

NON-CONFIDENTIAL VERSION

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Dear Daniel, Mark, Sophie and Alex

Application for Authorisation MA1000020-1 - Amalgamation of BPAY, eftpos and NPPA - Response to RFI 1 – Governance

Thank you for your letter of 6 June 2021, seeking further information from the Applicants about the proposed governance arrangements.

This letter provides the Applicants' response to your request for information. For your ease of reference, we have included each of your questions in bold, before providing the Applicants' answer to it. Terms not defined in this letter have the same meaning as in the Application for Authorisation dated 22 March 2021.¹

¹ Unless mentioned otherwise, defined terms in this document have the same meaning as in the Application. As indicated to the Commission, BPAY HoldCo, BPAY Group and BPAY Pty Limited will be included in the Proposed Amalgamation. For the purposes of this letter, references to BPAY OpCo should be taken to include all or some of BPAY HoldCo, BPAY Group and BPAY Pty Limited, as the context requires.

Before providing answers to each of your questions, it may assist if we make a small number of overarching observations about the structure of the proposed amalgamation.

Re-organisation of existing ownership interests

The proposed amalgamation will involve a re-organisation of the existing ownership interests in each of BPAY, eftpos and NPPA.

The existing ownership interests are common to a significant extent across each of BPAY, eftpos and NPPA. They are described in section 6 of the Application for Authorisation.

Each of the Major Australian Banks owns an interest in BPAY, eftpos and NPPA. Between them, the Major Australian Banks currently own 100% of BPAY and the majority of NPPA and hold the majority of member voting interest in eftpos. **[Confidential to NPPA]** **[Confidential to eftpos]**

There are other common owners of eftpos and NPPA comprising Bendigo and Adelaide Bank, Citigroup Pty Ltd, Cuscal Limited, ING Bank (Australia) Limited and Australian Settlements Limited.

There are also owners of NPPA which do not own eftpos and vice versa.

Key consequences of re-organisation of existing ownership interests

The Applicants propose that the re-organisation of the ownership interests would have 5 key consequences.

First key consequence – increase in interests of diverse range of participants

First, the amalgamation will result in a diverse range of payments stakeholders, including those with expertise in the small business sector, gaining greater interests in the decision-making process about which domestic payments innovations will be supported and when by NewCo.

The existing interests of the Major Australian Banks will be diluted, compared to any of the counterfactuals. They will not be able to control NewCo, BPAY, eftpos or NPPA, individually or collectively, negatively or positively.

Second key consequence – BPAY, eftpos and NPPA will be wholly-owned subsidiaries of NewCo and will be able to co-ordinate to agree a single payments innovations roadmap

Secondly, the amalgamation will result in BPAY, eftpos and NPPA becoming wholly-owned subsidiaries of NewCo.

As such, they will become related bodies corporate to each other as defined by section 4A of the *Competition and Consumer Act 2010* (Cth) and they will take the benefit of the associated exemptions for related bodies corporate in Part IV of the Act.

Those factors will allow them to lawfully co-ordinate a pipeline for domestic payments innovations, consistent with and giving effect to the Reserve Bank of Australia's policy to encourage more innovation in Australia's domestic payments sector.

Third key consequence – an agreed innovations pipeline will result in payments innovations being brought to market sooner than in any counterfactual

The certainty of an agreed innovations pipeline will allow participants in Australia's payments industry, including the Major Australian Banks, to better prioritise their internal resources to enable payments innovations to consistently be brought to market sooner than would be the case in any of the counterfactuals.

The amalgamation will not (and cannot) remove the funding and resource constraints faced by all participants in Australia's payments industry, including the Major Australian Banks.

However, the amalgamation will remove critical obstacles to the success of new payments products – ongoing uncertainty about whether a new product will have truly shared commitment and achieve ubiquity, and the delays caused by evaluating and comparing overlapping product proposals – and avoid the significant transaction costs of repeated applications to the Commission for authorisation that would be needed for alternative, lesser forms of co-ordination which may, or may not, occur in the counterfactuals.

Fourth key consequence – BPAY, eftpos and NPPA will enjoy protections not typically enjoyed by wholly-owned subsidiaries

It is envisaged that BPAY, eftpos and NPPA will have governance arrangements which will be like a typical wholly-owned subsidiary.

However, BPAY, eftpos and NPPA will enjoy certain protections that typical wholly-owned subsidiaries do not. Those protections relate to each of BPAY's, eftpos' and NPPA's Payment Services (as defined in the NewCo Constitution), their funding and their existing strategic roadmaps to June 2022.

The protections mean, for example, that should NewCo's Board resolve to use funds generated by eftpos to support an initiative by NPPA, or to shut down the eftpos' Payment Service and direct its users to NPP, any 2 Directors of NewCo, including 2 of the Independent Directors, or 2 of the Directors nominated by the smaller ADIs, such as Cuscal Limited and Bendigo and Adelaide Bank Limited, or 2 of the Directors nominated by non-ADIs, such as Coles Group Limited and EFTEX Limited, or any combination of 2 Directors, could require the resolution to be ratified by a Special Majority Band Resolution of the shareholders of NewCo who are users of eftpos.

If that were to occur, each of those shareholders who are users of eftpos would have one vote each regardless of their shareholding or eftpos volumes. Unless 75% or more of them voted in favour of the Board's resolution, the Board's resolution would fail. This allows users of each of the Payment Services to determine whether or not there is a fundamental change to any of BPAY, eftpos or NPPA. In practice, the existence of this protection should ensure that any proposal by NewCo that would involve a fundamental change in respect of a Payment Service is broadly supported by its users.

The protections will not be limited by time.

Fifth key consequence – NewCo will be able to admit new shareholders

Fifthly, the amalgamation will result in NewCo being able to admit new shareholders, with a requirement that they make a fixed, nominal capital contribution to NewCo, and it is expected that this will occur. This will further diversify and enrich the decision-making process for innovation in Australia's payments industry.

Answers to your questions

We now provide answers to each of your questions.

1. **In relation to each of the three OpCos, please explain (by reference to the relevant parts of the Implementation Agreement):**
 - a. **How the directors are appointed to the OpCo board by NewCo (e.g. vote by NewCo shareholders or resolution by NewCo directors, including the applicable majority requirements for the vote or resolution, as the case may be)?**

Please note that, currently, the answer to this question is not dealt with in the Implementation Agreement. Consequently, the answer to this question is based on what is intended from discussions by members and observers of the Industry Committee and the Transaction Advisory Committee.

The Applicants envisage that each OpCo's Directors will be appointed by a resolution of NewCo's Board by way of a simple majority vote.

It is intended that the owners of NewCo will appoint a single governance body, being the Board of NewCo.

It is also intended that the Board of each OpCo will be comprised of either the same directors as the Board of NewCo, or a sub-set of them in the same proportion of Independent Directors to Representative Directors as the Board of NewCo.

The proportion of Independent Directors to Representative Directors on the Board of NewCo will be 4:9. Accordingly, where the Board of an OpCo will be made up of a sub-set of NewCo's Directors, for every 1 Independent Director on the Board of the OpCo, there will be at least 2.25 Representative Directors. This will result in approximately 30% of the OpCo's Directors being Independent Directors.

The Constitution of each OpCo will be amended so they will be in a consistent form and reflect the form of Constitution which is generally used for a wholly-owned subsidiary.

The OpCos' Constitutions will provide for the appointment of the Directors of the OpCo by NewCo, as the sole shareholder in the OpCo. Any requirements in the OpCos' existing Constitutions that shareholders be representative of, or appointed by, specific shareholders or classes of shareholders or members (as applicable) will be removed.

This approach will facilitate the delivery of the alignment and benefits sought to be achieved from the amalgamation, by centralising decision-making power in NewCo for the innovation strategy and future investment roadmap of each of the OpCos, based on critical input from each of the OpCos and Committees appointed by the Board of NewCo to consult with other key stakeholders in Australia's payments industry, including small businesses and merchants.

The execution and implementation of the innovation strategy and future investment roadmap will be devolved to each of the OpCos.

While being constituted by the same individuals, or a sub-set of them, as the Board of NewCo, the Board of each OpCo will meet separately to make decisions required under that OpCo's Constitution, consistent with the directors' duties under common law and statute to act in the interests of the company and having regard to advice and input provided by the OpCo's management teams.

The Directors of NewCo and each OpCo will be subject to directors' duties in relation to NewCo or that OpCo, as the case may be, when acting in those respective capacities including:

- (a) general duties under the *Corporations Act 2001* (Cth), including:
 - (i) the duty to exercise care and diligence; and
 - (ii) the duty to exercise powers and discharge duties in the best interests of the company, subject to our comments in response to question 2d below with respect to the directors of each OpCo, given they will be wholly-owned subsidiaries of NewCo; and
- (b) duties at common law, being:
 - (i) fiduciary and equitable duties, the core obligations which arise from the fiduciary relationship between the directors and the company. These include the duties to act in good faith in the best interests of the company; to act for proper purposes; to not to be in a position of conflict, and to not profit, benefit or gain by reason or use of their fiduciary position or of their opportunity or knowledge resulting from it; and
 - (ii) under common law tort rules, duties to act with reasonable skill, care and diligence.

The decisions of the Directors of NewCo and each OpCo will be constrained by the application of the Special Majority Band Resolution process which we describe below, pursuant to which two of NewCo's Directors can request that a certain decision of the Board of NewCo which affects a Payment Service supplied by an OpCo be ratified in accordance with article 10.5 of NewCo's Constitution. In practice, this should ensure that any proposal by NewCo that would involve a fundamental change in respect of a Payment Service is broadly supported by its users.

b. How the OpCo directors are nominated, including in particular, whether they are nominated by the NewCo shareholders and if so, which shareholders are entitled to nominate how many directors?

NewCo's shareholders will not nominate each OpCo's Directors.

Rather, and consistent with the practices of the overwhelming majority, and perhaps all, groups of related bodies corporate, the Directors of each OpCo will be nominated (and appointed) by NewCo's Directors.

The Directors of each OpCo will be the same as, or a sub-set of, NewCo's Directors, the latter of whom will be nominated by NewCo's shareholders. Given the structure of the NewCo Board and that each director has a single vote, it is highly unlikely that the levels of representation would be different at the OpCo Board level compared to the NewCo Board.

This means that NewCo's shareholders will be indirectly responsible for nominating each of the OpCo's Directors because NewCo's shareholders will be directly responsible for nominating each of NewCo's Directors.

1) Composition of NewCo's Directors

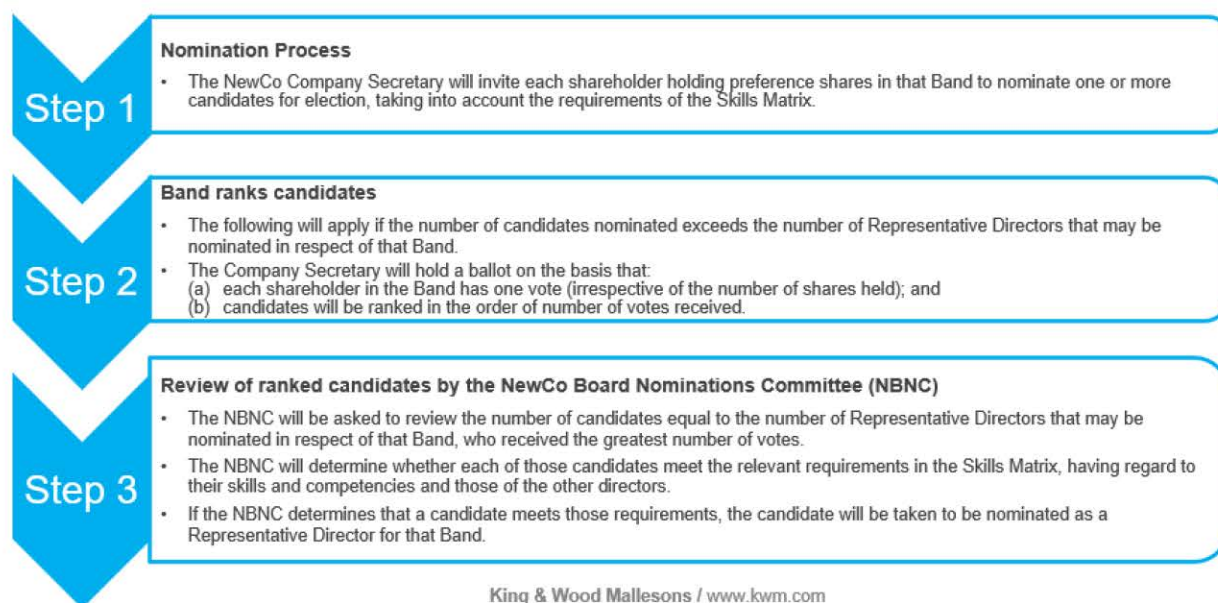
NewCo's Board will comprise 13 Directors including the Chairperson. Of those:

- 4 Directors, including the Independent Chairperson of NewCo, will be Independent Directors; and
- 9 Directors will be nominated by NewCo's shareholders.

Of the 9 Directors who will be nominated by NewCo's shareholders (**Representative Directors**):

- 4 Directors will be nominated by shareholders who each hold more than 15% of the total number of NewCo's shares. **[Confidential to the Parties]**; and
- 5 Directors will be nominated by other shareholders as follows:²
 - (i) 2 Directors will be nominated by shareholders who are ADIs and who hold 15% or less of NewCo's shares. These shareholders will comprise **[Confidential to the Parties]**;
 - (ii) 3 Directors will be nominated by shareholders who are not ADIs. These shareholders will comprise **[Confidential to the Parties]**.

In relation to the appointment of NewCo's Representative Directors, the NewCo Constitution provides that the method by which a Band nominates their Representative Director is '*... to be determined by them at the time at which the Director is to be nominated.*' The Transaction Advisory Committee has agreed that the steps referred to in Option A of the paper entitled "Appointment of Representative Directors to NewCo" in Annexure A will be followed in relation to the appointment of Representative Directors in respect of each Band,³ as summarised below.



2) Nomination of NewCo's Independent Directors

In relation to the nomination of NewCo's Independent Directors, the Transition Plan in Schedule 3 of the Implementation Agreement ("**Transition Plan**") provides that the process for the selection of the initial Chairperson and other Independent Directors will be undertaken by the Transaction Advisory Committee.⁴ Please see Annexure B ("NewCo Chair and NED Appointment Process") prepared by

² Other entities may potentially become shareholders between the date of this letter and the nomination of directors occurring.

