



15 January 2025

By email: consultation@oaic.gov.au

To whom it may concern

Public Interest Determinations on International Money Transfers

The Australian Banking Association (**ABA**) advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

The ABA welcomes the opportunity to provide a response to the Office of the Australian Information Commissioner's (**OAIC**) consultation on *International Money Transfers Public Interest Determination Applications*.

The ABA notes that these PIDs have been in place since 2015 and have supported the certainty, reliability and efficiency of the IMT system. The ABA strongly supports the applications made by the Reserve Bank of Australia (**RBA**) and the Australia and New Zealand Banking Group Ltd (**ANZ**) for a public interest determination (**PID**) in relation to international money transfer (**IMT**).

Further, the ABA strongly recommends that the Commissioner issue the PIDs as, preferable, permanent exemptions or, in the alternative, for a minimum of ten years. The ABA notes that the OAIC has granted these PIDs on two previous occasions, in 2015 and 2020.

The ABA has reviewed the consultation questions and views that our answers from our 2020 submission remain relevant. The key policy considerations and broader context has not evolved significantly in the subsequent five years. Our answers are provided below.

Answers to consultation questions

- 1. What additional steps (if any) ANZ, other ADIs, and the RBA could take to comply with APP 8.1 (that is, to ensure that the overseas financial institution to which they disclose the beneficiary's personal information does not breach the APPs in relation to that information)**

2020 position: The ABA would consider it impracticable for the RBA and ADIs to be required to take additional steps to ensure that an overseas financial institution, to which an ADI or the RBA discloses a beneficiary's personal information, does not breach the APPs. ADIs cannot have in place contractual arrangements with each and every beneficiary bank world-wide. In addition to the wide range of daily transactions and significant transaction volumes, an ADI does not always have a relationship with the beneficiary bank. Overseas financial institutions operate under their own privacy regime and would not be incentivised to agree to a separate set of privacy standards in respect of IMTs received from an Australian ADI. All ADIs will continue to take steps to ensure the security and confidentiality of the IMT process. In addition, the SWIFT network operates to facilitate many IMT transactions with overseas financial institutions on a confidential and secure basis.

Additional comments: The ABA is not aware of any basis for altering our 2020 position.



2. Whether ANZ, other ADIs, and the RBA should remain accountable for the handling of the beneficiary's personal information by the overseas financial institution under s 16C (that is, whether ANZ, the relevant ADI, or the RBA as the case may be, or the beneficiary, should bear the risk of the overseas financial institution not handling the beneficiary's personal information in accordance with the APPs)

2020 position: An ADI and the RBA should not be held accountable for the handling of a beneficiary's personal information by an overseas financial institution. The scope for Australian ADIs and the RBA to ensure overseas financial institutions compliance with the APPs is limited. All ADIs will continue to take steps to ensure the security and confidentiality of beneficiaries' personal information sent overseas during the IMT process. In addition, the SWIFT network operates to facilitate IMT transactions with overseas financial institutions on a confidential and secure basis.

Additional comments: The ABA is not aware of any basis for altering our 2020 position.

3. Whether the draft PIDs in attachments A to C should only apply to a disclosure by ANZ, another ADI or the RBA, as the case may be, to an overseas financial institution that takes place over the SWIFT network

2020 position: All ADIs process IMTs through the SWIFT network (in some cases for the entire IMT process and in other cases for part of the IMT process) and outside the SWIFT network (e.g. through a payment and settlement system in the beneficiary bank's jurisdiction). As such, all ADIs require a PID to apply to disclosures both within and outside the SWIFT network.

Additional comments: The ABA is not aware of any basis for altering our 2020 position.

4. The extent to which the draft PIDs in attachments A to C are inconsistent with an individual's reasonable expectation of privacy

2020 position: The OAIC proposes that the new PIDs (set out as draft determinations in the Consultation Paper) be remade on substantially the same terms as the PIDs that are currently in force. These PIDs have allowed the ANZ, other ADIs, and the RBA to continue their existing practices in relation to processing IMTs without breaching the Privacy Act since 2014. Therefore, the ABA would argue that the draft PIDs are consistent with an individual's reasonable expectation of privacy.

Additional comments: The ABA is not aware of any basis for altering our 2020 position.

5. The nature of the public interest objectives served by the proposed interference with privacy

2020 position: The IMT process in its current form is one component of the global financial system, and Australia is a significant contributor to that system. Maintaining the certainty, reliability and efficiency of the IMT processing serves an important public interest within the context of Australia's role within the global community. IMTs provide a simple, secure, cost effective and reliable means for the global transfer of money for individuals.

Additional comments: The ABA is not aware of any basis for altering our 2020 position.

6. The impact on the public interest if PIDs are not made

2020 position: Given the nature of the IMT process (as outlined in the RBA and ANZ applications), an ADI is unable to rely upon any APP 8.2 exceptions. Specifically, under APP 8.2(a) it would be impractical for every ADI to obtain current and ongoing legal advice in relation to the privacy regimes of all jurisdictions to which IMT initiated by that ADIs customers are sent. Even if such legal advice was obtained, those jurisdictions with inferior privacy schemes would fall outside the APP 8.2(a) exception.



7. Any relevant matters which have changed since 2020 and may impact on the public interest test

The ABA is not aware of any relevant matters which have changed since 2020.

8. The number of years that the PIDs, if made, should remain in force.

2020 position: The ABA would strongly recommend the Commissioner consider issuing these PIDs and the General Determination as permanent exemptions until the privacy legislation is updated to address the particular issue that required the two PIDs and the General Determination to be issued in 2015. This would reduce unnecessary regulatory costs and red tape for Australian ADIs and the RBA. If the above is not possible, the view of the ABA is that the two PIDs and the General Determination should remain in force for a minimum of ten years.

Additional comments: The ABA reiterates our strong view set out above that a permanent exemption be issued.

Kind regards

Merric Foley
Policy Director