



Transaction Banking  
Level 4, 833 Collins Street  
Docklands Victoria 3008

4 December 2019

Ms Angelene Falk  
Australian Privacy Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Dear Ms Falk

**Application for a public interest determination in relation to compliance with Australian Privacy Principle 8 when applied to international money transfers**

This application seeks a public interest determination (**PID**) under Part VI of the *Privacy Act 1988* (Cth) (**the Privacy Act**) having the effect that, on and from 25 February 2020, a breach of Australian Privacy Principle 8 (**APP 8**), or a breach of another Australian Privacy Principle (**APP**) as a result of the application of section 16C(2), in relation to the processing of international money transfers (**IMTs**) that involve cross-border disclosure of personal information of an individual who is the beneficiary of an IMT, will be taken not to contravene section 15 of the Privacy Act.

The applicant is Australia and New Zealand Banking Group Limited (**ANZ**). However, ANZ understands that the Reserve Bank of Australia (**RBA**) will also be making an application and that this may again result in the PID being given general effect to other authorised deposit-taking institutions<sup>1</sup> (**ADIs**) under section 72(4).

Relevantly, the following PIDs are currently in place:

- Privacy (International Money Transfers) Public Interest Determination 2015 (No. 1) (**ANZ PID**). The ANZ PID commenced on 25 February 2015 and expires on 25 February 2020. The ANZ PID permits ANZ to disclose the personal information of a beneficiary of an international money transfer to an overseas financial institution when processing an international money transfer without breaching the APPs. A copy of the ANZ PID appears in Annexure 1.
- Privacy (International Money Transfers) Public Interest Determination 2015 (No. 2) (**RBA PID**). The RBA PID commenced on 25 February 2015 and expires on 25 February 2020. The RBA PID permits the RBA to disclose the personal information of a beneficiary of an international money transfer to an overseas financial institution when processing an international money transfer without breaching the APPs. A copy of the RBA PID appears in Annexure 2.
- Privacy (International Money Transfers) Generalising Determination 2015 (**ADI PID**). The ADI PID commenced on 25 February 2015 and expires on 25 February 2020. The ADI PID permits other ADIs to disclose the personal information of a beneficiary of an international money

<sup>1</sup> within the meaning of the *Banking Act 1959* (Cth). An ADI may be a bank, credit union or building society or a financial institution otherwise authorised by the Australian Prudential Regulation Authority.

transfer to an overseas financial institution when processing an international money transfer without breaching the APPs. A copy of the ADI PID appears in Annexure 3.

The PID sought under this application will replace the ANZ PID on its expiry on **25 February 2020**. ANZ seeks a PID for a period of five (5) years, in line with the period of the ANZ PID. Given the timing of expiry of the ANZ PID, ANZ is also making an application for a temporary PID in relation to the same conduct for a period of 12 months.<sup>2</sup> It is also expected that, if the temporary PID is made, it would be given general effect pursuant to section 80B(3) of the Privacy Act.

As discussed in more detail in this application, the public interest in ANZ processing IMTs for its customers outweighs to a substantial degree the public interest in adhering to APP 8 and being held accountable for any breaches of the APPs by the overseas recipient of the personal information. In relation to the temporary PID, an urgent decision is required as the ANZ PID expires on **25 February 2020**.

ANZ is an organisation under section 6C of the Privacy Act.

## 1 Background

On 12 March 2014, Schedule 1 of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (Cth) (**Privacy Amendment Act**) took effect. This resulted in the repeal of the National Privacy Principles in Schedule 3 of the Privacy Act and the commencement of the Australian Privacy Principles (as Schedule 1 of the Privacy Act).

Previously, National Privacy Principle 9 (**NPP 9**) applied to the processing of IMTs and, in particular, to any personal information of the individual or company requesting the IMT (**sender**) and the individual receiving the funds (**beneficiary**). Under NPP 9, the transfer of any account and other identifying information of the sender or the beneficiary to a foreign financial institution (as needed in order to process the IMT) was treated as a transborder data flow. NPP 9 allowed an organisation in Australia to transfer such personal information about an individual to someone who is in a foreign country provided one of six criteria was met. Subsections (d) and (e) in particular allowed ANZ to process an IMT without having to seek express consent from the beneficiary on the basis that either:

- the transfer is necessary for the conclusion or performance of a contract concluded between ANZ and its customer (i.e. the sender) in the interest of the beneficiary; or
- the transfer is for the benefit of the beneficiary, it is impracticable to obtain the consent of the beneficiary to that transfer and, if it were practicable to obtain such consent, the beneficiary would be likely to give it.

APP 8 (which replaced NPP 9) requires that before ANZ discloses personal information to an overseas recipient, ANZ must take such steps as are reasonable in the circumstances to ensure that the overseas recipient does not breach the APPs. However, APP 8 does not contain the same exceptions that were included in NPP 9. Rather, the relevant exceptions in APP 8.2 require that:

- ANZ reasonably believes that the overseas entity which will receive the information (potentially including the payment system operators, intermediate and correspondent banks and the beneficiary's bank) is subject to a law, or binding scheme, that has the effect of protecting the information in a way that, overall, is at least substantially similar to the way in which the APPs protect the information, and there are mechanisms that the beneficiary can access to take action to enforce that protection of the law or binding scheme; or

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<sup>2</sup> Pursuant to section 80A of the Privacy Act.