³ Accordingly, the steps in Option B of Annexure A are not relevant.

⁴ Please see Confidential Implementation Agreement, 10 December 2020, Schedule 3 – Transition Plan, clause 4.2 – annexed as **Confidential Annexure 2** to the Application for Authorisation.

Secretariat of the Transaction Advisory Committee, dated 8 June 2021, with respect to this. The process initially is focussed on appointing an Independent Chairman, Heidrich & Struggles are assisting the Transaction Advisory Committee, which has delegated this to a Sub-Committee. **[Confidential]**. A short list of potential candidates for the Independent Chair has been developed and interviews will start shortly. The Transaction Advisory Committee hopes to finalise the Independent Chair appointment in early July and all other independent appointments by end July.

2. **Please explain the decision-making power of, and the decision-making processes within, each OpCo, including:**

a. **What types of matters will each OpCo be responsible for?**

The Memorandum on NewCo's potential governance and operating model ("**Governance Memorandum**")⁵ provides that: **[Confidential to the Parties]**⁶

Accordingly, each of the OpCos will continue to be responsible for the day-to-day operation of its Payment Service in accordance with the existing operating rules of the Payment Service.

It is not intended, and the Governance Memorandum does not provide for, any of the following to change as a result of the amalgamation:

- the operating rules and procedures of the Payment Services, other than rules that are linked to the ownership of the operator. For example, 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; or
- the technological operation of the Payment Services.

To the extent that an OpCo, as operator of a Payment Service, or a committee established by it with the operating rules of the Payment Service, currently make decisions under the operating rules of that Payment Service, the OpCo or the committee (respectively) will continue to do so in accordance with the operating rules.

Some of the key matters each of the OpCos will continue to be responsible for are:

- (a) the management of its Payment Service/s and associated operations, maintenance and development of its infrastructure;⁷ including in relation to:
 - (i) managing incidents;
 - (ii) platform or connected party suspension decisions;
 - (iii) managing the release of software upgrades and change management; and
 - (iv) the execution of strategic initiatives;
- (b) operating the payment rails, including managing risks in relation to third party providers;

⁵ Please see Industry Committee Resolution, 16 October 2020, Confidential and Privileged Annexure B – Memorandum on NewCo's potential governance and operating model, annexed as **Confidential Annexure 1** to the Application for Authorisation. As noted in the Application, the resolutions of the then Industry Committee in that Industry Committee Resolution are non-binding.

⁶ **[Confidential to the Parties]**

⁷ Transition Plan, clause 8.2(c).

- (c) complying with its obligations under the operating rules of the Payment Service, including in relation to:
 - (i) maintaining the operating rules;
 - (ii) assessing access to and participation in the Payment Service, and the grounds for suspension or termination of its participation;
 - (iii) compliance by participants with the operating rules, including taking actions in relation to breaches and remediation, and dispute resolution processes;
 - (iv) the assessment of applications for admission to the Payment Service and onboarding new members;
 - (v) pricing services in accordance with the operating rules; and
 - (vi) addressing crises and emergencies;
- (d) identifying, monitoring, and managing general business risks, including in relation to the execution of its business strategy, budget, funding, cash flows and operating expenses;
- (e) managing legal, credit, liquidity, operational and other risks in relation to the Payment Service, including through a risk management framework;
- (f) increasing the use of the Payment Service, including through increasing the number of participants in the system and the volume of transactions;
- (g) maintaining and implementing corporate management policies and compliance plans, to provide effective compliance with all regulatory obligations;
- (h) **[Confidential to eftpos] [Confidential to NPPA]** and
- (i) performing other agreements and obligations, including:
 - (i) performing and overseeing suppliers' performance of their contractual obligations under key supplier contracts; and
 - (ii) other matters related to general business, such as maintaining human resources, information technology, payroll and accounting functions, superannuation, leases and retaining consultants. Over time, there may be potential to capture synergies in this area with the NewCo management centre through the shared services.⁸

In addition, each of the OpCos will:

- (a) participate in any cross-entity working groups, coordinated by NewCo, with resources from the OpCos. These may be formed to support activities such as strategy and roadmap development by NewCo, business planning, standards development, early stage innovation and API Design and Development;⁹ and
- (b) consider the development of additional functionality, innovation and new products, including providing proof of concepts for consideration by NewCo.

⁸ This is described further in Transition Plan, clause 8.4.

⁹ See Transition Plan, clause 8.2(b).

In contrast, the types of matters for which the NewCo's Board will be responsible will be confined to deciding the strategy for NewCo, the investment roadmap and the appointment of NewCo's CEO.¹⁰

NewCo's Board and CEO will also guide the following activities, potentially through appropriate Board Sub-Committees, with support of cross-OpCo working groups:¹¹ **[Confidential to the Parties]**

NewCo's Board will also be responsible for deciding on any funding requests for outside capital, which is considered in our response to your question 5 below.

b. What types of decisions will each OpCo be able to make, including (but not limited to) decisions with respect to the development of the OpCo's roadmap and the inclusion of a particular payment service in its roadmap?

Each OpCo will be able to continue to make decisions in relation to the matters referred to in the response to question 2a above.

Each OpCo will also be responsible for implementing its existing roadmap to June 2022.

From July 2022, an agreed and unified roadmap for Payments Services across all three OpCos will ultimately be decided by NewCo's Board with critical input from each of the OpCos. It is expected that each OpCo and their management team will play an important role in developing the unified roadmap for Payment Services building from the existing roadmaps.

The OpCos will be able to consider and propose the development of additional functionality, innovations and new products (including proof of concepts) to NewCo's Board to consider including in the unified roadmap.

One of the consequences of the amalgamation will be that, from July 2022, an OpCo will not be able to make a unilateral decision to include a new payment service in its roadmap unless it is endorsed by NewCo's Board as part of the unified roadmap. Each OpCo will have ample opportunity to present to NewCo's Board the case in favour of including the new Payment Service and NewCo's Board will consider that case on its merits, including by reference to input from all of NewCo's Directors and information provided by the Board's Sub-Committees.

c. Whether the decisions will be made by way of resolution of the Board of directors of the OpCo, including the applicable majority requirements?

The constitution of each OpCo will be amended to be in a consistent form which reflects the form which is generally used for a wholly-owned subsidiary and provide for the following:

- (a) decisions of the Directors will be decided by a simple majority of votes of Directors present and entitled to vote in that decision;
- (b) the ability for the Directors to delegate any of their powers to the following, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit:
 - (i) to a committee or committees consisting of 1 or more of their number as they think fit;¹²

¹⁰ Transition Plan, clause 8.3.

¹¹ Transition Plan, clause 8.3.

¹² Other than powers required by law to be dealt with by Directors as a board.

- (ii) to any persons they select for any period.

With respect to such delegations, the Directors will be able to revoke, withdraw, alter or vary the delegation of any of those powers.

The existing delegations of the Directors of each OpCo are in Confidential Annexures C and D and Annexure E. As can be seen from those Annexures, the delegations include:

- (a) each OpCo Board has delegated authority to their respective CEOs in respect of the day to day operations of the OpCo's businesses within certain defined parameters;
- (b) each OpCo Board has established subcommittees to provide oversight and advice to the board on certain matters (such as remuneration decisions, finance and audit matters etc).

Additionally, as detailed further in response to question 4 below, each OpCo Board has established delegations in relation to decisions relating to the pricing of services, as follows:

- (a) **[Confidential to eftpos];**
- (b) in NPPA's case, a sub-committee of the NPPA Board comprised of the independent directors holds a delegation from the NPPA Board to set prices (per Reg 3.1 of the NPP Regulations);
- (c) **[Confidential to BPAY].**

It is anticipated that, following the amalgamation, the Board of each OpCo will adopt delegations of authority to both employees and committees that currently exist.

d. Whether the decisions will be made by the OpCos independently from NewCo?

The proposed amalgamation will involve a re-organisation of the existing ownership interests in each of the OpCos, and the OpCos will become wholly-owned subsidiaries of NewCo. They will not be independent of NewCo.

However, as noted above, the amalgamation will result in a diverse range of payments stakeholders, including those with expertise in the small business sector, gaining greater interests in the decision-making process about which domestic payments innovations will be supported and when by NewCo. The existing interests of the Major Australian Banks will be diluted, compared to any of the counterfactuals. They will not be able to control the OpCos, individually or collectively, negatively or positively.

Both the *Corporations Act* and case law on general corporate governance qualifies the general principle that Directors must act for the benefit of their company by allowing directors of wholly-owned subsidiaries to, in certain circumstances, act in good faith and in the best interests of their holding company¹³ (with this taken to satisfy their obligations).

As a practical matter, this means that if the Directors of the OpCo are acting in good faith and in the best interests of NewCo, they will be taken to be satisfying their duty to that OpCo.

Also, to the extent that an OpCo, as operator of a Payment Service, or a committee established by OpCo or in accordance with the operating rules of the applicable Payment Service, currently makes decisions

¹³ *Corporations Act*, s 187.

under the operating rules of that Payment Service, the OpCo or the committee (respectively) will continue to do so in accordance with the operating rules. Please see our response to question 4 below for an example of this in relation to decisions on the pricing of services.

e. Who has the ability to change the governing rules, scheme rules and/or constitution of each OpCo?

1) Changes to the operating rules of the Payment Services

The amalgamation will not of itself result in changes to the operating rules and procedures of the OpCos' Payment Services, other than rules that are linked to the ownership of the operator.¹⁴

With respect to the framework for changing the operating rules of the Payment Services, subject to the following in respect of eftpos, the framework for changing the operating rules of the Payment Service is provided for in the rules themselves and those frameworks will not change as a result of the amalgamation.

Currently, eftpos' Constitution provides power to eftpos' Board to approve changes to eftpos' Scheme Rules and allows the Board to delegate those powers. It is intended that, at the time of the amalgamation, amendments to eftpos' Scheme Rules will be made so that, going forward, the Scheme Rules provide for this.¹⁵

In the following paragraphs, we describe the frameworks in each of the three payments schemes rules for changing the operating rules of the scheme.

2) The NPP's Scheme Rules

The framework for changes to the NPP Regulations and NPP Procedures is set out in the NPP Regulations which provide that:

- (a) the NPP Procedures can only be amended by resolution of a two-thirds majority of the NPP Rules Sub-Committee, which is a committee comprised of representatives of NPP Participants (Connected Institutions would also be eligible to appoint a voting representative and Overlay Service Providers attend by invitation but do not vote);¹⁶ and
- (b) the NPP Regulations, including the provisions relating to the method of amendment, can only be amended if the amendment is endorsed by the Rules Sub-Committee (two-thirds majority) and approved by the Board of NPPA.¹⁷ It is intended that from the time of the amalgamation, any amendment to the NPP Regulations that impacts the RBA, in its capacity as the provider of the Fast Settlement System or as the regulator of the Australian payments system, will also require the prior written consent of the RBA.

The Terms of Reference of the Rules Sub-Committee are in Annexure F.¹⁸ According to its Terms of Reference, the role and responsibilities of the Rules Sub-Committee are to exercise (under CEO

¹⁴ Please see response to your question 2a above.

¹⁵ Please see response to your question 2c above with respect to delegations.

¹⁶ See NPP Regulations, Part 10 and the Rules Sub-Committee Terms of Reference set out in Annexure F.

¹⁷ See NPP Regulations, Part 11.

¹⁸ Any proposed amendment to the NPP Regulations which impacts the Reserve Bank of Australia ("RBA") as the regulator of the payments system [ie is contrary to a payments policy objective] requires the consent of the RBA.

delegated authority) all of the functions conferred on the Rules Sub-Committee by the NPP Regulations and the NPP Procedures including, without limitation, to:

- (a) monitor and maintain NPP Regulations and NPP Procedures;
- (b) develop proposed amendments to NPP Regulations and NPP Procedures;
- (c) approve amendments to the NPP Procedures and documents referred to in the NPP Procedures, including without limitation the NPP Participant Back Office Design Considerations document;
- (d) liaise with Change Management Sub-Committee and such other sub-committees of the Operational Committee as appropriate to assess impacts of NPP security, standards, technical, regulatory and other changes on the NPP Regulations and NPP Procedures; and
- (e) develop and maintain regulatory interpretation guides and other ancillary materials.

The authority for establishing and maintaining the Terms of Reference for the Rules Sub-Committee has been delegated by the NPPA Board to the CEO.¹⁹

3) eftpos' Scheme Rules

[Confidential to eftpos]²⁰

4) BPAY's Scheme Rules

[Confidential to BPAY]^{21 22 23}

5) Changes to an OpCo's Constitution

Section 136 of the *Corporations Act* provides that a company's constitution may be modified by special resolution of its shareholders.

As each OpCo will be a wholly-owned subsidiary of NewCo, NewCo will have the ability to change the Constitution of each OpCo.

Each OpCo's Constitution will be based on a standard company constitution for a wholly-owned subsidiary. As such, each OpCo's Constitution will not contain any further requirement relating to amendments to the Constitution beyond that set out in section 136 of the *Corporations Act*.

3. **If any of the decisions identified in response to question 2 above are not made by the OpCo independently from NewCo, please explain the extent of control or influence, either legal or de facto, NewCo will have in relation to these decisions.**

NewCo will have legal and de facto control over the decisions of the OpCos' Boards for the reasons set out in response to questions 1 and 2 above.

¹⁹ See NPPA Board Delegations of Authority set out in Annexure E.

²⁰ [Confidential to eftpos]

²¹ [Confidential to BPAY]

²² [Confidential to BPAY]

²³ [Confidential to BPAY]

As set out in response to question 2c above, the OpCos' Boards have delegated certain powers to committees or other persons. It is anticipated that, following the amalgamation, the Boards of each of the OpCos will adopt those delegations.

Please note, however, that with respect to such delegations, the Boards of the OpCos may revoke, withdraw, alter or vary the delegation of any of those powers. As the sole shareholder of the OpCos, NewCo would have indirect influence over any such decision.

