allows customers of a participating Authorised Deposit-Taking Institution (ADI) to make payments from their account to a customer of another participating ADI with immediate funds availability to the payee. From the perspective of the customers, the process is simple and takes only moments.

There are a number of confirmation and clearing steps (which involve the payer ADI confirming its customer has the required funds and the payee ADI confirming that the recipient account exists and is able to receive NPP payments) and settlement steps (which involve the transfer of funds between the ADIs) that occur in quick succession, and within seconds, to make this happen:

- a) A customer (the payer) initiates a payment through a banking channel, such as an on-line banking portal or mobile phone banking application. The customer could include up to 35 characters of plain text (End to End ID) and additionally, unstructured remittance data (up to 280 characters of rich text).
- b) If the payer has chosen to use a PayID to identify the recipient of the funds, the payer's institution will send an enquiry message to the addressing service to find the payee's BSB and account number linked to the PayID. The name associated with the PayID is returned to the payer for confirmation, which helps to reduce the occurrence of misdirected payments and fraud.

- c) The payer institution then sends a message with all the relevant payment details and payer-provided remittance data, subject to any overlay service requirements, to the payee's institution using its payment gateway. The payee's institution clears the payment by checking the payment details and sends a response back to the payer's institution via its payment gateway, confirming it can credit the payee.
- d) With clearing of the payment complete, the payer institution's payment gateway automatically initiates settlement by sending a settlement request to the Fast Settlement System (**FSS**), which tests that the payer institution has sufficient credit funds, and then transfers value between the two institutions' Exchange Settlement Account (**ESA**) in real time by simultaneously debiting the ESA of the payer institution and crediting the ESA of the payee institution.
- e) The FSS then returns a settlement confirmation to both institutions indicating that settlement has occurred.
- f) Once the settlement confirmation has been received, the payee ADI makes the funds available to its payee customer.

The addition of Zepto as a Connected Institution is an example of a non-ADI connecting into the NPP system. At the time of writing, NPPA had received another application from a prospective Connected Institution which is currently under review and we expect to receive more applications in 2022.

5.2 **Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

Background

A payment is the transfer of a financial asset, of the kind generally used as a medium of exchange, from one person to another. Such assets are generally cash or obligations drawn on organisations which, in the normal course of their business, provide the means for their customers to transfer value to third parties.

The payments system is the institutional infrastructure which carries payment messages and transfers funds from one party's account to another party's account. It underpins commerce and is at the core of the financial system.

A payments system comprises payment instruments and delivery mechanisms. A payment instrument is the form that a payment message takes (such as a cheque or debit card) and is the means by which one party transfers value to a third party. Such a message is typically a request by one party (such as the drawer of a cheque) to another party (the drawee of the cheque) to pay a certain sum to a third party (the payee). A delivery mechanism is the means by which payment messages are carried from one point within the payments system to another.

Where both parties to a payment transaction maintain accounts with the same organisation, payment arrangements are relatively simple. The organisation debits the paying customer and credits the receiving customer. Where the parties to the payment instruction are customers of different organisations, a process, called "clearing and settling", is needed for both organisations to reflect the change in their customers' accounts and for value to pass between those organisations:

- a) clearing is the cross-institutional exchange of individual payment messages for the purposes of obtaining settlement. It entails sorting, routing and exchanging payment instructions; verifying the integrity of the instructions and the accuracy of the sums involved; correcting the sums for errors and other adjustments and finally, determining net amounts which, once paid, will settle any resultant debt between the financial institutions involved; and

- b) settlement is the exchange of value between organisations for the purpose of providing finality of payment for the obligations arising out of clearing. As a general rule, settlement between financial institutions for their obligations arising from domestic clearing of payment messages is effected through transfers of balances held by those institutions with the central bank of the country concerned. Settlement between financial institutions in Australia is achieved through transfers of their ESA balances held with the Reserve Bank of Australia.