- ANZ expressly informs the beneficiary that if he or she consents to the disclosure of the information, APP 8.1 will not apply to the disclosure and after being so informed, the beneficiary consents to the disclosure.

For reasons explained in more detail below, it is not practicable for ANZ to meet the requirements set out in APP 8.2 when processing IMTs. Therefore, in order to comply with APP 8.1, ANZ must take such steps as are reasonable in the circumstances to ensure that the overseas recipient of the beneficiary's personal information (which is necessary to process the IMT) does not breach the APPs in relation to that information. Whilst ANZ will continue to take steps to ensure the security and confidentiality of the IMT process, it seeks a PID in relation to compliance with APP 8.1 for the purposes of business clarity and certainty as it is presently uncertain whether the protections already adopted by ANZ would be considered reasonable in the circumstances and it is impracticable for ANZ to take further steps to protect the information. Further, given that it is not practicable for ANZ to negotiate individual contracts with the overseas recipients to ensure their compliance with the APPs, and that systems and processes are in place to protect the security and confidentiality of the beneficiary's information during the IMT process, ANZ also seeks relief from being held accountable for a breach of the APPs by the overseas recipient by virtue of section 16C(2).

Unless a PID and a temporary PID are granted to ANZ, from 25 February 2020 (the expiry date of the ANZ PID) ANZ may not be able to continue to process IMTs for its customers without breaching APP 8.1. This would be a major problem for ANZ's customers in Australia. Thousands of IMTs are requested daily from ANZ by both individual customers and large corporations.

## 2 Outline of the IMT process

### 2.1 Introduction

For the purpose of this application, IMT is the term used for any payment made by an Australian sender to a beneficiary outside of Australia.

IMTs in Australia are typically processed:

- in the majority of cases, using the SWIFT network;<sup>3</sup> or
- by relying on the ADI's own commercial arrangements (e.g., ANZ may send the IMT to an offshore branch or subsidiary).

Further details on these transfer mechanisms are set out below.

### 2.2 Initiating the IMT process

The IMT process will typically commence when the sender (e.g., an ANZ customer) completes an IMT application form. This may be done in a variety of ways including electronically by phone or in limited circumstances, by person. As part of this initial step, the sender provides their account details and address.

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<sup>3</sup> SWIFT is a member-owned cooperative established in 1973. It is used by more than 10,000 banking organisations, securities institutions and corporate customers in over 200 countries. It is a highly confidential and secure network that facilitates the transfer of payments and other financial messages between users. High levels of confidentiality are imposed and security is reinforced through encryption of messages. SWIFT is also subject to a governance structure and publicly available data retrieval policies that enable SWIFT to meet the security commitments required by users. There are three categorised groups of users: supervised financial institutions, non-supervised entities active in the financial industry and closed user groups/corporate entities. SWIFT users are only able to send financial messages within their user category. Therefore, ANZ is only able to send financial messages via SWIFT to other supervised financial institutions. SWIFT has documented, neutral and risk based processes in place to validate SWIFT users on an ongoing basis.

The sender will also need to provide details about the beneficiary. The only mandatory information required is the beneficiary's name and account number. However, several countries impose additional requirements and the beneficiary's bank may require further identifying information e.g. account name, residential address or additional details about the sender or the beneficiary. Generally, this additional information is requested because of an in-country regulatory requirement in the beneficiary's jurisdiction or to allow anti-money laundering and counter-terrorism financing checks as well as sanctions checks to be performed onshore.

The sender may also choose to include additional remittance information (e.g., a greeting or an invoice reference number etc).

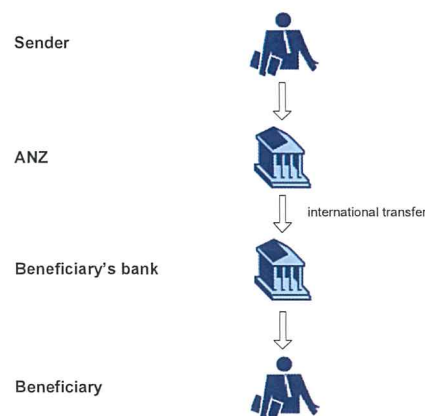
### 2.3 ANZ sends the IMT to a foreign bank

Once the sender has completed the international money transfer request, ANZ will send the IMT to the beneficiary's bank (which, for the purposes of this analysis, is located in a foreign country) in one of the following ways.

#### (a) Option 1: Using the SWIFT network for the entire process

Once a bank becomes a SWIFT user, it establishes commercial relationships (either by contract or through the SWIFT Relationship Management Application<sup>4</sup>) with other users that allow for the processing of IMTs. A relationship that allows banks to make payments to one another is referred to as an "Account Relationship".

