

Review of the EFT code of conduct

The Assistant Treasurer, Senator the Hon. Rod Kemp, and the Minister for Customs and Consumer Affairs, the Hon. Warren Truss, MP released a report on a review of the Electronic Funds Transfer (EFT) Code of Conduct on 25 March 1998. The EFT code is a self-regulatory document which outlines the rights and obligations of cardholders and card-issuers in transactions involving the use of a plastic card and a personal identification number (PIN). It covers all financial institutions offering such retail EFT services.

The review was conducted by a taskforce, drawn from Treasury and the ACCC, which consulted extensively with industry participants and consumer bodies. Although the report was completed by November 1995, its release was put on hold until the conclusion of the Financial System (Wallis) Inquiry last year. In view of the time that had elapsed, the taskforce undertook to update the data and to conduct an additional round of consultations to ensure that the revised code took into account recent developments. However, the two surveys contained in the report were not redone.

The review confirmed that the EFT code is generally working well. The number of complaints relative to the number of transactions made each year is very low, and many of those complaints are being resolved in favour of cardholders. In formalising its recommendations, the taskforce was therefore concerned not to destabilise the code's operation. The following is a summary of the report's main conclusions and recommendations.

Terms and conditions

As part of the review process the taskforce examined, in early 1995, the terms and conditions documents of financial institutions offering retail EFT facilities. The results were somewhat disappointing. The terms and conditions of many card-issuers did not fully reflect the provisions of the code, in particular with regard to liability. However, the taskforce

acknowledged that there may have been some improvements since the survey was conducted.

The taskforce has recommended that card-issuers ensure their terms and conditions documents reflect the liability provisions of the code. It has also made it clear that card-issuers party to the code may clarify cardholder liability within the provisions of the code, but cannot extend liability beyond those provisions.

Finally, the taskforce was of the view that a guideline indicating how the terms in the code should be interpreted would provide card-issuers with an indication of the minimum standard their documents would be expected to include. The taskforce recommended that the Banking Ombudsman's office, representatives of credit union dispute resolution schemes, and other relevant parties, such as building societies, consider developing such a guideline.

Compliance with the code

According to the self-monitoring exercise currently overseen by the Australian Payments System Council (APSC) and reported in its annual reports, compliance with the code's provisions is very high. However, a small survey of the availability of terms and conditions documents at branches and staff awareness of the code (as required by the code), carried out by the taskforce in December 1994–January 1995, indicated that the self-monitoring exercise may not give a full picture of compliance with the code.

The taskforce acknowledged that, due to delays in the release of the report, the survey results are now somewhat dated. It is quite possible that the training initiatives which accompanied the introduction of the Uniform Consumer Credit Code and the codes of practice for banks, building societies and credit unions have resulted in marked improvements in the information being provided to customers on request.

In any event, the taskforce recommended that the APSC, or its successor the Australian Securities and Investments Commission (ASIC), assess the effectiveness of the monitoring process. The taskforce also recommended that the availability of terms and conditions be

publicised to cardholders. In particular, the taskforce encouraged financial institutions with an Internet presence to include a copy of their terms and conditions document on their home page.

Dispute resolution

The taskforce was concerned that the availability of alternative dispute resolution schemes was not well known to cardholders. It recommended that card-issuers be required to advise cardholders in writing of the availability of alternative dispute resolution schemes at specific times during the life of a particular complaint.

To further improve the dispute resolution process, the taskforce also recommended that card-issuers be required to provide monthly updates of the progress of the complaint where the investigation continues beyond 45 days.

The taskforce also recommended that the code be amended to clarify the fact that all EFT complaints made by cardholders must be raised with their card-issuers, even if the disputed transaction took place at a retailer or an ATM not owned by the complainant's financial institution.

Double debit transactions

Double debit transactions occur when a transaction is incorrectly processed more than once to the same account. The taskforce was advised that a retailer can often discover that a double debit may have occurred before the cardholder becomes aware of the mistake through reading his/her statement. In such cases, the retailer would draw the attention of its merchant acquirer (often referred to as 'the bank of the merchant') to the problem, so that the merchant acquirer can investigate the matter.

However, retailers have advised the taskforce that in some cases their merchant acquirer refuses to initiate an investigation until a complaint has been received from the cardholder (the merchant acquirer is not necessarily also the cardholder's bank). The taskforce recommended that the code require merchant acquirers, upon being advised by a

retailer that a transaction has been debited or credited incorrectly, to notify the card-issuer concerned of the situation without waiting to receive a complaint from the cardholder.

Unauthorised transactions

The taskforce was concerned that card-issuers have been placing undue weight, when allocating liability for unauthorised transactions, on the evidence that the correct PIN had been used. It appeared that some card-issuers may have assumed from the evidence of a successful transaction that the cardholder had contributed to the loss, and may not have given due weight to the possibility of other explanations, such as involuntary observation of the PIN.

The taskforce recommended that the code be amended to state that, when assessing cardholders' contribution to the loss, card-issuers will consider all reasonable evidence, including all reasonable explanations for the transaction occurring. The taskforce also recommended that the code be amended to provide that evidence of successful PIN access will not be of itself conclusive evidence that the cardholder has contributed to the loss.

New technologies

Although the taskforce did not examine the issue of new electronic banking technologies, which was beyond the scope of this review, it recognised its importance and urgency. In particular, the taskforce noted that while telephone banking, and to a lesser extent computer banking, was becoming widely used, there were few consumer protection safeguards in place. It recommended the establishment of a working party to consider appropriate consumer protection for telephone and computer banking.

The taskforce also examined the issues of EFTPOS fees, ATM and EFTPOS security, security advice, privacy and security, and the availability of external dispute resolution schemes.

The report is available from the Commission's website. Printed copies are available for \$20 from Isabelle Arnaud on ph. (02) 6243 1071.