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Australian Securities Investments Commission  
 Email: [ePaymentsCode@asic.gov.au](mailto:ePaymentsCode@asic.gov.au)

## ePayments Code review - Consultation Paper 310

eftpos Payments Australia Limited (**eftpos**) welcomes the opportunity to respond to the above consultation and have provided high level feedback on the ePayments Code (**the Code**) below, on the basis that this consultation seeks views of topics for a broader consultation to be conducted later in the year.

### Background

Incorporated in 2009, eftpos is a designated payment system under the *Payment Systems (Regulation) Act 1998 (C'th)* (**PSRA**).

eftpos:

- administers the eftpos payment system that has been used for over 30 years (initially through bilateral arrangements between financial institutions) to process eftpos debit and prepaid card transactions initiated by cardholders at merchant points of sale;
- is a mutual style card scheme with a membership that includes financial institutions, aggregators and retailers;
- operates a business that covers both eftpos debit cards and eftpos prepaid cards (chip and contactless) and involves setting common rules and interchange for eftpos debit card transactions, providing processing, settlement and tokenisation infrastructure and developing products and services for our Members to provide to their cardholder and merchant customers, including mobile and non-device-based payment options.

eftpos require our Members, by way of Scheme Rules, to comply with the Code, whether or not they are subscribers to it, for receipting, disputes and chargebacks and have aligned the allocation of responsibility for unauthorised transactions to the Code. It is also the case that a number of eftpos Members themselves are subscribers to the Code.

### Response

As an over archiving comment, eftpos' view is that any amendment to the Code should continue to drive competition and efficiency in payments for the benefit of its subscribers and consumers. Specific proposals detailed by ASIC in their Consultation Paper for amendment to the ePayments Code are as follows:

<b>Proposal Reference</b>	<b>ASIC "Proposal"</b>	<b>eftpos Response</b>
B1	We propose to assess whether the Code, as currently worded, has successfully adapted to today's payments environment and is sufficiently adaptable to respond to emerging and future developments in financial technological innovation and changing customer behaviours.	<p>eftpos believe that successful adaption of the Code for today's payment environment and payments into the future, could be achieved through a technologically natural Code, which is clear and succinct for the subscriber and which allows for consistency of consumer rights. Assessment of the following items may assist in achieving this:</p> <p><i>Mobile and other non device based Payments</i></p> <ul style="list-style-type: none"> <li>• references to 'device' and 'identifier' to more broadly cover electronic payments beyond what may have been contemplated upon</li> </ul>

		<p>last drafting, such as, tokenisation and card on file.</p> <p><i>Biometric authentication</i></p> <ul style="list-style-type: none"> <li>protections to be provided within the Code around biometrics, to provide for a consistent approach.</li> </ul> <p><i>Transaction receipt</i></p> <ul style="list-style-type: none"> <li>technology is changing as is the method of receipt of transaction. eftpos supports consumers being provided with an opportunity to receive a record of their transaction, however that may occur.</li> </ul> <p>The above may assist with future proofing the Code, through technology neutrality and allowing for persistent consumer rights via uniform minimum terms across subscribers.</p>
B2	We propose to assess the clarity and appropriateness of the current policy positions in the Code's complaints handling provisions	<p><i>Complaints Handling</i></p> <p>eftpos believe that maintaining a two-tiered approach to complaints handling is appropriate, whereby there is a clear distinction between the entities covered by:</p> <ol style="list-style-type: none"> <li>Chapter F, being customer facing entities providing products (some under licence, others as unlicensed sellers or a secondary seller) to individuals, and</li> <li>those covered by Appendix A, being those who are not providing the product to an individual (ie. no direct complaints), rather than a 'one size fits all approach' for subscribers which may not be fit for purpose.</li> </ol> <p>A move to a different complaint handling model may result in increased compliance burdens for subscribers regarding dispute processes and tools which may result in additional costs for subscribers as well as other participants in the industry not bound by the code and may cause confusion for consumers who have become accustomed to a certain process.</p>
B3	We propose to consider whether the current settings in the Code for unauthorised transactions are appropriate and sufficiently clear	<p><i>Data Aggregators – pass code security requirements</i></p> <p>There should be a clear distinction between:</p> <ol style="list-style-type: none"> <li>those aggregators using personal information (not banking details) from a customer under a direct arrangement with the customer; and</li> <li>those aggregators which may use banking details of the individual on their behalf.</li> </ol> <p>In the first instance there is no disclosure of banking information and thus eftpos assess that this is not within the purview of the consultation for unauthorised transactions and pass code requirements.</p> <p>In the second, this appears to be an agency type relationship. As such, eftpos believe that the review should be around whether a transaction of this type is deemed 'unauthorised' when the aggregator is acting as authorised agent for the individual and</p>



