

**GUIDELINES FOR CONSUMER PROTECTION IN
ELECTRONIC FUNDS TRANSFER SYSTEMS**

Attachment to Paper of
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1 Introduction

1.1 Coverage

These guidelines apply to:

- the issue and use of EFT cards
- funds transfers made through electronic terminals
- pre-arranged automatic transfers of funds from customer accounts
- deposits made at Automatic Teller Machines

1.2 Exceptions

These guidelines do not apply to:

- funds transfers made at a branch or office of any financial institution for a customer of that institution by an employee of that institution
- paper-based transactions of any kind (eg, ones involving cheques, drafts or bills of exchange)
- telephone bill paying services
- automatic transfers of funds to customer accounts
- electronic transfers of funds between financial institutions or between businesses.

2 EFT cards and PINs

2.1 Unsolicited EFT cards

No financial institution shall issue an EFT card (other than a replacement or supplementary card) to any customer or to a person nominated by that customer (a nominee) except pursuant to a request in writing, signed by that customer.

2.2 Delivery of EFT cards by mail or other indirect method

Where EFT cards are delivered to cardholders by someone other than an employee of the financial institution issuing the card, the financial institution shall be required to obtain a signed acknowledgment of receipt from the recipient before issuing that person a PIN or allowing the EFT card to be used to transfer money to or from any of the customer's accounts.

Where other signatures of the recipient are held it shall be negligent of the issuing institution not to check the signature on that receipt with the signature that is held.

2.3 Delivery of EFT cards by employees or agents

Where EFT cards are delivered to customers or nominees directly by the financial institution or by its employees or agents, the institution shall, before delivery of the card, satisfy itself as to the identity of the recipient and shall obtain from the recipient a signed acknowledgment of receipt of the card.

2.4 Signing of EFT card upon delivery

Where there is provision made for the holder of an EFT card to make payment for goods or services by means of a signed credit transfer form (eg, where an EFTPOS terminal is not operating), the recipient shall be advised to sign the EFT card immediately upon delivery.

2.5 Issue of PINs

PINs shall not be delivered to cardholders until the financial institution issuing the card has obtained a signed acknowledgment of receipt for that card.

PINs shall not be delivered to cardholders by any method other than:

(a) by delivery to the cardholder at an office or branch of the issuing institution

or

(b) by delivery to the cardholder by an agent or employee of the issuing institution.

2.6 Statement concerning disclosure of PINs

Where the disclosure of a PIN to another person may result in additional liability being imposed on a cardholder, at the time when the PIN is first delivered, cardholders should be given a statement clearly setting out when that

additional liability will arise, the extent of that liability, and an explicit warning against:

- (a) writing the PIN on the card
- (b) keeping the PIN with the card or in an obvious place (eg, in a wallet or diary)
- (c) knowingly disclosing the PIN to third parties (including family members).

2.7 PIN security

The method of PIN generation and the method of PIN storage and retrieval shall conform with accepted industry practices and with the relevant Australian Standards Association requirements. In addition the following rules shall apply:

- i) PINs shall contain not less than four nor more than six letters or numbers or a combination of both.
- ii) Financial institutions shall allow customers to put a "stop order" on any EFT card that is able to access any account held by that customer and the institution shall not be entitled to debit the customer's account with any amounts obtained through use of the card while the "stop order" remains in force.
- iii) PINs shall be able to be changed at the request of any cardholder.
- iv) PINs shall not be changed except at the request of a cardholder unless for security reasons, or unless the institution considers that there will be losses to its customer or itself if a PIN is not changed.
- v) Where cardholders are able to nominate their own PINs the financial institution issuing the card should prepare a list of combinations which the cardholder ought not to select (eg, birth dates, personal telephone numbers, car registration numbers, family members' names, etc). This list shall be given to cardholders prior to the selection of any PIN.

3 Initial disclosure of terms and conditions

3.1 Timing of disclosure

Disclosure of the terms and conditions of use of EFT cards shall be made before those cards are used (or are capable of being used) to make any electronic funds transfers.

3.2 To whom disclosure shall be made

Disclosure of the terms and conditions of use of EFT cards shall be made to each cardholder and to each customer from whose account funds may be electronically transferred.