4. **Please explain how the OpCos will make decisions in relation to the pricing of services (we refer to paragraph 8.5 of the Transition Plan, Schedule 3 of the Implementation Agreement dated 10 December 2020).**

The Governance Memorandum states that **[Confidential to the Parties]**^{24 25}

To the extent that an OpCo, as operator of a Payment Service, or a committee established by an OpCo or in accordance with the operating rules of the applicable Payment Service, currently makes decisions under the operating rules of that Payment Service, the OpCo or the committee (respectively) will continue to do so in accordance with the operating rules.

In respect of the potential for NewCo to influence pricing decisions in the medium to long term in the context of its oversight of the OpCos, please also see our comments below in respect of the objects of NewCo referring to the provision of payment services which are 'cost effective', and facilitating 'the provision of low cost solutions for retailers, other businesses and their customers'. The objects clauses (if any) of the OpCos do not currently include any similar references to the provision of low-cost payment services.

1) Current frameworks for pricing decisions

1.1) *NPPA*

In the case of NPPA, the NPP Governance Committee, which is a sub-committee of NPPA's Board, is comprised of independent Directors only. The NPP Governance Committee holds a delegation from the Board to determine annual NPP Transaction Fees and set prices.²⁶ It will continue to do so following the amalgamation. As is currently the case, NPPA's leadership team will continue to provide the OpCo's independent Directors with advice on the approach to pricing.

The NPPA Governance Committee is comprised of the independent directors of the NPPA Board and the NPPA CEO. Its Committee Charter is included in Annexure G.

1.2) *BPAY*

[Confidential to BPAY]

1.3) *eftpos*

[Confidential to eftpos]

Please address the following:

²⁴ **[Confidential to the Parties]**

²⁵ **[Confidential to the Parties]**

²⁶ NPPA Regulations, reg 3.1.

a. Will the NewCo Board have any control over or exert any influence on the OpCos' decisions in relation to the pricing of services?

Section 8.5 of the Transition Plan provides an example of how NewCo could make key decisions and refers to the diagram extracted below, which includes a row on pricing of Payment Services. As can be seen from that row, it is envisaged that pricing decisions will remain with the OpCos. **[Confidential to the Parties]**

[Confidential to the Parties] This merely reflects that, in the medium to long term, NewCo may provide input into pricing recommendations in the context of its strategic consideration of the development of new payment services and how the relevant OpCo might fund them.

The objects of NewCo specifically refer to the provision of:

*"...globally competitive payment services which are resilient, safe, efficient, fair, accessible and cost effective and which meet the present and future requirements of the users of the Australian payments system, including financial institutions and payment services providers, while facilitating the provision of low cost solutions for retailers, other businesses, and their customers."*²⁷

Further, as there is potential under the *Corporations Act* for a parent company to be held liable for the debts of its subsidiaries, NewCo will have an interest in the solvency of each OpCo, which will require oversight of each OpCo's budgets and financial performance to ensure each company in the group remains solvent and meets prudent operating requirements. To the extent pricing feeds into revenue, NewCo will have an interest in these outcomes. Additionally, NewCo will seek to ensure that its object of "facilitating the provision of low cost solutions for retailers, other businesses, and their customers" is being met.

b. Will the NewCo Board make pricing recommendations or provide pricing guidance to the OpCos in relation to the pricing of services?

Please see our response to question 4a above, including with respect to NewCo's objects. In the medium to long term, NewCo may provide input into pricing recommendations in the context of its strategic consideration of the development of new payment services and how the relevant OpCo might fund them.

c. Will the NewCo Board otherwise be involved in the OpCos' decision-making in relation to the pricing of services?

There is no contractual framework, either under the Implementation Agreement or under the operating rules of each Payment Service, for NewCo to be involved in an OpCo's decision-making in relation to the pricing of services. However, please see our response to question 4a above with respect to NewCo's objects and solvency considerations.

²⁷ Article 2.1 of NewCo's Constitution.

5. **When a funding request is required for outside capital for a payment service, who decides whether to provide funding for the investment? Explain how this decision is made by NewCo by reference to the relevant provisions of the NewCo Constitution.**

At this time, it is not expected that any of the OpCos will need capital contributions or other outside capital before June 2022, including to fund the Prescribed Services.²⁸

As is typically the case for an Australian company, NewCo's Constitution does not:

- (a) fetter the means by which funding could be raised by NewCo from third parties (including its shareholders), subject to the qualifications set out below in relation to fund raisings that may necessitate a change in NewCo's equity structure; or
- (b) require its shareholders to provide funding to NewCo or the OpCos, by way of equity or otherwise.²⁹

If NewCo sought to raise capital from its shareholders or third parties and issue preference shares as a result, the terms on which preference shares may be issued under NewCo's Constitution include that:

- each shareholder has one vote at shareholder meetings regardless of the number of shares held;³⁰
- the preference shares are redeemable on request at one cent per share (that is, the amount is not intended to be representative of the capital investment which is represented by those shares);³¹ and
- the preference shares may only be transferred to a related body corporate.³²

[Confidential to the Parties]^{33 34}

6. **Please explain the proposed funding arrangements for NewCo with regards to (i) the day-to-day operating costs and (ii) the non-operating costs of each OpCo. In doing so, please refer to the relevant provisions in the Implementation Agreement which incorporate or set out any such funding arrangements and explain what types of matters will be considered to be non-operating costs of an OpCo. In your response, please specifically address the following:**

Section 2.11 of the Governance Memorandum states that, relevantly: **[Confidential to the Parties]**

At inception, NewCo is anticipated to be no cost (net-net). This is because NewCo will not require any new investments, including in premises, technology or staff.

²⁸ See clause 7.2 of the Transition Plan.

²⁹ Section 2.11 of the Governance Memorandum states that imposing funding requirements on any NewCo shareholder would require their agreement.

³⁰ Please see footnote 43 below.

³¹ Item 6.3 of Schedule 1 (Terms of Preference Shares) of the NewCo Constitution.

³² Article 5.1 of the NewCo Constitution.

³³ **[Confidential to the Parties]**

³⁴ **[Confidential to the Parties]**

Each OpCo has existing funding for its current roadmap and initiatives. No funding is anticipated to be required at the NewCo level for the non-operating costs of the OpCos. Please refer to the observations below regarding the recent financial performance of the OpCos.

The cost of the NewCo Board and Company Secretariat functions will be more than compensated for by BPAY, eftpos, and NPPA no longer needing to fund 3 separate Boards and Company Secretariat functions.

Any other requirements of the new Board will be met by facilities of the existing OpCos such as existing IT licences and payroll administration.

Once NewCo is operative, there may be some immediate duplications that can relieve costs, which will likely arise through NewCo's Board having oversight over all three OpCo's operations. For example, company insurances, software licensing, and procurement costs may all immediately benefit from a coordinated approach across NewCo.

More importantly, as the three OpCos work together over time, the Applicants believe that the most important future synergies will arise around the cost of research and development of new ideas and offerings to market (such as QR codes), where NewCo's Board will be able to work with the three OpCos to lower the cost and time to bring new products to market. This synergy will not only bring a saving to each OpCo, it will bring significant benefits to the public of Australia and to competition in Australia's payments sector through a more streamlined payments innovation roadmap.

As a secondary effect, as the schemes evolve together over time there will also be opportunities for organic rationalisation of overlapping roles, particularly in shared services functions (finance, human resources, legal and governance functions).

1) Observations about the financial performance of BPAY, eftpos and NPPA

We set out below a summary of observations about the recent financial performance of BPAY, eftpos and NPPA because they are relevant to the potential need to raise funds from shareholders or from outside sources going forward. As can be seen from those observations, there is a low likelihood of NewCo having to raise funds from capital contributions from shareholders or outside sources to fund its operations.

[Confidential to the Parties]³⁵

a. Could NewCo use funds generated from one OpCo's payment services to provide funding for one or both of the other two OpCos' current or future payment services?

Yes. However, if a decision were made by NewCo's Board to use funds generated from one OpCo's payment services to provide funding for one or both of the other two OpCos' current or future payment services, then any 2 directors of NewCo could request that this be ratified by a Special Majority Band Resolution. The decision would then require a resolution supported by at least 75% of NewCo's shareholders who are participants in the OpCo's payment service which the funds were generated from. The Special Majority Band Resolution will have the effect of placing the decision to use funds from one

³⁵ **[Confidential to the Parties]**

of the OpCos to fund one or both of the others in the hands of users of the first OpCo who are also shareholders of NewCo.

Please also refer to the information provided above with regard to the current financial position of each OpCo, which demonstrates that there is no need in the short term for funds generated by one OpCo's payment service to be used to provide funding for one or both of the other two OpCos' payment services.

- b. Could NewCo use operating profits and/or dividends generated from the eftpos OpCo's payment services to fund operating and/or non-operating costs (including, in particular, investments in new services or infrastructure) of one or both of the other two OpCos (for example, to provide funding for a new NPP functionality)?**

The answer is the same as the answer to question 6a above.

- c. If your response to 6a. and/or 6b. above is in the affirmative, please describe the processes which would be required for NewCo to do so (e.g. vote by NewCo shareholders or resolution by NewCo directors, including the applicable majority requirements for the vote or resolution, as the case may be).**

If NewCo were to decide to use the funds for one of the two purposes set out in your questions 6a and 6b, the decision-making process would involve:

- (a) initially, having regard to their fiduciary duties and obligations to act in the best interests of NewCo, the Directors of NewCo, would have to decide to use the funds for that purpose. The relevant threshold for this decision would be a majority of the Directors present and entitled to vote;³⁶
- (b) NewCo would formally request that the relevant OpCo use the funds in the manner contemplated, which we assume the Board of each OpCo would comply with if they considered it would be in the best interests of NewCo or the group as a whole;
- (c) because the decision would satisfy the criteria in Article 10.5(b) of NewCo's Constitution, any 2 Directors of NewCo could request in writing to the secretary of NewCo that the decision requires ratification by a Special Majority Band Resolution. If that were to occur, a Special Majority Board Resolution would be required to ratify NewCo's Board's decision. The relevant threshold for this decision would be 75% or more of the Shareholders holding Preference Shares in the relevant Band (noting that for this purpose the Band would comprise the NewCo Shareholders who are participants in that particular payment service). Please see paragraph [3] of Schedule 4 of the NewCo Constitution and our response to your question 9 below in respect of the composition of the Bands for this purpose.³⁷

³⁶ Article 10.4 of the NewCo Constitution.

³⁷ Article 3, Schedule 4 of the NewCo Constitution.

7. Please explain how decisions relating to access will be made.

Access decisions will continue to be made in accordance with each of the OpCo's existing scheme rules, as applicable.

The amalgamation will not of itself result in changes to the operating rules and procedures of the Payment Services, other than rules that are linked to the ownership of the operator.³⁸

There are no current plans to change any of those rules.

In your response, please specifically address the following:

a. Will the NPPA OpCo or the NewCo Board decide if a third party can access the NPP?

Following the amalgamation, decisions about admission to the NPP will continue to be made in accordance with the NPP Regulations by the NPP Governance Committee (as a delegate of the NPPA Board), which is comprised of the CEO and the Independent Directors of NPPA. The Terms of Reference of the NPP Governance Committee are in Annexure G.

The NPPA Regulations set out the objective and transparent eligibility criteria and processes for the admission of NPP Participants and Connected Institutions.³⁹

Regulation 4.7 of the NPP Regulations provides that any applicant who meets the criteria shall be admitted as an NPP Participant or Connected Institution. Regulation 4.7 may only be amended in accordance with the framework for changes to the NPP Regulations and NPP Procedures which is set out in the NPP Regulations and described in the Applicants' answer to your question 2e above.

In accordance with the Regulation, the decision as to whether a third party can access the NPP is currently made by the NPP Governance Committee (as a delegate of the NPPA Board).

b. If the former, will the NPPA OpCo make such a decision independently from NewCo?

Admission decisions will continue to be made in accordance with the NPP Regulations by the NPP Governance Committee (as a delegate of the NPPA Board), as set out above.

NewCo will not be involved in the decisions.

c. If such a decision is not made by the NPPA OpCo independently from NewCo, please explain the extent of control or influence the NewCo Board will have in relation to such a decision.

Not applicable.

8. Please identify, for each Payment Service operated by each OpCo:

a. All Participant Members;

Subject to the following, the amalgamation will not of itself result in changes to the number of participants in each Payment Service or the nature of their participation in the Payment Service for the purposes of

³⁸ Please see the response to your question 2a with respect to this.

³⁹ NPPA Regulations, reg 4.7.

the operating rules of that Payment Service (for example, with respect to the NPP, whether the participant is an 'NPP Participant' or a 'Connected Institution', or another type of participant).⁴⁰

The Reserve Bank of Australia is currently a shareholder of NPPA, but will not become a shareholder of NewCo (and will not remain a shareholder of NPPA as a result).

The following Confidential Table sets out the current Participant Members of each of BPAY, eftpos and NPPA. **[Confidential to eftpos]**

Confidential Table 1: Current Participant Members of BPAY, eftpos and NPPA

BPAY	eftpos	NPPA
[Confidential to BPAY]	[Confidential to eftpos]	Australia and New Zealand Banking Group Limited Australian Settlements Limited Bendigo and Adelaide Bank Limited Citigroup Pty Limited Commonwealth Bank of Australia Cuscal Limited HSBC Bank Australia Limited Indue Limited ING Bank (Australia) Limited Macquarie Bank Limited National Australia Bank Limited Westpac Banking Corporation

b. The possibility / likelihood that the number and identity of the Participant Members will change over time, and the relevant factors that will influence that possibility / likelihood;

The Applicants do not expect the amalgamation will affect the possibility/likelihood of the number or identify of Participant Members of any of the schemes, primarily because the scheme rules will not change as a result of the amalgamation and there are no plans to change them.

1) BPAY

[Confidential to BPAY]

2) eftpos

⁴⁰ Please see the response to your question 2a with respect to this.

[Confidential to eftpos]

3) NPPA

The NPP is designed to admit any directly connected organisation which wishes to join. The only real constraint on the number of NPP Participants – who must be ADIs - is the number of entities licenced by APRA.

The decision for many about whether to become a directly connected NPP Participant is a business and commercial one based on their total NPP payments volume and the contestability of the secondary access market. While there are a number of NPP Participants offering secondary access to the NPP, NPP expects that only organisations with very significant payment volumes will see commercial value in direct connection.

Another relevant (but not determinative) factor is the cost of direct connection. Currently, the cost of connecting directly, paid as a subscription for redeemable preference shares in NPPA, as an NPP Participant is \$2 million (for low band shareholders/participants). The cost of connection will start to gradually reduce to \$500,000 by December 2027.

