



Australian  
Competition &  
Consumer  
Commission

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20 January 2017

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General Counsel  
NPP Australia Limited

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Dear Ms Chapman

**NPP Australia Limited applications for authorisation A91560 - A91562 –  
interested party consultation**

I refer to the above listed applications for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 18 October 2016.

NPP Australia (NPPA) on behalf of current and future participants in a proposed New Payments Platform (NPP) seeks authorisation for certain provisions of the NPP Regulations. These provisions broadly relate to suspension and termination, eligibility requirements and settlement provisions for participants in the NPP. The NPP is a new open access infrastructure that is being developed to enable households, businesses and government agencies to make simply addressed payments, with near real-time funds availability to the recipient, on a 24/7 basis.

As you are aware, the ACCC has conducted a public consultation process in relation to the applications for authorisation. All publicly available submissions are posted on the ACCC internet site at [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister).

In addition to the submissions on the public register, the ACCC received two submissions that were excluded from the public register at the request of the parties providing the submissions. These submissions raised concerns about the proposed arrangements.

The purpose of this letter is to provide you with a summary of the concerns raised in these submissions (see **Attachment A**) and an opportunity to respond to these concerns.

Please note, the fact that the ACCC is passing on these concerns does not necessarily mean that it agrees with them. Nor has the ACCC formed a final view about the proposed arrangements.

If NPPA wishes to provide a further submission in relation to the issues set out in Attachment A, please do so by **3 February 2017**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Saraj Bhullar on 03 9290 1941 or [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Jones', with a stylized flourish at the end.

David Jones  
General Manager  
Adjudication

## **ATTACHMENT A**

The ACCC notes that not all the concerns raised, as summarised below, relate to the specific provisions of the NPP Regulations for which authorisation is sought. However, the ACCC considers that each of the concerns summarised below is relevant to the ACCC's assessment of the public benefits and public detriment likely to result from the provisions of the NPP Regulations for which authorisation is sought.

### **Composition of the NPPA Board**

The NPPA Board is comprised of Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited, Westpac Banking Corporation, the Reserve Bank of Australia (RBA), three elected directors (from Cuscal Limited, Bendigo & Adelaide Bank Limited and Citigroup Pty Limited), an independent Chair and the chief executive officer of NPPA. Each director, other than the chief executive officer, has one vote and decisions will be passed by a 66% majority.

The NPPA Board is responsible for, amongst other things, making decisions about the suspension or termination of a person's right to be an NPP Participant, Connected Institution or Overlay Service Provider.

Concerns have been raised that the Board comprises primarily of incumbent market participants who, in the view of the parties raising these concerns, may have a conflict of interest between the goals of the NPP (increasing adoption for the benefit of consumers), which would include allowing new entrants to participate in the NPP, and benefiting their own organisations by restricting access by new entrants to the NPP.

These submissions argued that the Board composition should reflect a broader scope of industry representation across incumbents, regulatory agencies, executive management, new entrants and government agencies responsible for fostering innovation and development.

More broadly, concerns have also been raised that the NPP Regulations do not expressly state how the Board's decision making powers will be devolved and accordingly, it is difficult to assess potential risks regarding the impartiality of decision making.

### **Eligibility, suspension and termination provisions**

Provision 4.2(g) of the NPP Regulations states that NPP participants must demonstrate, to the reasonable satisfaction of NPPA, that their business practices and operations will be sound and secure and will not adversely affect the integrity, security, efficiency, reliability or stability of the NPP Basic Infrastructure.

Concerns have been raised that as 'sound and secure' is not defined in the NPP Regulations it could potentially be applied in a manner that disadvantages new entrants. It has been argued that assessments about whether potential participants' operations are 'sound and secure' should be undertaken by independent experts.

It has also been argued that the suspension and termination provisions (part 9 of the NPP Regulations) give the NPPA Board broad powers. For example, provision 9.2(a)(vi) states that the Board may suspend an NPP Participant, Connected Institution or Overlay Service Provider if they engage in conduct reasonably regarded by the Board to be contrary to the interests of the NPPA or which may adversely affect the NPP Basic Infrastructure.

Concerns have been raised that 'contrary to the interest of' and 'adversely affect' are not defined in the NPP Regulations and could potentially be construed quite broadly so as to be applied to restrict participation in the NPP by new entrants.

### **Participants' relationships with third parties**

Concerns have been raised that Part 4 of the NPP Regulations (Participation) does not contemplate the existence of relationships between a Participant and a non-Participant third party which delivers services on the NPP, where the Participant may enable NPP access to the third party. Concerns have been raised that as such, third parties have little visibility into or recourse in response to decisions that may be made about their ability to provide services on the NPP.

It is argued that relationships between Participants and non-Participants should be considered expressly in the NPP Regulations. Specifically, parties which potentially deliver services on the NPP but are not NPP Participants should have an appropriate level of visibility into and access to decision-making processes that NPPA implements.

### **Costs incurred by participants**

Provision 4.2(d) of the NPP Regulations requires NPP Participants to agree to pay all fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, NPP Participants in accordance with the NPP Regulations.

Concerns have been raised that this requirement could be onerous for NPP Participants in the early stage of business development or with little capital and may constitute a barrier to entry with the effect of excluding new innovations and/or participants.

### **Requirement to be an authorised deposit-taking institution (ADI)**

Provision 4.2(a) of the NPP Regulations requires NPP Participants, other than the RBA, to be ADIs. One interested party has questioned why NPP Participants need to be ADIs. They argue that NPPA's application for authorisation focuses on NPP Participants obtaining an Exchange Settlement Account (ESA) and being authorised by the RBA to utilise the Fast Settlement Service. They state that their understanding is that these are separate requirements and the RBA does not require an entity to be an ADI to obtain an ESA. They therefore question why NPP Participants are required to be ADIs particularly when, they state, non-ADIs can achieve Know Your Customer and Australian Money Laundering requirements.

They argue that the NPP infrastructure should be open further to allow secure, registered and tested entities who are not ADIs to effect payments on behalf of account holders. They argue that this would allow innovators to provide services and applications that could utilise basic real time payments while maintaining the security and integrity of the NPP.

This submission also argues that the NPP will be a direct competitor to its members' card issuing businesses. They also argue that NPP members derive significant revenue from the fees and interest associated with issuing Visa, Mastercard and AMEX cards, which also run real time payment networks and accordingly, even though there will be significant advantages for merchants and consumers to utilise the NPP, utilising the NPP would appear to run counter to the banks maximising returns from their card issuing businesses. They argue that keeping the NPP closed from non-bank payment providers will prevent consumers taking advantage on non-bank technologies using the NPP network in competition to card issuing businesses.