3.3 Information to be disclosed

The following information shall be given to each person to whom disclosure must be made:

- i) details of any charges applicable to EFT transactions
- ii) details of the customer's or cardholder's liability for unauthorised use of the EFT card
- iii) details of any restriction on the use of the EFT card (eg, daily/weekly limits or individual transaction limits)
- iv) a description of transactions that may be made with the EFT card (including details of accounts from which withdrawals or transfers can be made and any line(s) of credit which can be drawn against)
- v) a statement (where relevant) to the effect that acceptance of a transaction does not imply that the customer has sufficient funds in the account to cover the transaction, and that where an amount is overdrawn, standard bank charges will apply
- vi) details of those charges
- vii) the procedure for reporting the loss or theft of an EFT card (including the telephone number for reporting lost or stolen EFT cards outside of normal banking hours)
- viii) the procedure for dealing with errors or mechanical failures at ATMs or EFTPOS terminals
- ix) the procedure for reporting an error in a periodic statement
- x) if the contract may be varied by the financial institution, a statement to that effect and an indication of how that variation will take effect
- xi) all other terms of the contract.

4 Continuing disclosure

4.1 Receipts at electronic terminals

At the time of any electronic fund transfer made at an electronic terminal and involving the use of an EFT card, the cardholder shall receive a receipt or notice containing all of the following information:

- i) the amount of the transfer (where the amount includes both an amount payable for goods or services and a cash advance, those amounts and the total amount shall be disclosed separately)
- ii) the date of the transfer, and where possible, the time of the transfer
- iii) the nature of the transfer (eg, "deposit to savings", "transfer from savings to cheque account", "payment from cheque account") (codes may be used only if they are explained on the receipt)
- iv) the numbers, names, and codes that identify the customer and the account from or to which funds are being transferred
- v) the general location of the terminal used to make the transfer and a number or code that enables that terminal to be identified
- vi) the name of any third party to or from whom funds are transferred
- vii) in the case of an ATM (where possible), the balance in the account after the transfer has been made.

4.2 Periodic statements

For any account to or from which transfers can be made through electronic terminals using EFT cards, or in relation to which an automatic payment order is in force, the customer shall be sent a monthly statement (unless the customer requests a different frequency) showing :

- i) in respect of each electronic fund transfer occurring since the previous statement :
 - the amount of the transfer
 - the date the transfer was made and (if different) the date on which it was credited/debited to the account
 - the type of transfer

- where funds are transferred to or from another account held by the customer with the same financial institution, details of that transfer (eg, "transfer from savings account", "transfer to deposit/investment account")
 - the location of any electronic terminal from which transfers have been initiated, and
 - the name of any third party to or from whom funds were transferred
- ii) in respect of any pre-arranged automatic transfer:
- the amount of the transfer
 - the date on which the transfer was made
 - the name of the recipient, or any other code nominated by the customer to identify the transaction
- iii) details of charges, if any, relating to EFT transfers (other than charges for the provision of credit)
- iv) the opening and closing balances for the period
- v) the address or telephone number to be used for enquiries concerning the account or to report any errors in the statement
- vi) the telephone number or the procedure for reporting lost or stolen cards.

5 Request disclosure

5.1 Right to request certain information

A customer shall be entitled to request, and to be given (or sent) all or any of the following information in relation to any account from or to which transfers of funds can be made through an electronic terminal using an EFT card, or in respect to which an automatic payment order to transfer money out of the account is in force:

- the current balance of the account
- a statement showing the dates and amounts of all entries in the account since the previous periodic statement
- copies of periodic statements supplied during the previous twelve months

- a copy of the current charges relating to the use of any EFT facilities, or the operation of the account
- a copy of the current terms and conditions relating to the account or to the use of any EFT facilities.

6 Modification disclosure

6.1 Notice of certain changes

Where pursuant to a term permitting it to do so, a financial institution wishes to vary or modify a contract to:

- i) increase fees or charges relating to the use of an EFT card or an automatic payment facility
- ii) increase the amount of a cardholder's or customer's liability for losses relating to EFT transactions, or
- iii) reduce the daily/weekly or transaction limit applying to the use of an EFT card -

the institution shall give the customer or cardholder one month's notice in writing of the change before it takes effect.

6.2 Notice of other changes

Where pursuant to a term permitting it to do so, a financial institution wishes to vary or modify a contract relating to the use of EFT or automatic payment facilities in other ways than those covered by paragraph 6.1, it shall notify the customer or cardholder of that change not later than the date on which the customer receives the next periodic statement following the date on which the change takes effect.