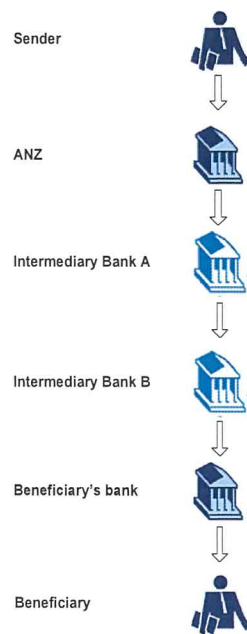
If ANZ has an Account Relationship with the beneficiary's bank, ANZ will send both the funds and the payment instruction directly to the beneficiary's bank, as shown below.



If ANZ does not have an Account Relationship with the beneficiary's bank, it is still possible to transfer money using SWIFT. In this case, ANZ will send the payment instructions to an "intermediary" bank (also member of SWIFT), which will then route the instructions to the beneficiary's bank. Typically, the intermediary bank will be a bank located in the same country as the beneficiary's bank, and will be a bank with which ANZ has established an Account Relationship.

More than one intermediary bank may be involved in the process before the funds reach their final destination. The diagram below shows an example where two intermediary banks are used.

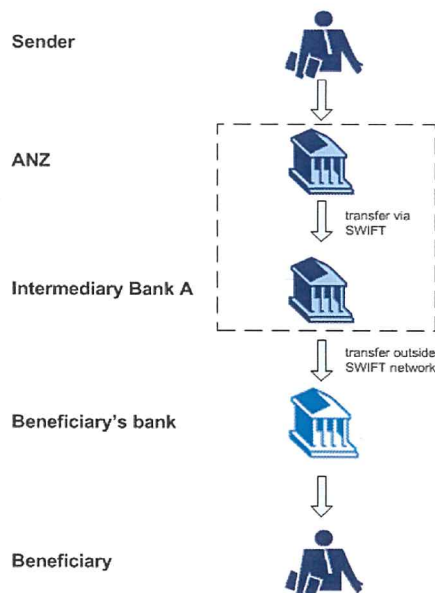
<sup>4</sup> The Relationship Management Application (RMA) is a service offered by SWIFT that allows users to manage their business relationships on the network. The application allows users to control the types of messages that may be exchanged between it and other users. Users with an RMA relationship will not typically have a contractual relationship.



(b) Option 2: Using the SWIFT network for part of the IMT process

In some instances, the beneficiary's bank is not a member of SWIFT, but SWIFT may still be relevant to the processing of an IMT.

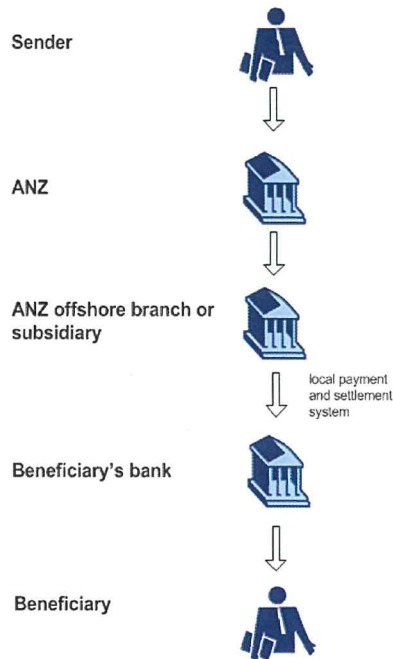
In this case, ANZ would typically use an intermediary bank in the same way as described in Option 1 above with the payment instructions routed through the SWIFT network in the usual way until they reach an intermediary bank that has a commercial relationship with the beneficiary's bank. That intermediary bank would then complete the IMT outside the SWIFT network (e.g., through a domestic payment and settlement system in the beneficiary bank's jurisdiction). This arrangement is shown in the diagram below.



There may be other instances where ANZ may transfer funds to an offshore branch or subsidiary of ANZ and that branch or subsidiary will complete the IMT process with the beneficiary's bank over the SWIFT network.

(c) Option 3: IMTs outside the SWIFT network

In certain circumstances, an IMT may be processed without any use of the SWIFT network. For example, ANZ may transfer funds to an offshore branch or subsidiary of ANZ and that branch or subsidiary could make a payment to a beneficiary bank within that jurisdiction by means of the local payment and settlement system (i.e., that jurisdiction's equivalent of Real Time Gross Settlement<sup>5</sup>). A payment between ANZ entities will be at least as secure as SWIFT as it is within ANZ's own firewall and the local payment and settlement system will be a regulated and secure environment in which to complete the transfer.



2.4 Beneficiary's bank pays the beneficiary

In all cases, the ultimate transfer of funds to the beneficiary is completed by the beneficiary's bank. The relationship between the beneficiary and his or her bank will be regulated by the account terms and conditions relevant to the beneficiary's account and banking laws applicable in the relevant jurisdiction (and, in the ordinary course, the beneficiary's bank will be appropriately licensed and prudentially regulated according to local laws and applicable international banking obligations).

**3 The IMT process and compliance with APP 8**

3.1 Compliance with APP 8.1

APP 8.1 requires that ANZ takes such steps as are reasonable in the circumstances to ensure that the overseas recipient of the beneficiary's personal information does not breach the APPs in relation to that information.

