



**AUSTRALIAN BANKERS'  
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Ms Ashly Hope  
Strategic Policy Adviser  
Australian Securities and Investments Commission  
By email: [ashly.hope@asic.gov.au](mailto:ashly.hope@asic.gov.au)

Dear Ms Hope,

## **Facilitating electronic financial services disclosure**

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide comments to the Australian Securities and Investments Commission (**ASIC**) in relation to Consultation Paper 224: Facilitating electronic financial services disclosure.

With the active participation of 23 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

### **Introductory remarks**

The banking industry strongly supports reform of the regulatory requirements relating to financial services disclosure to ensure requirements are technology neutral and enable more innovation in the way financial services providers (providers) design and deliver disclosures. Such reforms should allow for the development of disclosures that can facilitate better engagement and understanding and allow more timely access by consumers than is possible with paper based / posted disclosures.

Increasingly, consumers want to engage with banks via electronic means and facilitating better electronic disclosure is consistent with how consumers want to engage with their provider. The banking industry believes that better understanding and easier access will result in better informed consumer decision making and will promote access to financial products and services.

To ensure the best outcomes for consumers, and to support efficiencies and savings by industry, we would welcome reforms that are designed so that:

- Key existing consumer protection and security requirements are maintained. For example, new requirements should not mandate the use of hyperlinks, especially where such links lead to personal or sensitive information. Many member banks believe strongly that hyperlinks should not be contained in emails as this would undermine security messages.

- Additional restrictive and unnecessarily burdensome requirements are not imposed. For example, products that are fully online or electronic only products should not be subject to obligations to provide customers with access to paper-based disclosures upon request. This should apply to both new and existing customers.
- The reforms are genuinely technology neutral to allow for further advances in technology. For example, new reforms should not embed specific references to email delivery where other forms of electronic delivery may be available in the future.
- New obligations are clear in terms of their interaction with other relevant obligations. For example where there are clear exemptions for disclosure with respect to certain financial products, new obligations must preserve those existing exemptions.
- The reforms do not alter the responsibility of the consumer to read the disclosure, nor require the financial services provider to take steps, in addition to existing obligations, to ensure the consumer reads the disclosure.
- The reforms take into account other sources of obligations regarding disclosure, including the ePayments Code and the Code of Banking Practice. Where necessary, we support ASIC working with industry to make complementary changes to these codes.
- The reforms should be extended to include and ensure consistency between other legislation including the Insurance Contracts Act, Life Insurance Act, Superannuation Industry (Supervision) Act and Electronic Transactions Act.

The ABA notes that this consultation is being conducted in the context of broader discussion and consultation on the regulatory settings for financial services disclosure, including the final report of the Financial Systems Inquiry and Report 391: ASIC's deregulation initiatives. We are mindful that these reports also contain recommendations regarding changes to financial services disclosure which should be taken into account as part of this process.

## ASIC's proposals

### A1- Facilitating electronic disclosure

The banking industry strongly supports reforms to facilitate innovation in the design and delivery of disclosures, including enabling electronic disclosure.

In particular, we support Option 4 at 18(d); however, the ABA will not be making specific comments in relation to the proposals set out in Option 2 at 18(b).

#### Potential benefits

The benefits resulting from such reforms have the potential to:

- Provide easier access to disclosures for most consumers, in a form that many consumers have come to expect in relation to the delivery of financial services more generally.
- Enable better informed consumers who may be more likely to read and understand disclosures designed and delivered in more innovative ways.
- Encourage more Australians, especially younger and more technology savvy consumers, to engage to secure their financial futures.
- Enable process efficiencies and costs savings for providers with respect to:
  - Postage;
  - Printing;
  - Outsourcing where mail houses are used to mail out the information;
  - Document maintenance and updates; and

- Product development costs – in areas of new products.

While the banking industry is confident that process efficiencies and savings will be experienced over time, we caution that the savings will not be immediate, particularly in relation to the large cohorts of customers that have not previously provided an email address.

#### Managing potential disadvantages

There is potential for some disadvantages for consumers who do not have access to online facilities or who are not confident using such facilities. However, we feel that the flexibility to opt out of electronic delivery, and the option for the consumer to revert back to print and post disclosure, provides sufficient protections.

All financial services disclosures should be able to be delivered electronically, however special care and consideration should be taken by the provider in the design and delivery of disclosures that contain personal and sensitive information, such as Statement of Advice (SOAs). ASIC does not need to develop specific guidance in relation to these kinds of disclosures but we note that providers should properly consider their privacy and other information security obligations when utilising electronic disclosure methods for documents containing personal and sensitive information.