6.3 To whom notice shall be given

Customers of financial institutions shall receive notice of all changes affecting their accounts.

Cardholders who are not customers of the financial institution shall receive notice of any changes which may affect the use of their card, or under which their liability for misuse of that card by a third person may be increased.

7 Liability of cardholders for unauthorised transfers

7.1 The liability of any cardholder for losses caused by the misuse of any lost or stolen EFT card by third persons shall not exceed the lesser of:

7.7 Liability for consequential losses

"Losses", for the purpose of this paragraph, should include all losses that are reasonably foreseeable and financial institutions shall not attempt to limit their liability to cardholders or customers to direct losses only.

8 Investigations and correction of errors

8.1 Meaning of "errors"

For the purposes of this paragraph, "error" includes the following:

- any unauthorised electronic funds transfer
- any uncompleted electronic funds transfer
- the omission from a periodic statement of any electronic funds transfer to or from an account that should have been included in that statement
- any other mistake (eg, any computing, accounting or printing error) relating to a periodic statement
- incorrect charges relating to electronic funds transfers
- mistakes in receipts issued at electronic terminals (including mistakes as to time, date, amount or location)
- a failure to provide a receipt at an electronic terminal
- mistakes in the amount of cash dispensed at any electronic terminal or any discrepancy between the amount requested, the amount received, and the amount indicated on the receipt
- mistakes concerning deposits at electronic terminals.

8.2 Procedures for investigating errors

All financial institutions offering EFT services shall establish procedures for receiving and investigating complaints from customers or cardholders and shall give appropriate publicity to those procedures.

8.3 Method of complaint

Financial institutions may require that complaints:

- i) be in writing

7.3 Counterfeit, faulty, cancelled, expired or improperly issued cards

as between a cardholder and the issuing institution, all losses relating to cards that are forged, that are faulty, that have expired or been cancelled, or that have been issued to the wrong person, shall be the responsibility of the institution.

7.4 Machinery/software related losses

As between a cardholder and the issuing institution, any losses relating to or caused by faults in EFT machinery or computer software, shall be the responsibility of the institution.

For the purposes of this paragraph, "fault" includes the following:

- failures resulting in underpayments of cash at an electronic terminal or in overpayments to merchants for goods or services supplied
- failures resulting in funds being debited/credited to wrong accounts
- a failure resulting in an authorised transfer not being made (eg, where an amount is debited, but never transferred)
- inadequate security permitting unauthorised access to an EFT system and enabling unauthorised transfers of funds to be made from individuals' accounts without the consent or knowledge of those individuals, or the institution.

7.5 Off-line losses

As between the cardholder and the issuing institution, losses occurring through electronic terminals while those terminals are not connected to the main EFT computer system, or occurring while those terminals are not functioning correctly, which would not have occurred if those terminals had been connected, or had been functioning correctly, shall be the responsibility of the institution.

7.6 Losses caused by insiders

As between a cardholder and the issuing institution, losses that are caused or that arise directly or indirectly (or that are not prevented) by the fraudulent or negligent conduct of employees of the financial institution or of merchants who are linked to the EFT system or of their agents or employees, shall be the responsibility of the institution.

- i) \$50
- ii) the balance of the account (including any pre-arranged credit) or
- iii) the actual loss at the time the financial institution is notified of the loss or theft of the card.

Where a cardholder may have contributed to the loss caused by the misuse of a lost or stolen EFT card by:

- voluntarily disclosing the PIN to the person who misused the card
- writing the PIN on the card, or intentionally keeping a copy of the PIN in uncoded form with the card, or
- unreasonably delaying reporting the loss or theft of the card after discovering that fact (a delay of more than twenty-four hours may be considered unreasonable where there are no apparent reasons for the delay) -

that cardholder's liability for the loss may be increased to an amount that does not exceed the lesser of:

- i) \$250
- ii) the balance of the account (including any pre-arranged credit)
- iii) the losses occurring between the time when the cardholder should have notified the financial institution of the loss or theft of the card (ie, within twenty-four hours of discovering that fact) and the time when the cardholder actually notifies financial institution
- iv) the maximum amount that the cardholder would have been entitled to transfer over the relevant period prior to the notification of the loss or theft of the card, calculated in accordance with the daily, weekly or transaction limits applicable to that cardholder.