As previously outlined in the application for the ANZ PID, ANZ has always taken steps to ensure the security and confidentiality of information that needs to be sent overseas in order to process an IMT. Like all Australian banks, ANZ is subject to a common law duty of confidentiality regarding information about its customers and their accounts and transactions.<sup>6</sup> Whether the transfer occurs as part of the

<sup>5</sup> Real Time Gross Settlement (usually referred to as "RTGS") systems are for the transfer of funds between banks without any waiting period. They are usually controlled by the central bank of the country.

<sup>6</sup> A duty of confidentiality is codified in clause 11 of the Banking Code of Practice.

SWIFT network or other mechanism, there are security mechanisms in place to ensure the integrity and confidentiality of the information is maintained at all times.

However, ANZ will again face uncertainty in complying with APP 8.1, as it remains unclear that the steps it has taken (and the systems that have been put in place) would be considered “reasonable in the circumstances”. The APP Guidelines issued by the OAIC in relation to APP 8.1 say that in considering what will constitute “reasonable steps”, it is generally expected that the relevant APP entity should enter into an enforceable contractual arrangement with the overseas recipient that requires the recipient to handle the personal information in accordance with the APPs other than APP 1.<sup>7</sup> The APP Guidelines qualify this by stating that the requirement to obtain a contract with a foreign recipient will depend on the circumstances, including the practicability of taking particular steps.

As ANZ has previously indicated, the nature of the IMT process, with its wide range of daily transactions and significant transaction volume, makes it impracticable to have enforceable contractual arrangements with every potential overseas recipient; in fact, that is the very reason why the SWIFT network needed to be created in the first place. The SWIFT network operates to facilitate many of the transactions with those correspondent banks for the purposes of the IMT process. In some cases, ANZ will rely upon the SWIFT network’s RMA rather than upon a contractual relationship. It would not be practicable for ANZ (or any other Australian ADI, for that matter) to try to alter SWIFT to impose contractual obligations with all overseas SWIFT members to require compliance with the APPs. The interconnectedness of the global financial system means that there is a material risk that changing SWIFT in these circumstances would create significant repercussions for the entire financial system. In fact, it is important that Australian ADIs be capable of operating efficiently as part of that system (i.e. they contribute, as global citizens, to the safe movement of money between countries).

Furthermore, we note that in the context of IMTs, each bank that receives information as part of an IMT transaction is operating under its own privacy regime (whether they are mandatory or voluntary) and would have little to no incentive to agree to a separate set of privacy standards to process IMTs received from ANZ. In those cases where a contractual relationship does exist, ANZ could not simply change those contracts on a unilateral basis.

The impracticability of obtaining contracts with all foreign banks to which ANZ remits IMTs is not limited to it being inconvenient, time-consuming or imposing costs for ANZ to obtain such contracts. In addition to the difficulties described in section 3.2 below, it is unlikely that foreign banks would agree to enter into contracts requiring them to handle personal information in accordance with the APPs given the protections afforded by the SWIFT network.

ANZ has not received any complaints from beneficiaries relating to how their personal information is dealt with in processing IMTs since the ANZ PID commenced. We also note that the collection and disclosure of the beneficiary’s name and account number enables ANZ to comply with mandatory AML/CTF<sup>8</sup> obligations.

### 3.2 The relevant exceptions in APP 8.2 are not available to ADIs when processing IMTs

ANZ submits again that due to the nature of the IMT process (as outlined above), ANZ would not be able to rely on any of the relevant exceptions in APP 8.2:

- **Given the volume and broad reach of IMTs, it would be unreasonably burdensome for ANZ to try to form a view about privacy laws applicable in every possible destination country** – It would not be practicable for ANZ to obtain legal advice (and keep that advice up to

<sup>7</sup>OAIC, *APP Guidelines*, paragraph 8.16–8.18. This is consistent with similar views expressed in the Explanatory Memorandum to the Privacy Amendment Bill.

<sup>8</sup> Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).

date) on the privacy regimes that apply to every country in the world (as in theory, an ANZ customer could initiate an IMT to any country that has a functioning banking system). Even if ANZ did obtain such legal advice, IMTs could not be sent to those countries that do not have substantially similar privacy protections and that do not allow the beneficiary to take direct action to enforce protection of their personal information. This would result in an inability to send IMTs to individuals in particular countries and is likely to particularly disadvantage senders who are supporting families over long distances. Consequently, customers would increasingly rely on less secure and more costly means of processing IMTs (e.g., more informal money remittance services).

- **ANZ would not be able to obtain consent from the beneficiary** – ANZ’s role is limited to collecting the information on the beneficiary from the sender. The beneficiary is not ANZ’s customer and, in the ordinary course, it would not have any interaction with ANZ. Because there is no legal (or other relationship) between ANZ and the beneficiary, there is no opportunity for ANZ to seek the beneficiary’s consent to processing the IMT. Further, ANZ processes a large number of IMTs each day. It would not be feasible for ANZ to contact every beneficiary (in a large number of jurisdictions) to obtain their consent to ANZ disclosing their personal information.

#### 4 The need for a PID

The continuing uncertainty that exists in relation to compliance with APP 8.1, the fact that the exemptions in APP 8.2 are not generally available to ANZ in the context of the IMT process, and that it is not practicable for ANZ to take further steps to ensure that the overseas recipient of the beneficiary’s personal information complies with the APPs in handling that information, ANZ again submits that it (and any other domestic ADI) should not be held to breach APP 8, or another APP as a result of being held accountable for a breach by the overseas recipient as a result of section 16C(2), when processing IMTs. A PID is needed to ensure that ANZ can continue to process IMTs with the certainty that it will be taken not to have breached APP 8, or another APP as a result of being held accountable by section 16C(2).