#### Products that are 'fully online'

Many products are designed for exclusive electronic use or are provided in a way that is clear to the consumer that they are only delivered through electronic means. While we are supportive of flexibility to ensure consumer protection, the ability for consumers to opt out of electronic disclosures or change their mind should not extend to these products.

'Fully online' products can include products that can be transacted online regardless of whether some of the transactions in relation to that product can also be conducted via other channels (e.g. contact centre).

#### Flexibility for providers

Providers should retain the flexibility to continue to provide print and post disclosures, having regard to the nature of the disclosure, their internal risk management arrangement and the needs of their customers.

### **B1 – Delivery of disclosures to an email address**

The banking industry strongly supports ASIC's proposal that where a financial services provider has an email address for a customer, the customer does not need to give consent to use that email address to deliver disclosure electronically. We understand that this is to apply to new and existing customers.

However, there is a practical barrier to giving immediate effect to this proposal. Many bank customers have not historically provided an email address and customers have proved slow to provide an email address, so it will take some time for banks to provide disclosures via email to existing customers.

#### Provision of email address by the consumer

The banking industry is of the view that when providing an email address to a financial services provider, consumers will understand and expect that the financial services provider will use that email address to contact them, including providing disclosures.

In determining whether the provider can rely on the address to satisfy its delivery obligations, providers should be able to rely on the same existing policies, procedures and forms they use to satisfy themselves that a postal address can be used for that purpose. This means that, generally, a bank will rely on an email address when it is provided in connection with applying for or receiving a financial

service. Where notice is given at the time a client provides an email address that email address will be used by the bank for any future disclosures, then the bank should not be required to give additional notices or seek further approvals that would not be required or sought for a postal address.

If an address is collected as part of marketing activity, it must either be made clear to the consumer that the email may also be used to provide relevant disclosures or the bank must reasonably believe that the customer expects the bank to use the address for relevant disclosures before a provider can rely on it.

The banking industry supports an approach where an email address need not be provided directly to the provider. Existing practices relating to the receipt of and reliance on postal addresses provided by third party intermediaries, should also apply to email addresses. For example:

- Address provided to broker / financial planner/ authorised representative.
- Address provided to employer (corporate super).
- Address provided to one company in a corporate group of companies (subject to relevant privacy limitations).

Any requirements for how the address must be given by the consumer should remain technology neutral. For example requirements must permit provision over the phone, by text and other means that may emerge over time.

Principles based, technology neutral guidance that addresses these matters should be sufficient guidance for industry as to whether an email address can be relied on to satisfy disclosure obligations.

## **B2 – Provision of disclosures on website or other electronic facility**

The banking industry strongly supports ASIC's proposal to allow financial services providers to make disclosure available on a website or other electronic facility, provided clients are notified that the disclosure is available and can still elect to receive the disclosure via an alternative method.

As noted above, the consumer's ability to elect to receive the disclosure via an alternative method should be limited to those products that are not fully delivered online.

### Notification requirements

The acceptable method of notification should remain entirely technology neutral. However ASIC's principles of good disclosure should apply to these notifications.

In the notification it should be sufficient to make a referral to where the disclosure should be found rather than a hyperlink. The banking industry carefully considers the use of hyperlinks and will not use hyperlinks in many circumstances. However it should be left to the provider to determine if they want to use a hyperlink, having regard to their own risk management and IT infrastructure arrangements.

It should be sufficient to notify the client once only, of the publication and reference to the disclosure. Notification should not be required when a new version of the disclosure is issued.

Principles based, technology neutral guidance that addresses these matters should be sufficient guidance for industry.

### Efficiencies and cost savings

There is significant potential for industry efficiencies and cost saving by utilising this method. Banks may consider using this delivery method for the large cohort of customers who have not provided an email address. For example, a bank may publish the disclosure online and then send a one page print and post document referring the client to the disclosure and notifying them that they may elect to receive the disclosure via an alternative method of delivery. This method is arguably a more practical first step in moving to electronic disclosure than email delivery.

## **C1 - Facilitating the use of more innovative PDSs**

The banking industry will not make any specific comments on these proposals; however we broadly support all initiatives that will better facilitate electronic disclosure and the development of more meaningful disclosure for consumers.

### **D1 – Electronic delivery of credit disclosures**

The banking industry broadly supports aligning credit disclosures with the arrangements for financial services disclosures.

Alignment will allow consumer choice and enable consumers to benefit from improved and more innovative (and engaging) disclosure.

There is also potential for increased efficiencies for providers as it is more efficient to manage electronic communication preferences with a customer in the same way across all the products they hold with their financial institution. The benefits will include consistency in operational processes; risk and compliance processes; and staff training. Many providers offer both credit and non-credit products, and use similar technologies across their product platforms; customers expect seamless and consistent processes across products.

The potential for cost saving across the industry is substantial, particularly given the extent of consumer credit businesses.