[Confidential to NPPA] NPP may see a number of applications from organisations that want to become Connected Institutions to enable third party payment initiation services. Applicants who join NPP in these categories will be entitled (but not obliged) to become NewCo shareholders if they wish.

c. All Members who will hold classes of Preference Shares in the Band for a particular Payment Service;

Confidential Table 2: Members in each Band for each Payment Service [Confidential to BPAY]

[Confidential to eftpos]

Band	Shareholders in each Payment Service Band			
BPAY	[Confidential to BPAY]			
eftpos	[Confidential to eftpos]			
NPPA	1	Australia and New Zealand Banking Group Limited	7	HSBC Bank Australia Limited
	2	Australian Settlements Limited	8	Indue Limited
	3	Bendigo and Adelaide Bank Limited	9	ING Bank (Australia) Limited
	4	Citigroup Pty Limited	10	Macquarie Bank Limited
	5	Commonwealth Bank of Australia	11	National Australia Bank Limited
	6	Cuscal Limited	12	Westpac Banking Corporation

d. Each such Member's shareholding (number and proportion of shares) and voting rights in the classes of Preference Shares in the Band for a particular Payment Service.

Please see Confidential Table 3 below showing the number and proportion of Preference Shares that will be held by each shareholder of NewCo immediately following the amalgamation, noting that the Transition Plan states the following:

- (a) **(number of shares)** the number of Preference Shares to be issued to each shareholder⁴¹ is to be the greater of:
- (i) one; and
 - (ii) an amount equal to the book value represented by the capital investment made by the member in each of the OpCos divided by 1,000 to reflect the issue price for each preference share (rounded down);⁴²
- (b) **(voting rights)** for the purposes of an Ordinary Shareholders' Resolution, a Special Majority Band Resolution and a Special Majority Shareholders Resolution, a shareholder will have one vote regardless of the number of Shares held by them.⁴³

Confidential Table 3: Voting Rights by Payment Service Band, including number of shares and % proportion of shares within each Band [Confidential to the Parties] [Confidential to eftpos] [Confidential to BPAY]

Shareholder of NewCo	eftpos Band		BPAY Band		NPPA Band		Total NewCo Shares Held
	Votes (% of band total)	Shares as % of band total	Votes (% of band total)	Shares as % of band total	Votes (% of band total)	Shares as % of band total	
Adyen Australia Pty Ltd	[Confidential to eftpos]		[Confidential to BPAY]		[Confidential to the Parties]		
Australia and New Zealand Banking Group Limited							
Australian Settlements Limited							
Bank of Queensland Limited							

⁴¹ Other than the initial shareholder.

⁴² Clause 3.4 of the Transition Plan.

⁴³ [Confidential to the Parties]

Bendigo and Adelaide Bank Limited							
Citigroup Pty Limited							
Coles Group Limited							
Commonwealth Bank of Australia							
Cuscal Limited							
EFTEX Pty Ltd							
First Data Network Australia Limited trading as Fiserv							
HSBC Bank Australia Limited							
Indue Limited							
ING Bank (Australia) Limited							
Macquarie Bank Limited							
National Australia Bank Limited							
Suncorp Metway Limited							
Tyro Payments Limited							
Westpac Banking Corporation							
Windcave Pty Ltd							
Woolworths Group Limited							

Total shares / votes within band							

9. **Please explain how any subsequent shareholders of NewCo will be classified as or determined to be a Participant Member of a particular Payment Service, and the role of NewCo and/or its shareholders in this process.**

For the purpose of ratifying certain decisions of the Directors that would affect a Payment Service in accordance with article 10.5 of NewCo's Constitution through a Special Majority Band Resolution,⁴⁴ classes of Preference Shares are banded into the following Bands in respect of each Payment Service:

- (a) in respect of the BPAY Scheme, classes of Preference Shares held by NewCo's shareholders and their related bodies corporate that are BPAY Participants;
- (b) in respect of the eftpos Payments System, classes of Preference Shares held by NewCo's shareholders and their related bodies corporate that are eftpos Participants; and
- (c) in respect of the New Payments Platform, classes of Preference Shares held by NewCo's shareholders and their related bodies corporate that are NPP Participants.⁴⁵

The definitions of BPAY Participant, eftpos Participant and NPP Participant in article 1.1 of NewCo's Constitution are extracted below.⁴⁶ **[Confidential to the Parties]**

Section 3 of Schedule 4 of the NewCo's Constitution will be updated to include the following new provision, reflecting the intention that the relevant OpCo would confirm to NewCo at the time of a Special Majority Band Resolution which of the Shareholders are BPAY Participants, eftpos Participants or NPP Participants (respectively) at that time. **[Confidential to the Parties]**

This approach reflects the fact that whether or not a shareholder of NewCo is a BPAY Participant, eftpos Participant or an NPP Participant at any particular time will be a matter of fact at that time. NewCo shareholders could be a member of one or more bands depending on which schemes they are participants within.

10. **Describe the types of matters or decisions that will be capable of being taken by a resolution of the NewCo Board of directors, on the one hand, and those which will require the passage of a resolution by NewCo members/shareholders (or a subset of members/shareholders) on the other hand. In practice, what types of matters or decisions will be capable of being taken by the NewCo management and not require a resolution by the Board of directors.**

1) Matters or decisions capable of being taken by a resolution of NewCo's Board of directors

As is typically the case for an Australian company, NewCo's Constitution provides that the business of NewCo will be managed by the Directors and the Directors are given the ability to exercise all powers of

⁴⁴ Please see responses to your questions 6, 8, 11 and 12 with respect to this.

⁴⁵ See article 3, Schedule 4 of the NewCo Constitution.

⁴⁶ See article 1.1 of the NewCo Constitution for other definitions.

the Company, including to borrow or raise money, unless the *Corporations Act* or the Constitution specifically reserves matters to the Company's shareholders in general meeting.

NewCo's Board will be responsible for the overall governance, management and strategic direction of NewCo. This will include:

- appointing the independent Chairperson (from one of the Independent Directors appointed by NewCo shareholders);
- appointing and replacing the CEO;
- approving the appointment and replacement of other senior executives and the company secretary;
- overseeing management in its implementation of NewCo's strategic objectives
- approving operating budgets and major capital expenditure;
- overseeing the integrity of NewCo's accounting and corporate reporting systems, including the external audit;
- satisfying itself that NewCo has in place an appropriate risk management framework (for both financial and nonfinancial risks) and setting the risk appetite within which the Board expects management to operate;
- satisfying itself that an appropriate framework exists for relevant information to be reported by management to the Board;
- whenever required, challenging management and holding it to account;
- satisfying itself that NewCo's remuneration policies are aligned with NewCo's purpose, values, strategic objectives and risk appetite; and
- monitoring the effectiveness of NewCo's governance practices.

While the day-to-day operations of NewCo will be delegated to NewCo's management team, NewCo's management team will operate under the overall direction of the Board and in line with the strategy set by the Board. One of the roles of NewCo's Board will be to establish the levels of authority delegated to NewCo's management team.

During its initial phase the NewCo management will be small, principally the CEO, with the majority of other staffing resourcing drawn on a shared basis from the OpCos.

2) Matters or decisions taken by a Special Majority Band Resolution

If, in the opinion of a Director of NewCo, a decision made by the Directors would result in a fundamental change in:

- (a) the nature, scale or operation of a Payment Service, or is a proposal to cease providing a Payment Service; or
- (b) the manner of funding the operating costs of providing a Payment Service (including any requirement for particular Shareholders to fund new investment) or the manner in which funds generated by a Payment Service are utilised (including the use of funds generated by a Payment Service for investment in another payment service); or

- (c) the roadmap agreed for the development of “Prescribed Services” set out in clause 7 of the Transition Plan included in the Implementation Agreement, to the extent it relates to a Payment Service,

then, any two Directors of NewCo may request in writing to the Secretary that the decision be ratified by a Special Majority Band Resolution of the Band in respect of that Payment Service, in which case a Special Majority Band Resolution is required to ratify the decision.⁴⁷

Please see our response to your question 11 below for more detail regarding how a Special Majority Band Resolution will work in practice.

3) Matters or decisions capable of being taken by a resolution or special resolution of the shareholders

NewCo’s Constitution and the *Corporations Act* specifically reserve certain matters to NewCo’s shareholders.

NewCo’s Constitution will give shareholders the right to appoint Independent Directors in accordance with a criterion stipulated in the Constitution. Shareholders will also have the power to nominate and specify the term of office of the Representative Directors in accordance with the Banding Rules.

Additionally, NewCo’s Constitution will require shareholder approval by Special Majority Shareholders’ Resolution for the following matters: **[Confidential to the Parties]**

The *Corporations Act* requires shareholder approval for various corporate actions such as share buy backs and reductions of capital.

4) Matters or decisions capable of being taken by NewCo management without a resolution of the Board of directors

As is typically the case for an Australian company, the matters or decisions capable of being taken by NewCo’s management team without a resolution of the Board of Directors would be expected to relate to all matters not referred to above.

The Constitution of NewCo will enable the Directors of NewCo to delegate any of their powers to a committee or committees consisting of 1 or more of their number as they think fit,⁴⁸ or to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit. Whilst it is likely that, following the amalgamation, the Board of NewCo will adopt delegations of authority to both employees and committees, this will ultimately be a matter for that Board.⁴⁹

11. **Explain in more detail how a Special Majority Band Resolution will work in practice, with reference to an example of a potential fundamental change for each of eftpos, BPAY and NPPA (for instance, in terms of operation / roadmap, nature of services, use of funding generated from the Payment Services).**

Please see our responses to your questions above.

⁴⁷ Article 10.5 of the NewCo Constitution.

⁴⁸ Other than powers required by law to be dealt with by directors as a board.

⁴⁹ Whilst no such delegations have been prepared at this stage, please see responses to your question 2c above for some example delegations of the directors of each OpCo.

12. **If there were to be a NewCo business case for rationalising payment rails (e.g. shutting down some eftpos or BPAY infrastructure in the long term), explain the decision-making process and any Board or shareholder/member resolution process that would be required in order to implement this.**

This response considers the decision to shut down some of eftpos' infrastructure in the long term. It applies equally to any decision to shut down of some of NPPA's or BPAY's infrastructure.

At the outset, please note the following:

- (a) the objects of NewCo (extracted below) are:

"... to provide globally competitive payment services which are resilient, safe, efficient, fair, accessible and cost effective and which meet the present and future requirements of the users of the Australian payments system, including financial institutions and payment services providers, while facilitating the provision of low cost solutions for retailers, other businesses, and their customers."⁵⁰

- (b) the process for deciding to shut down payment rails would be very involved, complex and time-consuming; and
- (c) there would be a significant impact on a substantial number of regulated entities.

Accordingly, we would expect there to be lengthy and detailed conversations with scheme members, retailers and merchants, financial institutions and regulators in respect of any such decision (as has been, and continues to be, the case with the Australian Paper Clearing System (cheques) administered by the Australian Payments Network).

If there were to be a NewCo business case for shutting down, for example, some of eftpos' infrastructure in the long term, the decision-making process in respect of NewCo would involve:

- (a) initially, the Directors of NewCo, having regard to their fiduciary duties and obligations to act in the best interests of NewCo, would have to decide that there should be such a rationalisation which, given the requirements of NewCo's objects, would be heavily influenced by the views of scheme members and retailers and merchants, as well as financial institutions and regulators. The relevant threshold for this decision would be a majority of the Directors present and entitled to vote;⁵¹
- (b) because the decision satisfies the criteria in Article 10.5(a) of the NewCo Constitution, any 2 Directors of NewCo could request in writing to the secretary of NewCo that the decision requires ratification by a Special Majority Band Resolution. If that occurs, then a Special Majority Board Resolution is required to ratify the NewCo Board's decision. The relevant threshold for this decision would be 75% or more of the Shareholders holding Preference Shares in the eftpos Band. Please see paragraph 3 of Schedule 4 of the NewCo Constitution and our response to your question 9 above in respect of the composition of the Bands for this purpose.⁵²

⁵⁰ Article 2.1 of the NewCo Constitution.

⁵¹ Article 10.4 of the NewCo Constitution.

⁵² Article 3, Schedule 4 of the NewCo Constitution.

Therefore, if a decision were to be made to shut down some eftpos infrastructure in the long term, any 2 Directors of NewCo could request that this be ratified by a Special Majority Band Resolution. We have described what that would involve in our answers to your questions above. In practice, this should ensure that any proposal by NewCo that would involve a fundamental change in respect of a Payment Service is broadly supported by its users. Should the Special Majority Band Resolution be passed, NewCo would then ask eftpos to shut down the eftpos infrastructure in the manner contemplated by the proposal, subject to any regulatory requirements.

13. **By reference to the relevant provisions of the Implementation Agreement and/or the NewCo Constitution (if applicable), please explain the process through which NewCo could decide to impose mandates on shareholders to support new services.**

The parties to the Implementation Agreement are NPPA, eftpos and BPAY Holdco. NewCo will accede to the Implementation Agreement when it is incorporated.

The Implementation Agreement does not bind any of the current shareholders or members of the OpCos, nor will it bind any of the shareholders of NewCo following the amalgamation.

Accordingly, the Implementation Agreement does not impose any requirement to adopt, implement or otherwise support a new service on:

- (a) any shareholder of NewCo or on any current shareholder or member of an OpCo; or
- (b) any participant in any of the Payment Services.

Further, the Implementation Agreement and Transition Plan neither require nor restrict:

- (a) the OpCos imposing a mandate on the participants of its Payment Service to adopt, implement or otherwise support any new service; or
- (b) NewCo ensuring that an OpCo does the above.

NewCo's Constitution does not contemplate the imposition of mandates by NewCo on NewCo's shareholders to support a new Payment Service.

Consistent with current practice by the OpCos, to the extent that mandates were imposed in respect of a Payment Service in the future, following amalgamation, it is expected that they would be imposed by the OpCos on participants (or a subset of them) in accordance with the operating rules and current practice (for example, with respect to consultation) of that Payment Service. In addition, any such mandate imposed by the OpCos would need to be linked to a product/service or functionality that is part of the NewCo Board approved payments roadmap and strategy (ie all OpCo mandates would need to link back to a coherent roadmap of service deployments).