Existing payment systems

There are 4 existing payment systems currently administered by AusPayNet. These systems relate to cheques (APCS), direct entry (BECS), cards in certain circumstances (IAC) and high value (HVCS).

Each is managed by a committee reporting directly to AusPayNet's Board. AusPayNet provides the rules, procedures and decision-making structure that enable the transfer of value between providers of these payment services.

AusPayNet

As noted above, AusPayNet has assisted and facilitated development of the NPP Regulations and has overseen development of the system more generally.

AusPayNet is an industry self-regulatory body with specific accountability for key parts of payments clearing and settlement arrangements in Australia. AusPayNet's charter, as set out in its Constitution, is to coordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures.

AusPayNet does not process payments, but instead coordinates and manages payments clearing arrangements for each of the clearing systems it establishes. Broadly, they are responsible for technical and efficiency standards, operating procedures and policies, supervision of observance of the clearing system rules, assessment of clearing volumes, dispute resolution and approval of membership applications according to the rules. Individual institutions are responsible for their own clearing operations, and must conduct their operations according to AusPayNet's rules as set out in the Regulations and Procedures for each of AusPayNet's clearing systems in which they participate.

5.3 In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

Not applicable.

5.4 Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously.

The suspension and termination provisions would only impact the NPP Participants and Connected Institutions of NPPA (and any Identified Institution of a sponsoring participant), to the extent the suspended or terminated participant could be excluded from participating in and receiving services through NPP (as also described, below). Therefore, triggering of the suspension or termination provisions (if at all) might have the ability of excluding a participant of NPPA and reducing their choice of payment systems players. For completeness, if the sponsoring participant of an Identified institution was suspended or terminated (subject to any contractual arrangements between the Identified Institution and the relevant participant), the Identified Institution could engage another participant for sponsorship.

Further, the exercise of provisions of termination or suspension, could also amount to coordination between various other participants of the NPPA.

6 Public benefit

- 6.1 **Describe the benefits to the public that are likely to result from the proposed conduct. Refer to the public benefit that resulted under the authorisation previously granted. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

The suspension and termination provisions are necessary to protect the efficient functioning and integrity of the NPP system. NPP can play its part effectively only if its participants operate in accordance with NPP Regulations and NPP Procedures.

As also provided above, suspension and termination provisions provide last resort sanctions, which are considered critical in payment system architecture to ensure a payment system can maintain integrity and avoid systemic failure (even in circumstances where one or more participants in the system are unwilling or unable to meet their obligations to other participants).

Regulation 9.2 is only triggered upon the incidence of an event which may affect the integrity of the NPP facility (for example, if a participant no longer meeting participation requirements, insolvency, or a request by the relevant prudential supervisor for suspension) or by agreement with the relevant NPP Participant, Connected Institution or Overlay Service Provider.

These are not provisions that any Board would apply lightly, as their very application (even if justified) would have severe repercussions for consumer confidence in the system. Similar provisions in other domestic clearing systems administered by AusPayNet, for example, have never been used, as is the case with the NPP too.

Further, as in any set of rules or laws, sanctions are an important mechanism to foster compliance with the necessary rules that support the payment system. Without these safeguards, the efficacy and integrity of the NPP would be diminished and the confidence of participants of the NPPA would be reduced. Similar provisions in other payment systems operated by AusPayNet have been considered and authorised by the ACCC.

In those decisions, the ACCC has accepted that without the ability of participants to self-enforce compliance with the standards established, the operational efficiency of payment system could be undermined and at the extreme, compromise the industry's ability to centrally coordinate the clearing and settlement of the relevant transactions.

7 Public detriment including any competition effects

- 7.1 **Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Refer to the public detriment that may have resulted under the authorisation previously granted. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

As also provided above, the suspension and termination provisions, if triggered, might have the effect of excluding the institution concerned from participating in and receiving services through the NPP. Since an excluded institution may have difficulty engaging other participants, exclusion from NPP may have an adverse impact on the institution concerned. However, these provisions are "last resort" sanctions.

