

**FACTS AND CONTENTIONS RELIED UPON
IN SUPPORT OF GROUNDS OF AUTHORISATION**

CONTENTS

I.	APCA's CORPORATE STRUCTURE	1
II.	PAYMENTS SYSTEMS	6
III.	APCA's CLEARING SYSTEMS	8
IV.	BECS REGULATIONS AND PROCEDURES	10
V.	SUSPENSION AND TERMINATION -Public Benefit	13

I. APCA

Company Form

APCA was incorporated as a public company on 18 February 1992. APCA is a public company limited by guarantee. This form of public company allows multiple categories of membership with different rights and obligations without the restrictions of share ownership.

The previous shareholding arrangements were removed because the criteria for membership was based on institutional types (eg. the Reserve Bank, each major bank, state and regional banks, building societies and credit unions) which no longer wholly reflected the current kinds of institutions participating in clearing activities. The change to APCA's Constitution and the consequential changes to APCA's clearing system regulations have opened membership to all organisations engaged in the clearing activities APCA manages. For example, Australia Post and American Express are now eligible for membership of the Australian Paper Clearing System. Coles Myer and Cashcard are now members of the Consumer Electronic Clearing System.

Membership

APCA has "owner members", "participating members", and "associate members". APCA has also established three advisory councils.

Each member incurs a guarantee liability on a winding-up of APCA of:

- (a) for owner members \$1,000;
- (b) for participating members \$10,000 per clearing system; and
- (c) for associate members \$10.

Owner members

Membership of a clearing system gives entitlement to owner membership. Owner members must be "constitutional corporations" within the meaning of the Payment Systems and Netting Act 1998 (Cth) and must be either a participant in at least one of APCA's clearing systems or an "industry association" as defined in APCA's Constitution. An industry association is a body nominated by participating members to represent them (the existing owner member industry associations are Credit Union Services Corporation (Australia) Limited and CreditLink Services Limited which together represent most credit unions and Australian Settlements Limited which represents building societies).

Owner members are responsible (through the Board of directors) for the governance of APCA and the oversight/control of APCA's five clearing systems. Any single owner member or group of owner members with at least 5% of "Adjusted NCV" nominates directors. Adjusted NCV is the aggregate of a member's or a group of members' "National Clearing Volume" calculated within a specified period across the three systems in which the member or group has its highest proportions of clearing activity. Provision is also made for representation by the Reserve Bank of Australia, building societies and credit unions.

Participating Members

Participating members are institutions that participate on a day-to-day operational basis in one or more of APCA's clearing systems. Participating members need not be owner members, but are encouraged to join in that capacity.

Separate participating membership exists for each clearing system, so that membership is divided into five classes based on APCA's five clearing systems. Within each of these five classes there may be different categories of participating membership depending on whether a member clears and settles directly or indirectly.

A participating member's rights and obligations on clearing and settling payment instructions are dependent on its particular category of membership. All categories of participants have the same rights to vote at meetings of the relevant clearing system and to appoint a committee of management for that clearing system. Each clearing system has rules in place setting out these rights and obligations, and detailing operating procedures required in the system.

The requirements for participating membership vary from system to system but the eligibility rules common to each system are that a participant must:

- (a) be a body corporate which carries on business at or through a permanent establishment in Australia;
- (b) be able to comply with the applicable Regulations and Procedures and related technical and operational standards;
- (c) agree to pay all applicable fees, costs, charges and expenses;
- (d) not adversely affect the integrity of exchanges or otherwise introduce a significant new risk into the system; and
- (e) not impair overall efficiency of the system.

Clearing system participants that directly settle must meet additional criteria related to their settlement obligation. They must be able to provide finality of payment for the obligations they incur as a result of exchanging payment instructions by the debiting or crediting of an Exchange Settlement Account (ESA) at the Reserve Bank. There are exceptions effectively at the discretion of the relevant management committee. Hence if a member would not introduce material settlement risk, a different settlement method may be sanctioned. For example, the merchant principal member of CECS has been permitted to use its corporate bank account for settlement of its CECS settlements because in the normal course it is a net receiver of settlement payments.