7.2 Misuse by agents acting beyond their authority

Where a cardholder has intentionally disclosed the PIN to a third person, and has allowed that person to use his/her card to withdraw money from an account, or to transfer funds, the cardholder shall be responsible for all transactions occurring while that person is in possession of the card with the cardholder's consent.

- ii) identify the customer or cardholder, and the number of the account in respect of which an error is alleged
- iii) identify the nature of the complaint
- iv) indicate the approximate date on which the alleged error occurred, and
- v) indicate the approximate amount of the alleged error.

8.4 Investigation of errors

On receipt of any complaint from a customer or cardholder concerning any error, the financial institution concerned shall assemble whatever information is available to it concerning the error or the transfer to which it relates, and shall investigate the matter.

8.5 Notification of outcome of investigation

Where a customer or cardholder has complained of an error, that person should be notified within twenty-one days of the making of that complaint of the outcome of the investigation and given an indication of what remedial action, if any, will be taken by the financial institution in relation to the complaint.

Where it is not possible for the institution to complete its investigations within twenty-one days, the customer or cardholder shall be notified of that fact and given an indication of the likely delay in investigating the matter, and the reasons for that delay.

8.6 Correction of errors

Where as a result of the investigation of a complaint, a financial institution discovers that an error has been made (whether it was the error complained of or not), the institution shall forthwith correct that error and notify the customer or cardholder of the amount with which that person's account has been debited or credited as a result.

Where the error involves debiting a customer's account with an amount which the institution was not entitled to debit, in addition to correcting the error, the institution should also credit the account with the amount of any fees or charges that would not have been incurred had the error not occurred. If the amount that was debited exceeds \$100 and if the customer has been denied the use of that amount for more than one month, the institution shall also pay interest on that amount at its current deposit rates for that amount for the relevant period.

8.7 Finding no error

Where, as a result of an investigation of a complaint a financial institution concludes that no error has occurred, it shall advise the customer or cardholder accordingly and shall give brief details of the material on which its findings are based.

8.8 Inconclusive findings

If a financial institution investigating a complaint cannot positively establish that a transfer was made in response to the correct PIN/card combination, or if it cannot produce records relating to a transfer about which a complaint has been made, the institution shall not be entitled to debit its customer's account with the amount of that transfer.

8.9 Dissatisfaction with finding

Where a customer or cardholder who complains of an error is not satisfied with the results of the investigation of the matter, that person shall be entitled to request and to be supplied with copies of any material on which the finding was based (including, where available, copies of any photograph taken of the person making the transfer which is the subject of the complaint).

8.10 Charges and enforcement suspended while investigation is in progress

No charges shall be imposed and no enforcement action shall be taken against a customer or cardholder in respect of any amount or matter that is the subject of a complaint, while that complaint is still being investigated.

9 Automatic payments

9.1 Disclosure of non-payment

Where a financial institution has accepted instructions to make regular payments from a nominated account to a nominated payee, and at the time the payment is due to be made, it is not made (whether because of insufficient funds in the customer's account or for any other reason), the institution shall forthwith notify the customer that the payment has not been made, briefly explain the reasons for the non-payment, and indicate whether the customer should arrange for payment to be made separately, whether the institution will make the payment (whether on request or otherwise).

9.2 Notice to payees

Where the failure to make an automatic payment is not due to inadequate funds in the customer's account, and the

instruction to pay has not been countermanded, the financial institution which failed to make the payment shall forthwith notify the nominated payee (or the institution which operates the payee's account) that the payment has not been made and indicate that the customer is not responsible for that non-payment.

9.3 Countermand of automatic payment instructions

Where a financial institution is given at least two business days notice of countermand of an automatic payment instruction, the institution shall not debit its customer's account with the amount of that payment.

9.4 Notice of right of countermand

Customers shall receive notice of the right to countermand automatic payment instructions not later than the date on which the first periodic statement is received following the acceptance of those instructions.

9.5 Liability for losses resulting from failure to make automatic payments

Where a financial institution has failed to make a payment that it has been instructed to make and there are sufficient funds in the nominated account from which to satisfy the payment, the financial institution shall accept the same liability to its customer as if the instruction to pay was a properly drawn cheque which was dishonoured by the financial institution in similar circumstances.

10 Home banking

10.1 Application of guidelines

These guidelines shall apply with all necessary modifications to any home banking or videotex service that enables subscribers or other authorised persons to transfer funds to or from any account.

