



ASIC

Australian Securities & Investments Commission

REPORT 8

**ASIC's submission to the
Parliamentary Joint Committee
on Corporations and Securities
inquiry into fees on electronic
and telephone banking**

June 2000

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Executive Summary

What we are addressing.

As the conduct and disclosure regulator for the financial sector ASIC is interested in, and will comment on, those of the Committee's terms of reference which focus on disclosure and on ASIC's role. We do not touch upon the term of reference dealing with the quantum of fees.

Our submission is divided into 6 parts which, after an introductory part, look at:

- the principles of good disclosure;
- the regulatory regime for transaction fee disclosure;
- the adequacy of that regime;
- how to improve telephone and electronic banking fee disclosure; and
- ASIC's role.

Our comments draw upon a range of work ASIC is involved with in relation to fee disclosure, including research we have had conducted on the issue and the work of the Transaction Fee Disclosure Working Group which we chair.

The need for effective disclosure.

Effective disclosure of fees is important if consumers are to be able to make choices between deposit products based on price and are to be able to conduct their banking so as to minimise the fees they incur. It is also important to ensuring that markets operate competitively. To ensure effective disclosure ASIC believes that there are a number of good disclosure principles which should be followed. Good disclosure is:

- timely
- relevant to the consumer's needs and complete;
- in the financial services context, as personalised as possible;
- clear and comprehensible to the intended audience;
- attention catching; and
- subject to consumer testing before introduction.

In the context of transaction fee disclosure, the four times when we believe that disclosure is important are:

- at the time a consumer is selecting a product or service provider;
- immediately prior to making a transaction;
- at the time they receive their statements; and
- when changes are made to fees.

The adequacy of disclosure regulation and practices.

The issue to be considered therefore, is how adequately present regulatory systems and practices meet these principles of good disclosure.

After examining the relevant aspects of the regulatory system we have attempted to address the question of the adequacy of the present system in two ways. First by presenting the results of research we have had conducted on the issue and then by comparing the present regime and the practices of institutions with our principles of good disclosure.

Earlier this year, ASIC, through our Consumer Advisory Panel, commissioned the research firm, Chant Link, to conduct research into consumers' understanding of the bank fees that apply to their accounts and what, if any, changes they would like to see in the way in which fees are disclosed.

The research found that overall levels of knowledge about transaction fees are low and that many consumers would like better disclosure either to guide their own habits or because they think others would benefit from it. The findings of the research suggest that the present disclosure regimes are less than optimal in meeting the needs of consumers.

Likewise, our comparison of the status quo with our principles of good disclosure showed that there is room for improvement, especially in relation to disclosure on statements and disclosure at the time of the transaction.

Improving disclosure.

Not unusually, identifying the shortfalls of current practices is easier than remedying them. In looking at possible ways to improve disclosure we have become aware of a number of significant cost, technological and practical difficulties, particularly in respect of the disclosure of transaction specific information at the time of the transaction.

These difficulties have led us to propose a two staged reform process. This general approach has the support of our Transaction Fee Disclosure Working Group. In brief, we think the first stage should involve measures which can take place on an industry wide basis over the next year or two. These are proposals which wouldn't involve huge systems overhauls or present excessively complex or costly technical challenges.

The second stage would involve reaching agreement on a longer term plan for implementing improved disclosure practices. If principles/outcomes can be agreed now then they can be taken into account by industry both when fee charging regimes are being reviewed and when the technical specifications of new processing and delivery systems are being determined. There would be likely to be differences in the rates at which various institutions were able to meet these principles.

We have also set out our early views on what we think the content of these reforms should be. Please note that these views are ASIC's views only. We do not purport to speak for other members of the working group. As you will see, while on some issues we have formed reasonably developed views, on other issues

we are still exploring the pros and cons of possible reforms. Our views are likely to be further influenced by debate within the Transaction Fee Disclosure Working Group and by evidence presented to this inquiry.

In our assessment, the most important short term reform would be to achieve improved disclosure on statements. This view is supported by the Chant Link research.

Ideally, the Payments System Codes should be amended to require statements to include a summary of the costs of transactions undertaken during the statement period broken down by the number of transactions charged for and not charged for and, where this is relevant to the cost, the type of the transaction. The codes should also require the statements to include information about the key variables influencing the fee charging regime. (Under present fee charging regimes this would mean information about, for example, the number of free transactions per period.)

Part 5 of our submissions also includes a number of other suggestions for reform in this first stage, including optional access to non-transaction specific information about the fees regime applying to your account through internet and telephone banking.

In the longer term, we are of the view that the most important improvements relate to disclosure at the time of the transaction. While the precise formulation of goals in this area will depend a bit on the fee charging regimes of the future and on additional research about what consumers want, our initial view is that there should be optional access to information about the cost of a transaction and the impact of the transaction on the cost of future transactions prior to the transaction taking place through most, but not all, technologies.

Reforms of these types would help ensure that consumers better understand the fee regimes applying to their products and are in a position to make informed choices which help them reduce the cost of their banking.

ASIC's role.

Finally, ASIC's role is established by legislation. Our current legislative responsibilities would seem to make it appropriate for us to have roles;

- monitoring the marketplace for breaches of legislation we are responsible for and taking enforcement action where appropriate;
- contributing to policy debates and the development of self-regulatory initiatives;
- contributing to consumer education efforts; and
- undertaking monitoring of any self-regulatory initiatives which may come out of this inquiry.

Part 1:

Introduction

About ASIC

The Australian Securities and Investments Commission (ASIC) is an independent Commonwealth government body established by the *Australian Securities and Investments Commission Act 1989* (ASIC Act). We are the main consumer protection regulator for the financial services sector. Our statutory objectives include to:

- maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
- promote the confident and informed participation of investors and consumers in the financial system.

(s1(2) The Australian Securities and Investments Act 1989)

We are the conduct and disclosure regulator in the financial sector and enforce laws that promote honesty and fairness in:

- investments, superannuation, insurance, deposit taking and financial advice to Australian consumers;
- buying and selling shares, debentures, options, futures contracts, managed investments and other securities in Australian markets; and
- directing and managing companies, company financial reports, raising money from investors and takeovers.

We also work with industry and consumers to:

- improve conduct and disclosure practices through industry self-regulatory initiatives; and
- educate consumers to enable them to make informed choices in their financial decision making.

ASIC's jurisdiction in relation to the inquiry's terms of reference.

ASIC's statutory objectives relating to the performance of the financial system and promoting the informed participation of consumers in the financial system give us a clear interest in three of the inquiry's terms of reference, namely:

- the availability and transparency of fee information for consumers who undertake electronic funds transactions or telephone banking;
- the feasibility of implementing a fee disclosure regime on electronic fund transactions and telephone banking; and
- the role of ASIC in ensuring bank, non-bank financial institutions and non-financial institution suppliers and operators of those facilities provide fee information on electronic and telephone transaction banking.

Thus we will be commenting on the Committee's second, third and fourth terms of reference.

The Committee's first term of reference looks at the reason for, and impact of, fee increases in relation to telephone and electronic banking. We will not be commenting on this first terms of reference as ASIC does not have a role in relation to the level of fees and charges.

ASIC's current activities in relation to fees on electronic and telephone banking.

ASIC has recently been, or is presently involved in, a number of activities which are relevant to this inquiry.

EFT Code, Fees Research and Transaction Fees Disclosure Working Group.

Our main involvement has grown out of a review of the EFT Code of Conduct that we are undertaking at the request of the Treasurer.

The Code is being reviewed to extend its coverage to all forms of electronic funds transfers. The current EFT code includes several provisions dealing with the disclosure of fees and charges. The EFT Working Group reviewing the Code included a proposal in its first discussion paper, which was released in July 1999, that receipts at electronic terminals contain information disclosing "where possible, the fee, if any, applicable to the transaction".

