

ASIC Consultation Paper 341
– Review of the ePayments
Code: Further Consultation
Submission by Legal Aid Queensland

ASIC Consultation Paper 341 – Review of the ePayments Code: Further Consultation

Legal Aid Queensland (LAQ) welcomes the opportunity to provide a submission in response to ASIC Consultation Paper 341 – Review of the ePayments Code: Further Consultation.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ’s Civil Justice Services Unit lawyers provide advice and assistance in relation to responsible lending, insurance, mortgage stress, housing repossession, banking and financial issues, financial hardship, debt, contracts, loans, telecommunications and unsolicited consumer agreements. We are experienced in providing advice and assistance to clients with legal issues relating to ePayments.

Proposals

B1 We propose to do the following:

- (a) remove the requirement in clause 44.1 of the Code that subscribers must report annually to ASIC or its agent information about unauthorised transactions; and**
- (b) retain ASIC’s power to undertake ad hoc targeted compliance monitoring (presently in clause 44.2), but specify two distinct functions:**
 - (i) monitoring subscribers’ compliance with Code obligations (which already exists in clause 44.2); and**
 - (ii) monitoring or surveying matters relevant to subscribers’ activities relating to electronic payments.**

B1Q1 Do you support removal of the requirement in clause 44.1? If not, why not?

LAQ does not support this proposal. The annual report to ASIC by subscribers is important because:

- (a) It ensures transparency of Industry practices in dealings with consumers,
- (b) It enables systemic and/or conduct issues to be identified and for action to be taken by ASIC,

- (c) It enables the identification of the extent of harm being caused to consumers by unauthorised transactions,
- (d) Builds trust between industry and the public.

B1Q2 What are the costs to subscribers of ASIC continuing an annual collection of data on unauthorised transactions?

How does this compare to the potential costs and benefits or savings of ASIC instead relying on its ad hoc monitoring power in the Code?

LAQ has no submissions to make in response to this question other than the collection of this data contributes to significant benefit for subscribers.

B1Q3 Do you see any possibility for industry-led recurrent data collection and reporting in relation to unauthorised transactions?

What would be the costs of setting up and maintaining such an initiative, and who would be well-placed to conduct it?

See response to B1Q2.

B1Q4 Do you support the additional monitoring or surveying function in proposal B1(b)(ii)? If not, why not?

LAQ supports the additional monitoring function proposed in B1(b)(ii) because:

- (a) LAQ has observed an increase in electronic payment related frauds and scams. It is important that additional data is gathered to enable monitoring of this issue for industry and consumers.
- (b) LAQ has observed an increase in the numbers of consumers seeking legal advice and assistance with unauthorised transactions.
- (c) It is important that the community be confident in how subscribers are responding to issues that arise with electronic payments and unauthorised transactions.

B1Q5 What are the expected costs to subscribers of the additional monitoring or surveying

LAQ has no submissions to make in response to this question other than to say the benefit to industry and consumers of additional monitoring and surveying outweighs any cost to subscribers.

C1 We propose to amend the Code so that:

(a) the processes in clauses 28, 29 and 30 apply not only where there are sufficient credit funds available in the recipient's account to cover the mistaken internet payment (current application) but also where only a portion of the funds is available in the recipient's account (so that the consumer has an opportunity to retrieve at least a portion of the mistaken internet payment);

(b) it includes non-exhaustive examples of what a receiving ADI can do to meet the requirement to make 'reasonable endeavours' to retrieve the consumer's funds, while clarifying that these examples are guidance only and are neither a 'safe harbour' nor prescribed actions that the receiving ADI must in every case take; and

(c) proposals C2(a) and (b) operate together—that is, the receiving ADI must seek return of the partial (if any) funds and make reasonable endeavours to retrieve the remainder of the funds.

C1Q1 Are there any special considerations to justify not applying the processes in clauses 28, 29 and 30 to situations in which only partial funds are available in the unintended recipient's account?

In LAQ's submission there are no special considerations that apply to justify not applying the process in Clauses 28, 29 and 30.

C1Q2 Are there benefits in applying the MIP framework to situations where only partial funds are available for return? Please describe these benefits.

In LAQ's submission consumers receive the same benefits applying the MIP framework to their situation regardless of whether there are full or partial funds available.

C1Q3 Do you think it would be useful for the Code to provide non-exhaustive examples of what might amount to 'reasonable endeavours'? If not, why not?