		<p>whether the Code needs to be amended to reflect this type of relationship, which facilitates open banking.</p> <p>The timing of the broader consultation should be considered. There is privacy legislation, including pending Consumer Data Right legislation around Open Banking, which is looking to provide a standard framework, operating standards and requirements for use of personal information of individuals, which will involve consideration of these aggregator type relationships. As such, in order to ensure the code reflects the current environment, it may be premature to amend the code ahead of a clearer understanding and publication of those changes.</p> <p><i>Limitation periods under card rules</i> A number of issues may be considered regarding limitation periods including persistent consumer rights via uniform minimum terms across subscribers which allows for a competitive application and transparency for the consumer.</p>
B4	We propose to review the data reporting requirements in the Code and assess the most valuable an efficient approach	<p>Additional reporting may be beneficial; however, eftpos submits that a consistent approach to reporting should be applied so that information is either provided at a fully aggregated level, to ensure for corporate confidentiality, or the opposite, being transparent disclosure for each participant in the industry, including new participants to whose transactions the code commences to apply, such as NPP.</p>
B5	We propose to consider whether the provisions in the Code for mistaken payments are simple and accessible enough, and whether ADI subscribers should have any role in mitigating or preventing such payments	<p><i>Simplifying the process for mistaken payments</i> eftpos agrees that customers should have a clear and simple process for recovery of a payment should they legitimately have a mistaken payment.</p> <p>As pointed out by ASIC in its paper, these payments are guarded by BECS Procedures which provide a framework for ADIs to follow when a mistaken payment is made. eftpos agree with the inclusion of minimum standards so long as this does not result in a disparately onerous regularly burden on parties.</p> <p>eftpos agree that the process as set out for these payments could be simplified with a unified understanding as to application of the process across industry and regulatory bodies. However, eftpos also note that to date, subscribers in complying with the Code, have embedded tools, processes and procedures to ensure appropriate adherence and response to such matters. Any change to this regime, would require substantial amendment by subscribers to tools, processes and procures, which would increase the compliance burden for subscribers and those that provide systems that subscribers use, such as card schemes.</p> <p>As the Code stands, there are the same minimum requirements for all subscribers. This allows for competitive differentiation while also supporting the</p>

		rights of consumers to have recovery mechanisms for mistaken payments.
B6	We propose to explore whether it may be appropriate to extend the Code, or at least some of its protections, to small business	eftpos is supportive of small business' and believe that extension of the Code to cover them should align with other legislation currently in train or recently applicable which has extended rights to small business to ensure a consistent approach.
B7	We propose to consider any other aspects of the Code that may need updating as part of our review	Amendment to Code to reflect new legislative requirement for gift card expiry to be at 3 years not 12 months.

In addition, eftpos note that there is currently a Treasury Consultation paper *Enforcement of financial services industry codes* which asks for comment regarding amendment to financial services codes to include "enforceable clauses" in line with previous Consumer Law clauses. This Consultation Paper 310 does not appear to deal with this requirement and eftpos assume this will be covered as part of the subsequent review process for the Code.

Again, eftpos wish to reiterate that continued competition and efficiency in payments to benefit by subscribers and consumers should be the paramount concern when assessing potential amendments to the Code.

We would be pleased to discuss this submission further with you.

Yours sincerely



Stephen Benton  
**Chief Executive Officer**