Financial institution submissions which dealt with this proposal were strongly opposed to it and pointed out a range of technical, practical and cost reasons why it couldn't be implemented at the present time. Submissions from, consumer groups, government consumer agencies and other non-financial institutions were strongly in support of the recommendation.

It was clear to both ASIC and the EFT working group that the issue of fee disclosure had the potential to seriously delay the entire EFT code expansion process which we did not consider to be in the interests of anyone. The EFT working group therefore agreed to drop the recommendation on the condition that ASIC deal with the issue through a separate forum.

ASIC was of the view that if we were to properly consider this issue we should start by testing the popular wisdom that consumers don't understand present fee regimes and see what, if any, changes they would like to see in the way in which fees are presently disclosed. Thus, when our Consumer Advisory Group came to ASIC with a proposal to undertake consumer research on this issue we supported the proposal.

The research firm Chant Link was employed to undertake research of the type just described. A copy of their report has been provided with this submission. As discussed in greater detail later in the submission, the research showed that many consumers do not presently understand the structure of the fees regimes applying to their accounts. They also have some clear preferences as to how disclosure could be improved.

To further explore this issue, ASIC convened a half day meeting on the 13th of April of interested stakeholders to discuss whether there was a need for changes to fee disclosure regimes and, if so, how this issue could be progressed. Thirty-one representatives of consumer groups, industry associations, banks, dispute resolution bodies, retailers and other government agencies attended the forum.

At the forum there was general recognition that many consumers don't presently understand their transaction fees and that there was scope for improvements in disclosure regimes. The Australian Bankers' Association and the Australian Banking Industry Ombudsman both proposed that a transaction fee disclosure working group be established to pursue the issue of improved disclosure. Such a working group has now been established. Appendix A contains a list of the organisations represented on the working group.

At its first meeting the transaction fee disclosure working group agreed to cooperate with the PJSC inquiry and provide any assistance we could. It was agreed, however, that the group as a whole would not make a submission. Rather, it would be up to individual members to make submissions.

The first meeting of the transaction fee disclosure working group was held on the 15th of June. At that meeting the group agreed that:

The objective of the Transaction Fee Disclosure Working Group is to provide consumers with the opportunity to better understand the transaction fee structures applying to their accounts so that they can make informed choices.

In seeking to meet this objective it was agreed that the group would:

- commence by identifying the problem/s to be resolved;
- adopt a two staged approach with the first stage looking at reforms which can take place over the next year or two and the second looking at those

reforms which will have greater systems and technology implications and could occur over a longer term (say 3 to 5 years);

- ensure that proposals are phrased as objectives/outcomes and avoid being overly prescriptive;
- recognise the competitive nature of the market and the need to allow for flexibility and innovation;
- seek to dovetail the group's work with other processes such as the reviews of the Payments System Codes; and
- subject assumptions and proposals to consumer testing where appropriate/possible.

Concerns were also expressed that the proposals should both create a level playing field and involve a voluntary self-regulatory approach.

The next meeting of the transaction fee disclosure working group will be held on the 3rd of August.

Consumer Issues Audit.

In the second half of 1999 ASIC's Consumers Advisory Group (CAP) commissioned Chant Link to undertake research on what consumers saw as their main concerns in terms of consumer protection and financial services. That research involved both focus groups with consumers, interviews with financial sector experts and a survey of 85 financial counsellors and others professionals involved with consumers and financial services. The research found that the need for improved disclosure of fees was one of the top 10 issues for consumers.

Reviews of the Payments System Codes.

As members would be aware, the Banking and Credit Union Codes of Practice are presently being reviewed. ASIC will be making submissions to both of these inquiries. On the basis of the two pieces of Chant Link research referred to above, ASIC's submissions will cover the need for improved fee disclosure.

Monitoring of the Payments System Codes.

In July 1998 ASIC inherited responsibility for monitoring the Payments System Codes from the Australian Payments System Council. In our first monitoring exercise, which covered the period April 1998 to March 1999, we found that complaints about fee disclosure were the major areas of complaint under the Banking and Building Society codes of practice. There were 1737 complaints about fee disclosure under the Banking Code and 37 such complaints under the Building Society Code. There were very few complaints on this topic under the Credit Union Code. A copy of the monitoring report is available on ASIC's web site at www.asic.gov.au.

Part 2:

The principles underpinning good disclosure regimes.

Introduction.

Effective disclosure is important if information asymmetries between institutions and consumers are to be corrected and markets are to operate competitively. It ensures that consumers are able to make meaningful choices between financial services products and providers based on price and, in the present context, are able to conduct their banking so as to minimise the fees they incur.

ASIC has considerable experience with disclosure in a range of areas of the financial services sector.¹ That experience has led us to form some well considered views about what constitutes good disclosure. The basic principles are very simple. Good disclosure is:

- timely;
- relevant to the consumer's needs and complete;
- in the financial services context, as personalised as possible;
- clear and comprehensible to the intended audience;
- presented in a manner likely to catch the consumer's attention; and
- subject to consumer testing before introduction

Disclosure must be timely.

It is well recognised that consumers are most likely to pay attention to information and take it in when it is of immediate relevance to them. The Chant Link research supports the view that fee information about electronic and telephone banking is likely to be relevant to consumers at a number of different times. In particular:

¹ See for example our Good Advice Report.

- when consumers are selecting the appropriate banking product and service provider for their needs one issue they may wish to consider and compare is the cost of fees associated with products;
- immediately prior to making a transaction to determine whether they are prepared to make the transaction at the cost involved or possibly may wish to vary the transaction to reduce future costs (eg take out more money if it is their last free transaction for the month);
- at the time they receive their statements so that they can both check the accuracy of the charges attributed to them and also review the impact of their banking practices on the fees they are charged and, if desired, modify their practices to reduce the cost of their banking and
- prior to any changes to the fees regime so that consumers have time to modify their behaviour appropriately or change accounts should they so choose.

Disclosure must be relevant and complete.

As well as being timely, information must be relevant and useful to a consumer's needs and complete. These concepts encapsulates a number of different ideas.

- It is important to determine what is the most important information for consumers to receive and this information should be highlighted. Information relating to the cost of using a financial service is likely to be amongst the most important for a consumer to receive.
- It is also important that all aspects of relevant information are presented together. For example, account statements which tell you how much you have been charged in fees but don't tell you why you incurred those fees are failing to provide all of the relevant information necessary.
- Ideally, information should be provided in such a way that it is possible for consumers to make accurate comparisons between products.
- Surveys should be undertaken to determine what information is the most important for consumers to have. Those surveyed should include consumers, dispute resolution bodies and financial services experts.

Disclosure should be personalised where possible.

Relevant information is also ideally personalised information. Thus, if you are talking about information at the time of the transaction then, in an ideal world, you would receive information about what this particular transaction will cost you or information about how many free transactions you have left for the month. When being notified about changes to fees the information would be addressed to you and only relate to the changes in the fees applicable to your account.

Disclosure must be clear and comprehensible.

Information is only useful if consumers can understand it. This involves two separate issues. First, information must be presented in clear and simple language which its target audience can easily understand. This means avoiding industry and legal jargon or, if it can't be avoided, carefully explaining its meaning. It also means using plain language and, if necessary, providing examples.

Even if information is presented in clear language, if the system being described is particularly complex, that very complexity may create a barrier to consumers understanding the information presented. In some instances attention may need to be paid to simplifying the system in addition to working on how it is disclosed.

Important information should catch the consumer's attention.

It's not uncommon for all relevant information to be provided in disclosure documents but for consumers to miss important bits because of the manner of presentation. For example, relevant information can be lost in a morass of other information. The important dictum that it is the quality of information, not the quantum, is forgotten. Sometimes key information is presented in separate documents to the main one promoting and describing a product. Issues such as the size of typeface, layout, the use of colour, the use of graphics, the order in which information is presented and the location and boldness of links on screens are all relevant to whether or not a consumer's attention is likely to be drawn to the information they most need.

Disclosure documents should be subject to consumer testing before being finalised.