As noted above, the amalgamation will not of itself result in changes to the operating rules and procedures of any of the Payment Services, including any frameworks in the rules for the imposition of mandates on participants (other than rules that are linked to the ownership of the operator).⁵³ We set out below, a summary of the existing frameworks for mandates in respect of a Payment Service under its operating rules.

⁵³ Please see response to your question 2a above.

1) **BPAY**

[Confidential to BPAY]

2) **eftpos**

[Confidential to eftpos]

3) **NPP**

The NPP Regulations confer all powers on NPPA that are reasonably necessary to ensure the security, integrity, efficiency of the NPP, subject to explicit duties of good faith and robust governance arrangements. This includes the powers to propose amendments to the NPP Regulations and NPP procedures that define business services and technical, operating and security requirements to be implemented by NPP Participants, Connected Institutions and Overlay Service Providers as parties to the NPP Regulations and as users of the NPP (not as shareholders).

When a requirement is considered to be fundamental to the integrity of the NPP, the Board of NPPA can designate it as a Mandatory Compliance Requirement under Regulation 3.8. When making a designation decision, the NPPA Board considers the recommendation of the CEO and any impact assessment made by the Change Management Sub-Committee (comprised of representatives of Participants, SWIFT, RBA FSS). If the NPPA Board decides to designate a requirement it will also set an Effective Compliance Date after which non-compliance with the requirement is subject to the imposition of Non-Compliance Charges calculated in accordance with the schedule of escalating charges set out in regulation 3.8(k).

14. **Is there a requirement upon NewCo to establish and maintain the End User Committee and Payment Service Provider Committee?**

It is intended that NewCo will establish and maintain the End User Committee and Payment Service Provider Committees (each, a “**Committee**”), as contemplated in the New Shareholder and Committee Principles and proposed amendments to NewCo’s Constitution referred to below.

If so, please:

a. Explain the basis for this requirement (including by reference to the Implementation Agreement and/or the NewCo Constitution);

The New Shareholder and Committee Principles (the “**New Shareholder and Committee Principles**”), dated 3 March 2021, set out in Annexure I, state that NewCo should establish two advisory committees (each, a “**Committee**”), being:

- (a) an End-User Committee to represent the views of end-users of the BPAY, NPP and eftpos systems, being individual consumers, small businesses, big businesses, industry associations, charities, corporations, fintech operators and government departments (ie the “**End-Users**”); and
- (b) a PSP Committee to represent the interests of the payment service providers (“**PSPs**”) and other organisations in the payments ecosystem (eg Token Servicers and Digital ID Service Providers).⁵⁴

Those principles were approved by the Transaction Advisory Committee at its meeting on 12 June 2021.

⁵⁴ See section 2.1 of the New Shareholder and Committee Principles, annexed as Annexure I.

The principles in relation to the establishment and terms of reference of the Committees were developed taking into account the principles considered in the Payment System Operator Delivery Group Report, Final Report, dated 4 May 2017, (the “**PSODG Report**”)⁵⁵ in relation to an End-User Advisory Council and Participant Advisory Council in connection with the then proposed consolidation of domestic Payment Services in the United Kingdom.⁵⁶

The Transition Advisory Committee has approved the update of NewCo’s Constitution to include a new article 9.10 and associated definitions of the Committees, as extracted below. These provisions are based on the provisions in the Pay.UK Constitution related to the Advisory Councils:⁵⁷

9.10 End-User Committee and PSP Committee

The End-User Committee and PSP Committee will report annually and publicly on their work, and may make such other public statements relevant to their work as they see fit. The Directors shall respond publicly and as soon as possible to the annual reports and other public statements made by the End-User Committee and PSP Committee.

End-User Committee means the end-user advisory committee, as formed from time to time by the Board.

PSP Committee means the payment service provider committee, as formed from time to time by the Board.

b. Provide information on the terms of references for each of these committees; and

1) Terms of reference of the Committees

The New Shareholder and Committee Principles state that the terms of reference for each Committee should be developed by reference to the following objectives:

- (a) ensuring the Board of NewCo has a strong understanding of the issues and concerns of End-Users and of PSPs. For example, the Committees could:
 - (i) identify priority areas for consideration and resolution including:
 - (A) changes to practices and products that could result in better outcomes for end-users or PSPs (as applicable); and
 - (B) specific issues related to some End-Users or PSPs, for example in the case of the End-User Committee, low income and/or vulnerable individuals;
 - (ii) develop responses and solutions for resolving priority areas including:
 - (A) information sharing and explanation of practices; and
 - (B) joint research and reports on specific issues;
- (b) effectively managing interaction between the Board of NewCo and both End-Users and PSPs to ensure that the voices of End-Users and Participants are heard; and

⁵⁵ Available at <https://www.psr.org.uk/publications/news/new-payment-system-operator/> as at 1:13pm (Sydney time) on 14.06.2021.

⁵⁶ Being the UK consolidation referred to in footnote of the ACCC Preliminary Views involving the consolidation of Bacs Payment Schemes Limited (the operator of the Bacs payment system), Faster Payments Scheme Limited (the operator of the Faster Payments Service payment system) and Cheque & Credit Clearing Company Limited (the operator of the Cheque & Credit Clearing system).

⁵⁷ See Article 14 of the Pay.UK Constitution available at <https://www.wearepay.uk/wp-content/uploads/Pay.UK-Articles-adopted-9-9-2020.pdf> as at 1:13pm (Sydney time) on 14.06.2021.

- (c) enabling End-Users and PSPs to provide input to the Board of NewCo on the general strategic context of payments, including:
 - (i) the roadmap for the development of payments services;
 - (ii) promoting innovation in payments; and
 - (iii) enhancing connectivity between, and integration of, the BPAY, NPP and eftpos systems.⁵⁸

2) Structure of the Committees

The New Shareholder and Committee Principles state that the structure of the Committees should be developed by reference to the objectives that the Committees:

- (a) should be independent in their construct and representation, and safeguards should be put in place to manage conflicts of interest. An independent director of NewCo will act as a chair for each Committee;
- (b) should have close links with each other to encourage a broader perspective across both groups within the payments ecosystem. Where appropriate, a representative from the End-User Committee could attend the PSP Committee and vice versa as a non-voting member to facilitate informed debate and decision making and the Committees reaching consensus on key issues, where possible, before the views of each Committee are passed to the Board of NewCo; and
- (c) should include senior representatives of each of BPAY Group Pty Ltd, eftpos Payments Australia Limited and NPP Australia Limited.⁵⁹

New Shareholder and Committee Principles also state that:

- Committee members should be required to act honestly and exercise a reasonable degree of care and diligence. One of the criteria to be a member of the Committee should be that the person not have been subject to a finding of, or reprimanded for, misconduct in connection with their employment, whether by their employer (current or previous) or any legal or regulatory body;
- The membership of each Committee should be reviewed every two years; and
- The Board of NewCo should take into consideration the Committees' views to inform decision making, including in relation to the roadmap for the development of services, and the dialogue between the Committees and the Board of NewCo should be two way.

As noted above, the NewCo Constitution provides that the End-User Committee and PSP Committee should report annually and publicly on their work, and may make such other public statements relevant to their work as they see fit. It also provides that the Board of NewCo should respond publicly and as soon as possible to the annual reports and other public statements made by the Committees.

3) Operation of the Committees

The New Shareholder and Committee Principles state that the operations of the Committees should align with their objectives, as set out above. In order to achieve these objectives:

- (a) each Committee will prepare an annual work plan;

⁵⁸ Section 2.4 of the New Shareholder and Committee Principles, annexed as Annexure I.

⁵⁹ NewCo will seek to roll-in existing advisory committees of BPAY, eftpos and NPPA where relevant and appropriate to do so.

- (b) each Committee should meet periodically (to be determined by the Committee); and
 - (c) the operation of each Committee is to be reviewed within two years.⁶⁰
- c. Outline how NewCo's Board will be required to take into consideration the Committees' views to inform its decision making.**

As noted above, NewCo's Constitution will be updated to include a new article 9.10 which will provide that:

- The End-User Committee and PSP Committee will report annually and publicly on their work, and may make such other public statements relevant to their work as they see fit.
- The Directors shall respond publicly and as soon as possible to the annual reports and other public statements made by the End-User Committee and PSP Committee.

The New Shareholder and Committee Principles also state that the Board of NewCo should take into consideration the Committees' views to inform decision making, including in relation to the roadmap for the development of services, and the dialogue between the Committees and the Board of NewCo should be two way.⁶¹

As these Committees will be chaired by Independent Directors, it is expected they will report back to the Board on feedback, and as senior representatives of the OpCo Management teams will attend, it is expected they will integrate the feedback into their work and development of forward plans and products.

15. In relation to the Prescribed Services, please provide/explain:

- a. a detailed description of each of the services (by reference to the responsible OpCo's current roadmap);**
- b. which OpCo will be responsible for developing each of the services;**

The table below contains a description of each of the services and which OpCo will be responsible for developing them. **[Confidential to the Parties]**

Category	Prescribed Service	Responsible OpCo	Detailed description of Prescribed Service
[Confidential to the Parties]			

- c. whether there will be any contractual or other requirement for any shareholders/members of each OpCo to adopt and/or implement the services (please explain by reference to the Implementation Agreement, if applicable).**

As noted in our response to your question 13 above, the Implementation Agreement does not bind any of the current shareholders or members of the OpCos, nor will it bind any of the shareholders of NewCo following the amalgamation.

⁶⁰ Section 2.4 of the New Shareholder and Committee Principles, annexed as Annexure I.

⁶¹ Section 2.3 of the New Shareholder and Committee Principles, annexed as Annexure I.

Accordingly, the Implementation Agreement does not impose any requirement on any shareholder of NewCo or shareholder or member of OpCo, nor any participant in any of the Payment Services, to adopt or implement a particular Prescribed Service.

The Implementation Agreement contains an obligation on the parties to that agreement (ie BPAY Holdco, eftpos and NPPA and, when it accedes to that Agreement, NewCo) to:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other parties (including by attending meetings and by providing information),

to implement the Transition Plan as soon as reasonably practicable and in accordance with the Timetable in Schedule 1 of the Implementation Agreement and the Transition Plan.⁶²

The Transition Plan provides that NewCo is to ensure that the Payment Services provided by the OpCos include the Prescribed Services.⁶³ It does not require that any OpCo impose a mandate on either its current shareholders or members (as applicable) or the participants of its Payment Service, to adopt and/or implement the Prescribed Services, or that NewCo ensure that the OpCos do so. However, it does not restrict the OpCos imposing such a mandate on NewCo.

[Confidential to eftpos]

Consistent with the requirements in the Transition Plan in relation to Prescribed Services referred to above, the mandate of those Prescribed Services was intended to be conditional upon the completion of the amalgamation.

The Applicants acknowledge that each of the Prescribed Services could have been brought to market in the absence of the proposed amalgamation. However, they would not have been brought to market in accordance with an agreed timeline and they would have been brought to market later than is provided for in the timeline for the Prescribed Services. Also, not all Applicants would have been ready to support those Prescribed Services at the same time.

Conclusion

For the reasons provided in its previous submissions, expert and lay evidence, the Applicants consider that the Commission should authorise the Proposed Amalgamation, under the effects and benefits limbs.

The proposed amalgamation will involve a re-organisation of the existing ownership interests in each of BPAY, eftpos and NPPA and the consequences that arise have been addressed in detail above.

The proposed amalgamation is not likely to lead to a substantial lessening of competition in any market.

⁶² Clause 5 of the Implementation Agreement.

⁶³ Transition Plan, clause 7.

The proposed amalgamation is likely to give rise to significant public benefits including those arising from an agreed innovations pipeline resulting in payments innovations being brought to market sooner than in any counterfactual. NewCo's governance structure provides for broader representation than currently exists in any version of the counterfactual scenario and includes clear and effective checks and balances for users of each of the three payment schemes and mechanisms to consult various participants in the payments industry. This will mean a richer decision making process. NewCo will be able to admit new shareholders and the proposed amalgamation will not result in any changes to each scheme's existing rules for open and non-discriminatory access. NewCo will have no incentive to remove or diminish any of the scheme's capabilities.

Claim for confidentiality

Some information in this letter and its attachments is confidential to the Applicants and could cause commercial harm to the Applicants if disclosed. The Applicants respectfully asks the Commission to treat that information as confidential.

The applicants consider that the confidential information relates to the Commission's core statutory function of administering and enforcing the *Competition and Consumer Act 2010 (Cth)* (**Act**). As such, the Applicants consider that the information comprises "protected information" as defined by section 155AAA(21) of the Act.

The Applicants understand that:

- (a) there will be no restriction on the internal use, including future use, the Commission may make of the confidential information consistent with its statutory functions;
- (b) the confidential information may be viewed by the Commission's external consultants (for example legal, economic and industry advisers) on the condition that each such consultant will be informed of the obligation to treat the information as confidential; and
- (c) the Commission will not disclose the confidential information to any third parties (other than its external consultants) unless compelled to do so by law or in accordance with section 155AAA of the Act.

Should the Commission be compelled by law to disclose the confidential information, or any part of it, the Applicants ask the Commission to, where possible, give as much notice as possible to the Applicants before disclosing the confidential information, or any part of it, so that the Applicants may consider seeking an order from the Court to protect the information and documents from disclosure.

Please let us know if you would like any further information about the governance arrangements that would follow from the amalgamation.

Yours sincerely



**Sharon Henrick | Partner | Competition Law and
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King & Wood Mallesons**

T [redacted] | M [redacted]
[redacted]



**Christopher Kok | Senior Associate | Competition
Law and Regulatory Team
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This communication and any attachments are confidential and may be privileged

Annexures

Annexure	Description
Annexure A	Appointment of Representative Directors to NewCo (6 March 2021)
Annexure B	NewCo Chair and NED Appointment Process (8 June 2021)
Confidential Annexure C	[Confidential to BPAY]
Confidential Annexure D	[Confidential to eftpos]
Annexure E	NPPA Board Delegations of Authority (November 2018)
Annexure F	NPP Terms of Reference of the Rules Sub-Committee (26 October 2017)
Annexure G	NPP Governance Committee Charter - Terms of Reference (9 September 2020)
Annexure H	New Shareholder and Committee Principles (3 March 2021)
Confidential Annexure I	[Confidential to the Parties]

Appointment of Representative Directors to NewCo

This memorandum considers two options for a framework for nominating Representative Directors of NewCo (the “**Framework**”).