In this context, this application is made on the basis that the public interest in ANZ processing IMTs for its customers outweighs to a substantial degree the public interest in adhering to APP 8 and being held accountable under section 16C(2), as discussed in more detail below.

##### 4.1 The public interest benefits associated with making IMTs available to Australian ADI customers

IMTs are an important process that allow individuals to benefit from the global movement of money. In some cases, they allow families to support one another over long distances. In other cases, they allow private transactions to take place involving parties on opposite sides of the world. IMTs, irrespective of the reasons for use, provide a simple, secure, cost-effective and reliable means for the global transfer of money. They provide unquestionable benefits to the individuals involved (i.e. the ANZ customer and the beneficiary).

IMTs provide payment security and transaction certainty. This is a major benefit for customers and it also assists governments to better enforce anti-money laundering and counter-terrorism financing rules.

IMTs are also an important element of international financial relations. In 2018, SWIFT processed 7.8 billion payment messages at a daily average of 31.3 million.<sup>9</sup>

Australia, as one of the largest economies in the world and a leading economy within the Asia Pacific region, is a significant contributor to the international financial landscape. Australia is a member of the

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<sup>9</sup> 2018 SWIFT Annual Review.



Group of 20 (G20) nations. According to the International Monetary Fund, Australia is one of 25 jurisdictions with systematically important financial sectors (based on the size and interconnectedness of its financial sector). As a result, Australia is subject to mandatory financial stability assessments which recognise the central role of financial systems in the domestic economy as well as in the overall stability of the global economy.<sup>10</sup> The IMT process, in its current form, is one component of the global financial system. It would be detrimental for Australia's reputation as a leading international financial participant if it becomes impracticable for ADIs in Australia to process IMTs. Maintaining the certainty, reliability and efficiency of this process also serves an important public interest within the context of Australia's role within the global economy.

#### 4.2 The public interest benefits associated with adhering to APP 8 when processing IMTs

The main public benefit associated with adhering to APP 8 when processing IMTs would be to ensure the protection of personal information of beneficiaries.

In this respect, ANZ notes that personal information is already protected in a number of ways when processing IMTs:

- **Disclosure is within a secure environment** – IMTs are processed in a heavily regulated and controlled environment, the basis of which is a trusted network of relationships between financial institutions. Where IMTs are processed using the SWIFT network, a secure and highly protected proprietary system applies to facilitate protection of the personal information. Otherwise, ANZ only sends payment messages to other financial institutions that are licensed, authorised or registered with a financial market regulator and subject to supervision by that regulator.
- **The disclosures that occur as part of the IMT process are the minimum needed to actually allow the IMT process to happen** – In order to process an IMT, certain information about the beneficiary needs to be transferred from the sender's ADI to the beneficiary's bank. The disclosure of such information would be within the reasonable expectation of any beneficiary.
- **Current IMT process is a successful and secure means of conducting international transfers** – ANZ is not aware of any beneficiary making a complaint that ANZ had disclosed their personal information offshore in order to make an IMT. The current international arrangements that facilitate ANZ's conduct of IMT process work smoothly and efficiently in a highly regulated and secure environment. This has been the case over a substantial period of time.

It is not clear, however, that these steps would be considered reasonable in the circumstances for the purpose of APP 8.1. Further, it would not be practicable to take additional steps to ensure that the overseas recipient of the beneficiary's personal information complies with the APPs in respect of that information. There is a strong public benefit in providing certainty to ANZ and its customers that it will not breach the APPs so that ANZ can continue to process IMTs on and from 25 February 2020. ANZ notes that a likely consequence of increased costs, lengthy delays and decreased transaction certainty is an increasing number of customers relying on less secure and less regulated means of international transfers (e.g., more informal money remittance services).

The public benefit also needs to be considered in a context where reliance upon the exemptions in APP 8.2 would not be practicable given the nature and features of the IMT process:

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<sup>10</sup> International Monetary Fund, Press Release No. 10/357, 27 September 2010, "IMF Expanding Surveillance to Require Mandatory Financial Stability Assessments of Countries with Systematically important Financial Sectors".

- **The costs associated with satisfying the requirements of APP 8.2 would make the cost of IMTs prohibitive for most ADI customers** – the volume and varied nature of the individual IMTs would mean that trying to seek consent from all beneficiaries (assuming that was practicable) would result in exorbitant transaction costs for ANZ customers, effectively putting IMTs beyond the reach of most Australian ADI customers.
- **The delays associated with satisfying the requirements of APP 8.2 would make IMTs impractical and expose ADI customers to risk** – the need to contact the beneficiary's bank and/or the beneficiary would result in a significant increase in the time taken to complete the IMT process. Alternatively, the operational and time-consuming burden of obtaining and maintaining up to date legal advice on the privacy regimes in every country would be substantial and likely to result in further delays. Such delays would result in increased transaction risks for ADI customers (e.g., because of exposure to exchange rate movements and because it would be unclear when it would be possible to actually pay the relevant moneys to the beneficiary).