Disclosure documents are expensive to produce and institutions are understandably loath to have to reprint them too often. Therefore, it is desirable that draft documents are subject to consumer testing prior to being finalised. Likewise, it is desirable that general policy on disclosure is tested with consumers to check that the policy experts have got it right about what it is that consumers need and want. Such testing should be designed to assess:

- how well consumers understand the information contained in the document/disclosure; and
- whether the document/disclosure provides all of the information consumers want and need.

Part 3

The regulatory regime for fee disclosure.

Introduction.

When considering the regulatory regime for fee disclosure one needs to look at:

- the existing law;
- the proposed reforms included in the *Financial Services Reform Bill 2000*;
- the requirements of the Payments System Codes, namely the Banking, Building Society and Credit Union Codes of Practice; and
- requirements under the EFT Code and proposals for its expansion;

The analysis in this part focuses only on transaction accounts. We have not looked at fee disclosure and credit products where there is a far more elaborate legal disclosure regime provided under the Uniform Consumer Credit Code.

The Existing Law.

The existing law does not deal directly with the issue of fee disclosure for electronic and telephone banking or for any other form of transaction banking. The closest it comes to the issue is s.12DA of the *Australian Securities and Investments Commission Act 1989* which prohibits a corporation engaging in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive. This means, in practice, that any conduct or advertising relating to the cost of an electronic or telephone banking service must not create a misleading or deceptive impression about its cost either be a positive act or by an act of omission

The Financial Services Reform Bill

If the relevant provisions in the *Financial Services Reform Bill* successfully pass through the Parliament then the law will soon give greater coverage to the issue of the disclosure of fees associated with electronic and telephone banking. The Bill covers electronic and telephone banking and requires under Cl 983C that a **Product Disclosure Statement** be provided to consumers. Amongst other

things, it must disclose information about the cost of the product and any amounts the holder of the product will or may have to pay in respect of the product after its acquisition, and the times at which those amounts will be payable. The level of information required to be disclosed under these requirements is such as a person would reasonably require for the purpose of making a decision whether to acquire the financial products as a retail client.

The product disclosure requirements of the Bill require the disclosure to be made at the earliest possible time when a retail person is considering the acquisition of a financial product. Broadly, there are three situations in which a Product Disclosure Statement is required to be given under the Bill and they are:

- when a recommendation in relation to a financial product is made (s.982A(2));
- when an offer of a financial product for issue is made or when a person offers to acquire a financial product (s982B(2); and
- in certain limited circumstances, when a financial product is offered for sale (s.982C(2))

In the issue situation the Product Disclosure Statement must be given either at or before the time a person makes an offer to issue or arrange to issue, or where there is a client offer, before the client becomes bound by a legal obligation to acquire the financial product.

In the sale situation the Product Disclosure Statement must be given at or before the time the seller makes an offer to a person to sell a particular financial product.

Proposed s987B of the Bill establishes a regime for **ongoing disclosure** of information. Essentially, disclosure is required where there is a material change to, or a significant event effecting, any of the information that was required to be included in the Product Disclosure Statement. The level of disclosure required is that which is reasonably necessary for the holder to understand the nature and effect of the change. Ongoing disclosure may be provided in writing, electronically or in a way specified in the regulations.

Where the change or event relates to fees and charges, the change must be notified one month before it takes effect.

The Financial Services Reform Bill does not require disclosure of fees and charges on a transaction by transaction basis.

The Payments System Codes.

The Payments System Codes are the Code of Banking Practice, The Building Society Code of Practice and the Credit Union Code of Practice. Each of these codes has as one of its stated objectives to “promote disclosure of information relevant and useful to consumers”. As to specific requirements about fee disclosure the Banking Code states:

4.0 A Bank shall, before or at the time of providing a particular Banking Service to a Customer for the first time or otherwise on request by a Customer, make available to the Customer a schedule containing the Standard Fees and Charges which currently apply to the Banking Service.

As to varying fees, the Code provides:

9.1 When, in relation to a Banking Service, a Bank intends to introduce a fee or charge (other than a government charge . . .), . . . the Bank shall provide written notice of the change to each affected Customer at least 30 days before it takes effect.

9.3 A Bank shall notify affected Customers of other variations to the Terms and Conditions (including a variation of Standard Fees and Charges or of an interest rate) in relation to a Banking Service by advertisement in the national or local media or in writing to affected Customers, no later than the day on which the variation takes effect.

The provisions in the Building Society and Credit Union Codes are similar. Both the Credit Union and Banking Codes are currently being reviewed. The Building Society Code is also due to be reviewed. The current Code provisions dealing with disclosure of fees will need to be looked at as part of those reviews to ensure consistency with *Financial Systems Reform Bill*. There is also scope to build upon the Bill in terms of improving disclosure in this area.

On this point, the Treasury commentary to the Bill made it clear that a key feature of the product disclosure requirements is that they have been drafted in such a way that they are capable of applying flexibly across the full range of financial products that are subject to the regime. One of the ways in which flexibility is said by Treasury to be achieved is:

The list itself is cast in fairly general terms, with the capacity for the information that must be included under particular heads in relation to particular products to be fleshed out in a number of ways:

- through a regulation making power (see proposed subsection 983C(2));
- under an industry code of conduct which may be approved by ASIC; and
- through ASIC guidance in the form of policy statements (see p.145 of the Commentary)

The EFT Code of conduct.

The present EFT code of conduct only covers ATM and EFTPOS transactions. ASIC is currently chairing the EFT working group charged with expanding the code to cover all forms of electronic banking, including telephone banking. It is

expected that the expanded code will be finalised when the FSR Bill passes through the Parliament.² The fee disclosure requirements under the current EFT Code are:

- 2.3 Card-issuers will ensure that, before an EFT card is first used the cardholder has been provided with documentation on:
 - (i) any charges for the issue or use of an EFT card and PIN, separate from activity or other charges applying to the account generally.
- 3.1 Card issuers wishing to vary or modify the EFT Terms and Conditions to:
 - (i) impose or increase charges relating solely to the use of an EFT card and PIN, or the issue of an additional or replacement card; . . .

will provide written notification to the cardholder, and allow a period of notice of at least 30 days before the change takes effect.
- 4.3 requires statements to show:
 - (ii) any charges relating solely to the use of an EFT card and PIN (identified as a separate line item);

The draft expanded code makes the code as technology neutral as possible for electronic banking and will have the effect of expanding the application of the existing code's fees provisions to telephone and other electronic forms of banking.

² The working group hopes to have done all work possible on the code well before the FSR Bill is through the Parliament but will hold off finalising it until the Bill's passage so that we can ensure that there are no inconsistencies between the code and the legislation. If the time frame for the passage of the Bill is extended we will review this.

Part 4

Are disclosure rules and practices adequate?

Introduction

In assessing the adequacy of the current transaction fee disclosure regime for telephone and electronic banking this Part of the submission is divided into two main sections.

First, it will look at the Chant Link research dealing with consumers' understanding of the bank fees they presently pay and their views on how they would like disclosure to be done.

Secondly, we will compare the present disclosure regime, including the practices of individual institutions which go beyond the requirements of the regulatory regime, with the principles of good disclosure outlined in Part Two of the submission. The extent to which the principles are met in respect of each of the critical times for disclosure discussed there will be examined.

The Chant Link research on fee disclosure.

Research approach.

A copy of the Chant Link research has been provided with this submission. In brief, the research examined the extent to which consumers understood the fees regimes applying to their current transaction accounts. It also looked at consumer attitudes to current and hypothetical future transaction fee disclosure methods associated with transaction accounts.

The research was limited in that it was qualitative only and involved a small sample of four focus groups. These were conducted in Melbourne in March 2000. Consumers were recruited for discussions such that the responses from consumers of different age groups and various levels of household income could be discerned and compared. While the sample was small, it was the view of the researcher that the data showed consistency across all four broadly defined demographic groups, suggesting that community attitudes as a whole, if tested in wider qualitative or quantitative surveys, are highly likely to agree with these research results.