It considers:

- background regarding the constitutional framework for the appointment of directors;
- the establishment of a NewCo Board Nominations Committee and skills matrix for directors;
- two options for the Framework; and
- a high-level summary of the framework for the selection and election of representative directors of NPPA and EPAL.

1 The constitutional framework for the appointment of directors

The draft NewCo constitution (“**Constitution**”) provides that the number of Directors is to be 13,¹ comprised of 4 independent directors (including the independent chairperson) and 9 Representative Directors.²

For the purposes of nominating Representative Directors, the classes of preference shares are banded into three groups by reference to their shareholder.³ The expected composition of the shareholders holding shares in each Band at the time of the consolidation is shown in Schedule 1 to this memorandum.⁴

The number of Representative Directors that may be nominated in respect of each Band is listed below.

Band	Number of Directors
Band 1 (consisting of the major (15%+) shareholders)	4
Band 2 (the smaller (<15%) shareholders who are ADIs)	2
Band 3 (the smaller (<15% shareholders) who are not ADIs)	3

The Constitution provides that the method by which a Band nominates their Representative Directors is ‘...to be determined by them at the time at which the Director is to be nominated.’

2 NewCo Board Nominations Committee and Skills Matrix

Following the incorporation of NewCo:

¹ Unless otherwise determined by the Company in a general meeting.

² The term of office of directors is to be specified at the time of their appointment as being either two or three years: see articles 8.2 and 8.3 of the Constitution.

³ See section 2 of the Banding Rules in Schedule 4 of the Constitution.

⁴ Note that the classes of preference shares will be banded together differently for the purpose of nominating Representative Directors and for the purpose of specified Special Majority Band Resolutions relating to individual Payment Services. Also, further consideration will need to be given to 4 entities who are in various stages of becoming a member of eftpos.

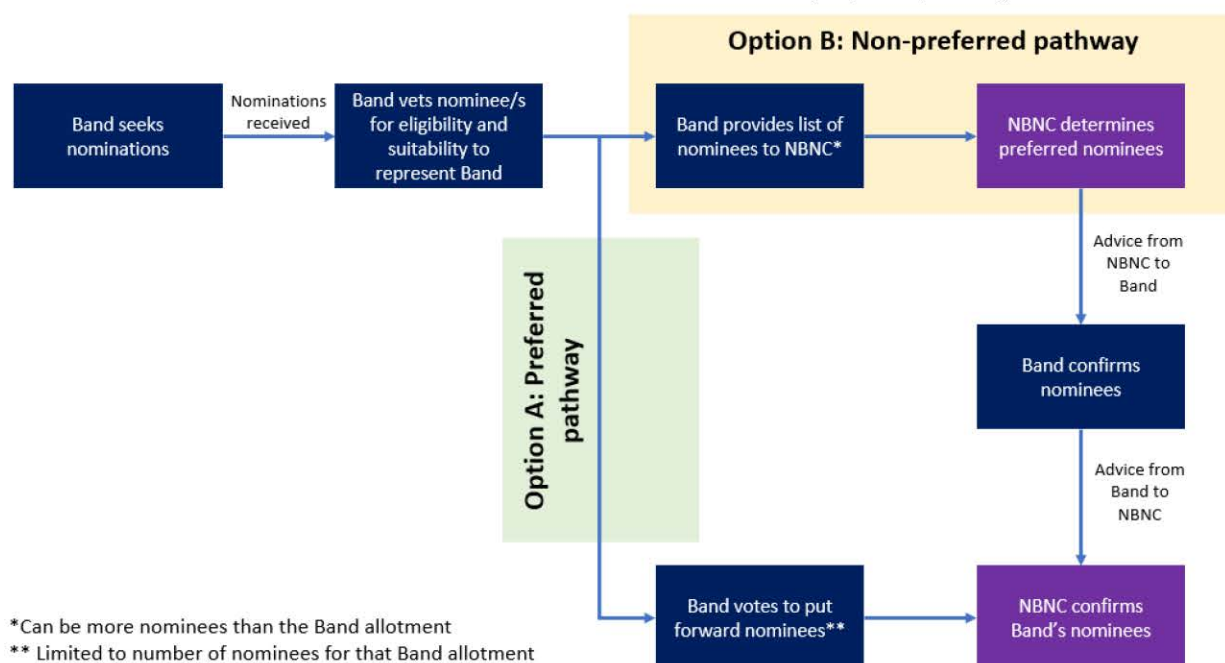
- (a) a NewCo Board Nominations Committee (“NBNC”) will be constituted.⁵ The NBNC will be comprised of the Independent Directors and its terms of reference will include assisting in the process of the nomination and appointment of Representative Directors; and
- (b) a matrix of the skills and personal attributes of Directors will be agreed (“Skills Matrix”), a draft of which is in the Annexure to this memorandum.

Each candidate for nomination as a Representative Director will be required to provide a declaration as to fitness and propriety and invited to submit a biography to identify how they consider they meet the skills and personal attributes in the Skills Matrix.

3 Options for the framework for nominating Representative Directors

Two options for the framework for nominating Representative Directors are summarised below.

One of the key differences between the options is whether the relevant shareholders rank the candidates before the NBNC reviews them (as per Option A), or whether the NBNC reviews and ranks the candidates before the relevant shareholders confirm them (as per Option B).



3.1 Option A

The following steps will be followed in respect of the appointment of Representative Directors in respect of a Band:

Step 1: Nomination process - The Company Secretary of NewCo will invite each shareholder holding preference shares in that Band to nominate one or more candidates for election, taking into account the requirements of the Skills Matrix.

Step 2: Band ranks candidates - The following will apply if the number of candidates nominated exceeds the number of Representative Directors that may be nominated in respect of that Band (e.g. if the shareholders in Band 2 (the smaller (<15%) shareholders who are ADIs) nominated 3 candidates, given that 2 Representative Directors may be nominated in respect of Band 2.

The Company Secretary will facilitate a ballot being held, on the basis that:

- (a) each shareholder holding preference shares in that Band will have one vote (irrespective of the number of shares held by it); and

⁵ Pursuant to article 9.6 (Committees) of the Constitution.

(b) candidates will be ranked in the order of the number of votes received.

Step 3: Review of ranked candidates by the NBNC – The NBNC will be asked to review the number of candidates equal to the number of Representative Directors that may be nominated in respect of that Band and who received the greatest number of votes.

The NBNC will:

- (i) consider those candidates which it has been asked to review and make a determination as to whether they meet the relevant requirements in the Skills Matrix, having regard to their skills and competencies and the mix of skills and competencies of other Directors and other Nominated Representative Directors; and
- (ii) advise the shareholders in that Band of its determination, including a brief summary of the reasons for its determination.

If the NBNC determines that the candidate meets the relevant requirements, the candidate will be taken to be nominated as a Representative Director in accordance with the Banding Rules.

If the NBNC determines that the candidate does not meet the relevant requirements, then the Band would need to consider the potential candidates further and conduct a further ballot.

3.2 Option B

Step 1: Nomination process – Same as Step 1 in Option A above.

Step 2: Review and ranking of candidates by the NBNC – The Band will provide a list of the nominated candidates to the NBNC, and the NBNC will:

- (a) consider each candidate nominated and make a determination as to whether they meet the relevant requirements in the Skills Matrix, having regard to their skills and competencies and the mix of skills and competencies of other Directors and other Nominated Representative Directors; and
- (b) notify shareholders in that Band of their recommendation as to the most suitable candidates for role of each Representative Director for that Band, in ranked order.

Step 3: Band confirmation of recommended candidates – Unless a shareholder in that Band advises the NBNC that it objects to the recommendation from the NBNC, the candidate(s) recommended by the NBNC will be taken to be nominated as Representative Director(s) by that Band in ranked order.

If a shareholder objects to the recommendation, then the Band would need to consider the potential candidates further.

Schedule 1 – Expected composition of Bands

[Confidential to the Parties]

Shareholder	NewCo shares resulting from membership of EPAL	NewCo shares resulting from membership of BPAY	NewCo shares resulting from membership of NPPA	Total NewCo Shares
Band 1 – shareholders who hold more than 15% of the NewCo shares (may nominate 4 Representative Directors)				
[Confidential to the Parties]				
Band 2 – ADIs (may nominate 2 Representative Directors)				
[Confidential to the Parties]				
Band 3 – non ADIs (may nominate 3 Representative Directors)				
[Confidential to the Parties]				
TOTAL				[Confidential to the Parties]

Schedule 2 – Framework for the selection & election of representative directors of NPPA & EPAL

The table below summarises some of the key aspects of the frameworks for the selection & election of representative directors of NPPA Australia Limited (“NPPA”) and EFTPOS Payments Australia Limited (“EPAL”)

NPPA	EPAL
What is the composition of the Board?	
<p>(a) 3 independent directors, including the Chair of the Board; (b) the following representative directors:</p> <ul style="list-style-type: none"> (i) 1 representative nominated by each High Band shareholders; (ii) 4 representatives elected from among the Low and Medium Band shareholders; and (iii) 1 director representing the RBA. <p>The CEO of NPPA also sits on the Board as a non-voting director.</p>	[Confidential to eftpos]
Is there a prescribed process for shareholders appointing representative directors?	
No, for High Band shareholders (as they each appoint a representative director).	[Confidential to eftpos]
Yes, for Medium Band (excluding the RBA) and Low Band shareholders.	[Confidential to eftpos]
If there is a prescribed process, what is it?	
<p>Nomination Process: Medium Band (excluding the RBA) and Low Band shareholder (respectively) will be invited to nominate one candidate, provided that if a shareholder's officer or employee is a director of NPPA whose position is not about to expire, the shareholder is not entitled to nominate a candidate for election. A shareholder is not prohibited from nominating a candidate where its officer/employee only holds the position of an alternative director.</p> <p>Review of Nominations by the Remuneration and Nomination Sub-Committee (RNSC):</p> <ul style="list-style-type: none"> (i) the RNSC will review, consider and advise the Board on the nominations; (ii) the Board will consider the advice of RNSC and make a determination as to whether it recommends the nominee as a suitable candidate for the role of director; and (iii) the Company Secretary will advise each nominee of the Board's determination and provide a brief summary of the Board's reasons for its determination. Nominees will be given an opportunity to withdraw their nomination for the current role upon notice of the Board's determination. 	[Confidential to eftpos]

NPPA	EPAL
<p>Outcome of Nomination Process:</p> <ul style="list-style-type: none"> (i) if the number of valid nominations do not exceed the number of vacancies available, the candidate(s) nominated have been appointed to the vacancies; or (ii) if the number of valid nominations exceed the number of vacancies available, a ballot will be held. <p>Voting entitlement is determined under the NPPA Constitution and Shareholders Agreement.</p>	
How are the skills of nominees or representative directors considered and assessed?	
<p>At the time nominations are sought, Medium Band shareholders and Low Band shareholders will be provided with a copy of the skills and competencies which the Board has determined it is desirable for the Board to possess in total, including any gaps that have been identified in overall board competencies that are sought to be closed.</p> <p>Each candidate for nomination will be required to consent to act as a director and provide a declaration as to fitness and propriety, and will be invited to submit a biography to identify how they consider they meet the desired skills and competencies.</p>	<p>[Confidential to eftpos]</p>
What is the role of the remuneration and nomination committee in the appointment process?	
<p>The Remuneration and Nomination Sub-Committee (“RNSC”) has the responsibility for reviewing valid nominations received for Board positions and advising the Board and the electing shareholders on each nominee’s suitability for the role given the appropriate mix of skills and competencies for the future needs of the Board.</p> <p>The RNSC will consider each nomination and advise the Board in writing as to the suitability of each nominee having regard to each nominee’s skills and competencies, the mix of skills and competencies currently on the Board and the future skills and competency needs of NPPA.</p>	<p>[Confidential to eftpos]</p>

Annexure – Skills Matrix for Directors of NewCo

NewCo Independent Non-Executive Directors

There will be four independent Non-Executive Directors appointed to NewCo's Board of 13, one of which will be appointed Chair. Each will be accomplished leaders with notable executive achievement and reputation as per the criteria below.

Board skills

- Domain knowledge in payments or related network-type platforms, infrastructure, technology, or operations disciplines in Australia and/or overseas.
 - Marketing and consumer experience across a variety of customer and user segments, particularly consumer and small to medium businesses.
 - Leadership and influencing skills and a demonstrated ability to build, maintain and manage key relationships with participants, industry, government and regulators.
 - Exposure to early stage innovation and development in fintech or platform investments.
 - Commitment to regulatory, compliance and governance disciplines in regulated environments.
- Ability to contribute positively and actively to development of an inclusive, diverse and accountable Board and operational culture.

Personal attributes

- Integrity, personal values and skills appropriate to an industry-based and regulated Board.
- Strong strategic and commercial acumen.
- Can develop and articulate own thoughts in a collegiate manner and receptive to the views of others and complementing the collective strengths of the Board.

Term

- The term of appointment will be three years. At establishment of NewCo, the Chair will be appointed for three years and each of the three independents will be appointed for an initial period of 1, 2 or 3 years, decided by vote of the shareholders, with a term of three years on successful re-election.
- Remuneration will be in line with market and be advised in due course.

Criteria for independence

Independent directors, under the NewCo Constitution, must meet the following criterion both at appointment and throughout the duration of their term:

- The person is not currently, and has not within the last two years, been employed by¹, or acted in a material way, as: a professional adviser, consultant, supplier or customer to; nor had a substantial holding in, an existing shareholder of one of the three operating companies being consolidated (NewCo)²; or, a Related Body Corporate of a Shareholder of NewCo within the meaning of the Corporations Act.

¹ Excluding Independent Directors of eftpos Payments Australia Limited or NPP Australia

² In this context NewCo means NewCo, eftpos Payments Australia Limited, BPAY Group, and NPP Australia

NewCo Chair and NED Appointment Process

Prepared by TAC Secretariat, 08 June 2021

Background

As outlined in the draft NewCo Constitution, if approved by the ACCC, the NewCo will include an independent Chair and 4 independent Non-Executive Directors (NEDs), alongside a number of representative directors representing share class groups.

As agreed by all Participants (Applicants to the ACCC) and in line with the 'ICA Implementation Agreement', the inaugural NewCo Chair is to be appointed by the Transaction Advisory Committee, and that inaugural NewCo Chair will then support the TAC with appointing the 4 inaugural NEDs.

