

Submission on Proposal to Remake ASIC Corporations (Non-Cash Payment Facilities) Instrument 2016/211

From: John Stuckey, Chief Executive Officer, MobileDigital Operations P/L

To: Regulatory Policy Branch, Australian Securities and Investments Commission

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.cc ACCC

Subject: Feedback on ASIC's Proposal to Remake Instrument 2016/211 – Non-Cash Payment Facilities

Dear ASIC Regulatory Policy Branch,

As Chief Executive Officer of MobileDigital, I appreciate the opportunity to provide feedback on ASIC's proposal to remake ASIC Corporations (Non-Cash Payment Facilities) Instrument 2016/211.

We do not support the remake in its current form. While continuity is important for regulated entities, this proposal misses a critical opportunity to bring the framework into alignment with the consumer-focused direction of current legislative and policy reform.

Misalignment with Reform and Market Realities

The Payments System Modernisation Bill 2025, which passed Parliament last month, expands regulatory oversight to modern stored-value systems and signals a clear expectation of greater accountability in how such products are issued and managed.

In contrast, ASIC's proposed remake preserves outdated relief settings that were introduced as temporary stopgaps. Extending them for another five years — without adjustment — will prolong structural weaknesses in the consumer experience and delay the adoption of more modern, reliable approaches.

A System That Fails Consumers

Current gift card and low-value facility systems in Australia suffer from persistent, well-documented problems:

- Undelivered or unopened digital cards, especially via email (which often ends in spam folders) or SMS (which lacks consumer trust)
- Unclaimed balances, with no refund path or proactive outreach
- Friction-filled redemption processes that deter use

- Lack of reliable delivery confirmation or expiry alerts

These are not edge cases. They are widespread issues resulting in billions of dollars of unused or forfeited value at any given time — **a system that benefits issuers but fails consumers.**

There Are Technical Solutions – and Consumer Expectations Are Growing

From our vantage point as a technology provider, we know that there are proven solutions to improve:

- Open and redemption rates
- Delivery confirmation and reporting
- Expiry notifications, and usage encouragement processes
- Balance transparency and refund options

These are already used in other jurisdictions and sectors. Continuing to exempt the Australian market from meaningful obligations sends the wrong signal — that consumer protection is too hard, and inaction is acceptable. The industry in its current form benefits from under regulation at the expense of the card recipient and card purchaser. Breakage can no longer be tolerated as the business model.

ACCC and Broader Regulatory Interest

We also believe this issue will increasingly fall within the ACCC's purview, given its mandate around fair trading and consumer outcomes. The gift and prepaid space involves significant monetary value, limited transparency, and inconsistent consumer redress — factors likely to attract scrutiny if self-regulation and relief instruments remain misaligned with market conduct expectations.

A Growing Market with Legacy Systems

Australia's gift card market is projected to reach over \$20 billion p.a by 2030, yet we continue to rely on systems with:

- No guaranteed delivery
- No recipient-side tracking
- Manual redemption steps
- Opaque terms and expiry risks

Several market research summaries note a unredeemed gift card balances of approximately \$1.9 billion in Australia. In our view, the current relief framework represents a legacy mindset, one that treats consumers as the problem rather than as stakeholders entitled to clarity, usability, and fairness.

Industry Perspective and Dissent from AGPCA

While MobileDigital is a member of the Australian Gift and Prepaid Card Association (AGPCA), we do not support their submission in favour of this remake. We believe the AGPCA response overlooks the need for fundamental reform and focuses too heavily on the interests of code issuers and card sellers.

The industry must begin to centre the recipient experience, and that includes hard conversations about expiry, unclaimed value, delivery and redemption.

Kicking the problem down the road does not serve the public, nor does it align with the spirit of current regulatory reform.

Our Position

We respectfully recommend that ASIC:

1. Limit the remake of Instrument 2016/211 to a shorter transitional period, no longer than 18 months.
2. Commit to a consultation round in 2026 aligned with the implementation of the Payments System Modernisation framework.
3. Begin work toward a next-generation regime that reflects the capabilities of modern digital delivery, and prioritises recipient-side protections and engagement metrics.

We would welcome the opportunity to engage further as part of a working group or future consultation process.

Sincerely,

[Redacted signature]

**Chief Executive Officer
MobileDigital**

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