

MEMORANDUM OF UNDERSTANDING

RESERVE BANK OF AUSTRALIA AND NPP AUSTRALIA LIMITED

Background

1. This Memorandum of Understanding (MOU) sets out a framework for engagement and information sharing between the Reserve Bank of Australia (RBA) and NPP Australia Limited (NPPA) in relation to the New Payments Platform (NPP). The intention of these arrangements is to address any actual or perceived conflicts of interest or duty arising from the RBA's various operational and policy responsibilities in relation to the NPP. This MOU is a statement of intent of the RBA and NPPA (and, where applicable, the RBA-appointed director referred to below). Neither this MOU nor the agreement by the RBA-appointed director referred to in clause 7 is intended to create any binding legal obligations, or to limit the discretion of the parties or that director in any way in the discharge of their functions.
2. The NPP is open-access infrastructure for fast payments in Australia that was launched in early 2018. The NPP was developed via industry collaboration, including with the RBA, to enable households, businesses and government agencies to make simply-addressed payments, with near real-time funds availability to the recipient, on a 24/7 basis.
3. The NPP is owned and operated by NPPA, a public company limited by shares. The RBA is a shareholder of NPPA along with 12 initial participating financial institutions. The objectives of NPPA according to its Constitution are to establish and operate the NPP in a manner that promotes the public interest in the NPP by:
 - ensuring its safe, reliable and efficient operation;
 - facilitating fair access to the NPP as mutually owned utility infrastructure; and
 - ensuring ongoing investment in the NPP to meet the changing needs of financial institutions and users of the Australian payments system.
4. Aside from being a shareholder in NPPA, the RBA has an ongoing involvement in the NPP from both an operational and policy perspective:
 - The RBA operates the Fast Settlement Service (FSS), which provides real-time settlement of NPP transactions between financial institutions on a 24/7 basis. The RBA's Payments Settlements Department has responsibility for this function.
 - The RBA is a direct participant in the NPP in its capacity as a transactional banker to the Australian Government and its Departments and agencies. The RBA is making NPP services available to its government clients, including the ability to make real-time payments and collect public monies via NPP payments to government accounts. These services are provided by the RBA's Banking Department. The RBA does not offer any banking or related

services, including NPP-related services, to the public or non-government commercial entities.

- The RBA is the primary regulator of the payments system through the Payments System Board. Under the *Payment Systems (Regulation) Act 1998* (PSRA), the RBA has the power to designate payment systems as being subject to its regulation and then to impose standards and access regimes on those systems or on participants in those systems on public interest grounds. The RBA's Payments Policy Department has responsibility for providing advice to the Payments System Board.

5. Given the various responsibilities of the RBA, there are benefits from the RBA being closely involved with NPPA. However, this could raise actual or perceived conflicts between the duties of the RBA as regulator of the payments system and its involvement in the NPP from an operational perspective. The arrangements set out below for how the RBA interacts with NPPA, including sharing of information, are designed to address any actual or perceived conflicts.

RBA-appointed Director of NPPA

6. In recognition of the importance of the FSS to the operation of the NPP, the NPPA Shareholders' Agreement gives the RBA the right to appoint the Head of its Payments Settlements Department, or a suitably qualified senior member of Payments Settlements Department, as a director of NPPA. The RBA may also choose not to appoint a director, or to withdraw its appointment of a sitting director. During any period when there is no RBA-appointed director on the NPPA Board, the RBA has the right to appoint an observer, who may attend NPPA Board meetings but would not have a vote.
7. At the date of this MOU, the RBA has exercised its right and appointed the Head of Payments Settlements Department as a director of NPPA. The Head of Payments Settlements Department agrees with the engagement and information-sharing framework set out in this MOU.
8. The parties acknowledge that the RBA-appointed director is neither from, nor represents, the RBA's Payments Policy Department, and does not represent the views of the Payments System Board.
9. Given its permanent right to appoint a director, the RBA has agreed that it will not otherwise participate in the election of directors of NPPA.
10. The RBA-appointed director has access to the same information on the NPP as other NPPA directors, including to Board and Committee papers. Under the NPPA Board Charter, the RBA-appointed director may share NPPA Board and Committee papers and other relevant information with other RBA staff in the course of seeking input from subject-matter experts and others to enable the RBA-appointed director to make an effective contribution at NPPA Board and Committee meetings. Such sharing will not occur where it is contrary to any other provision of this MOU. Any RBA staff receiving access to NPPA Board or Committee papers will maintain the confidentiality of those documents and the information contained in them.
11. Like other clearing systems that settle transactions at the Reserve Bank (via RITS, the RBA's high-value RTGS system), there is a Feeder System Agreement for the NPP with the RBA that is

managed by Payments Settlements Department. The purpose of the Feeder System Agreement is to admit the NPP as a Feeder System to RITS (in accordance with clause 5 of the RITS Regulations) and to set out the rights and obligations of both parties in connection with the admission and operation of the NPP as a Feeder System to RITS. In the event that the NPPA Board is reviewing changes to this Agreement, or considering a matter in relation to which there is a dispute between NPPA and the RBA, the RBA-appointed director or the NPPA Board may request that the RBA-appointed director not receive relevant NPPA Board papers and absent themselves from relevant discussions at the NPPA Board.