The research was not restricted to telephone and electronic banking. Telephone and computer banking were only used by a few participants across the four groups. However, ATM use was fairly widespread amongst the group with EFTPOS slightly less frequently used. The sample would therefore appear to be relatively consistent with national usage statistics.³

Findings on consumers' knowledge about transaction fees

It was found that overall the level of knowledge about transaction fees was low. Highest, although by no means complete, consumer awareness existed for:

- minimum account balances required to attract some fee rebates; and
- the existence of a fee penalty for using "other network ATMs" (although the size of the fee was rarely known).

Overall there was very low knowledge and understanding of rules, fee levels and the current status of the account with respect to:

- depositing money at an ATM or over the counter;
- EFTPOS cash withdrawals;
- transfers from one account to another within an institution;
- account balance inquiries by any means;
- writing a cheque (although most knew whether or not a fee was payable for their personal cheques);
- the number of free transactions applying to the participants' own accounts for each month; or
- how many transactions they were up to so far that month.

The highest overall knowledge levels were in the younger groups, but even there, many consumers could only answer with conviction about half or less of the prompting questions about transactions.

Those using phone banking felt that they couldn't find out about fees pertaining to their accounts when using the phone banking facility, except where they requested information on the last five transactions, which may include a transaction fee as a debit.

Those using internet banking had mainly been using it to pay bills and didn't know whether transaction fees were available on-line or not.

In terms of whether or not consumers are interested in knowing the fees they pay, the research found that at the outset lower income groups tended to have an inherently higher level of involvement and interest in obtaining better fee information than higher income groups. However, higher income groups still contained a significant number (about half) who were sufficiently concerned about

³ The February 2000 ABS survey of internet use by householders, released in June 2000, found that 5% of Australian adults had paid bills or transferred funds via the internet; 49% had paid bills or transferred funds via telephone banking; 66% had paid bills or withdrew funds via EFTPOS and 74% had transferred or withdrawn funds via an ATM. Australian Bureau of Statistics, *Use of the Internet by Household*, February 2000, 8147.0, p.10.

the principle of effectively “hidden” fees to suggest moderately strongly that an improvement in supply of fee information to them (and to consumers broadly) was warranted.

About one quarter of consumers, spread fairly evenly across all groups, were initially not very concerned about learning more about fees or changing the disclosure regime. However, there was no doubt that the discussion brought home to many consumers that better information was likely to be useful to them in minimising fees and led many of them to change their views on the need for improved disclosure.

These findings on the levels of interest in fee disclosure and the poor understanding of fees at present allow one to conclude that existing fee disclosure regimes are less than optimal.

Suggestions for improving fee disclosure

After exploring consumers' current levels of awareness of fees, and where consumers get their information about fees, the research then sought unprompted suggestions from consumers about how fee disclosure could be improved. After this, a series of suggestions were put to consumers about possible changes to disclosure regimes to see which options consumers preferred.

The unprompted suggestions for improved transaction fee disclosure included the following.

Statements.

There was strong support for using the monthly statement for improved disclosure since it is regular, usually read unlike other modes of disclosure and provides information that is specific to that account/customer.

The two suggestions for how the statement could be used for better effect were for it to provide a summary of transactions and fees attached to them on the statement and/or a statement of the rules pertaining to transaction fees and other account fees together with the conditions applying to these as they pertained to the specific account.

Simplified, more personalised mailed information.

Mailed information and brochures were considered to be too complex. Thus, participants suggested that mailed information needs to be simplified, more personalised and more useful, eg by saying here is how to minimise your fees.

Along the same lines, there is evidence from another study that disclosure brochures can be confused with advertising material in mail outs and are often thrown out without being read.⁴

⁴ This issue was raised in a caseworker survey carried out by the Consumer Credit Legal Centre (NSW). The survey was undertaken as part of the preparation of their submissions to the reviews of the Payments System Codes.

Contemporaneous Warnings or Prompts.

There were a number of suggestions which aimed to provide the consumer with information that may affect the transaction about to be undertaken or subsequent transactions within the month. These included a signal of when the first transaction fee for the month is to be/has been incurred; informing the consumer of the transaction fee pertaining to the particular transaction and residual balance information after the transaction to take account the impact of any fees.

Branch signage and pamphlets.

More signage and pamphlets in branches so people could read the information while waiting in queues was suggested in one group.

Overview of information sought

Whichever means was used to provide information, consumers tended to suggest the most important pieces of information included:

- the number of transactions they were up to for the month and/or the number of free transactions left for the month;
- the cost of the transaction just made or about to be made; and
- a simple fee table summarising their own charges (eg a wallet sized card for constant reference.)

After the unprompted discussion of how disclosure could be improved, six ideas were put to consumers. The options and responses to them were:

1. Status quo

This was initially preferred by about one quarter of participants but as discussion proceeded many of those preferring the status quo began to shift their views to one of the other options.

2. A summary of fees on the monthly statement.

This was highly preferred by many consumers since it would be attended to and would provide information that was a permanent record, frequently provided. It would allow transaction behaviour patterns to be changed if the consumer so desired.

3. Optional access to general information on ways to minimise transaction costs, available at the time of the transaction.

This was the least favoured of the six options because people thought they couldn't absorb the detail of this complex information at the time they were making the transaction. They also felt that other customers may be inconvenienced by delays at ATMs and counters as a result of this.

4. Warnings about fees pertaining to 'other network' ATMs.

This was seen as superfluous, in the sense that most consumers knew about such fees already, and were unlikely to change their behaviour if such a warning was given. These fees could be highlighted in monthly statements to better effect for those who were otherwise unaware. (Interestingly, while most knew such fees were charged, they thought they were usually around 50 cents rather than over \$1.00 which is usually the case.)

5. Optional access to information about fees and conditions applying to your account.

This example asked people about the desirability of eg pressing a number on the ATM, telephone or computer to get access to information about the rules on fees applying to their account such as how many free transactions they get and what transactions will cost once the free limit is passed. This option was highly valued by many consumers despite having similar drawbacks to those mentioned for idea 3. The main advantage seen in this option was the personalised nature of the information, followed by its availability contemporaneously with the transaction. However, some felt that there were practical and cost implications for institutions and therefore consumers with this option.

6. Optional information about fees pertaining to this particular transaction at the time of the transaction.

This was seen as ideal by many consumers, since it could be done with only one or two simple pieces of information being provided, that were relevant to the individual and delivered in a timely way. Key information required included:

- the number of transactions completed to date and/or the number of free transactions this account can routinely have per month; or
- the number of free transactions left in the account this month; or
- the cost of this transaction.

Overall conclusions from the research.

Overall it was found that consumers' understanding of transaction fees is low.

Most people wanted:

- clearer rules disclosure when first accessing the product;
- clearer summaries of transaction types and fees on their monthly statements; and
- information at the time of the transaction on the number of free transactions per month applying to their account and the number consumed to date rather than the fees. Alternatively, the number of free transactions left was generally considered sufficient information. If no fee level information is given at the time of the transaction, then the summary of fees on the statement was seen as needed in addition to contemporaneous disclosure of free transaction tallies.

The discussion revealed that consumers became more passionate about the issue as a result of being involved in the discussion and learning about the fees that apply to their account and to those of others. The strength of feeling varied as follows:

- younger, lower household income had the strongest feelings on the topic overall and were the most likely to change their behaviour with better disclosure;
- older, lower household income consumers felt that service and fee levels of banks were a problem for them and fee disclosure, while not as important as the other issues, should still be looked at;
- of the younger, higher household income group half wanted better disclosure, feeling quite strongly that it would help them personally and the other half felt that while they may not be affected by better disclosure, disclosure reform should occur for the sake of all members of the community; and
- the older, higher household income group were really impressed with the transaction fee summary statement idea which some felt would be used by them to change their patterns of ATM and over the counter withdrawals.

