



AUSTRALIAN PAYMENTS CLEARING ASSOCIATION

**SUBMISSION TO REVIEW OF CODE OF BANKING
PRACTICE – ISSUES PAPER**

JULY 2008

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I. INTRODUCTION

1. The Australian Payments Clearing Association (APCA) welcomes the opportunity to respond to the Review of Code of Banking Practice Issues Paper (the Issues Paper).
2. APCA supports the Code of Banking Practice (the Code) and its Review as part of an efficient self-regulatory framework which promotes certainty, legitimacy and transparency in the delivery of banking services to consumers.
3. Measures being undertaken to improve compliance and enforcement are integral to this process. APCA endorses the proposed recommendations in this regard.
4. In this submission, APCA specifically comments on a limited range of issues that impact on payments, notably direct debit, account switching and electronic banking.

II. ABOUT APCA

5. APCA is the Australian payment industry's principal self-regulatory body. It is the primary vehicle in Australia for payments industry collaboration, with a mandate to improve the safety, reliability, equity, convenience and efficiency of the Australian payments system.
6. APCA was established in 1992 as a mutual organisation for administering the technical and operational rules and standards between banks, building societies, credit unions and other payments organisations. APCA's role has since extended to managing and developing regulations, procedures, policies and standards governing payments clearing and settlement within Australia. It has around 80 members comprising the Reserve Bank, banks, building societies, credit unions and other participants in its five clearing systems. The 5 systems clear more than 98% of Australia's non-cash retail payment values.
7. APCA's clearing systems provide definitive, participant-driven sets of rules and decision-making structures governing the conduct of clearing and settling transactions in relevant payment instruments. APCA does not process payments. In general, individual institutions participating in each clearing system are responsible for their own clearing operations which they must conduct according to APCA's rules.
8. APCA's Core Principles focus on a broad role to enhance the Australian payments system. The principles articulate three core APCA activities:

- Industry policy development and advocacy, where APCA's role is to facilitate the development of industry positions and views on the evolution and regulation of payment systems, and to communicate those views to government, regulators and other stakeholders as needed;
- Industry standards and self-regulation, where APCA seeks to ensure that system participants decide how they will operate and be governed, and members collectively set the self-regulatory framework for the industry; and
- Industry change management, where APCA coordinates and facilitates payments system development programmes as required by its members.

III. BACKGROUND

9. The Code of Banking Practice (the Code) is a voluntary code of conduct for banks to follow, setting out standards of good banking practice for dealing with individuals and small business customers and their guarantors. The Code is administered by the Australian Bankers Association (the ABA).
10. The Code was first independently reviewed in 2000 and 2001, with the last version of the Code published in May 2004.
11. The current review commenced 29 November 2007 with the commissioning by the ABA of an independent reviewer to undertake a public consultation exercise, with an initial scoping exercise prior to the release of the current issues paper.
12. The Code deals widely with the relations between banks and their customers, and, as such, there are significant portions of the Code not directly relevant to APCA.
13. APCA has, however, contributed to the debate about the efficiencies of self-regulation, specifically in the context of payment systems through the release of the International Council of Payment Association Chief Executives (ICPACE) "Principles of Self Governance", which provide guidance on elements required for an optimal self-governance framework. APCA recognises the value of the Code as an example of an efficient voluntary self-regulatory framework which meets the ICPACE principles.

IV. SECTION 8.8: DIRECT DEBITS

14. APCA strongly supports consumers being able to choose whether they want to enter into direct debit arrangements. Such arrangements are very popular in Australia. APCA statistics from

2007 noted that, on a monthly basis, there were 41 million direct debit transactions worth \$361 billion. Direct debit arrangements are seen as convenient and remain popular with thousands of Australian consumers.

15. APCA supports the proposed change to Clause 19 of the Code of Banking Practice, namely to better distinguish between cancellation of a direct debit (where a financial institution will notify the merchant than holds the direct debit request accordingly) and a change to a direct debit (where the consumer will ordinarily need to contact the merchant holding the direct debit request).

V. SECTION 8.9: ACCOUNT SWITCHING

16. APCA welcomes the inclusion of a new provision in the Code on account switching.
17. The Issues Paper correctly details the measure agreed to by industry as part of its account switching facilitation package, with one exception. APCA notes that APCA, the ABA and Abacus did not agree to include a central registry facility to collect details of customers' direct debit and credit arrangements, as suggested by the independent reviewer at pages 18 and 66 of the Issues Paper. This should be acknowledged in any future discussion of the account switching package.
18. APCA endorses the recommendations made at Section 8.9 that the Code include a section dealing with account switching and suggests that this should explicitly list the four key principles agreed to by the ABA.
19. APCA furthermore endorses the recommendation made in the Issues Paper that the Code include a provision that banks publish their arrangements for account switching on their websites.