In fact, NPPA notes that similar suspension and termination provisions have been (and continue to be) authorised with respect to the Regulations in other AusPayNet frameworks. As recognised by the ACCC in those determinations, although exclusion may have an adverse impact on the institution concerned, the suspension and termination provisions do not place unreasonable requirements on the relevant participants.

To the extent that any anti-competitive detriment may arise in respect of a particular participant, this anti-competitive detriment does not affect competition itself, given the number of competing

providers of such services. In NPPA's view, therefore, there are no likely public detriments. To the extent that a potential adverse impact upon a suspended or terminated participant was considered to be a public detriment, it would be minimal and would be outweighed by the public benefit associated with having a secure NPP.

Further, in its recent decision, authorising the Amalgamation,¹² the ACCC had noted that any public detriment, including anti-competitive detriment, from the relevant provisions in the NPP Regulations would likely be limited. For example, the suspension or denial of direct access to the NPP would not preclude a financial institution from having payments cleared and settled through the NPP. Third parties could enter into an agreement with existing NPP Participants for clearing and settlement.

The above demonstrates the following:

- a) the suspension and termination provisions have never been enforced before and are highly unlikely to be enforced in future;
- b) even if the provisions are enforced against a participant, due to severe non-compliance at their end, such a participant will always have the opportunity to get payments cleared and settled through the NPP via other means, such as securing a sponsoring participant and becoming an Identified Institution;
- c) a possible (although, unlikely) determinant is outweighed by the overall benefits of suspension and termination provisions. These provisions ensure an important mechanism to foster compliance with the necessary rules that support the payment system. Without these safeguards, the efficacy and integrity of the NPP would be diminished and the confidence of participants of the NPPA would be reduced.

The authorisations the subject of this application have been beneficial during the term of the authorisation in that they have helped ensure the efficiency and integrity of the NPP. Without these provisions, the efficiency and integrity of the NPP would be at risk.

The NPP Regulations (and other rules documents which are incorporated by reference) (**NPP Rules**) and other policies contain a variety of mechanisms that encourage the compliance of NPP Participants and Connected Institutions. For example, these mechanisms include:

- a) the self-reporting of non-compliance by participants, the development of remediation plans and commitment from participants to meet the remediation deliverables set out in such plans;
- b) certain requirements in the NPP Rules which are fundamental to the integrity, availability, resilience or performance of the NPP have been designated by the Board to be Mandatory Compliance Requirements.¹³ Should a participant breach a Mandatory Compliance Requirement, it may be liable to pay non-compliance charges to NPPA. Non-compliance charges may escalate for repeat breaches;
- c) the adoption by the Board of the NPP Compliance Escalation Policy which requires participants who do not meet certain requirements under the NPP Rules to self-suspend from the NPP. If the participant fails to give effect to a self-suspension request, a suspension direction may be issued by NPPA (see paragraph (d) below);
- d) relying upon the termination and suspension provisions in Part 9 of the NPP Regulations.

¹² MA1000020-1.

¹³ As that term is defined in the NPP Regulations

To provide an example of how these mechanisms work in practice, NPPA recently issued a Participant Compliance Notice pursuant to the NPP Compliance Escalation Policy. This notice was issued for failure to provide the Annual Compliance and Assurance Attestations (in which participants attest that they comply with certain requirements in the NPP Rules) by the due date which is a requirement of the NPP Rules. The Participant Compliance Notice required the relevant participant to submit the outstanding attestations by a new “extension date” which was 20 business days after the material was originally due. If the Participant failed to provide the outstanding attestations by the “extension date,” it would be required to self-suspend or be suspended by NPPA. This participant submitted the outstanding attestations well before the “extension date” and no further action was required.

The presence of the suspension and termination provisions in Part 9 of the NPP Regulations are beneficial in that they encourage voluntary compliance earlier in the compliance process so that to date, NPPA has not been required to rely upon these provisions. These provisions are also beneficial in that NPPA is able to feel more confident in a more expansive and inclusive membership criteria (for example, Connected Institutions which do not necessarily have an ADI licence) knowing that these provisions may be relied upon as a “last resort.”