10.2 Receipts/statements not required

It shall not be necessary for financial institutions providing home banking services to provide receipts or statements relating to those services (unless requested by the subscriber) where information which would normally be disclosed on such receipts or statements is otherwise available to the subscriber as part of the home banking/videotex facility.

10.3 Issue of CINs and transactions codes

The procedures for generating, issuing and preserving security of PINs shall apply with all necessary

modifications to the generation, issue and security of CINs and transaction codes for home banking facilities.

11 Deposits at electronic terminals

11.1 Discrepancies between recorded deposits and amounts received

Where, in relation to a deposit of funds at an electronic terminal there is a discrepancy of more than \$1 between the amount recorded as having been deposited and the amount recorded as having been received, the institution receiving the deposit shall notify the account holder of the difference as soon as possible and shall indicate the actual amount which has been credited to that account.

11.2 Acceptance of deposits at electronic terminals

The security of deposits received at electronic terminals shall be the responsibility of the financial institution accepting the deposit and deposits shall be deemed to be accepted by that institution (subject to correction of amounts) upon the completion of the transaction at the electronic terminal.

Where the institution accepting the deposit is not the institution which holds the depositor's account, the institution accepting the deposit shall be deemed the agent of the other institution in respect of that deposit.

12 General matters

12.1 Audit-trails

All electronic funds transfer systems should generate sufficient records to enable transfers, and the authorisation for transfers to be traced, checked and where an error has occurred, to be identified and corrected.

12.2 Australian Standards Association Guidelines

Where relevant and where they do not conflict with these guidelines, guidelines for the operation of electronic funds transfer systems in Australia prepared by the Australian Standards Association should be followed by all financial institutions operating such systems.

12.3 Penalties on non EFT customers and transactions

Financial institutions shall not seek to promote the use of electronic funds transfer methods in preference to other payment methods by imposing higher charges on customers using such other methods.

12.4 Application of Credit Act 1984

Where the provisions of these guidelines conflict with provisions of the Credit Act 1984 which apply where an electronic funds transfer involves the provision of credit, the provisions of the Credit Act 1984 shall prevail.

12.5 Privacy

The following principles shall apply to all financial institutions in respect of all EFT services which they provide and in respect of all accounts from which electronic funds transfers can be made:

- i) The duties of confidentiality and secrecy that apply to banks in respect of customer records shall apply to all financial institutions.
- ii) No person other than an employee or agent of the financial institution which maintains the account, and the customer or any person authorised by the customer shall have access through any electronic terminal to information concerning that customer's account.
- iii) No information other than that requested by a cardholder or that is necessary to complete a particular transaction or that is required to comply with these guidelines, shall be provided at any electronic terminal.
- iv) Except where it is being operated by an employee or agent of the financial institution concerned, no electronic terminal shall be capable of providing any information concerning a customer's account unless the request for information is preceded by the entry of the correct card/PIN combination for that account.
- v) Except where it is provided pursuant to a legal duty or responsibility, no information concerning the use of EFT services by a customer shall be provided by any financial institution except with the consent of that customer.

12.6 Prohibition of certain terms in contracts

The following terms shall not be included in contracts relating to the use of EFT services or EFT cards:

- i) terms imposing liability on customers other than in accordance with these guidelines
- ii) terms "deeming" customers to have accepted the accuracy of statements concerning their accounts if no objections are raised within a certain period after receipt of a periodic statement

- iii) terms making it a prerequisite to the commencement of any legal proceedings concerning a matter in dispute for that matter to be referred to arbitration
- iv) terms "deeming" notices to have been received by customers or cardholders where those notices have not actually been delivered or sent to those customers
- v) terms limiting liability for losses in relation to a disputed transfer or payment to the amount of that transfer or payment.

12.7 Non-causative exemptions

Financial institutions should not attempt to avoid liability for losses in respect of unauthorised transfers on the basis of conduct by the customer or cardholder which, although strictly in breach of contract, does not relate directly to the cause of the loss, and cannot be shown by the institution to have contributed to the loss.

12.8 Networking arrangements

A financial institution shall not avoid liability to its customers in respect of EFT losses by reason of the fact that it is party to a shared EFT system, and that another party to the system has actually caused the loss or owns the machinery that was responsible for the loss. For the purposes of these guidelines, where a customer or cardholder is able to use machinery owned by someone other than the issuing institution to obtain EFT services or to make electronic funds transfers, the owners of that machinery shall be deemed to be agents of the issuing institution.