Timeline

Date	Progress
29/01/21	[TAC meeting #1] Chair noted that TAC will develop an approach for appointment of Chair and NEDs.
05/02/21	[TAC meeting #2] Chair suggested that a subcommittee structure will be needed to consider appointment of Chair and NEDs.
12/02/21	[TAC meeting #3] Chair proposed that Governance Subcommittee (GSC) should be formed in coming weeks.
19/02/21	[TAC meeting #4] TAC agreed that GSC's primary task will be to recommend to TAC the process and potential candidates for Chair and NEDs. TAC agreed that GSC is to comprise 2 members from major banks, 1 from retailers, 1 from non-major banks, and 1 from other ADIs. TAC takes action to identify these representatives.
26/02/21	[TAC meeting #5] TAC noted GSC Draft Terms of Reference (ToR). TAC noted GSC has been stood up comprising Jim Tate (JT) Westpac (organiser), Nigel Dobson (ND) ANZ, Paul Askew (PA) Coles, Sarv Girn (SG) Cuscal, and Kees Kwakernaak (KK) Fiserv.
04/03/21	[GSC meeting #1] GSC confirmed ToR, began discussions on draft appointment criteria for Chair and NEDs including research into ASX board skills matrices, proposes to engage recruitment firm to conduct independent recruitment process
05/03/21	[TAC meeting #6] Final GSC ToR presented to TAC , TAC noted ongoing discussion on criteria.
10/03/21	[GSC meeting #2] GSC noted that potential NEDs are being proactively suggested already, agreed to establish confidential central register of names put forward.
12/03/21	[TAC meeting #07] GSC advised TAC to provide any suggestions on Directors to central register (instead of to individual GSC members), to later be provided to independent recruitment agency for consideration. GSC presented draft Board Skills Paper (Selection Criteria / Matrix) .
19/03/21	[TAC meeting #08] TAC noted ongoing work of GSC
29/03/21	[GSC meeting #3]
09/04/21	[TAC meeting #09] Chair noted a number of stakeholders have requested seats on the Board, and we have reiterated that membership will be based on ensuring the diversity of skills required for the Board to meet the needs and interests of stakeholders, rather than favouring one or more business organisations.

Industry Committee Administration Pty. Ltd.

<i>Date</i>	<i>Progress</i>
23/04/21	[TAC meeting #10] GSC noted we will invite existing Independent NEDs of NPP and eftpos to express interest in being considered for the NewCo Board. GSC noted that proposals have been sought from two Executive Search Companies to assist with identifying Directors.
30/04/21	[TAC meeting #11] GST noted proposals have been received from two Executive Search Companies, and invitations have been sent to independent non-executive directors of eftpos and NPPA.
05/05/21	[GSC meeting #4] GSC meets, votes to select Heidrick & Struggles as recruiter, and discusses potential Director Fees and tenure.
14/05/21	[TAC meeting #12] GSC advises TAC of selection of Heidrick & Struggles, and invited all TAC and other nominations for the NED positions to be received by 28/05/21. Need for diversity discussed, along with timing of Chair, NEDs, and Representative Directors appointments.
28/05/21	[TAC meeting #13] GSC noted that 5 of the 6 existing Independent NEDs of NPP and eftpos have expressed interest in being considered for the NewCo Board, and noted that TAC nominations for the NED positions should be received by COB today 28/05/21. GSC noted that a list of 30 candidates for Chair has been received from Heidrick & Struggles , noting we will not proceed with NEDs until the Issues Paper and indication from ACCC.
01/06/21	[GSC meeting #5] GSC discussed timeline for NED appointment, ensuring mix of skills between NEDs and representative directors.
09/06/21	[GSC meeting #6] GSC to discuss process for appointing Representative Directors

DoA1.0_Finance Administration DoA v7 effective <i>29 November</i> <i>2018</i>		<i>29 November 2018</i>
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NPP Australia Limited
Board Delegations of Authority

Document Information

Document History

Version Number	Date Modified	Author	Summary of Changes
V0.1	20/3/2015	R.Clark	Document created
V0.2	20/03/15	ARFC	Changes to document
V0.2	31/03/15		Approved NPPA Board
V0.2.0	07/04/16	G Kelly	Annual review Authorised Officers and Ancillary Officers
v 0.3	23/08/16	G Kelly	Various Amendments following appointment of NPPA's CEO
V0.4	15/11/16	V Chapman	Addition of clause 2.1(f) (re-numbered as clause 2.1(h) in v0.5)
V0.5	28/03/17	V Chapman	Inclusion of clause 2.1(b); amendment of clause 2.1(f) and (g) to delegate NPPAL administrative functions under NPP Regulations / NPP Procedures to the CEO; editorial amendments
V0.6	21/11/17	V Chapman	Various amendments to remove references to Authorised Officers of APCA; extension of period of time for section 2.1(g)(U) delegation; addition of "Office Manager" as Authorised Offer of NPPA.
V7	29/11/18	V Chapman	Annual review. Deletion of obsolete text.

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1. Introduction

NPP Australia Limited (**NPPA**) has been established to oversee the establishment of the NPP.

In accordance with Article 9.8 of the NPPA Constitution, the Board of Directors may delegate its powers, duties or authority to any person they select for any period.

2. Current Delegation

2.1 CEO's General Authority

The Directors delegate to the Chief Executive Officer general explicit authority to manage operation and administration of the New Payments Platform (NPP) in accordance with the provisions of the Shareholders Agreement dated 24 September 2014 (as amended from time to time) and the NPPA Constitution adopted 24 September 2014 (as amended from time to time), and the NPP Regulations and NPP Procedures, including:

- (a) to oversee and manage implementation and ongoing performance of the Master Infrastructure Services Deed dated 2 December 2014;
- (b) to oversee and manage implementation and ongoing performance of Provisioning Agreements entered into with NPP Participants (and Applicants which have satisfied the Initial Eligibility Requirements);
- (c) to oversee and manage the appointment of any provider of outsourced services under the Shareholders Agreement;
- (d) to develop and execute the Board-approved strategy for the establishment and on-going operations of the Company, including the development and promotion of overlay services, services and capabilities directed to NPP transaction volume growth, engaging the market and relevant regulators;
- (e) to undertake all actions required, including entering into any contractual arrangements or agreements (which includes for the avoidance of doubt, the FSS Feeder Agreement with the RBA, Provisioning Agreements with prospective NPP Participants, confidentiality undertakings with prospective NPP Participants, Overlay Service Providers and Connected Institutions) to implement and give effect to the NPP Regulations and NPP Procedures approved by the Board. Notwithstanding the generality of the foregoing, the Board reserves all powers under the NPP Regulations to determine fees (NPP Regulations, Regulation 3.1) and to make decisions with respect to the suspension or termination of any party (NPP Regulations, Part 9);
- (f) to undertake and perform the following administrative functions and powers in connection with day-to-day operation of the NPP Basic Infrastructure as set out or contemplated by the NPP Regulations and NPP Procedures, and implementation of the NPP Regulations and NPP Procedures approved by the Board, including:
 - A. the approval and authorisation of Orders for NPP Componentry under the NPPA Reseller arrangement;
 - B. management of and upload of data to Business Reference Data Tables;
 - C. establishing and administration of NPP Closed User Groups and NPP business services;
 - D. management of NPP Participants' operational contacts database and access to the data;
 - E. the initial assessment of Participation Applications (satisfaction of Initial Eligibility Requirements) prior to consideration by the Board, management of share subscription and accession process and approval of Applicants' Orders for NPP Componentry;
 - F. the assessment and determination of new Level 1 Overlay Service Provider Applications and the determination of key Overlay Service Implementation and Commencement Dates in accordance with Part 4 of the NPP Regulations;
 - G. negotiation of access to Certification Solution (as required by prospective Overlay Service Providers and/or their subscribers);

- H. periodic review of Inter-Organisation Compensation Principles for purposes of Part 6 of the NPP Regulations (delegated to Operating Committee);
- I. publication of NPP Regulations and NPP Procedures to the Company's website;
- J. amendments to the NPP Regulations and NPP Procedures of a minor, typographical or editorial nature as contemplated by the NPP Regulations (subject to notification all NPP Participants, Overlay Service Providers and Connected Institutions);
- K. approval of amendments to the NPP Procedures (delegated to the Rules Sub-Committee);
- L. approval of amendments to the NPP Regulations for recommendation to the Board for final approval (subject to Members' approval if amendment is required by the Company's Constitution to be determined by special majority members' resolution);

- M. collation and distribution of standard NPP Reports (as defined in NPP Regulations);
- N. collection and analysis of NPP fraud statistics (analysis to be delegated to Fraud Advisory Committee);
- O. implementation of the Incident Management Framework in connection with management of NPP incidents (includes issue of service notifications, issue of operational suspension and subsequent reinstatement directions made under NPP Regulations) and coordination of communications between NPP Participants, SWIFT and RBA (FSS) during Incidents (delegated to IRG. For the avoidance of doubt, in extenuating circumstances, that is where the IRG is not quorate or cannot be convened, to exercise any of the powers of NPPA or the Board to act or to give a direction under Regulation 5.6 of the NPP Regulations, in accordance with that provision);
- P. monitoring NPP Participants', Connected Institutions' and Overlay Service Providers' ongoing compliance with the NPP Compliance and Assurance Framework (including NPP Security attestations, KYC/Sanctions Attestations and Addressing Service Protocol attestations);
- Q. notification to NPP Participant, Connected Institution or Overlay Service Provider of that party's actual, potential or perceived non-compliance with NPP Regulations or NPP Procedures, and issue of remediation directions in accordance with Regulation 2.4(a);
- R. administration of the dispute resolution process under Part 12 of the NPP Regulations (to be delegated to the Operating Committee);
- S. administration of the Change Management processes described in the NPP Procedures, including initial assessment of Change Requests and Change Proposals (to be delegated to Change Management Sub-Committee); and
- T. assessment and determination of NPP maintenance activities, including NPP Message maintenance, and technology upgrades (within NPPA operating budget), as contemplated by Part 15 of the NPP Regulations (to be delegated to Change Management Sub-Committee); and

- (g) to establish terms of reference for the Operating Committee and its sub-committees in accordance with the principles approved by the Board and any special purpose working group required from time to time, to appoint representatives of NPP Participants to those committees and working groups from time to time and to delegate such of the powers and functions set out in paragraphs A to T above as may be necessary or desirable to enable those operational governance committees to function as contemplated by their terms of reference, the NPP Regulations and / or the NPP Procedures; and

- (h) to manage issues as new issues arise and manage the day-to-day affairs of the Company.

2.2 Approval of Expenditure:

- (i) The Chief Executive Officer is permitted to approve the following expenditures:
 - a. Payments within overall operating budget parameters approved by the Board provided that where the payment exceeds \$500,000 prior authorisation must be sought from the Chair of the Audit, Risk and Finance Committee;
 - b. Payments outside budget parameters, of any amount up to \$50,000, for unanticipated business expenses. Any use of this delegation will be reported at the next NPPA Audit Risk & Finance Committee.
- (ii) Corporate credit card charges incurred by the CEO or the Chair shall be authorised as follows:
 - (a) The CEO will review and approve the Chairman's credit card expenses and authorise the reimbursement of expenses to the Chair; and
 - (b) The Chair will review and approve the CEO's credit card expenses and authorise the reimbursement of expenses to the CEO.
- (c) Any Authorised Officer of NPPA (detailed in Schedule 1) is permitted to approve company expenditures:
 - a. within capital or operating budget parameters approved by the Board for amounts up to \$50,000; or
 - b. Tax obligations to the ATO that occur in the normal operation of business (ie BAS, PAYG, FBT).

2.3 Authorisation of Payments (Bank Authority)

- (i) The Chief Executive Officer is permitted to co-authorise payments, drawn on NPPA bank accounts (i.e. by, electronic payment or other means) with a co-signature or electronic means of authorisation of any Authorised Officer of NPPA (detailed in Schedule 1).
- (ii) Authorised Officers of NPPA are permitted to co-authorise Approved Expenses up to \$50,000, drawn on NPPA bank accounts (i.e. by electronic payment or other means).
- (iii) All payment authorisations will be made in accordance with the Company's relevant financial control policies and guidelines.
- (iv) All payments authorised under this delegation of authority will be processed by the Company's outsourced financial service providers, in accordance with their terms of engagement.

2.4 Payments made under Treasury Guidelines

- (i) The following officers have authority to invest surplus funds in accordance with the Treasury Policy: the Chief Executive Officer is permitted to co-authorise investment transactions via the NPPA bank accounts (i.e. by electronic payment or other means) with an Authorised Officer of NPPA permitted to make payments drawn on NPPA bank account (i.e. by electronic payment or other means).
- (ii) All investment confirmations will be reviewed by the Company Secretary to ensure that investments have been booked in accordance with the Treasury Guidelines.

2.5 Staff (including hiring and remuneration packages)

- (i) Subject to paragraph (ii) below, the Chief Executive Officer has authority to appoint staff to the positions within the recruitment framework and in accordance with the remuneration, retention, termination and superannuation policies determined in consultation with the People and Culture Committee (**PCC**).

- (ii) The Chief Executive Officer will refer remuneration packages for senior executives to the PCC for review prior to appointing any senior executive to the position.
- (iii) The Chief Executive officer will provide recommendations for annual bonuses for senior executives to the PCC for review prior to awarding the annual bonuses.

2.6 Authority to sign

- (i) The Chief Executive Officer is appointed as an authorised signatory permitted to execute and deliver all documents with the co-signature of another director or a company secretary, which are or may be necessary or desirable in connection with:
 - a. the CEO's general authority in Delegation 2.1;
 - b. the approved expenditures in Delegation 2.2 (iii); and
 - c. the CEO's authority in Delegation 2.5 (Staff),
- (ii) Signatories may give effect to any transactions contemplated by the documents described in Delegation 2.6 (i) above including, but not limited to, by completing blanks and making amendments, alterations or additions considered necessary or desirable.

2.7 Media Policy

The External Communications and Media Policy governs comment to the media on behalf of NPPA. The Chief Executive Officer and the Chair are the only sources of comment to the media on behalf of NPPA except when other Directors or Senior Executives are involved in media conferences, or when the CEO has referred the media to an individual on a particular matter.

