



12 March 2009

SCOCA Australian Consumer Law Consultation
Competition and Consumer Policy Division
Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

**“An Australian Consumer Law: Fair Markets — Confident consumers”
Consultation paper released 17 February 2009 (Consultation Paper)**

BPAY Pty Limited (**BPAY**) manages the BPAY Scheme.

Members of the BPAY Scheme comprise over 170 Australian financial institutions including Authorised Deposit-taking Institutions and other types of retail financial institutions.

The BPAY Scheme facilitates the payment of bills and settlement of financial transactions between 15,000 businesses (termed “Billers” in the BPAY Scheme) and **any** Australian consumer with access to an eligible account with one of the more than 170 BPAY Members.

Given its universal coverage and the diversity of both the types of consumers and businesses using the BPAY Scheme, and also the Members of the Scheme, a standard set of rules and procedures is by necessity at the core of the BPAY Scheme process.

In common parlance these arrangements would no doubt be seen as “standard form”. As the terms need to unequivocally bind all participants for the sake of certainty of outcome, they are embodied in fundamental contractual form.

Some of the core safeguards within the BPAY Scheme e.g. the protection against fraudulent activity, the provisions to enable efficient recovery of any mistaken payments, among others, require the BPAY Scheme (either directly or through its Members) to be able to act unilaterally in certain circumstances.

In reading the Consultation Paper, we note that the Standing Committee is considering the introduction of regulations dealing with “standard form contracts” into the proposed new Australian Consumer Law. In particular the Standing Committee is considering provisions that may impair the ability for “suppliers” to act unilaterally under standard form contracts.

We ask that the Standing Committee’s deliberations take note of the centrality of the ability of BPAY to act unilaterally in certain circumstances, to the undoubtedly positive consumer experience embodied in the BPAY Scheme. BPAY considers that it is vital for a balance to be struck to ensure that corporations are able to act unilaterally in certain circumstances so

they can adapt their business practices and arrangements to changes in the regulatory, technological or commercial environment in which they operate.

No doubt, a further communiqué will issue from the Standing Committee after review of the public submissions received in response to the Consultation Paper. BPAY and its advisers will make further representations, as necessary, at that point.

In the meantime, if I can provide any further background or information on the BPAY Scheme, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Andrew Arnott', written in a cursive style.

Andrew Arnott
Chief Executive Officer