LAQ supports the Code providing a non-exhaustive list of examples of what might amount to reasonable endeavours because:

- (a) It provides guidance for both Code subscribers and consumers regarding the expectations ASIC has for subscribers' practices and conduct.
- (b) It is appropriate to provide guidance about the principles set out in the Code.
- (c) It provides the public with guidance as to the assistance that they can reasonably expect Code subscribers to provide when issues are identified, and assistance is requested by the consumer.
- (d) It is recognised that what amounts to reasonable endeavours will vary depending upon the factual circumstances of each mistaken payment and the characteristics and vulnerabilities of the consumer.

C1Q4 What types of examples would be helpful in a non-exhaustive list of examples of what might amount to 'reasonable endeavours'?

LAQ supports the use:

- identified practices and conduct, and
- corresponding case studies,

as ways of providing examples of how Code Subscribers should engage in reasonable endeavours.

C1Q5 What types of factors might affect whether a particular action is necessary to satisfy 'reasonable endeavours' in individual cases?

In LAQ's submission the following types of factors might affect what are reasonable endeavours in particular cases:

- Family and Domestic Violence
- Elder Abuse
- Culturally and Linguistically diverse.
- Mental Health
- Sensory Impairment
- Physical disability
- Intellectual or Acquired Brain Injury impairment,

- Presence of an enduring power of attorney or other similar documents.
- Digital exclusion.

C1Q6 Are there any practical impediments to implementation of the proposals at C2?

LAQ sees no practical impediments to the implementation of the proposals listed at C1.

C1Q7 What are the costs to subscribers of extending the MIP framework to cover the partial return of funds?

LAQ has no submissions to make in response to this question other than to say the benefit to industry and consumers of extending the MIP framework to cover the partial return of funds outweighs any cost to subscribers.

C2 We propose to amend the Code to:

- (a) require the sending ADI to investigate whether there was a mistaken internet payment and send the request for return of funds to the receiving ADI 'as soon as practicable' and, in any case, no later than five business days after the report of the mistaken internet payment;**
- (b) require both the sending and receiving ADIs to keep reasonable records of the steps they took and what they considered in their investigations;**
- (c) require the sending ADI, when they tell the consumer the outcome of the investigation into the reported mistaken internet payment, to include details of the consumer's right to: (i) complain to the sending ADI about how the report about the mistaken internet payment was dealt with; and (ii) complain to AFCA if they are not satisfied with the result; and**
- (d) clarify that non-cooperation by the receiving ADI or the unintended recipient is, by itself, not a relevant consideration in assessing whether the sending ADI has complied with its obligations.**

C2Q1 Do you agree with the proposed timeframe in proposal C2(a)?

If not, why not?

LAQ supports a shorter timeframe than the 5-business day proposal in C2(a) because the funds from a mistaken internet payment have often left an account before 5 business days have expired.

C2Q2 What are the costs associated with compliance with the proposed timeframe?

LAQ is not aware of significant compliance costs associated with the proposed timeframe or a shorter timeframe. Additional monitoring and surveying will provide significant benefit for subscribers.

C2Q3 Do you agree with the proposed recording keeping requirements? Why or why not? What are the costs of the proposed record keeping requirements?

LAQ supports the proposed record keeping requirements because:

- (a) They provide evidence to industry and consumers of the steps taken to recover funds.
- (b) They encourage all subscribers to develop a process that is simple, easy to follow and easy to record in responding to mistaken payment complaints.

C2Q4 What do you consider are the costs of requiring ADIs to inform consumers of their dispute resolution rights?

Any costs that an ADI will incur to inform consumers of their dispute resolution rights are unlikely to be significant and will provide significant benefits to consumers, including:

- (a) Openness and Transparency;

- (b) Increased trust from consumers;
- (c) Access to justice when something goes wrong.

C2Q5 What are the benefits and/or burdens of C2(d)? How do they compare to benefits and/or burdens

In LAQ's submission, the focus of the e-payments Code is to ensure subscribers meet their obligations to their customers. Clarifying that non-cooperation by the receiving ADI or the unintended recipient is, by itself, not a relevant consideration in assessing whether the sending ADI has complied with its obligations will:

- (a) Assist subscribers and consumers to understand the sending ADI's obligations.
- (b) Clarify that the sending ADI has no responsibility for the actions of the receiving ADI.

However, LAQ notes that it remains important that the Code clarify the responsibilities of the receiving ADI to promptly respond in these circumstances.