Related Research

Another piece of research worth referring to in this context is the survey of 67 financial services case workers conducted by the Consumer Credit Legal Service of NSW. The survey was done to inform the submissions of consumer organisations and other stakeholders into the reviews of the Payments System Codes. It was primarily funded by the Law Foundation of NSW. ASIC's Consumer Advisory Panel also provided some funding to ensure that it was national in scope.

The table below sets out the responses to the question:

How do you rate the conduct of financial institutions in relation to disclosure of fees and charges, interest rates and other costs applying to products and services? This includes timing of disclosure, form of disclosure; notification of fee increases; whether any hidden fees including disclosure of application fees; mortgage discharge fees, early termination payments etc.

Institution	Not in a position to comment	Generally positive of favourable experience	Concerned about some practices in the area.	Concerned about industry sector practices/conduct generally
Banks	6	13	24	21
Credit Unions	19	13	16	16
Building Socs	34	11	11	8

Adequacy when current regime is tested against principles of good disclosure.

In considering the adequacy of existing disclosure rules and practices we have tested the status quo against the principles of good disclosure outlined in Part 2 of the submission, considering those principles at each of the four times mentioned for when disclosure is important.

Disclosure when selecting the product.

Timeliness.

The Payments System Codes and the EFT code ensure that consumers can have access to fees information before they use an account or ATM or EFTPOS access method for the first time. While in practice institutions will provide you with fee information upon request prior to opening an account this is arguably not a requirement of the codes. There are no requirements for disclosure of telephone and other electronic banking fees before they are used for the first time where the consumer already has an existing account.

Reforms currently in progress should ensure improvements here. The *Financial System Reform Bill* will ensure that consumers will have access to a Product Disclosure Statement at the earliest possible time when they are considering purchasing a product. As these statements should include fee information this should ensure timely information for those wishing to select a transaction account.

The expanded EFT code, when finalised, will ensure that consumers seeking to use telephone or computer banking for the first time, even if they have an existing account, will be provided with information about the fees applying to these delivery mechanisms.

Up until recently, all this early fee disclosure has primarily been done through separate brochures which outline the fee regimes applying to the range of retail accounts offered by the particular institution. The advent of computer banking has provided another convenient delivery mechanism for such information. While not required to disclose fee information on web sites, we have been pleased to see the vast majority of institutions offering internet banking are now choosing to do so although there is scope for some credit union sites to improve in this area.

ASIC has now done two surveys of deposit taking institutions' web sites. The first, and most detailed, took place in November 1999. In addition, a snapshot of the current state of disclosure on these sites was taken between February and March 2000. The surveys focused on those sites offering internet banking services although some of the other 140 odd sites provided by DTIs which were promotional only and didn't offer internet banking were also visited. Our assessment was based on what disclosure information was obviously available. The findings in terms of obvious listings of deposit account keeping and transaction fees and charges on web sites were as follows:

Percentage of internet DTI sites which offer internet banking that disclose fee information.

	Banks 1999	Banks 2000	Building Societies 1999	Building Societies 2000	Credit Union 1999	Credit Union 2000
# of sites surveyed	14	12*	2	2	17	16*
Obvious fees listing	69%	100%	100%	100%	53%	56%

* There were less sites in the second check because a number of the sites were inaccessible at the time it was done.

Relevance and completeness

Arguably, it is implicit in the current codes' rules that fee disclosure must be broken down to tell you what fees will apply to what transaction modes and what other rules apply to the determination of fees in your account. An examination of a sample of the fee disclosure pamphlets issued by institutions shows that this was done in those documents that ASIC has examined. In preparing this submission we also visited a sample of internet banking sites where, again, most relevant fee information was clearly disclosed.

The different rules for calculating fees applied by different institutions to different accounts makes comparison between the products of different institutions difficult. While some institutions present the fee information for their various products in a manner designed to assist with making comparisons between their products, in reality this is also often difficult to do.

Personalised

The information provided about fees at this pre-contractual time tends to be generic. Of more concern is that all of the fees information about an institution's entire range of retail deposit products tends to be included in the same brochure. This can lead to confusion for consumers in working out what information applies to the account that they are interested in. Such confusion was apparent in the Chant Link research.

Clear and Comprehensible

The sample of disclosure brochures looked at by ASIC staff in the preparation of this submission, varied in the extent they could be considered to be clear and comprehensible although most had clearly used best endeavours. As just noted, the Chant Link survey suggests that at least some consumers find these brochures difficult to use. The complex systems applying to many fee disclosure regimes means that despite good intentions, in many instances, the complexity of the subject matter made even good disclosure somewhat complex to understand.

This complexity was illustrated by the financial research firm, Cannex, at ASIC's fee disclosure forum. Cannex reported that they have to seek 300 separate pieces of information about a product to feel confident that they understand the fee structure applying to that particular product.

Catch the consumers' attention.

Fee information tends to be included in a separate brochure to other information about a product. We understand that this is because it is subject to more frequent changes and this saves on printing and related costs. As noted, these separate brochures tend to provide information about the fees regimes for all of an institution's retail deposit products so it can be hard to find the information that is relevant to you. While institutions' main promotional brochures tend to be printed on gloss paper with lots of colour and illustrations, it is quite common for fees brochures to be on matt paper with few or no graphics and to be in either black and white or only a limited range of colours. All of these factors mean that fees information isn't promoted in a way to maximise its chances of catching the consumers' attention. This situation should be improved with the introduction of Product Disclosure Statements under the Financial Systems Reform legislation.

In the limited sample of internet banking sites looked at in the preparation of this submission, information on fees and charges was reasonably attention catching - certainly much more so than with traditional disclosure mechanisms.

Consumer testing.

ASIC is not aware of what, if any, consumer testing is done on current fee disclosure information.

Disclosure at the time of the transaction.

There is nothing in the current regulatory regime, or the proposed changes to it, which requires disclosure of information about the cost of a particular transaction immediately prior to making it. In addition, ASIC is not aware of any institutions which offer telephone or other forms of electronic banking which of their own initiative provide personalised disclosure about the costs of a particular transaction immediately prior to making that transaction.

That said, as noted above, newer forms of electronic banking have led to some improvements in disclosure. With almost all Australian internet banking sites, it is now possible to get access to information about the fees rules applying to your account at the time of the transaction but not information about the particular transaction.

Disclosure on Statements.

As seen in Part 3, the only 'rule' covering disclosure on statements is cl 4.3 of the EFT Code which requires statements to show "any charges relating solely to the use of an EFT card and Pin. (Identified by separate line item)".

Our limited examination of statements shows that this requirement is interpreted very differently by different institutions. At its worst there is a simple line which

says something like “Bank fees \$x.xx”. Such disclosure while admittedly personalised and clear, does not provide all of the relevant information since it is impossible to tell from it what particular transactions cost. It is also buried in amongst other information and is thus not attention catching.

The best example of fee disclosure on statements we have seen is that adopted by the National Australia Bank on its deposit accounts. It provides significantly more information than required under the regulatory regime. The information is clearly and comprehensibly set out at the end of the statement, is attention catching and personalised. It also contains most of the relevant information needed though this could be enhanced with information about the number of free transactions you are entitled to and any other important information relevant to the fees you are charged. An example of the NAB style statement disclosure was shown to the consumers who participated in the Chant Link research and was very much approved of by them. Below is a typical example of what could appear at the end of a NAB statement.

Monthly Transaction Summary	Total	Free	Charged	Amount
Cheque Withdrawals	5	4	1	\$1.00
NAB ATM Withdrawal	3	3	0	\$0.00
NAB ATM Mini Statement	1	1	0	\$0.00
Non-NAB ATM Wdls/Enq	1	0	1	\$1.50
Total Transaction Fees				\$1.00
Account Keeping Fee				\$4.00
Non-NAB ATM Fee				\$1.50
Total Account Fees				\$6.50

Disclosure prior to changes to the fees regime.