2.8 Authority to Appoint an Acting CEO

The Chief Executive Officer may appoint an Authorised Officer of the Company to act in the position of CEO for periods of not more than six weeks when the CEO is absent from the office and not readily contactable.

In the absence of the CEO, the Chair of the Board may appoint a senior executive officer of the Company to act in the position of CEO.

Schedule 1

Authorised Officers of NPPA are the officers holding the positions below during the period which those officers have a valid service contract with NPPA.

Position
General Manager Technology & Operations
General Counsel
Head of Engagement
Company Secretary



Rules Sub-Committee (RSC)

Terms of Reference

Purpose	<p>The RSC is an advisory sub-committee of the Operating Committee.</p> <p>The role and responsibilities of the RSC are to exercise (under CEO delegated authority) all of the functions conferred on the RSC by the NPP Regulations and the NPP Procedures including, without limitation, to:</p> <ul style="list-style-type: none"> (a) Monitor and maintain NPP Regulations and NPP Procedures; (b) Develop proposed amendments to NPP Regulations and NPP Procedures; (c) Approve amendments to the NPP Procedures and documents referred to in the NPP Procedures, including without limitation the NPP Participant Back Office Design Considerations document; (d) Liaise with Change Management Sub-Committee and such other sub-committees of the Operational Committee as appropriate to assess impacts of NPP security, standards, technical, regulatory and other changes on the NPP Regulations and NPP Procedures; and (e) Develop and maintain regulatory interpretation guides and other ancillary materials.
Regulatory Context	Parts 10 and 11 NPP Regulations
Chair	NPPA: General Counsel
Membership	<p>Members:</p> <p>NPP Participants - one suitably qualified representative Each representative may appoint a standing alternate to attend a meeting if the representative is unable to attend.</p> <p>Chair Invitees (invitations may be standing or ad hoc): SWIFT representative RBA FSS representative PMSO representative* Connected Institution representative Overlay Service Provider/s representative other invitees as required</p> <p>Secretary: NPPA</p>
Confidentiality	It is a condition of RSC participation that each member and each invitee executes a confidentiality agreement and agrees to keep confidential all documents and written and verbal information received in connection with meetings of the RSC.
Outputs	<p>Recommended amendments to NPP Regulations to be referred to Operating Committee for recommendation to the Board and General Meeting for approval as required by the Constitution or the NPP Regulations.</p> <p>Approved amendments to NPP Procedures, to documents referred to in the NPP Procedures, including without limitation the NPP Participant Back Office Design</p>

	Considerations document and guidance materials to be referred to Operating Committee for noting and publication to all parties and to Board for noting.
Operating Rhythm	Meets quarterly. Agenda and supporting papers to be distributed by Secretary to members and invitees five business days before meetings Outputs circulated two business days after meeting.
Governance Protocol	Quorum: Chair plus two-thirds attendance of NPP Participant representatives. Attendance in person wherever possible; teleconference with prior consent of Chair. Voting: Aim for decisions by consensus. Where consensus not possible, decision may be carried by two thirds majority vote of members in attendance; Chair has casting vote. Invitees have no voting rights.

NPPA Rules Sub-Committee

MEMBERS	
Chair: NPPA General Counsel (Vanessa Chapman)	
ANZ	
CBA	
NAB	
WBC	
RBA Bank	
Cuscal	
ING	
Bendigo & Adelaide Bank	
Macquarie	
HSBC	
Citibank	
ASL	
INdue	
SWIFT	
Invitees	
PMSO* / RBA FSS / SWIFT Representatives	

* until expiry Transition Period (Nov – Dec 2017)

**NPP AUSTRALIA LIMITED
NPP GOVERNANCE COMMITTEE CHARTER**

1. PURPOSE OF CHARTER

This Charter sets out the role, functions, structures and processes of the NPP Governance Committee (**Committee**) of NPP Australia Limited (**Company**).

2. COMMITTEE OBJECTIVES

The primary objective of the Committee is to assist the Board in fulfilling its oversight responsibilities in relation to NPP system access and governance, and overseeing the compliance of NPP Participants and other parties with NPP requirements and obligations.

3. RESPONSIBILITIES

Consistent with the objectives of this Charter, the Committee has the following powers and responsibilities:

- (a) The Committee has delegated authority to exercise the powers and functions of the full Board in relation to the determination of Participation Applications and OSP Applications as described in Regulations 4.7, 4.9 and 4.11 of the NPP Regulations.
- (b) The Committee has delegated authority to make decisions with respect to the determination of Non-Compliance findings under the Mandatory Compliance framework established by Part 3 of the NPP Regulations, and the assessment of associated Non-Compliance Charges in accordance with the NPP Regulations;
- (c) The Committee has delegated authority to assess and determine annual NPP Transaction Fees and annual administration (operating) fees in accordance with the Transaction Pricing Model (which may include Administration Fees) approved by the Board;
- (d) Assessment of grounds for suspension or termination of NPP Participants and other parties under Part 9 of the NPP Regulations, for recommendation to the Board;
- (e) Ongoing assessment of the efficacy of the NPP Compliance and Assurance framework and associated compliance reviews of NPP Participants and parties.

4. GOVERNANCE

4.1 General

- (a) The Committee is comprised of the independent directors on the Board and the Chief Executive Officer. The Chair of the Committee will be appointed by the Board from one of the appointed members.
- (b) The Committee will meet up to six times a year if required (indicatively immediately before or after scheduled Board meetings).
- (c) The quorum for a meeting of the Committee is a simple majority of Committee members.
- (d) Video or conference call participation by Committee members, or other attendees, requires the Chair's approval.
- (e) Committee members are expected to disclose any conflicts of interests at the commencement of each meeting.

- (f) The Committee will seek to make unanimous recommendations and decisions in the first instance. If unanimity cannot be reached, the Committee may vote on the matter. Each member has one vote. Support of a simple majority of members present is required for a decision to be made.
- (g) The Committee may invite non-members to its meetings to provide advice from time to time. The Committee may call on non-members (including representatives of NPP Participants, Connected Institutions, Overlay Service Providers or NPPA personnel) to produce documents or information to assist it in the performance of its functions and responsibilities.
- (h) The Committee may call on independent expertise as required, on an ad hoc or standing basis to fulfil the objectives of the Committee.
- (i) The Company Secretary will undertake the duties of secretariat. Management will provide support to the Committee as required.
- (j) In addition to the matters set out in this Charter, the provisions of the Constitution that apply to meetings and resolutions of directors, apply to meetings and resolutions of the Committee.

4.2 Authority and Accountability

- (a) The Committee is established by the Board, under Article 9.6 of the Constitution.
- (b) The Committee is accountable to the Board.

4.3 Reporting

The Committee will report outcomes of its meetings to the Board within a reasonable period, as required, and will exercise its functions in accordance with any directions of the Board.

5. REVIEW OF CHARTER

The Committee will review this Charter annually so that it remains consistent with the Board's objectives and responsibilities.

The Board may amend this Charter in its own right or on the recommendation of the Committee.

6. GLOSSARY

Words defined in the constitution have, unless the contrary intention appears, the same meaning in this Charter.

7. CHARTER AMENDMENT HISTORY

Version	Prepared by	Approved by	Date	Description of amendment
0.1	General Counsel	PCC	05/06/2019	Draft Charter for PCC review and approval
1.0	General Counsel	Board	20/06/2019	Approved version
2.0	General Counsel	Board	28/11/2019	Amendment to include authority to determine Participation

				and OSP Applications
2.0	General Counsel	Board	9/09/2020	Annual review

New Shareholder and Committee Principles

1 New shareholders

The principles regarding new shareholders include the following:

- (a) **(representation of stakeholders)** The Board of NewCo should seek to expand the shareholder base such that it adequately represents the stakeholder community from time to time.

In doing so, the Board of NewCo:

- (i) should establish an appropriate balance between the number of shareholders necessary to reflect the stakeholder universe and the need to ensure that each shareholder has a meaningful role;
- (ii) should bear in mind that the takeover provisions in Chapter 6 of the *Corporations Act* may apply to NewCo if it has 50 or more shareholders at any time (and that it is not workable for the takeovers provisions to apply); and
- (iii) should consider the application of laws such as the *Foreign Acquisitions and Takeovers Act* and the *Security of Critical Infrastructure Act* in the context of considering an application by an entity which is not incorporated and/or domiciled in Australia to become a shareholder of NewCo.

- (b) **(shareholder criteria)** There should be a transparent application process and criteria that need to be met in order to become a shareholder.

The shareholder criteria should require the following (subject to any determination by the Board of NewCo to the contrary):

- (i) **(eligibility)** the applicant must be either:
 - (A) a “Participant Member” for the purposes of the Business Rules and Operating Procedures applicable to the BPAY Scheme;¹ or
 - (B) an “NPP Participant” or “Connected Institution” for the purposes of the NPP Regulations applicable to the New Payments Platform; and/or
 - (C) a “Direct Connector” or “Direct Settler”² for the purpose of the eftpos Scheme Rules applicable to the eftpos Payment Scheme; and
- (ii) **(active engagement)** the applicant must intend to be actively engaged with the governance of NewCo, including with issues such as:
 - (A) the roadmap and future direction for the development of payments services;
 - (B) promoting innovation in payments; and
 - (C) enhancing connectivity between, and integration of, the BPAY, NPP and eftpos systems.

¹ Capitalised terms used in this document have the meaning given in the draft Constitution for NewCo, unless the context requires otherwise.

² The reference to these terms will be considered further when the limited proposed changes to the eftpos Scheme Rules due to the amalgamation are finalised.

There should also be a requirement that each new shareholder make a capital contribution of a fixed amount of A\$50,000.

The Board of NewCo could consider asking a shareholder that ceases to meet those criteria to consider requesting that NewCo redeem the preference shares held by it in accordance with the constitution of NewCo.³

2 Input from interested stakeholders⁴

2.1 Establishment of the committees

NewCo should establish two advisory committees, being:

- (a) an End-User Committee to represent the views of end-users of the BPAY, NPP and eftpos systems, being individual consumers, small businesses, big businesses, industry associations, charities, corporations, fintech operators and government departments (ie the “**End-Users**”); and
- (b) a PSP Committee to represent the interests of the payment service providers (“**PSPs**”) and other organisations in the payments ecosystem (eg Token Servicers and Digital ID Service Providers).

The draft NewCo Constitution should be updated to include a new article 9.10 and associated definitions of the Committees, as extracted below.⁵

9.10 End-User Committee and PSP Committee

The End-User Committee and PSP Committee will report annually and publicly on their work, and may make such other public statements relevant to their work as they see fit. The Directors shall respond publicly and as soon as possible to the annual reports and other public statements made by the End-User Committee and PSP Committee.

End-User Committee means the end-user advisory committee, as formed from time to time by the board.

PSP Committee means the payment service provider committee, as formed from time to time by the Board.

2.2 Terms of reference of the Committees

The terms of reference for each Committee should be developed by reference to the following objectives:

- (a) ensuring the Board of NewCo has a strong understanding of the issues and concerns of End-Users and of PSPs. For example, the Committees could:
 - (i) identify priority areas for consideration and resolution including:
 - (A) changes to practices and products that could result in better outcomes for end-users or PSPs (as applicable); and
 - (B) specific issues related to some End-Users or PSPs, for example in the case of the End-User Committee, low income and/or vulnerable individuals;
 - (ii) develop responses and solutions for resolving priority areas including:
 - (A) information sharing and explanation of practices; and

³ The constitution provides that the redemption amount for each preference share redeemed will be A\$0.01.

⁴ By way of background, the Payment System Operator Delivery Group Report, Final Report dated 4 May 2017 (the “**PSODG Report**”) considered the then proposed consolidation of domestic payment systems in the United Kingdom. The principles in this section 2 in relation to the establishment, terms of reference and structure of the Advisory Committees were developed taking into account the relevant principles considered in the PSODG Report in relation to an End-User Advisory Council and Participant Advisory Council.

⁵ These provisions are based on the provisions in the Pay.UK Limited Articles of Association adopted on 9 September 202 related to its End-User Advisory Council and Participant Advisory Council.

- (B) joint research and reports on specific issues;
- (b) effectively managing interaction between the Board of NewCo and both End-Users and PSPs to ensure that the voices of End-Users and Participants are heard; and
- (c) enabling End-Users and PSPs to provide input to the Board of NewCo on the general strategic context of payments, including:
 - (i) the roadmap for the development of payments services;
 - (ii) promoting innovation in payments; and
 - (iii) enhancing connectivity between, and integration of, the BPAY, NPP and eftpos systems.

2.3 Structure of the Committees

The structure of the Committees should be developed by reference to the objectives that the Committees:

- (a) should be independent in their construct and representation, and safeguards should be put in place to manage conflicts of interest. An independent director of NewCo will act as a chair for each Committee;
- (b) should have close links with each other to encourage a broader perspective across both groups within the payments ecosystem. Where appropriate, a representative from the End-User Committee could attend the PSP Committee and vice versa as a non-voting member to facilitate informed debate and decision making and the Committees reaching consensus on key issues, where possible, before the views of each Committee are passed to the Board of NewCo; and
- (c) should include senior representatives of each of BPAY Group Pty Ltd, eftpos Payments Australia Limited and NPP Australia Limited.⁶

Committee members should be required to act honestly and exercise a reasonable degree of care and diligence. One of the criteria to be a member of the Committee should be that the person not have been subject to a finding of, or reprimanded for, misconduct in connection with their employment, whether by their employer (current or previous) or any legal or regulatory body.

The membership of each Committee should be reviewed every two years.

The Board of NewCo should take into consideration the Committees' views to inform decision making, including in relation to the roadmap for the development of services, and the dialogue between the Committees and the Board of NewCo should be two way. As noted above, the End-User Committee and PSP Committee should report annually and publicly on their work, and may make such other public statements relevant to their work as they see fit. The Board of NewCo should respond publicly and as soon as possible to the annual reports and other public statements made by the Committees.

2.4 Operation of the Committees

The operations of the Committees should align with their objectives, as set out above. In order to achieve these objectives:

- (a) each Committee will prepare an annual work plan;
- (b) each Committee should meet periodically (to be determined by the Committee); and
- (c) the operation of each Committee is to be reviewed within two years.

⁶ Newco will seek to roll-in existing advisory committees of BPAY, NPPA and eftpos where relevant and appropriate to do so.