



24 January 2020

Melanie Drayton
Assistant Commissioner, Regulation and Strategy
Office of the Australian Information Commissioner (OAIC)
PO Box 5218
Sydney 2000

via email: consultation@oaic.gov.au

Dear Ms Drayton

OAIC Public Interest Determinations on International Money Transfers

The Australian Banking Association (**ABA**) welcomes the opportunity to provide feedback to the Office of the Australian Information Commissioner (**OAIC**) in relation to two applications^{1,2} it has received for Public Interest Determinations (**PIDs**) in relation to international money transfers (**IMTs**) from the Reserve Bank of Australia (**RBA**) and the Australia and New Zealand Banking Group Limited (**ANZ**).

With the active participation of its member banks, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and community. It strives to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

The applications seek new PIDs to permit ANZ - along with other authorised-deposit taking institutions within the meaning of the Banking Act 1959 (**ADIs**); and the RBA to disclose the personal information of a beneficiary of an IMT to an overseas financial institution when processing an IMT, without breaching the Australian Privacy Principles (**APPs**).

The ABA strongly supports these two applications and urges the OAIC to issue new PIDs which would replace existing PIDs concerning IMTs that are due to sunset on 25 February 2020, namely:

Privacy (International Money Transfers) Public Interest Determination 2015 (No. 1) (made under subsection 72(2) of the *Privacy Act* in respect of the ANZ)

Privacy (International Money Transfers) Public Interest Determination 2015 (No. 2) (made under subsection 72(2) of the *Privacy Act* in respect of the RBA).

The ABA also strongly supports and endorses the RBA request that the Commissioner consider remaking a generalising determination under section 72(4) of the *Privacy Act* to apply to all ADIs that process IMTs, namely:

Privacy (International Money Transfers) Generalising Determination 2015 (made under subsection 72(4) of the *Privacy Act*, that no other ADI is taken to contravene section 15 or 26A while this determination is in force).

¹ An application from the Reserve Bank of Australia (RBA), received on 2 December 2019 <https://www.oaic.gov.au/assets/engage-with-us/consultations/applications-for-new-pids-regarding-international-money-transfers/pid-application-rba.pdf>

² An application from the Australia and New Zealand Banking Group Limited (ANZ), received on 5 December 2019, <https://www.oaic.gov.au/assets/engage-with-us/consultations/applications-for-new-pids-regarding-international-money-transfers/pid-application-anz.pdf>



The ABA provides feedback on the following questions raised in the OAIC consultation paper:

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).

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.

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).

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.

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.

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.

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

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.

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

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.

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

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.

Any relevant matters which have changed since 2015 and may impact on the public interest test.

None that the ABA are aware of.

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

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.

The ABA would be pleased to provide further explanation of any comment or recommendation contained within this submission. Should you have any questions please do not hesitate to contact me.

Yours sincerely

Aidan O'Shaughnessy
Executive Director, Policy