Timing

As seen in Part 2, the Payments System Codes, which cover telephone and electronic banking, require consumers to be provided with written notice at least 30 days before a new fee takes effect. Where standard fees and charges are to be varied advertisements must be run in the national or local media no later than on the day on which the variation takes effect. Under the EFT code, card issuers are required to provide written notification to card holders 30 days before new fees are imposed or before fees are increased.

Thus, at present there is sufficient advance notice about the introduction of new fees for consumers to take appropriate action should they choose to. This is not the case, however, where fees for telephone and internet banking are to be increased.

This situation is likely to change, however, since the expanded EFT code will apply to telephone and all forms of electronic banking. Similarly, under the *FSR Bill*, it would appear that all changes to fees will have to be notified to consumers one month before they take effect.

Relevance

The rules here seem to require that all of the relevant information be disclosed.

Personalised.

In many instances disclosure of new fees or increases to fees will not be personalised. This is especially likely to be the case where changes apply to more than one account and are announced via a brochure or in the media. The Chant Link research made it clear that consumers would prefer a personalised letter or something specific to their account.

Clear and Comprehensible.

This will depend upon how its done, the complexity of the changes and the number of accounts affected. ASIC has not conducted its own review of disclosure material in this area. That said, the Chant Link research found that:

- where disclosure is via a brochure consumers found it difficult to ascertain what exactly had changed in their fees; and
- regarded notices in the media as too formal and expressed in legal jargon, so that little attention was paid to this source.

Attention catching.

Again, this will depend on how it is done. It was clear in the Chant Link research that only a few consumers noticed notices in the media and even then they didn't pay attention to them. The expanded EFT Code and the *FSR Bill* provisions should result in notices about fee changes being presented in a more attention catching way although the details of how notice under the FSR Bill will be given in practice are not yet clear.

Subject to consumer testing.

ASIC is not aware whether or not any consumer testing has been done by institutions on the adequacy of current disclosure mechanisms for conveying changes in fees or their increases.

Part 5

Improving telephone and electronic banking fee disclosure.

The ideal

If one agrees with the principles for good disclosure set out in Part 2 of this submission as the ideal then relevant, complete, personalised, clear and comprehensible and attention catching disclosure of fees, which has been subject to consumer testing, should be available at each of the 4 times identified in Part 2 of this submission.

Impediments to ideal disclosure.

There are a range of impediments to such an ideal disclosure regime. These include issues associated with cost, the technical capabilities of systems and other practical considerations. Some impediments in fact benefit consumers. In some instances, while the impediments listed may inhibit immediate reforms, they need not rule out reforms over the longer term.

In listing some of these impediments it should be noted that we have not undertaken our own research into what we have been told by institutions about technical and cost considerations.

Impediments which ASIC considers relevant in considering reforms in this area include:

The technological capabilities of the current system.

As we understand it there are a number of technical impediments to improved disclosure, in particular to disclosure at the time of the transaction.

One of the great benefits of electronic and telephone banking is their speed. As it has been explained to ASIC, this speed, in relation to ATM transactions, is made possible through using front-end computers to process daily transactions. These daily transactions are later reconciled each evening with institutions' main frame computers. It is the main frame computer which has all of the details about a

customers' account. The front end computer does not have sufficient data on it at present to tell you how many transactions you are up to for the month. Putting this data on the present systems, we are told, would be very expensive and would slow them down significantly. We also understand that while the systems for telephone and internet banking are slightly different, the issues are very similar. That said, we understand that with the next generation of processing systems would allow for improved disclosure at the time of the transaction.

There are also a range of other technical issues which may affect at least the immediate viability of some reform proposals. These vary in terms of the time and cost that would be involved in changing them.

Cost.

We understand that the types of system changes required to implement some proposals for improved disclosure would be extremely expensive. We do not have the exact figures but we understand that some changes involve many, many millions of dollars. In such instances cost benefit questions would need to be asked.

Shared system

There are many players in the present electronic banking system. In some instances you will have retailers, a number of financial institutions and possibly telecommunications players all having a role or owning some of the relevant equipment. Where an institution wishes to voluntarily put in place reforms they would therefore require the cooperation of numerous parties if they were to be successful.

Fee charging regimes.

The complexity of many present fee charging regimes of themselves make ideal disclosure difficult. In addition, aspects of some present fee charging regimes make it impossible to determine the cost of a particular transaction until the end of the month. Such features include regimes which are:

- dependent upon the minimum monthly balance; or
- where the most expensive transactions in the month are included amongst the free limit.

Competition/innovation issues

As with most regulatory issues, care needs to be taken to ensure that reforms don't stifle competition between institutions to be innovative and improve disclosure or result in a lowest common denominator approach.

What is happening overseas.

As the Committee is no doubt aware, Australia is not alone in looking at the issue of fee disclosure at the moment. A number of initiatives have recently also taken place overseas. They primarily relate to the disclosure of surcharges at ATMs. Surcharges are charges made directly to the consumer by the owner of an ATM. The surcharge may vary depending upon who the ATM owner is. As we understand it surcharging is not presently used to any degree in Australia. There have been suggestions, however, that surcharging will become more prevalent in the future as the number of independent ATM operators increase.

What we more commonly have in Australia are interchange fees and foreign ATM fees. Interchange fees are fees charged by ATM owning institutions to consumers' institutions. These fees are then passed on to consumers by their institution in the form of foreign ATM fees. We are not aware if foreign ATM fees are identical to the relevant interchange fees. It would appear, however, that the foreign ATM fee a consumer pays to their institution will be the same regardless of who owned the ATM they used. Different institutions charge their customers different foreign ATM fees..

From the consumers' perspective, unless they are lucky enough to have an arrangement with their institution whereby they aren't charged foreign ATM fees, there is, in some senses, little difference between being charged a surcharge and a foreign ATM fee. That said, consumers would appear to have a greater interest in having surcharges disclosed at the time of the transaction given that these may vary between institutions and so there are two decisions to be made: first whether to use another institution's ATM and, if the answer is yes, which one to use, that is, which one will cost the least.

It would appear that the technical difficulties associated with disclosing much fee information at the time of the transaction, including foreign ATM fees, do not apply to disclosing surcharges.

USA

In the USA legislation has passed through the Congress to amend the *Electronic Fund Transfer Act* (15 U.S.C. 1693b(d)).⁵ The amendments would require disclosure of the existence of a surcharge in a prominent and conspicuous location on or at the automated teller machine and require the amount of any fee to appear on the screen of the automated teller machine or on a paper notice. ATM operators who have machines that are not technically capable of complying with on-screen disclosure will have a grace period until 31 December 2004.

The same piece of amending legislation states that the Comptroller General of the United States will conduct a feasibility study on requiring contemporaneous disclosure of any fee that will be imposed upon the consummation of an ATM

⁵ As far as we are aware the legislation has not yet received Presidential sign off.

transaction. (Section 704, Gramm-Leach-Bliley Act 1999.) In conducting the study, the Comptroller General must consider:

- the availability of appropriate technology;
- implementation and operating costs;
- the competitive impact any such notice requirement would have on the various sizes and types of institutions, if implemented;
- the period of time that would be reasonable for implementing any such notice requirement;
- the extent to which consumers would benefit from any such notice requirement; and
- any other relevant factors.

The Comptroller General must report to the Congress on the study within 6 months of the enactment of the legislation (November 1999). We have not yet been able to determine whether this report has been completed.¹

United Kingdom.

