

5 April 2019

ePayments Code Team  
Australian Securities & Investments Commission

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**By email:** [ePaymentsCode@asic.gov.au](mailto:ePaymentsCode@asic.gov.au)

Dear ePayments Code Team,

### **Review of the ePayments Code: Scope of the review**

The Westpac Group (**Westpac**) appreciates the opportunity to provide comments to the Australian Securities and Investments Commission (**ASIC**) on CP 310. We note CP310 is the first of two papers ASIC plans to issue on its review of the Code. A second and more substantive consultation paper will be released by ASIC later in 2019.

Having in mind the ever changing technological landscape and potential effects on the financial services industry and its customers, Westpac broadly supports ASIC's proposed topics for review of the ePayments Code (the **Code**) in CP 310. We provide comments on some parameters of ASIC's review below.

**ASIC Proposal 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 behaviour**

Westpac supports an expansion of the Code to cater for emerging technologies, particularly technologies that provide alternative payment methods for low value payment processing. For example, the definition of a Mistaken Internet Payment (**MIP**) currently does not contemplate payments processed via the New Payment Platform (**NPP**), and we anticipate that the Listing and Switching provisions may encounter similar issues in the near future. Westpac recommends ASIC expand the definition of MIP to include payments processed via NPP.

In addition to considering emerging forms of payment, the Code should also account for the increasingly large network of participants in the digital payments system including the schemes, device manufacturers (OEMs)/wallet providers and Fintechs (including aggregators and payment facilitators). Applying a consistent standard across the entire payments ecosystem would promote efficiency in regulation and better support and protect customers regardless of the payment device or capability they use.

**ASIC Proposal B3: We propose to consider whether the current settings in the Code for unauthorised transactions are appropriate and sufficiently clear**

#### ***What are the benefits and challenges of the Code's current settings for unauthorised transactions?***

With the evolution of payments technology and intricacies attached to their function, device manufacturers are increasingly facilitating payments outside an issuer's domain. In reviewing the Code, Westpac supports a consideration into whether device manufacturers (currently limited to issuers) should also play a role in educating customers to understand the implications of using different payment methods. For example, a device manufacturer could be better placed to inform a customer on payment implications involving biometric authentication.

Westpac supports a review into limitation periods for payment disputes, particularly being cognisant of the rules that apply for different types of payment (e.g. scheme rules). Closer alignment between these timeframes should be supported and considered as part of ASIC's review.

**What role, if any, could the Code play in preventing or reducing the risk of customers falling victim to financial scams, or helping customers who have lost money through scams?**

In reference to fraud detection (unauthorised payments), we observe that the amount of time it currently takes for a direct entry payment to process provides customers with an ability to detect a fraudulent debit on their account. Given that NPP increases the speed in which transactions settle, customers may not have the same opportunity to detect fraud on their accounts and instruct their financial institution to either halt or investigate the debit.

Regarding mistaken payments, NPP allows customers to pay via PayID, which we consider may assist in preventing scams. PayID registration is still in the early stages of development (i.e. the vast majority of NPP payments are currently not PayID based). However, in coming months, as more registrations occur and more PayID types are more widely available (e.g. ABN), Westpac is interested in monitoring the development of this initiative.

It is worth noting that one of the key enhancements being developed in the UK to fight scams is the “Confirmation Of Payee” feature, which will allow a sending bank to look up the account name of the receiving account details and present this to the sending customer before the transaction is processed. This enhancement essentially already exists in Australia with the PayID lookup process and will deliver a similar benefit once more fully adopted.

**ASIC Proposal B4: We propose to review the data reporting requirements in the Code and assess the most valuable and efficient approach**

Westpac would welcome ASIC consulting with industry in terms of data required by ASIC to ensure effective participation and a consistent approach across industry.

**ASIC Proposal 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**

Westpac sees the following opportunities to clarify the Code provisions relating to mistaken payments:

- The Code should clarify that Clause 25.1 does not require sending and receiving ADIs to reconcile the account name with the account number details (i.e. BSB and account numbers). This is consistent with the mandatory procedures under the Bulk Electronic Clearing System Procedures (**BECS**). Further, NPP and other online payment facilitators such as Beem It are increasingly using PayID or aliases to facilitate payments, where the payer will not be able to check the recipient’s bank account details.
- There should be an industry engagement to clarify steps the receiving ADI ought to take in demonstrating “reasonable endeavours to retrieve funds” – for example, where the unintended recipient:
  - is not responsive or refuses to co-operate;
  - moves the funds to another account (held by the same receiving ADI) where funds are not readily available for retrieval (e.g. credit facility); or
  - moves the funds to an account held by a different ADI.

Further, Westpac welcomes ASIC’s guidance on the role of the receiving ADI where only partial funds are available. Currently the Code and BECS Procedures contemplate circumstances where funds are fully available, or an instalment plan is in place.