Should an NPP Participant or Connected Institution do, or fail to do, anything that impacts upon the efficiency or integrity of the NPP (among other factors), NPPA may rely on the suspension and termination provisions in Part 9 of the NPP Regulations. These provisions apply equally to all participants that connect directly into the NPP, regardless of whether that institution is an ADI (such as an NPP Participant) or a non-ADI (such as a Connected Institution); is a large institution such as a ‘big four’ bank or a smaller fintech such as Zepto. The NPP Regulations do not discriminate between different types of institutions which is also a public benefit.

Any public detriment that is likely to result from the proposed conduct is minimal, and any such detriments are outweighed by the public benefit.

8 Contact details of relevant market participants

- 8.1 Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.**

The provisions of suspension and termination will only adversely impact the existing NPP Participants and Connected Institutions of NPPA (if at all) and any sponsored Identified Institution. As mentioned above, if the sponsoring participant of an Identified institution was suspended or terminated (subject to any contractual arrangements between the Identified Institution and the relevant participant), the Identified Institution could engage another participant for sponsorship.

9 Additional information

- 9.1 Provide any other information or documents you consider relevant to the ACCC’s assessment of the proposed application.**

Not applicable.


Declaration by Applicant (NPP Australia Limited)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person – on behalf of NPP Australia Limited

Chief Executive Officer

Office held

Adrian Lovney

(Print) Name of authorised person

This fourteenth day of January 2022.

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

**ANNEXURE 1 – current NPP Participants and Connected Institutions of NPPA
(as at the date of the application)**

	Name of institution	Address
1.	Australia and New Zealand Banking Group Limited	Level 9, ANZ Centre Melbourne, 833 Collins Street, Docklands, NSW 3008
2.	Australian Settlements Limited	ASL House, 6C Geils Court, Deakin, ACT 2600
3.	Bendigo and Adelaide Bank Limited	The Bendigo Centre, PO Box 480, Bendigo, VIC 3550
4.	Citigroup Pty Limited	Level 15, 2 Park Street, Sydney, NSW 2000
5.	Commonwealth Bank of Australia	Ground Floor, Tower 1, 201 Sussex Street, Sydney, NSW 2000
6.	Cuscal Limited	Level 1, Margaret Street, Sydney, NSW 2000
7.	HSBC Bank Australia Limited	HSBC Centre, 580 George Street, Sydney, NSW 2000
8.	Indue Ltd	Level 3, 601 Coronation Drive, Toowong, QLD 4066
9.	ING Bank (Australia) Limited	140 Sussex Street, Sydney, NSW 2000
10.	Macquarie Bank Limited	1 Shelley Street, Sydney, NSW 2000
11.	National Australia Bank Limited	800 Bourke Street, Docklands, VIC 3008
12.	Reserve Bank of Australia ¹⁴	65 Martin Place, Sydney, NSW 2000
13.	Westpac Banking Corporation	Level 20, 275 Kent Street, Sydney, NSW 2000
14.	Wise Australia (formerly, TransferWise Limited)	44 Martin Place Sydney NSW 2000
15.	Zepto Payments Pty Limited	3/66 Centennial Circuit, Byron Bay NSW 2481

¹⁴ Noting that the RBA will not become a shareholder of AP+.