Associate Members

Associate members are persons or organisations, not being owner members or participating members, who are otherwise interested in the functional integrity and efficiency of clearing systems. Associate members have no voting or participation rights but are entitled to attend Annual General Meetings and receive information about the Company and its clearing systems.

Advisory Councils

Advisory councils are comprised of bodies corporate which are not clearers but which are closely interested in clearing because of their commercial involvement in the payments business. Councils were established for the Australian Paper, Bulk Electronic and Consumer Electronic Clearing Systems to assist effective and efficient liaison between clearing system management committees and interested non-clearers on technical and operational matters related to the operation of each of those clearing systems.

The input of the different perspective and expertise that advisory councils bring strengthens the deliberative and decision-making processes in APCA. Decision-making is better informed, more attuned to the interests of all clearing system stakeholders, and more attuned to the changing payments environment. This ensures that parties with a commercial involvement in payments can contribute to the development of an efficient, secure and open set of payments clearing arrangements.

Advisory councils were not established for the High Value and Australian Cash Distribution and Exchange Clearing Systems as it was adjudged that there was an insufficient level of interest.

Role and Decision-Making Structure

APCA is an industry self-regulatory body. It has specific accountability for key parts of payments clearing and settlement arrangements in Australia. APCA's charter, as set out in its Constitution, is to co-ordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures.

APCA does not process payments. It co-ordinates and manages payments clearing arrangements for each of the clearing systems it establishes. Individual institutions are responsible for their own clearing operations, and must conduct their operations according to APCA's rules as set out in the Regulations and Procedures for each of APCA's clearing systems in which they participate

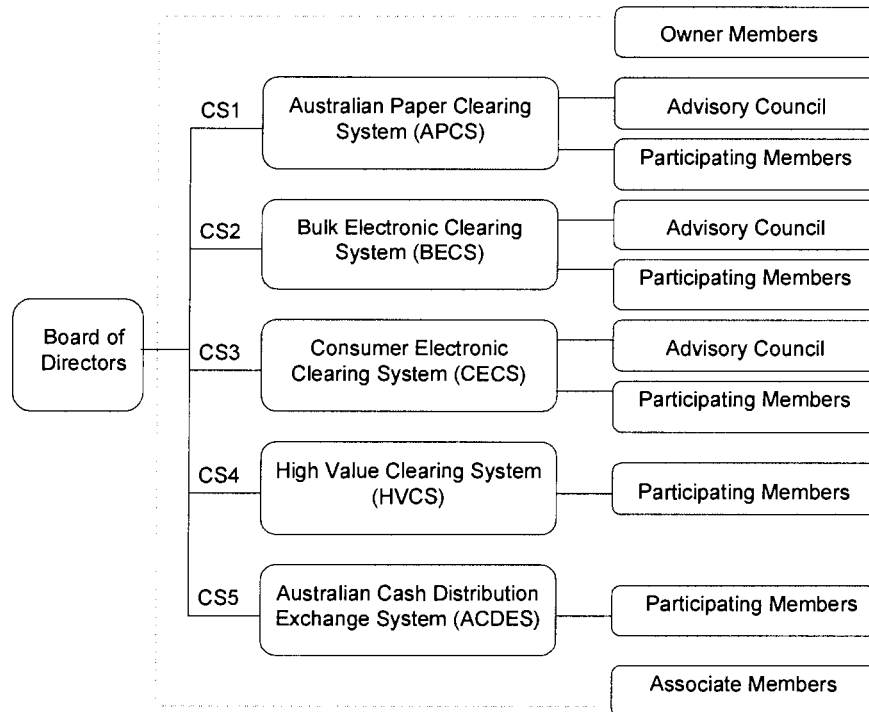
APCA is currently responsible for managing five payments clearing systems. Existing participants in, and new entrants to, each clearing system are provided with a single, clear body of rules and decision making structure governing the conduct of clearing and settling. APCA's five clearing systems are described in Section III.

APCA's charter does not restrict it to its current clearing systems; APCA may establish additional clearing systems if the need arises.

