



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Secretary@privacy.org.au

<http://www.privacy.org.au/About/Contacts.html>

1 August 2014

Office of the Australian Information Commissioner

By email: Consultation@oaic.gov.au

Dear Director,

Re: International money transfers public interest determinations – Consultation Paper

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

This submission by the Australian Privacy Foundation responds to the Consultation Paper – International money transfers public interest determination.

The Foundation is the nation's premier civil society organisation concerned with privacy. It is a non-partisan body that draws on expertise regarding law, business, technologies and public administration. It has provided invited and independent advice to parliamentary inquiries, law reform commissions and other bodies over the past two decades.

The Foundation supports (subject to our comments below) the proposed public interest determinations on the grounds that international money transfers (IMT) are an important part of transacting business internationally for individuals and it is reasonably foreseeable that the beneficiary information would be disclosed as part of this process. There is a strong public interest in enabling individuals to transfer money as required.

A concern with the submissions from ANZ and RBA is that the main tenor of the submission is that it is "not practical" to comply with APP 8 and s. 16C because it would involve getting legal advice on the privacy regimes of every jurisdiction. We contend that "practicality" should never be an overriding reason to simply arrange for PIDs under the Privacy Act.

We also consider that this PID may act as a very poor "precedent" with other entities seeking exemptions from the Privacy Act on the basis of inconvenience. If many PIDs are made using similar arguments as made by the RBA and ANZ then this would in effect render the relevant provisions of the Privacy Act useless. We submit that if there are practical problems then an exemption should only be made as a short to medium term measure while the overall problem is resolved to ensure privacy of personal information. The concerned entities must agree to this as part of receiving the PID.

We contend that in these circumstances the OAIC should have (as part of analysing the requests):

1. Reviewed the SWIFT Rules to test the veracity of the claims in the submissions
2. Sought further information on IMTs not involving the SWIFT network that are simply bank to bank. It is reasonable that bank to bank transfers could comply with APP 8 and s. 16C. There is no analysis at all by the OAIC on this point
3. Canvassed views and proposals on how the systems could be amended by 2019 to ensure full compliance with the Privacy Act.

We contend that the financial services providers relying on the PID should be specifically working towards a solution to address the non-compliance issues identified. At this stage, it does not appear this has occurred.

Representatives of the Foundation would be pleased to discuss this submission with you and address particular aspects in more detail.

Thank you for your consideration.

Yours sincerely

Australian Privacy Foundation

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby AC CMG and The Hon Elizabeth Evatt AC, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html

- The Media (2007-)

<http://www.privacy.org.au/Campaigns/Media/>