Alignment should apply to Consumer Credit regulated disclosures and periodic statements however providers should have the flexibility to utilise electronic disclosures as they think appropriate having regard to the nature of the disclosure, their internal risk management and compliance requirements and the needs of their customers. Moving to electronic disclosure should not be 'all in or all out' across the various disclosures.

The same flexibility proposed by ASIC in relation to the consumer opting out or reverting back to print and post should apply to credit disclosures.

## **Other relevant reforms and legislative consistency**

### Electronic Transactions Act

We support the provisions of the Electronic Transitions Act applying to disclosures required under Corporations and Consumer credit laws.

However, regulation 10(1) is ambiguous about whether written consent is required before documents (like terms and conditions and letters of offer) can be sent to customer electronically.

It sets out the disclosures that are to be made to customers when collecting their consent. While it does not clearly state that the consent needs to be written in order to send documents electronically, it implies it by stating that a customer may consent to electronic delivery only after being told that, 'if written consent is given, paper versions will not be provided, and they should check their emails regularly and they can withdraw consent at any time'. In the face of this uncertainty, a prudent approach is to require written consent from the customer.

Whether or not written consent is required from the customer makes a substantial impact on the ability to deliver documents electronically. As noted earlier in this submission, the banking industry supports ASIC's proposal that where a financial services provider has an email address for a customer, they do not need consent to use that email address to deliver disclosure electronically.

Therefore, in order to fully facilitate the use of electronic disclosure, the ABA and its members consider that amendment of the Electronic Transactions Act and Regulations will be required.

### ePayments Code

With the exception of where “a facility is designed exclusively for electronic use”, the ePayments Code only allows Code subscribers to use electronic communication where a user/customer has first positively agreed to electronic communication, that is, customers must consent to the use of electronic communication. If ASIC considers that either Option 2 or 4 is the appropriate response, then the ABA and its members would suggest a review of clause 21 of the ePayments Code to ensure that it is consistent with ASIC’s policy settings. For example, various aspects of the Code are arguably out of step with existing technology. For instance, it is unclear whether the definition of a “passcode” would cover use of other non-numerical forms of authentication such as biometrics.

Furthermore, for reasons set out earlier in this submission, the ability for consumers to opt out of electronic disclosures or change their mind should not extend to these types of products.

Where a facility is designed exclusively for electronic use, a Code subscriber wishing to utilise electronic communications to meet its Code obligations must first clearly disclose that electronic communication will be utilised before a customer first performs a transaction with the facility. The ABA supports alignment of the ePayments Code with ASIC’s proposals for the ability of providers to rely on an email address when it is provided in connection with applying for or receiving a financial service without the need for additional warnings, disclaimers or prompts.

### Consumer Credit Law

Various amendments to the disclosure and consent requirements for consumer credit disclosures will be required to enable electronic delivery. For example, section 195(3) of the National Consumer Credit Act 2009 (NCCP Act) provides that if a person nominates an address under paragraph (1)(a) or (2)(a), the person may, by notice in writing to the person giving the notice or other document referred to in subsection (1), change the nominated address or cancel the nomination. In a branch setting, customer convenience suggests that it would be preferable to avoid a process of a customer having to complete an additional action of some sort in order to satisfy the "in writing" requirement after having advised the bank of a change of address and the bank having recorded that instruction. For the call centre, the requirement is even more problematic given there is no easy way for the customer to immediately provide written notification. The solution would be to send the customer an SMS and have them reply confirming the new details. However, if the customer does not reply the bank is left with the situation where it has been instructed to change the address but it is unable to change its address record. Given the intention of the provision is to ensure notices sent by the bank reach the customer this is not an ideal outcome.

### Privacy law

We do not believe that reforms to the Privacy Act are required to facilitate electronic disclosure.

### Legislative alignment

At the Government level, communications / cooperation between Treasury and the Attorney General’s Department is critical. Over time, the Government needs to consider a legislative review to ensure technology neutral obligations. This is consistent with recommendation 39 of the Financial System Inquiry.

### New media

The industry welcomes flexibility to utilise new media. Where reform / relief are provided to enable this, it should not be accompanied by conditions that erode the benefits to consumers and efficiencies for the industry. The banking industry is cautious about requiring consumer self-assessments in order to use

new media. Any guidance on new media must be principles based and high level to avoid ASIC and the industry being further limited when new technologies emerge.

We have discussed above some of the further reforms that should be considered to further facilitate electronic disclosures, however we strongly recommend a comprehensive review of relevant legislation and amendment to ensure all obligations are technology neutral.

The ABA appreciates the opportunity to contribute to this consultation process. We would be pleased to discuss our submission with you. Please contact me  
to arrange a meeting

Yours sincerely,

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**Christine Cupitt**