- *Privacy Act* requirements do not permit a receiving ADI from disclosing the identity of the unintended recipients to the payer. This results in customers going through the Courts to obtain an order, which can be difficult and time consuming. Westpac recommends further consultation with Office of the Australian Information Commissioner to consider making changes to the *Privacy Act* (to better support payers in these circumstances).

**ASIC Proposal B6: We propose to explore whether it may be appropriate to extend the Code, or at least some of its protections, to small business**

Westpac recommends further investigation and analysis is required to assess the appropriateness and impacts of extending the ePayments code to small business, which will be highly dependent on both the definition of small business to be used, and the changes to the Code.

### *Definition of 'small business'*

If the Code were to be extended to small business we would propose the definition of 'Small Business' be aligned to the definition used in the Banking Code of Practice, including any variance to that definition. As noted by ASIC in CP310, there would be administrative challenges in extending the Code to small businesses, particularly where a customer moves in and out of the definition of 'Small Business'. Accordingly, the point in time concept in the definition of Small Business in the Banking Code of Practice needs to be maintained. This will assist to provide surety of coverage to both small business customers and counterparties to any in scope ePayments transaction.

### *Administrative complexity*

The definition of 'Small Business' used in the Banking Code of Practice is still quite broad, and could incorporate complex business structures within its limits. While consideration could be given to a monetary limit to transactions of the holder and user in relation to small business transactions only, this would be different from the current position for consumer (unlimited transaction value). Additionally, the breadth of different business structures, the number of periodical payments, direct debits, and/or direct credits is likely to be greatly more numerous than for a consumer. This will create a number of administrative issues in relation to efficient operation of Chapter E. In particular the requirement to provide lists of those payments to a small business in the 5 day time period required by the Code.

### *Complaint resolution process*

Consideration and amendments are also likely to be required to the timeframes for resolving complaints, especially in relation to Chapter E. Unlike consumers, the different business and financial structures, and processes used by small businesses, can include complex arrangements. To ensure fair treatment of customers, longer timeframes are likely required to ensure complaints and mistaken payments can be properly investigated and determined. As the amounts of transactions between small businesses is more commonly much larger than for consumers, coupled with the potential for complex financial structures, the impact of investigating and rectifying matters is more onerous on both the ADI and the relevant customers involved.

### *Extending scope of existing issues*

The inclusion of a definition of 'Small Business' into the Code may exacerbate the other issues and aspects of the Code that require updating as noted in the balance of this submission. As the inclusion of small businesses is a fundamental move away from the scope of the current Code, the solutions to these issues will require separate considerations and different changes (or new provisions be added) to the Code that only apply to small businesses. Merely including a definition of small business, which will then be applicable in relation to certain sections of the Code, is likely to create separate issues which require separate small business specific provisions and limitations are also required.

**ASIC Proposal B7: We propose to consider any other aspects of the Code that may need updating as part of our review**

More generally, we suggest the following aspects of the Code may require updating:

| Clause | Feedback  |
|--------|---|
| 3.1    | The clause should include a general statement to the effect that a law will prevail to the extent of inconsistency with the Code – with exception to the timing of giving information to users. |
| 4.11   | The clause should be amended to permit a subscriber to provide information in an electronic format.   |
| 4.14   | Westpac would support ASIC's guidance on the meaning of "sufficiently important or numerous".   |
| 4.15   | The clause should be combined with clause 4.17 to simplify.   |
| 5.9    | The requirement should only apply for when the transactions first takes place, and not  |

|         |   |
|---------|---|
|         | thereafter (e.g. 4 years after the transactions first took place).  |
| 8.1(b)  | The clause should be amended to delete “include on or with statements” and substitute “provide”, so that the subscribers have the discretion to determine how the information should be provided to the users.  |
| 11.7    | Provision should be made for this limit to be raised if the Code had not been reviewed within 5 years (in accordance with clause 44.4).   |
| 16.1    | A note should be inserted to provide guidance on the record retention period, as some applications only hold data for a short time.   |
| 17.2    | The cost of using the reporting process should be determined by the usual cost of the communication channel chosen by the user, rather than requiring it to be the cost of a local call, or free.   |
| 17.5    | A subscriber should only be required to acknowledge the receipt “where reasonably practicable”, as an acknowledgement cannot be provided if a user does not provide contact details, or provides incorrect or incomplete information.                 |
| 22      | This clause should be deleted, as the Code does not affect the interpretation of the Privacy Act and its Australian Privacy Principles. Further, regulation of surveillance and data recording is governed by legislation other than the Privacy Act. |
| 22.1(c) | Receipt requirements should be addressed in clause 5.   |
| A9.1    | The clause should be amended to clarify that “against the user” means a decision not in favour of the user (rather than a user being dissatisfied with the decision).   |

Please contact Mili Gobran  
like any further information.

if you would

Yours sincerely,



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