C3 We propose to amend the Code to clarify the definition of 'mistaken internet payment' to ensure that it only covers actual mistakes inputting the account identifier and does not extend to payments made as a result of scams.

C3Q1 Do you support our proposed clarification of the definition of 'mistaken internet payment'? If not, why not?

LAQ does not support the proposal. LAQ supports a definition of mistaken internet payment which extends to scams. The community expectation is that a mistaken internet payment includes all types of payments including those made as a result of a scam.

In LAQ's submission, a payment towards a scam is a mistaken payment because the consumer is mistaken about who the payment is being made to and/or for what purpose the payment is being made.

Removing Scams from the definition of mistaken payment and from the ePayments Code will mean there is no Regulatory Instrument setting out expectations for lenders when they are dealing with consumers affected by scams.

C3Q2 Please compare the costs and regulatory benefit of the following alternative scenarios:

- (a) 'Mistaken internet payment' is defined to refer only to actual mistakes inputting the account identifier.
- (b) 'Mistaken internet payment' is defined to include situations where a consumer inputs the incorrect account identifier as a result of falling victim to a scam (also known as 'authorised push payment fraud').

In LAQ's submission, consumers do not make a distinction between:

- (a) Entering the wrong account identifier; and
- (b) Entering the wrong account identifier as a result of a scam.

The community experience and expectation is that both of these scenarios should be viewed as mistake internet payments. Any costs to industry are outweighed by the benefits to consumers of having both scenarios defined as a mistaken internet payment.

C4 We propose to require ADIs to provide additional important information in the on-screen warning about mistaken internet payments required by clause 25 of the Code. The messaging must:

- (a) contain a ‘call to action’ for the consumer to check that the BSB and account number are correct; and
- (b) in plain English, include wording to the effect that:
 - (i) the consumer’s money will be sent to somewhere other than to the intended account; and
 - (ii) the consumer may not get their money back, if the BSB or account number they provide is wrong (even if the consumer has given the correct account name).

C4Q1 Do you support our proposals? If not, why not?

LAQ supports the proposals. The warning is coming at the time of the transaction and will act as a prompt to encourage the consumer to check and consider. A warning at the time of the transaction is likely to be more effective on a sustained and ongoing basis than a general community wide warning campaign.

C4Q2 Should precise wording for the on-screen warning be prescribed, or should flexibility as to the precise wording be allowed? If precise wording is prescribed, what should that wording be? If the Code allows flexibility, what wording would serve as a useful benchmark for compliance with the on-screen warning requirement?

In LAQ’s submission, the precise wording for the on-screen warning should be prescribed because:

- (a) It will provide consistency for the majority of consumers who have accounts with more than one institution.
- (b) It will provide certainty for ADI’s about their obligations.

In LAQ’s submission the precise wording should be:

“Important, please double check that the BSB and Account number that you are sending this money to are correct. If you send this money to the wrong BSB and account number, even if the account name is correct, the money will not go to the correct account and you may not recover your money.”

C4Q3 What costs and regulatory burdens would be involved in implementing the proposed change?

LAQ has no submissions to make in response to this question other than to say the benefit to industry and consumers outweighs any cost to subscribers

D1 We propose that:

- (a) **The Code will apply to protect small businesses in relation to a subscriber unless the subscriber opts out by notifying ASIC, we publish the subscriber’s opted out status on our website and the subscriber includes notification of its opted-out status in its terms and conditions with small business customers;**

We support the definition of “small business” but do not support the ability of “subscribers” opting out of extending the protections to those small businesses.

The proposed small business definition of 100 employees is likely to cover most small businesses in Australia.

In our view, many small businesses in Australia are micro business with many small businesses having just one employee (the owner). These businesses are unlikely to understand or have the knowledge that their personal finances could be treated differently to their business finances when it comes to mistaken payments.

Having notifications on ASIC's website or in the terms and conditions of the contracts between subscribers and their customers is unlikely to increase understanding or knowledge by small businesses. At best it may assist small business customers after they have made a mistaken payment that they have no recourse under the provisions of the e-Payments Code.

- (b) the Code will apply to small businesses who acquire their facilities in question on or after the date on which the new Code commences (i.e. the extension to small businesses will not operate retrospectively);**

LAQ does not support this proposal as most small business would already have existing facilities and this seems an unnecessary distinction.

- (c) the term 'user' (referred to in clause 2.1) will be modified to include 'small businesses' and their employees, contractors or agents; and**

LAQ supports this proposal.