In this context, it is submitted that there would be very little public benefit associated with requiring ANZ to take additional steps to ensure the overseas recipient does not breach the APPs or to rely on any of the exceptions in APP 8 when processing IMTs. In fact, there are significant detriments that would outweigh any public benefit that could otherwise be achieved.

## 5 The need for a temporary PID

In the event a PID is unable to be granted by 25 February 2020, ANZ seeks a temporary PID under section 80A of the Privacy Act in order to continue to be able to offer IMTs to its customers (without breaching the Privacy Act) while the subject matter of this PID is under consideration.

An urgent decision is required in light of the fact that:

- the ANZ PID expires on 25 February 2020 and, as outlined in this application, absent a PID, ANZ may breach APP 8, or the other APPs as a result of being held accountable under section 16C(2), if it seeks to process IMTs after that date; and
- due consideration of the PID application, including a public consultation process that may involve holding a conference under section 76 of the Privacy Act, will require a period of time that extends beyond 25 February 2020.

All of the considerations raised in this application in relation to the PID apply with equal force to the necessity for a temporary PID. Whilst the processing of IMTs in the manner currently undertaken results in a substantial number of important public benefits, as outlined in section 4.1, requiring ANZ to take additional steps to ensure the overseas recipient does not breach the APPs, or to rely on any of the exceptions in APP 8 in such a context would result in few public benefits (and significant public detriments). The extent to which the public interest in ANZ's processing of IMTs substantially outweighs the public interest in adhering to APP 8 or being held accountable for a breach of the APPs by the overseas recipient in such instances provides sufficient comfort for the granting of a temporary PID.

Furthermore, a temporary PID would allow Australian ADI customers to continue enjoying the significant benefits associated with the IMT process after 25 February 2020, without exposing these customers to any material risks (because of the security measures that are already in place for the protection of the integrity of messages, as outlined elsewhere in this document).

## 6 Conclusions

ANZ understands the paramount importance of privacy of personal information, especially as it applies to cross-border disclosures. It is for that reason that it has long taken steps to ensure the security,

confidentiality and transaction certainty of all IMTs it processes. However, it is not clear that these steps will meet the requirements for “reasonable steps” as set out in APP 8.1. This is particularly problematic in a context where it is not practicable for ANZ to otherwise rely on the exceptions in APP 8.2. Further, it is not practicable for ANZ to take additional steps to ensure that the overseas recipient does not breach the APPs.

Accordingly, it is necessary for ANZ to obtain a PID in relation to the processing of IMTs to provide certainty for ANZ, other ADIs and customers that ANZ (and other ADIs) will not be held to breach the APPs when processing IMTs. Absent a PID (and temporary PID) ANZ (and other ADIs) operating in Australia would not after 25 February 2020 be capable of continuing to offer the IMT service to their domestic customers in its current form (and it is unclear what kind of service could be offered that allowed IMTs to be processed at a reasonable cost). Such an outcome would have grave implications for individual customers, for beneficiaries and indeed for the economy as a whole. That is, the burden of complying with APP 8, and being held accountable under section 16C(2) for a breach of the APPs by the overseas recipient in the context of the IMT process would be very high, and the benefits of strict compliance would be negligible at best.

In that context, the public interest in ANZ’s processing of IMTs substantially outweighs the public interest in ANZ adhering to APP 8 or being held accountable for a breach of the APPs by the overseas recipient.

This application seeks a PID such that if it were to be considered that ANZ has breached APP 8.1, or another APP, as a result of the application of section 16C(2) when processing an IMT on and from 25 February 2020, ANZ will be taken not to have contravened section 15 of the Privacy Act.

Additionally, on the basis that an urgent decision is required and for the further reasons outlined in this application, a temporary PID in accordance with section 80A of the Privacy Act is also requested.

Yours sincerely,



**Alan Huse**  
Head of Payments and Cash Management



**Annexure 1**

**ANZ PID**



## Privacy (International Money Transfers) Public Interest Determination 2015 (No. 1)

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I, Timothy Pilgrim, Privacy Commissioner, make the following determination under subsection 72(2) of the *Privacy Act 1988* (Privacy Act).

Dated: 19 February 2015

[signed]

Timothy Pilgrim  
Privacy Commissioner

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### 1 Name of determination

This determination is the *Privacy (International Money Transfers) Public Interest Determination 2015 (No. 1)*.

### 2 Commencement

This determination takes effect on the day following the day of its registration in the Federal Register of Legislative Instruments maintained under section 20 of the *Legislative Instruments Act 2003*.

### 3 Authority

This determination is made under subsection 72(2) of the *Privacy Act 1988*.

### 4 Expiry

This determination expires, as if it had been repealed by another instrument, 5 years from the day this determination commences.

### 5 Repeal

The *Privacy (International Money Transfers) Temporary Public Interest Determination 2014 (No. 1)* (FRLI F2014L00241) is repealed immediately before this determination commences.

## 6 Definitions

Terms defined in the Privacy Act have the same meanings in this determination.