In the United Kingdom the March 2000 Cruickshank report into Competition in UK Banking found that:

There are two points at which it would be useful for customers to know the cost of cash withdrawals: before choosing which ATM to visit and before withdrawing money. Where customers do not have this information, they risk making two types of error. The first type of error is not using an ATM because they think it is more expensive than it actually is. The cost to customers of making this type of error is one of inconvenience - travelling further to an ATM than is necessary. The second type of error is withdrawing money from an ATM and subsequently discovering the cost to be greater than was expected. Both types of error would be affected by disclosure at the point of withdrawal.⁶

They went on to find that:

the quality of information provided to customers about these (surcharge) prices is unacceptable. Customers need to know the cost of withdrawing cash from an ATM at the point at which they make the cash withdrawal.⁷

⁶ Cruickshank, D., *Competition in UK Banking: A Report to the Chancellor of the Exchequer, March 2000*, p. 291.

⁷ *Ibid.*, p. 293.

Proposals for reform.

Introduction

ASIC is of the view that a two staged strategy would be the preferred approach. This approach was agreed to at the first meeting of the Transaction Fee disclosure Working Group.

First, agreement is needed on measures which can take place on an industry wide basis over the next year or two. These are proposals which wouldn't involve huge systems overhauls or present exceedingly complex or costly technical challenges. (That said, its recognised that almost any change will involve some costs and systems/technical implications).

Secondly, agreement is needed on a longer term plan for implementing improved disclosure practices. If principles/outcomes can be agreed now then they can be taken into account by industry both when fee charging regimes are reviewed and when the technical specifications of new processing and delivery systems are being determined.

In framing recommendations in relation to each of this stages, ASIC is also in agreement with the principles agreed upon at the first meeting of the Transaction Fees Working Group and set out in Part 1 of this submission.

The proposals included here are the early views of ASIC. We do not purport to speak for any other members of the transaction fees working group when putting these views. In deed, the working group is yet to have a substantive discussion about the shape possible reforms may take. We also recognise that as issues are debated further before the PJSC or the TFDWG our views may change.

In considering proposals for reform, ASIC has focused on proposals relating to disclosure on statements and disclosure at the time of the transaction. We have not focused on disclosure prior to contract or prior to using a transaction mechanisms for the first time nor on disclosure at the time of changes to fees since these disclosures are already covered by the regulatory regime. We are hopeful that the reforms in progress with the *Financial System Reform Bill* and the expanded EFT Code will go a long way towards alleviating the shortcomings of the present regime at these times.

Stage one proposals.

Fee Disclosure on Statements.

Accepting that disclosure at the time of the transaction is somewhat off before it is even technically possible, we believe that the initial focus of attention for reforms should be on disclosure on statements. (Even if disclosure at the time of the transaction was possible, we would still believe that disclosure on statements was an important priority). These views are born out by the Chant Link Research. Improved disclosure on statements will provide consumers with the information they need to understand their present banking practices, the costs of those practices and how they can reduce those costs should they choose to.

Our present thinking about how best to ensure improved disclosure on statements would be to amend the Payments System Codes. (While the EFT Code is another possible vehicle for such reforms, unlike the Payments System Codes, it does not deal with the full range of delivery modes. Arguably consumers need this disclosure whether they are undertaking electronic or telephone banking or more traditional types of banking. It is for this reason that even though the Committee is only looking at telephone and electronic banking we would recommend that any recommendations about disclosure on statements be phrased more generally.)

Amendments to the Payments System Codes should require statements to include a summary of the costs of transactions undertaken during the statement period broken down by the number of transactions charged for and not charged for and, where this is relevant to the cost, the type of the transaction.

The codes should also require the statements to include information about the key variables influencing the fee charging regime. Under present fee charging regimes this would include information about the number of free transactions per period and the impact of any minimum monthly balance requirements.

It may also be desirable to require that statements include directions to where further information can be obtained. This may be overkill, however, if they already contain sufficient contact details.

Since the objective is better, not more, disclosure, if this change was made to the code, it would be useful to add a note to clause 4.3 (ii) of the EFT code stating that compliance with the new clause X of the relevant payments system code constitutes compliance with this provision.

An example of what disclosure may look like under such rules is set out below. It is an adaptation of the NAB approach although the numbers and charges are entirely made up.

Transaction Summary	Free entitlement	Total transactions	Free	Charged	Amount
	15 per month*				
Cheque withdrawal		3	2	1	\$1.00
Own bank ATM withdrawal		5	5	0	
Own bank ATM deposit		0	0	0	0
Other bank ATM withdrawal/inquiry		1	0	1	\$1.50
Own bank mini statement		2	1	1	\$1.00
EFTPOS withdrawal		6	3	3	\$3.00
Over the counter withdrawal		3	2	1	\$2.00
Telephone banking		2	1	1	\$0.50
Internet banking		2	1	1	\$0.50
Total transaction fees					\$9.50
Total account keeping fee					\$5.00
Total account fees					\$14.50

* of which only there are a limit of two free across the counter transactions and two cheque withdrawals. Note no account keeping fees apply if the minimum monthly balance is above \$1,500. Call XXX for more information.

The idea of improved information about fees on statements was also adopted in the 1995 report by the then Prices Surveillance Authority into Bank Fees. They recommended that:

Financial institutions show on account statements, and at ATM and branch locations, the basis on which fees are calculated and provide information as to how fees can be avoided.⁸

Disclosure of the applicable monthly period.

Another disclosure reform which could usefully be dealt with in the Payments System Codes is disclosure about when the month period applying to the charging regime (eg for number of free transactions or minimum monthly balance) runs. We understand that the period currently varies between institutions with, for example, some applying the calendar month, some the statement period and some still other variables. It is our untested suspicion that most consumers are not aware of the relevant month period. It would be useful if the Payments System Codes required disclosure of the relevant period at a minimum, in fee schedules and with fee disclosure with internet and telephone banking. It should also be apparent from statements.

Disclosure of what constitutes a transaction.

It was apparent from the Chant Link survey that many consumers are not aware of what does and does not constitute a transaction for the purposes of when fees will or won't apply. It would also be desirable if disclosure regimes paid more attention to ensuring that what constitutes a transaction for the purposes of the regime is clearly disclosed. Again, this could be dealt with in the Payments System Codes.

Adoption of common categorisations of electronic and non-electronic transactions?

There is another disclosure issue which may be suitable for attention in the present reviews of the Payments System Codes. We are told by Cannex that for many accounts the fees regime distinguishes between electronic and non-electronic transactions rather than between each delivery mechanism or treating them all the same. Cannex informs us, however, that there is no consistency between institutions as to what is and is not considered to be an electronic transaction. For some telephone banking is electronic banking and for others it isn't. A similar situation exists for cheques.

This lack of commonality of language and lack of, arguably, intuitive categorisations is likely to make it very difficult for consumers to know what is and is not an electronic transaction if that is the distinction which applies to their account's fees regime. The desirability of the codes promoting a common

⁸ Prices Surveillance Authority, Inquiry into Fees and Charges Imposed on Retail Accounts by Banks and Other Financial Institutions and by Retailers on EFTPOS transactions. Report Number 65, 1995, p29 of the Executive Summary and Recommendations.

approach to the use of this language is worth exploring. At this stage, however, we are still considering the issue and have not formed a definite view on it

Disclosure on internet sites.

Internet banking lends itself to far better disclosure than has been practical with some of the earlier forms of electronic banking. While the technological problems with real time disclosure of the cost of an actual transaction appear to presently apply equally to internet banking there appear to be no such limitations to improving disclosure about the general fees regime applying to a particular account.

Most financial institutions now have web sites though only a small percentage of them in fact conduct internet banking over those sites. Ideally all financial institution sites, be they promotional only or operational as well should contain a link to fees information for deposit products promoted/operating on their sites. As we saw above, at present all sites which internet banking can be conducted on, other than some credit union ones, do in fact provide relevant fees information.

We think it would be desirable to formalise this by making it a requirement of the Payments System Codes that wherever a product is capable of being accessed on an internet banking site then there should be a clearly obvious link to information about the fee structure applying to the product. This approach would be consistent with the Best Practice Model for E-Commerce which provides at clause 29 and 30:

- 29) Businesses engaged in e-commerce should provide enough information about the terms, conditions and costs of a transaction to enable consumers to make informed decisions.
- 30) This information should be clear, accurate and easily accessible. It should be provided in a way that gives consumers an adequate opportunity for review before entering into the transaction and to retain a record of the transaction.