- (d) after the first 12 months, ASIC will review the number of subscribers who have opted out and will consider options for any enhancements to the experience under the Code for both subscribers and small businesses.**

LAQ supports this proposal.

- D1Q1 Do you support our proposal to provide for an 'opt-out' arrangement for individual subscribers in relation to small business Code coverage? Why or why not?**

LAQ has no submissions to make in response to this question.

- D1Q2 How likely do you think it is that your organisation (if you are a Code subscriber) and other subscribers will opt out? On what grounds might you or other subscribers opt out?**

LAQ has no submissions to make in response to this question.

- D1Q3 Please provide any information you have about the nature and extent of problems for small businesses in relation to electronic payments and about how small businesses would benefit (or not) from having the same protections as individual consumers under the Code?**

LAQ has no submissions to make in response to this question.

- D1Q4 What are the costs and benefits for industry of our proposal?**

LAQ has no submissions to make in response to this question.

- D1Q5 Do you agree with our proposal D1(b), that the Code should not apply retrospectively to small business facilities already acquired at the time of commencement of the updated Code? If not, why not? What are the costs and complexities versus benefits of our proposal and alternative approaches?**

LAQ does not support the retrospective application of laws or code provisions.

- D1Q6 What are the key parts of the Code that may present difficulties for subscribers in extending the Code's protections to small businesses? Please provide reasons.**

LAQ has no submissions to make in response to this question.

- D1Q7 Does our proposed change to the definition of 'user' (by including employees, contractors or agents of a small business) address any concerns about any increased risks to subscribers as a**

result of extending the Code's protections to small businesses? If not, why not? Do you think this could have any unintended impacts? If so, what are they?

LAQ supports the proposed change and is not aware of any unintended consequences that might arise.

D1Q8 Do you agree that we should review the extension of the Code to small business on an opt-out after 12 months? If not, why not?

LAQ supports the extension of the Code to small business being reviewed after 12 months.

D2 We propose to:

- (a) define 'small business' as a business employing fewer than 100 people or, if the business is part of a group of related bodies corporate (as defined in the Corporations Act), fewer than 100 employees across the group, and**
- (b) apply the definition as at the time the business acquires the facility in question (i.e. a point-in-time approach to defining small business).**

D2Q1 Do you agree with the proposed definition? If not, why not?

LAQ has no submissions to make in response to this question.

D2Q2 What are the costs and regulatory burden implications versus benefits in setting this particular definition (for example, from a subscriber's system capabilities perspective)?

LAQ has no submissions to make in response to this question.

D2Q3 What alternative definition(s) would you suggest? Why? How do you think the costs and benefits compare to those relevant to our proposed definition?

LAQ has no submissions to make in response to this question.

D2Q4 Given the discrepancy between our proposed definition and AFCA's definition of small business (see paragraph 104), which approach do you think is preferable for the Code? Is there an issue in having slightly different definitions?

LAQ has no submissions to make in response to this question.

E1 We propose to adjust the wording of the Code to:

- (a) clarify that the unauthorised transactions provisions only apply where a third party has made a transaction on a consumer's account without the consumer's consent and do not apply where the consumer has made the transaction themselves as a result of misunderstanding or falling victim to a scam);**
- (b) clarify that the pass code security requirements mean that consumers are unable to disclose their pass codes to anyone (subject to the exceptions in clauses 12.8 and 12.9 of the Code) and, if they do and the subscriber can prove on the balance of probability that the disclosure contributed to an unauthorised transaction, the consumer will not be able to get indemnity from the subscriber for that loss;**
- (c) provide some examples of scenarios that amount to express or implicit promotion, endorsement or authorisation of the use of a service referred to in clause 12.9 of the Code;**
- (d) clarify that a breach of the pass code security requirements by itself is not sufficient to find a consumer liable for an unauthorised transaction—the subscriber must, in addition, prove on the**

balance of probability that the consumer's breach of the pass code security requirements contributed to the loss; and

- (e) clarify that the provisions concerning liability for an unauthorised transaction are separate to any additional arrangements available under card scheme arrangements (e.g. chargebacks).**

E1Q1 Do you agree with our proposals? If not, why not?

LAQ supports the proposals subject to the following:

- a) With respect to (a), mistaken payments made as a result of scams should be included as part of the e-payments Code. This proposal will leave consumers with no legal remedy based in Code or legislation, when they are interacting with their ADI following a mistaken, scam induced payment.
- b) With respect to (b) and (d), we are concerned that this proposal does not adequately address family violence and elder abuse issues that could lead to disclosure of pins or other confidential information. Subscribers should be encouraged to assist consumers who are victim survivors of family and domestic violence and elder abuse.