VI. SECTION 8.10: ELECTRONIC BANKING

20. APCA's recent submission to ASIC's Review of the EFT Code of Conduct notes that, in its current form, the EFT Code is becoming increasingly inefficient and ineffective as market conditions change and payment methods proliferate. APCA believes that this problem will grow over time, given anticipated market and technological developments.
21. As well, the EFT Code significantly overlaps with existing self-regulatory arrangements. This is summarised in the Appendix of this submission, which is an excerpt from APCA's submission to the

recent ASIC Review of the EFT Code of Conduct.

22. In that earlier submission, APCA suggested an approach that would reformulate the EFT Code as a non-binding statement of policy principles. A reformulated EFT Code could then refer to existing and relevant self-regulatory frameworks, taking advantage of already well-scoped, well-supported frameworks and effective reporting and compliance for “mainstream” transaction types, as well as being able to tailor provisions to suit particular transactions.
23. A revised EFT Code could refer to existing self-regulatory regimes, for instance, the clearing systems administered by APCA; the Code of Banking Practice; the Mutual Code of Practice; and the BPAY and card scheme rules. These regimes could include the detail that supports the high-level principles enunciated in a revised EFT Code.
24. This would require work by administrators of the various self regulatory frameworks (e.g. APCA, ABA, Abacus, BPAY and the card schemes) with ASIC to explore how high-level principles could be enunciated in a revised EFT Code and then further articulated within each regime.
25. In this respect, APCA supports the principal contained within 8.10 of the Issues Paper, namely a need for rationalisation and alignment between the EFT Code and other sets of rules. In this respect, APCA would favour the EFT Code setting down high-level principles with self-regulatory mechanisms such as the Code of Banking Practice providing further detail as needed. APCA would agree with the suggestion in the Issues Paper that any changes to the Code of Banking Practice dealing with the interaction between the EFT Code and the Code of Banking Practice wait until the completion of the current review of the EFT Code.

VII. CONCLUSIONS

26. APCA endorses the Code of Banking Practice and believes it is broadly consistent with the Principles of Payments Industry Self-Governance released by ICPAGE, which articulate five key elements in any self-governance framework:
 - a. Certainty;
 - b. Legitimacy;
 - c. Transparency;
 - d. Flexibility; and
 - e. Efficiency.
27. As a result, APCA supports the proposed improvements to compliance and enforcement and believes that the Code of Banking

Practice may be a better site for issues such as electronic banking rather than the EFT Code.

28. APCA supports the changes to Clause 19 on Direct Debit to better distinguish between cancellations and changes to direct debit arrangements.
29. Lastly, APCA endorses enshrining the key elements of the account switching facilitation package in the Code in recognition of the banking industry's commitment to the package and specifically endorses the recommendation made by the independent reviewer subject to the clarifications noted in this submission.

APPENDIX – EXCERPT FROM APCA’S SUBMISSION TO ASIC REVIEW OF EFT CODE

Rules relevant to EFTs

Today there are at least 6 different sets rules (all of which are self-regulatory) which apply to aspects of an EFT. Those rules are:

- (a). Part A of the EFT Code - currently administered by ASIC;
- (b). the rules and regulations of BECS - administered by APCA;
- (c). the rules and regulations of CECS - administered by APCA;
- (d). the Banking Code of Practice - administered by the Australian Banking Association (ABA);
- (e). the rules and regulations of BPAY - administered by BPAY; and
- (f). the rules for each credit/debit card scheme, for example VISA and MasterCard.

Table 1 sets out, in summary form, the aspects of the EFT Code to which (a) - (f) above can also apply.

Area of Regulation	EFT Code	BECS	CECS	Bank Code	BPAY	Card Schemes
Disclosure of Terms & Conditions	Y	Y ¹	N	Y	Y	Y
Receipt Requirements	Y	N	Y	N	Y	Y
Provision of Statements	Y	N ²	N ³	Y	N	Y
Liability allocations	Y	N	N	N	Y	Y
Dispute Resolution	Y	Y	Y	Y	Y	Y

Table 1

¹ Limited to disclosure of direct debit authority terms and conditions.

² No provisions as to statement contents but information from message fields and standardized return codes (as required by the BECS rules) used by institutions to generate statements.

³ No provisions as to statement contents but information from message fields and standardized return codes (as required by the CECS rules) used by institutions to generate statements.

These rules often overlap. For example:

- (a). the EFT Code, BECS rules, BPAY and Banking Code of Practice all have provisions which relate to the disclosure of the Terms and Conditions;
- (b). the EFT Code, BPAY, CECS rules and credit/debit card scheme rules all have provisions relating to the provision of receipts. If the EFT Code is amended to include a requirement that only truncated account numbers appear on receipts then there will be 3 sets of rules which require receipts to include truncated account/card numbers;
- (c). The EFT Code, BPAY and the card scheme all deal with allocation of liability in various circumstances; and
- (d). all frameworks have dispute resolution provisions with varying requirements.

Because the scope of each set of rules is different and was, presumably, set without consideration of today's regulatory context there is no clear division of application. This means that in some cases there is no clear obvious criteria by which an institution, business or consumer can determine which set of rules apply. For example, that the EFT Code applies to certain transactions generated by a particular payments instrument type, and not others generated by the same by the same payments instrument does not seem to have any sensible policy basis.