The Regulations and Procedures for each of APCA's clearing systems have the effect of a contract under seal between APCA and each participating member in that system, and between the participating members in that system.

Participating members of each system appoint a committee of management with delegated responsibility for overseeing the operations of the system. Broadly, they are responsible for technical and efficiency standards, operating procedures and policies, supervision of observance of the clearing system rules, assessment of clearing volumes, dispute resolution, and approval of membership applications according to the rules. Participating members are entitled to participate in annual meetings of the relevant systems. These meetings provide a forum for discussion on all matters relating to the operations and management of the system.

APCA CLEARING SYSTEMS MANAGEMENT AND CORPORATE STRUCTURE



List of owner members

ABN AMRO Bank NV	HSBC Bank plc
Adelaide Bank Limited	ING Bank (Australia) Limited
AMP Bank Limited	JP Morgan Chase Bank, NA
Arab Bank Australia Limited	Macquarie Bank Limited
Australia and New Zealand Banking Group Limited	Mizuho Corporate Bank Limited
Australian Settlements Limited (ASL)	N.M. Rothschild & Sons (Australia) Limited
Bank of America National Association	National Australia Bank Limited
Bank of China	Oversea-Chinese Banking Corporation Limited
Bank of Queensland Limited	Reserve Bank of Australia
Bank of Western Australia Limited	Royal Bank of Canada
Barclays Bank plc	St. George Bank Limited
Bendigo Bank Limited	Standard Chartered Bank
Citibank Pty Limited	State Street Bank & Trust Company
Commonwealth Bank of Australia	Suncorp-Metway Limited
Credit Union Services Corporation (Australia) Limited (CUSCAL)	The Bank of Tokyo-Mitsubishi Limited - Australian Branch
CreditLink Services Limited	United Overseas Bank Limited
Deutsche Bank AG	Westpac Banking Corporation
HSBC Bank Australia Limited	

Board of Directors

Voting directors of APCA are nominated by owner members as previously noted.

Directors hold office for 2 years. Provision is made for the appointment of alternate directors.

The chairman is a non-voting director and holds office for two years from the date of appointment, and may be re-appointed.

A nominee director may not simultaneously hold the office of chairman of the company. The company's policy since October 1999 has been to appoint an independent chairman from outside APCA's membership.

The Chief Executive Officer of APCA is also a non-voting director.

Voting

Voting at management committee level is proportionate to clearing, with a simple majority of over 50% of eligible votes required to pass a resolution. Voting at the Board and General meeting level is more complex. Voting is partially related to clearing volume, while however, preserving important checks and balances that prevent particular groupings having a predominant voting position. Clearing volume for this purpose is the simple average of a member's percentage share of the transaction volume in each of APCA's clearing systems (for ACDES it is an average volume and value). Fifty votes are given to those members or groups of members with 5% and up to 20% of clearing volumes. Those with less than 5% have a corresponding reduction in votes below 50. Those with more than 20% gain extra votes up to a maximum of 100 votes at 30% of clearing volume. Two thirds of eligible votes is required to pass a normal resolution.

II. PAYMENTS SYSTEMS

Payment Services

A payment is the transfer of a financial asset, of the kind generally used as a medium of exchange, from one person to another. Such assets are generally cash or obligations drawn on organisations which, in the normal course of their business, provide the means for their customers to transfer value to third parties.

In Australia, banks, building societies, credit unions, issuers of charge-cards, travellers cheques and money orders provide the means for individuals and businesses to transfer value, one to another. In that sense they all provide payment services.

Cash payments are still important in volume terms. But non-cash means of making payments predominate in value terms.

The payments system is the institutional infrastructure which carries payment messages and transfers funds from one party's account to another's. It underpins commerce and is at the core of the financial system.

A payments system comprises payment instruments and delivery mechanisms. A payment instrument is the form that a payment message takes (eg. cheque, debit card) and is the means by which one party transfers value to a third party. Such a message is typically a request by one party (such as the drawer of a cheque) to another party (the drawee of the cheque) to pay a certain sum to a third party (the payee).

A delivery mechanism is the means by which payment messages are carried from one point within the payments system to another.