## 7 Application for a public interest determination

- (1) Australia and New Zealand Banking Group Limited (ANZ) is an APP entity under subsection 6(1) of the Privacy Act because it is an organisation under section 6C of the Privacy Act.
- (2) ANZ has applied under section 73 of the Privacy Act for a public interest determination in relation to the acts and practices set out in section 8 below.

## 8 International money transfer processing

- (1) The disclosure of personal information about an individual to an overseas recipient by ANZ breaches, or may breach, Australian Privacy Principle (APP) 8.1 where:
  - (a) ANZ, as an authorised deposit-taking institution within the meaning of the *Banking Act 1959*, is processing an international money transfer (IMT) on behalf of one of its customers, and
  - (b) in order to process the international money transfer, ANZ discloses personal information of the individual who is the beneficiary of the IMT (beneficiary) to another financial institution that is not in Australia or an external Territory (overseas financial institution) for the purpose of:
    - (i) remitting the relevant funds, to the beneficiary's financial institution for payment, or
    - (ii) a communication that is necessary to confirm receipt of the funds or to facilitate processing or return of the funds by the beneficiary's financial institution.
- (2) The acts and practices set out in subsection (1) above may also lead to ANZ breaching other APPs (other than APP 1) by reason of the application of subsection 16C(2) of the Privacy Act if the overseas financial institution does an act, or engages in a practice, in relation to the information that would be a breach of an APP (other than APP 1) if the APPs applied to that act or practice.

## 9 Public Interest

- (1) The public interest in ANZ carrying out the acts and practices set out in section 8 above outweighs to a substantial degree the public interest in adhering to APP 8.1 or ANZ being taken to have breached an APP (other than APP 1) as a result of the acts or practices of the overseas financial institution where:
  - (a) it is not practicable for ANZ to rely on the exceptions set out at APP 8.2(a) or APP 8.2(b) when disclosing the personal information,
  - (b) the other exceptions in APP 8.2 are not relevant to the disclosure of the personal information,

- (c) ANZ takes a number of steps to ensure the security and confidentiality of the personal information disclosed, and
  - (d) the nature of the arrangements that support and facilitate the processing of IMTs means that ANZ is not in a position to take additional steps to comply with APP 8.1 before disclosing the personal information.
- (2) For the purpose of paragraph 9(1)(a) above, it may not be practicable for ANZ to rely on the exception at APP 8.2(a) when engaging in the acts and practices set out in section 8 due to:
- (a) the potentially large number of overseas locations to which the personal information may be disclosed, and
  - (b) ANZ not having any relationship with the beneficiary, or the means to establish that relationship, in order to gain the beneficiary's consent to the disclosure of the personal information.

## **10 Public interest determination**

- (1) Accordingly, by operation of subsection 72(3) of the Privacy Act, while this determination is in force ANZ is taken not to breach section 15 of the Privacy Act if:
- (a) ANZ breaches APP 8.1 when engaging in the acts and practices set out in section 8 above, or
  - (b) an overseas financial institution does an act, or engages in a practice, in relation to the personal information disclosed to it by ANZ in the course of ANZ doing the acts or engaging in the practices set out in section 8 above, that would be a breach of an APP (other than APP 1) if the APPs applied to that act or practice.



**Annexure 2**

**RBA PID**





## Privacy (International Money Transfers) Public Interest Determination 2015 (No. 2)

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I, Timothy Pilgrim, Privacy Commissioner, make the following determination under subsection 72(2) of the *Privacy Act 1988* (Privacy Act).

Dated: 19 February 2015

[signed]

Timothy Pilgrim  
Privacy Commissioner

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### 1 Name of public interest determination

This determination is the *Privacy (International Money Transfers) Public Interest Determination 2015 (No. 2)*.

### 2 Commencement

This determination takes effect on the day following the day of its registration in the Federal Register of Legislative Instruments maintained under section 20 of the *Legislative Instruments Act 2003*.

### 3 Authority

This determination is made under subsection 72(2) of the *Privacy Act 1988*.

### 4 Expiry

This determination expires, as if it had been repealed by another instrument, 5 years from the day this determination commences.

### 5 Repeal

The *Privacy (International Money Transfers) Temporary Public Interest Determination 2014 (No. 2)* (F2014L00534) is repealed immediately before this determination commences.

## 6 Definitions

Terms defined in the Privacy Act have the same meanings in this determination.

## 7 Application for a public interest determination

- (1) The Reserve Bank of Australia (RBA) is an APP entity under subsection 6(1) of the Privacy Act because it is an agency under section 6(1) of the Privacy Act, and an organisation under section 7A(3) of the Privacy Act for particular acts and practices.
- (2) The RBA has applied under section 73 of the Privacy Act for a public interest determination in relation to the acts and practices set out in section 8 below.