12. The RBA and its appointed NPPA director will manage information sharing and participation in internal RBA payments policy meetings in a way that recognises and manages the potential for any conflicts of interest or duty arising from the role of the RBA-appointed director on the NPPA Board. Depending on the circumstances, this may involve policy papers being withheld from the RBA-appointed director and/or their absence from relevant parts of RBA payments policy meetings.
13. More broadly, to the extent that the RBA-appointed director is, or becomes, aware of any conflict of interest or duty between the RBA and NPPA, this would be handled in accordance with the *Corporations Act 2001* and the NPPA Board's Conflict Management Protocol. Depending on the circumstances, and the views of the other NPPA directors, this may involve NPPA Board and Committee papers being withheld, absence from the relevant part of the meeting and/or abstention from voting. The RBA-appointed director also has the option to resign from the NPPA Board if a conflict could not be satisfactorily resolved in any other way.

Banking Department

14. The RBA, via its Banking Department, is an NPP Participant, which means it has the ability to clear and settle NPP payments on its own behalf and connects directly with other NPP Participants via an NPP Payment Gateway. Like other NPP Participants, the RBA has signed up to the NPP Regulations and Procedures. Staff from Banking Department are members of some NPPA Committees and have access to relevant NPPA Committee papers via that membership.
15. The RBA-appointed director will not provide Banking Department with NPPA Board papers, nor Board minutes, but can seek the views of Banking Department staff, and of other RBA staff, to help develop an informed view of relevant issues (consistent with paragraph 10).
16. As is the case for other NPP shareholders, NPPA will provide Banking Department with a meeting summary after each NPPA Board meeting and Banking Department can request copies of NPPA Board papers by approaching NPPA directly.

Payments Policy Department

17. From a policy perspective, there are benefits from the RBA being closely engaged with NPPA, including in relation to any policy or operational issues that may arise. To the extent that the RBA were to have public interest concerns related to NPPA or the operation of the NPP, it would raise these with NPPA and try to resolve the issues in a voluntary manner, consistent with the RBA's normal procedures. As with other payment systems, designation and regulation using the Bank's formal powers under the PSRA would also be an option.

18. The Head of Payments Policy Department and other senior staff from Payments Policy Department will meet at least quarterly with the Chief Executive Officer and senior staff of NPPA. The main purpose of these meetings will be to discuss developments in relation to the NPP and NPPA, including any matters raised at the NPPA Board that could have relevance to the RBA's payments policy responsibilities.
19. Staff in Payments Policy Department will not have access to NPPA Board and Committee papers through the RBA-appointed director of NPPA. However, there will be a standing arrangement by which, after each NPPA Board meeting, NPPA will provide Payments Policy Department with a copy of the agenda and the meeting summary that is provided to NPPA shareholders. Payments Policy Department can also approach NPPA directly to request a copy of any Board or Committee paper that is relevant to the RBA's policy responsibilities.
20. More broadly, Payments Policy Department will seek information it requires on the NPP or NPPA directly from NPPA itself, rather than from the RBA's appointed director of NPPA (or from staff in the RBA's Payments Settlements or Banking Departments). This approach is consistent with how RBA payments policy staff engage with other commercial payment systems in which the RBA is involved from an operational perspective (such as BPAY and the card schemes) and with Australian Payments Network (where the Head of Banking Department is a director) and the Australian Payments Council (of which the Assistant Governor (Business Services) is a member).
21. NPPA agrees to provide policy-relevant information about the NPP to the RBA's Payments Policy Department. Where there are material issues that might have implications for the RBA's policy, the Chief Executive Officer of NPPA will inform the Head of Payments Policy Department at the RBA as soon as practicable rather than waiting for the next regularly scheduled meeting. This is consistent with the NPP Regulations and the NPP Feeder System Agreement between the RBA and NPPA, which both contemplate NPPA providing information to the RBA in its capacity as regulator of the payments system, including for the purposes of 'assisting payments system oversight by the RBA'. This voluntary commitment to provide information would not, however, require NPPA to provide information to the RBA if it was subject to confidentiality obligations with a third party or subject to a statutory obligation of secrecy or confidentiality.
22. Any information that staff in Payments Policy Department obtain from NPPA regarding the NPP or NPPA will be treated as confidential, except to the extent that it is already in the public domain or its disclosure or publication is consistent with the RBA's policy responsibilities. This information will not (unless it is published) be shared with Banking Department staff, consistent with the RBA's *Policy for Dealing with Conflicts of Interest and Duty between Banking Department and Payments Policy Department*.¹
23. In the event that Payments Policy Department was not obtaining the information it needed from NPPA, the RBA could exercise its formal powers under section 26 of the PSRA to compel NPPA and/or participants in the NPP to provide the necessary information. The Payments System Board could also, if it considered that to do so was in the public interest, designate the

¹ <https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/conflict-of-interest.html>

NPP under Part 3 of the PSRA and, having done so, exercise its other powers in relation to a designated payment system including the power to make standards.

24. Payments Policy Department will periodically assess (as it does for other payment systems) whether the NPP has become a systemically important payment system. If the RBA determines that the NPP is a systemically important payment system, it would expect to assess the NPP against relevant parts of the *CPMI-IOSCO Principles for Financial Market Infrastructures* in accordance with its broader policies on the supervision and oversight of systemically important payment systems.

Administration of this MOU

25. Payments Policy Department will provide regular reports on the NPP to the Payments System Board, which may recommend changes to the governance arrangements outlined in this MOU from time to time.
26. This MOU will be reviewed at least every two years.

Signed:



Tony Richards
Head of Payments Policy Department (on behalf of RBA)
Reserve Bank of Australia



Adrian Lovney
Chief Executive Officer
NPP Australia Limited

9 April 2019