ANNEXURE 2 – Extract of the NPP Regulations

“9.2 Suspension

(a) The Board may suspend an NPP Participant, Connected Institution or Overlay Service Provider for a specified or indefinite period of time in the following circumstances (each a “Suspension Event”):

- (i) the relevant NPP Participant, Connected Institution or Overlay Service Provider is subject to prudential supervision, and the relevant supervisor requests such suspension;*
- (ii) by agreement with NPP Participant, Connected Institution or Overlay Service Provider concerned;*
- (iii) if the relevant NPP Participant, Connected Institution or Overlay Service Provider no longer satisfies the requirements for participation set out in Part 4 of these Regulations;*
- (iv) if the relevant NPP Participant, Connected Institution or Overlay Service Provider is in Material Breach of its obligations under the NPP Regulations or the NPP Procedures and fails to rectify the breach or provide an explanation of its conduct satisfactory to the Board (in its reasonable discretion) within 30 Business Days of receipt of a request from the Board to rectify the breach or provide such an explanation;*
- (v) an Insolvency Event (not being an event that results in the automatic termination of participation rights pursuant to Regulation 9.5(a)(ii) or (iii)) occurs in respect of the NPP Participant. Connected Institution or Overlay Service Provider concerned; or*
- (vi) if the NPP Participant, Connected Institution or Overlay Service Provider concerned engages in conduct reasonably regarded by the Board to be contrary to the interests of NPPA or which may adversely affect the NPP Basic Infrastructure.*

(b) If an NPP Participant, Connected Institution or Overlay Service Provider is subject to prudential supervision by APRA then NPPA must give APRA reasonable notice of, and an opportunity to be heard at, any meeting at which it will consider suspending the NPP Participant pursuant to Regulation 9.2(a).

9.3 Effect of Suspension

(a) NPPA must promptly notify a party which is suspended under Regulation 9.2 of the suspension, and the time and date upon which the suspension becomes effective. For the avoidance of doubt, NPPA may determine that suspension is immediately effective.

(b) Subject to Regulation 9.4, an NPP Participant or Connected Institution which is suspended under Regulation 9.2 is not entitled (including, without limitation, in any capacity as a Sponsor to an Identified Institution or other NPP Participant) to:

- (i) connect to the NPP Basic Infrastructure; or*
- (ii) send or receive NPP Payments or Non-Value Messages.*

(c) Upon suspension of an Overlay Service Provider, each NPP Participant which is a subscriber to the Overlay Service or which provides clearing and/or settlement services to OS Subscribers will cease to be entitled to send or receive OS Payments.

(d) An Overlay Service Provider who is suspended under Regulation 9.2 is not entitled to provide its Overlay Service/s to any OS Subscriber for the duration of the suspension.

(e) An NPP Participant, Connected Institution or Overlay Service Provider which is suspended under Regulation 9.2 is not excused from discharging its obligations under the NPP Regulations or the NPP Procedures.

(f) NPPA will notify SWIFT, the RBA, all other NPP Participants and Connected Institutions and (other than in the case of suspension of a particular Overlay Service Provider) all Overlay Service Providers, by the most expeditious means reasonably available of any suspension under Regulation 9.2.

9.4 Conditions in lieu of Suspension

If a Suspension Event occurs in respect of an NPP Participant, Connected Institution or Overlay Service Provider NPPA may (in lieu of suspending that person) impose such conditions on the participation or effect such variation of any provision of the NPP Procedures in relation to that person as may be reasonable and proportionate. The rights and obligations of the NPP Participant, Connected Institution or Overlay Service Provider under these Regulations will be subject to any such conditions or variation. NPPA may at any subsequent time vary or revoke any such conditions or variations.

9.5 Termination

(a) An NPP Participant, Connected Institution or Overlay Service Provider ceases to be eligible to be a party to these Regulations on:

- (i) resignation;*
- (ii) becoming insolvent or making an arrangement or composition with creditors generally;*
- (iii) being wound-up, dissolved or otherwise ceasing to exist; or*
- (iv) the Board exercising its right to terminate the right of the person to be an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) in accordance with Regulation 9.5(d).*

(b) An NPP Participant, Connected Institution or Overlay Service Provider may, by notice in writing to NPPA, resign, such resignation to become effective on the date which is at least 30 days from the date of the notice. The notice is irrevocable.

(c) An NPP Participant, Connected Institution or Overlay Service Provider may not resign except by giving notice in accordance with Regulation 9.5(b).