Disclosure with telephone banking?

Similar non-transaction specific fee regime disclosure should also be possible with most telephone banking systems. If the option for fee information was put after the most commonly requested functions then it would not cause delays for consumers who did not wish to access the function.

It is worth considering whether the Payments System Codes should be amended to require such optional disclosure. Further consultation on this issue, however, is necessary since our understanding is that while the telephone banking systems of the major banks are automated, the phone banking used by some small financial institutions is not automated and the implications for such systems would need to be considered.

Generic Disclosure at ATMs?

Another issue worth exploring further, which ASIC is yet to form firm views on, is generic disclosure at ATMs. In particular, whether it would be worthwhile disclosing on ATM screens, or on stickers attached to the ATM, that if the ATM you are using is not one of your own institution's machines you may incur a fee for using the machine. (The focus here is on disclosure of foreign ATM fees not surcharges)

There have been calls for disclosure along these lines for some time. The Chant Link research suggests, however, that it may not be necessary. If disclosure of the existence of a fee at ATMs is being seriously considered then we think it would be worthwhile commissioning additional research on whether consumers would find such generic disclosure useful.

We note that Westpac has recently voluntarily including prompts to consumers on some of their ATM screens to check how many transactions they have made this month by calling a listed number.

Surcharge Disclosure at ATMs.

A related issue is the disclosure of surcharge fees on ATMs. As noted above, surcharges are not yet prevalent in Australia but they may become more common as more independent ATM owners appear. There have been calls for both the fact of, and the amount of, any surcharges to be required to be disclosed on screens.

ASIC supports such calls. As discussed above, it would appear that surcharges can vary between ATM operators so it will be very difficult for consumers to know beforehand what the fee is likely to be thus making disclosure all the more important. In addition, there do not appear to be significant technical difficulties with requiring this type of disclosure in the short term.

The potential for such disclosure to impact on consumer behaviour is suggested from the American experience where BankBoston found that 64,000 non-customers cancelled their transactions at ATMs on learning that there would be a \$1.00 surcharge.⁹

In the longer term it would seem desirable that the quantum of both surcharges and any other fee are disclosed since on the available evidence it appears that while consumers know that they are presently charged a fee for using another institution's ATM they significantly underestimate that cost. As we understand the present limitations of the technology, however, such disclosure of Foreign ATM fees is not practical in the short term for cost and technical reasons.

Stage two proposals.

As noted above, the stage two proposals relate to disclosure at the time of the transaction. They are the reforms which will involve significant technological

⁹ Banking Technology retail delivery report, p. 18. (We do not have a full citation for the article but can supply a copy of it if required.)

changes and costs to implement. Realistically, we can't expect them to occur until the next generation of web enabled processing technology is in place. Given the pace of new technology, however, this may not be that far off for some of the bigger institutions.

At this stage, our initial view is that the longer term changes that are desirable are best dealt with by developing principles/guidelines that institutions should aim to meet within, say, the next 3 to 5 years. (The time frame is something which would need to be consulted on. At this stage we are not sure whether 3 to 5 years is overly generous, about right or too tight. In all probability, the answer to this question will vary depending upon the size of the institution.)

At its simplest, the principle we should be aiming for is along the lines that:

consumers should have access to information about the cost of a transaction prior to undertaking it and information about the impact of the transaction on the cost of future transactions.

Whether the focus should be on information about the cost of the actual transaction or its relevance to the number of free transactions for the month will depend upon the fees regimes applicable at the time and testing of consumers to see what they would find to be the most useful.

Another issue that needs to be considered is whether the principle should apply to all delivery mechanisms. At this stage we would say no. While ASIC strongly supports the principle of technological neutrality in regulation, it is clear that different delivery mechanisms lend themselves to different disclosure regimes.

While optional disclosure of the cost of a transaction appears ideally suited to internet banking and also suitable for ATM and telephone banking, it does not appear appropriate for EFTPOS transactions in the form we presently know them. The inconvenience caused by the extra time a transaction could take and its impact on queues is likely to be a bigger negative for consumers than the added benefits of the disclosure. The application to stored value systems is also something which would need to be considered in the light of how these systems develop.

You will note that we have been talking about optional access. There is a debate in existence about whether the cost of a transaction should be required to be disclosed in every instance or whether it should be optionally accessible. ASIC is of the view that it should be optionally accessible. Since all additional information takes time and involves a cost, if consumers aren't interested in the information they should not be required to focus on it. Disclosure on statements should have sufficient educational effect.

Our expectation is that as new delivery mechanisms make disclosure cheaper and easier for institutions then disclosure practices will be voluntarily improved in some instances. We have already seen this in the case of internet banking. Even given this, however, if the Committee recommends that voluntary self-regulatory principles be developed in this area then we would recommend that there be monitoring of their take-up rate. ASIC would be well placed to perform this monitoring function.

Part 6

ASIC's role

Introduction.

The Committee's fourth term of reference is:

the role of ASIC in ensuring bank, non-bank financial institution and non-financial institution suppliers and operators of these facilities, provide appropriate fee information on electronic and telephone transaction banking.

ASIC's role is determined by our legislation. Set out below, however, are our views on this issue in the light of our current roles and functions.

ASIC's Role

ASIC is the financial services disclosure regulator. As such there are a number of appropriate roles for ASIC to have in relation to disclosure of fees for electronic and telephone banking.

Enforcer of legislation

Where there is Government legislation dealing with disclosure of fees for electronic and telephone banking then it is appropriate that ASIC monitor the marketplace to ensure compliance with the legislation and take enforcement action in appropriate instances where the legislation has been breached.

Maker of submissions.

While not a policy maker, ASIC, as the disclosure regulator, is well placed to contribute to reform debates such as this inquiry. Our complaints data, market knowledge and involvement with disclosure issues in other areas of the financial services sector all mean that we have a unique contribution to make. We have particular expertise and experience also in the area of self-regulation and financial services.

Facilitator of self-regulation

Where self-regulation is done along functional, rather than industry lines, (so that there is no logical 'owner' of the initiative), as is the case with the EFT code, then there may also be a role for ASIC as the facilitator of the self-regulatory initiative.

Monitor of reforms.

ASIC already has a role monitoring compliance with the Payments System Codes and the EFT Code. Should this Committee recommend a range of self-regulatory reforms then it would be appropriate to give ASIC the role and appropriate resources to monitor the adoption rate of the Committee's recommendations if they are supported by the Government. ASIC could be asked to report back to the Parliament on the issues after the appropriate length of time. For example, two years and then five years from the time of the Committee's report.

Educator of consumers

The primary role of educating consumers about the fees they pay is clearly one for institutions. ASIC does, however, use consumer education as one of our important regulatory tools. It may be appropriate for us some time in the future to engage in limited educational initiatives designed to help consumers with, for example, the questions they should ask about fees or how to compare fees. Such initiatives are not presently part of our consumer education priorities.

No role in relation to the level of fees.

While the term of reference only asks about ASIC's role in relation to disclosure, we note that a role in relation to the level of fees charged by institutions would not be consistent with our present role or areas of expertise.

Appendix

Appendix A

Institutions represented on the Transaction Fees Disclosure Working Group

Industry Associations

- The Australian Banker's Association
- CUSCAL
- The Australian Association of Permanent Building Societies
- National Credit Union Association
- Australian Finance Conference/Queensland Association of Permanent Building Society (one person representing both)

Consumer Organisations

- The Australian Consumers Association
- Financial Services Consumer Policy Centre

Financial Institutions

- ANZ
- NAB
- Commonwealth Bank
- Westpac
- St George
- AMP

Government Organisations

- ASIC
- Treasury
- The RBA is considering whether they wish to be involved.

Other

- The Australian Banking Industry Ombudsman
- Cannex
- Coles Myer