E1Q2 What are the costs or regulatory burden implications flowing from our proposals? Do the benefits outweigh the costs or regulatory burdens?

LAQ has no submissions to make in response to this question other than to say the benefit to industry and consumers outweighs any cost to subscribers.

E1Q Is it possible for a consumer to input a pass code to a screen scraping service without this amounting to 'disclosure'?

It is not possible for a consumer to input a pass code to a screen scraping service without this amounting to 'disclosure'.

E1Q4 Is it possible for consumers to use screen scraping in a way that does not lead to the risk of financial loss?

We submit it is not possible for consumers to use screen scraping in a way that does not lead to the risk of financial loss. Data protection is a shared responsibility between consumers and banks, and banks ought to notify the consumer of the risks involved when consumers elect to use screen scraping.

E1Q5 What types of examples involving express or implicit promotion, endorsement or authorisation of the use of a service would be helpful to include in the Code?

LAQ has no submissions to make in response to this question.

F1 We propose to:

- (a) define biometric authentication in the Code; and**
- (b) incorporate biometric authentication into the Code in some specific clauses where required (to recognise that present day transactions can be authenticated by use of biometrics (e.g. fingerprints) where previously only pass codes could be used). However, we do not propose to incorporate biometrics into the definition of 'pass code' in a way that would mean that pass codes and biometrics could be used throughout the Code interchangeably.**

F1Q1 Do you agree with the proposal to define biometric authentication in the Code? If not, why not?

LAQ supports the proposal to define biometric authentication in the Code because it will allow the Code to respond to changes and improvements in technology that have been introduced since the Code was last updated.

F1Q2 How would you suggest biometric authentication be defined in the Code?

LAQ has no submissions to make in response to this question.

F1Q3 Which particular clauses in the Code do you think need to include a reference to biometrics in order for the clauses to continue to have their intended effect?

LAQ has no submissions to make in response to this question.

F1Q4 Do you agree that we should not include biometrics in the general definition of ‘pass code’? What might be the impacts of taking this approach? In particular, how would using the concepts of biometric authentication and pass codes interchangeably within the pass code security requirements work in practice? What are the costs or regulatory burden implications of our proposals?

LAQ supports the view that biometrics should not be included in the general definition of passcode. A passcode is something that a consumer remembers whereas biometrics are the inherent characteristics of a person that they cannot change. They are concepts that should not be used interchangeably.

F2 We propose to:

- (a) revise the Code’s use of the term ‘device’ and instead refer to ‘payment instrument’; and
- (b) include virtual debit and credit cards in the definition of ‘payment instrument’.

F2Q1 Is the term ‘payment instrument’ more appropriate and easier to understand than ‘device? Can you foresee any problems with this terminology?

LAQ agrees that the term “device” may cause confusion for consumers given the rise of virtual cards and other technologies. Payment instrument is a little easier for consumers to understand but is still quite a technical term. Consumers are more likely to understand terminology that is phrased in the way that they interact with the technology. Phrases like “How you pay,” “What I pay with,” and “What I use to pay” are more appropriate and more likely to be understood by consumers.

F2Q2 What costs would be involved in industry adjusting to the new terminology?

LAQ has no submissions to make in response to this question.

F2Q3 Are there other new virtual payment instruments that should be covered by the definition of ‘payment instrument’ or ‘device’?

LAQ has no comment to make regarding any other virtual payment systems that should be included.

F2Q4 Do you see any unintended consequences from including virtual cards in the definition of ‘payment instrument’ or ‘device’?

LAQ has no comment to make regarding unintended consequences.

F2Q5 What are the costs or regulatory burdens in catering for virtual cards within the definition of ‘payment instrument’?

We are not aware of any costs or regulatory burdens that arise from including virtual cards in the definition of payment instrument.

F3 We propose to amend the Code to:

- (a) expressly extend all relevant provisions to situations in which a 'Pay Anyone' payment is made through the NPP; and
- (b) add a definition of 'Pay Anyone internet banking facility' as a facility where a consumer can make a payment from the consumer's account to the account of another person by entering, selecting or using a BSB and account number or PayID or other identifier that matches the account of another person.

F3Q1 Do you agree that the Code's protections should apply to transactions made through the NPP? If not, why not?

LAQ supports the proposal to expressly extend the Code provisions to all NPP payments.