## 8 International money transfer processing

- (1) The disclosure of the personal information about an individual to an overseas recipient by the RBA breaches or may breach Australian Privacy Principle (APP) 8.1 where:
  - (a) the RBA, as authorised to carry out banking business under the *Banking Act 1959* and the *Reserve Bank Act 1959*, is processing an international money transfer (IMT) on behalf of one of its customers, and
  - (b) in order to process the IMT, the RBA discloses personal information of the individual who is the beneficiary of the IMT (beneficiary) to another financial institution that is not in Australia or an external Territory (overseas financial institution) for the purpose of:
    - (i) remitting the relevant funds to the beneficiary's financial institution for payment, or
    - (ii) a communication that is necessary to confirm receipt of the funds or to facilitate processing or return of the funds by the beneficiary's financial institution, and
  - (c) the RBA does not have a contractual relationship with the overseas financial institution that obliges the overseas financial institution to comply with the APPs other than APP 1.
- (2) The acts and practices set out in subsection (1) above may also lead to the RBA breaching other APPs (other than APP 1) by reason of the application of subsection 16C(2) of the Privacy Act if the overseas financial institution does an act, or engages in a practice, in relation to the information that would be a breach of an APP (other than APP 1) if the APPs applied to that act or practice.

## 9 Public Interest

- (1) The public interest in the RBA carrying out the acts and practices set out in section 8 above outweighs to a substantial degree the public interest in adhering to APP 8.1 or the RBA being taken to have breached an APP (other than APP 1) as a result of the acts of practices of the overseas financial institution where:

- (a) it is not practicable for the RBA to rely on the exceptions set out at APP 8.2(a) or APP 8.2(b) when disclosing the personal information,
  - (b) the other exceptions in APP 8.2 are not relevant to the disclosure of the personal information,
  - (c) the RBA takes a number of steps to ensure the security and confidentiality of the personal information disclosed, and
  - (d) the nature of the arrangements that support and facilitate the processing of IMTs means that the RBA is not in a position to take additional steps to comply with APP 8.1 before disclosing the personal information.
- (2) For the purpose of paragraph 9(1)(a) above, it may not be practicable for the RBA to rely on the exception at APP 8.2(a) when engaging in the acts and practices set out in section 8 due to:
- (a) the potentially large number of overseas locations to which the personal information may be disclosed, and
  - (b) the RBA not having any relationship with the beneficiary, or the means to establish that relationship, in order to gain the beneficiary's consent to the disclosure of the personal information.

## **10 Public interest determination**

- (1) Accordingly, by operation of subsection 72(3) of the Privacy Act, while this determination is in force the RBA is taken not to breach section 15 of the Privacy Act if:
- (a) the RBA breaches APP 8.1 when engaging in the acts and practices set out in section 8 above, or
  - (b) an overseas financial institution does an act, or engages in a practice, in relation to the personal information disclosed to it by the RBA in the course of the RBA doing the acts or engaging in the practices set out in section 8 above, that would be a breach of an APP (other than APP 1) if the APPs applied to that act or practice.



**Annexure 3**

**ADI PID**



## Privacy (International Money Transfers) Generalising Determination 2015

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I, Timothy Pilgrim, Privacy Commissioner, make this determination under subsection 72(4) of the *Privacy Act 1988* (Privacy Act).

Dated: 19 February 2015

[signed]

Timothy Pilgrim  
Privacy Commissioner

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### 1 Name of determination

This determination is the *Privacy (International Money Transfers) Generalising Determination 2015*.

### 2 Commencement

This determination takes effect on the day following the day of its registration in the Federal Register of Legislative Instruments maintained under section 20 of the *Legislative Instruments Act 2003*.

### 3 Authority

This determination is made under subsection 72(4) of the *Privacy Act 1988* (Privacy Act).

### 4 Expiry

This determination expires, as if it had been repealed by another instrument, 5 years from the day this determination commences.

### 5 Repeal

The *Privacy (International Money Transfers) Generalising Determination 2014 (No. 1)* (FRLI - F2014L00242) is repealed immediately before this determination commences.

## 6 Definitions

Terms defined in the Privacy Act have the same meanings in this determination.

## 7 Giving the public interest determination general effect

- (1) Noting that *Privacy (International Money Transfers) Public Interest Determination 2015 (No. 1)* applies to the disclosure of personal information to an overseas recipient where:
  - (a) Australia and New Zealand Banking Group Limited (ANZ), as an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (ADI), is processing an international money transfer (IMT) on behalf of one of its customers, and
  - (b) in order to process the IMT, ANZ discloses personal information of the individual who is the beneficiary of the IMT (beneficiary) to another financial institution that is not in Australia or an external Territory (overseas financial institution) for the purpose of:
    - (i) remitting the relevant funds to the beneficiary's financial institution for payment, or
    - (ii) a communication that is necessary to confirm receipt of the funds or to facilitate processing or return of the funds by the beneficiary's financial institution.
- (2) No other ADI is taken to breach section 15 of the Privacy Act while *Privacy (International Money Transfers) Public Interest Determination 2015 (No. 1)* is in force if:
  - (a) the ADI breaches Australian Privacy Principle 8.1 when engaging in the acts and practices described in *Privacy (International Money Transfers) Public Interest Determination 2015 (No. 1)* and set out in subsection 7(1) above, or
  - (b) an overseas financial institution does an act, or engages in a practice, in relation to the personal information disclosed to it by the ADI in the course of the ADI engaging in the acts and practices described in section 8 of *Privacy (International Money Transfers) Public Interest Determination 2015 (No. 1)* and set out in subsection 7(1) above, that would be a breach of an APP (other than APP 1) if the APPs applied to that act or practice.