(d) The Board may, by notice in writing to an NPP Participant (other than the RBA in its capacity as the operator of the FSS), Connected Institution or Overlay Service Provider, terminate the right of that person to be an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) either with immediate effect or with effect from a specified time and / or on a specified date, only if the following conditions have been fulfilled:

- (i) a Suspension Event has occurred in respect of that NPP Participant, Connected Institution or Overlay Service Provider and has not been remedied within a period determined by the Board following consultation with the NPP Participant, Connected Institution or Overlay Service Provider concerned; and*
- (ii) the Board has provided an opportunity for that NPP Participant, Connected Institution or Overlay Service Provider to make a submission to the Board regarding the Suspension Event and such proposed termination.*

(e) A notice given by the Board pursuant to Regulation 9.5(d) will include reasons for the Board's decision.

(f) A notice given by the Board pursuant to Regulation 9.5(d) may be revoked by the Board at any time before it becomes effective.

(g) Each NPP Participant acknowledges and agrees that upon resignation under Regulation 9.5(b) or termination of its right to be an NPP Participant under Regulation 9.5(d):

(i) it will cease to be entitled to exercise the rights attaching to the Shares;

(ii) it remains bound by the Constitution; and

(iii) it may elect to redeem its Shares for the nominal redemption price in accordance with the Constitution.

(h) Any resignation of an NPP Participant, Connected Institution or Overlay Service Provider, or any termination of the right of a person to be an NPP Participant, Connected Institution or Overlay Service Provider will not affect any right or liability arising under the NPP Regulations or the NPP Procedures before that resignation or termination takes effect or arising in respect of any act, matter or thing occurring prior to that time. An NPP Participant, Connected Institution or Overlay Service Provider who resigns pursuant to Regulation 9.5(b) or whose right to be an NPP Participant, Connected Institution or Overlay Service Provider is terminated pursuant to Regulation 9.5(d) will continue to be bound by the NPP Regulations and the NPP Procedures in respect of:

(i) any act, matter or thing occurring prior to the time such resignation or termination takes effect or as a result of such resignation or termination;

(ii) any right or liability under the NPP Regulations or the NPP Procedures which relates to or may arise at any future time from any breach of the NPP Regulations or the NPP Procedures which occurred prior to or on the date of termination; and

(iii) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, the NPP Participant, Connected Institution or Overlay Service Provider (as the case may be) in accordance with the NPP Regulations or the NPP Procedures in respect of periods which commence prior to the time such resignation or termination takes effect or which relate to any such act, matter or thing.

(i) Without limiting the generality of Regulation 9.5(h), any resignation of an NPP Participant, or any termination of the right of any person to be an NPP Participant will not affect the obligations of the NPP Participant arising under the Constitution or the Shareholders Agreement, including its funding obligations under clause 6 of the Shareholders Agreement.

(j) Without limiting the generality of Regulation 9.5(h), any NPP Participant, Connected Institution or Overlay Service Provider who resigns or whose right to be a party, is terminated is not entitled to be repaid all or part of any fee, costs, charges or expenses (including NPPA's costs of implementing a requested any Minor Change or Major Change) which has been paid by it.

(k) On resignation or termination of an NPP Participant, Connected Institution or Overlay Service Provider (as the case may be), NPPA will, as soon as practicable, notify SWIFT, the RBA (in its capacity as the provider of the FSS) and all other NPP Participants, Connected Institutions, and (other than in the case of suspension of a particular Overlay Service Provider), all Overlay Service Providers by the most expeditious means reasonably available, of the resignation or termination specifying:

(i) the name of the resigning or terminated NPP Participant, Connected Institution or Overlay Service Provider; and

(ii) the date on which the resignation or termination will take, or has taken, effect."

ANNEXURE 3 - complete copy of the NPP Regulations.

<https://nppa.com.au/wp-content/uploads/2021/12/NPP-Regulations-v10.0-public-version.pdf>