F3Q2 Are there any particular provisions in the Code that, while workable in the BECS context, would not be workable in the NPP context? What are these and what are your reasons?

LAQ has no comment to made in relation to any Code provisions that would not be workable.

F3Q3 Can we accommodate the NPP in the wording of the listing and switching rules in Chapter E of the Code? If so, how?

LAQ has no submissions to make in response to this question.

F3Q4 Do you support the Code's provisions, as relevant, expressly relating only to BECS and the NPP? Or would your preference be that the Code is payment platform agnostic? What are your reasons?

The Code should remain payment platform agnostic because:

- (a) It will allow the Code to apply to new payment platforms as they develop.
- (b) It will allow the Code to more easily move with and apply to new technologies as they develop.

F3Q5 Do you foresee any costs or regulatory burden implications of our proposals?

LAQ has no comment to make regarding any cost or regulatory consequences.

F4 We propose to amend the Code to cover the provision of electronic transaction receipts as well as paper receipts.

F4Q1 Do you agree with our proposal? If not, why not?

F4Q2 Is there any particular information that the Code presently requires to be included on paper receipts that should not be required in electronic receipts? What are your reasons?

F4Q3 What are the costs or regulatory burdens of our proposal?

LAQ supports the proposal to amend the Code to cover the provision of electronic transaction receipts as well as paper receipts. All information currently required on paper receipts should also be included on electronic receipts. LAQ is not aware of any major costs burdens that apply to this proposal as many companies already possess technology capable of providing electronic receipts.

G1 We propose to amend the Code to:

- (a) replace references to Regulatory Guide 165 Licensing: Internal and external dispute resolution (RG 165) with references to Regulatory Guide 271 Internal dispute resolution (RG 271);

- (b) combine Chapter F and Appendix A so that complaints handling requirements are contained in a single framework instead of two, while retaining important differences in relation to unauthorised transaction report investigations;
- (c) require all subscribers to have IDR procedures that are set out in RG 271; and (d) require all subscribers to be members of AFCA.

G1Q1 Do you agree with our proposals? Why or why not?

G1Q2 Are you aware of any particular reasons that may warrant retaining two separate complaints handling frameworks in the Code?

G1Q Do you think we have adequately identified the important differences that require recognition in a merged complaints handling Chapter in the Code? Why or why not?

G1Q4 What would be the costs of imposing the same requirements (e.g. AFCA membership, setting up complaints frameworks, disclosure) on all subscribers?

LAQ supports the proposals as:

- (a) being practical and sensible ways of consolidating the complaints handling framework; and
- (b) providing greater access to free dispute resolution mechanisms for consumers.

The proposals benefit:

- (a) Industry by updating and consolidating existing code and legal requirements.
- (b) Consumers by providing a clearly set out and consistent dispute resolution framework that is accessible.

H1 We propose to align the facility expiry period in the Code with the expiry period in the Australian Consumer Law, which is 36 months.

H1Q1 Do you support this proposal? Why or why not?

H1Q2 Are you aware of any types of facilities subject to the Code that are not subject to the Australian Consumer Law expiry date requirements? Should the 36-month expiry date period also apply to those facilities? Why or why not?

H1Q3 What are the costs or regulatory burdens of our proposal?

LAQ supports the proposal because it improves the consistency of how facility expiry periods are regulated. LAQ is not aware of any facilities that are not subject to the Australian Consumer Law expiry requirements. LAQ is not aware of any cost or regulatory burden that will apply as a result of the proposal.

I1 We propose to apply an appropriate transition period before the updated Code commences. The specific period will be guided by submissions to this consultation paper.

I1Q1 If each of ASIC's proposals in this consultation paper were to be implemented in an updated Code, what do you think an appropriate transition period would be for commencement of the updated Code? What are your reasons?

I1Q2 Could you provide details as to where each proposal sits on a scale, compared to the other proposals, in terms of the amount of time that is needed for transition? Please provide anticipated timeframes, where possible.

I1Q3 What are the particular costs (in terms of financial and other resources) that ASIC should be aware of in setting a transition period for commencement of the updated Code? Are there considerations that we need to make for particular categories of subscribers? Please be as specific as you can.

One of the major purposes of the ePayments Code is to provide protection and assistance to consumers. While LAQ recognises the need for a transition period to give subscribers an opportunity to update their systems and procedures, it is important that the transition period be as short as possible in order to ensure that consumers and industry are gaining the benefits of the Code as early as possible.