Where both parties to a payment transaction maintain accounts with the same organisation, payment arrangements are relatively simple. The organisation debits the paying customer and credits the receiving customer. Where the parties to the payment instruction are customers of different organisations, a process is needed for both organisations to reflect the change in their customers' accounts and for value to pass between those organisations. This process, which is central to a well-functioning payments system, is called clearing and settling.

The need to clear and settle payment transactions between organisations is generated by the use of payment instruments which enable value to be transferred to third parties generally rather than only to third parties who are also customers of the organisation issuing the instrument. Cheques and debit cards issued by banks, building societies and credit unions are examples of such payment instruments.

The provision by an organisation to its customers of a payment instrument which restricts the transfer of value to third parties who are also customers of the same organisation (within what can be called "closed systems") will not, as a general rule, generate the need to clear and settle, no matter how extensive is the use of that payment instrument. Charge cards issued by organisations such as American Express and Diners come into this category.

Clearing

Clearing is the cross-institutional exchange of individual payment messages for the purposes of obtaining settlement. It entails sorting, routing and exchanging payment instructions, verifying the integrity of the instructions and the accuracy of the sums involved, correcting the sums for errors and other adjustments and finally, determining net amounts which, once paid, will settle any resultant debt between the institutions involved.

Clearing in Australia primarily falls under APCA's rules.

Settlement

Settlement is the exchange of value between organisations providing payment services for the purpose of providing finality of payment for the obligations arising out of payments clearing. As a general rule, settlement between financial institutions for their obligations arising from domestic clearing of payment messages is effected through transfers of balances held by those institutions with the central bank of the country concerned.

Central bank money is generally regarded as the only medium that provides finality of payment; in other words payment which is free of default risk.

“One of the major roles of central banks is to provide a monetary asset free of default risk that can be used for making inter-bank transfers and settling inter-bank obligations.”*

Settlement between financial institutions in Australia is achieved through transfers of their ESA balances held with the Reserve Bank of Australia.

For transactions encompassed by the Bulk Electronic Clearing System (and Australian Paper and Consumer Electronic Clearing Systems and the High Value Clearing System when in fallback mode) settlement is deferred, taking place on the morning of the next business day. Deferred settlement systems carry the inherent risk of an institution paying away and then not receiving due settlement.

Procedures in place to deal with a situation where an institution fails to settle are contained within APCA's applicable clearing system Regulations. These Regulations have been approved by the Reserve Bank under the Payment Systems and Netting Act 1998 (Cth) and for APCS also under the Cheques Act 1986 (Cth).

* *Central Bank Payment & Settlement Services with Respect to Cross Border and Multicurrency Transactions.*, Bank for International Settlements, 1993.

III. APCA'S CLEARING SYSTEMS

Australian Paper Clearing System

The Australian Paper Clearing System (APCS) was established in December 1993. This system has the role of co-ordinating, managing and ensuring the implementation and operation of policies and procedures for the conduct and settlement of exchanges of paper-based payment instructions, ie. primarily cheques, between its participating members.

While cheques remain important, their use continues to gradually fall. Nonetheless, there are still more than 2.2 million cheque transactions each day.

In February 2005, the Australian Competition and Consumer Commission ("the Commission") issued a favourable determination authorising the suspension and termination provisions in the APCS Regulations for a further period of 5 years with respect to the Trade Practices Act prohibitions on exclusionary provisions and contracts, arrangements and understandings that may substantially lessen competition.

Bulk Electronic Clearing System

The Bulk Electronic Clearing System (BECS) was established in December 1994. This system has the role of managing the conduct of the exchange and settlement of bulk electronic low value transactions in similar fashion to that applying to paper-based payment instructions in the APCS.

BECS currently covers direct entry payments. The direct entry system allows approved organisations, now numbering over 210,000¹, to make arrangements with their financial institution to debit and/or credit large numbers of customer accounts on a regular basis. Organisations can be credit users in the system, making payments (direct credits), or debit users receiving payments (direct debits).

The direct entry system has had consistently strong growth for some years.

Consumer Electronic Clearing System

The Consumer Electronic Clearing System (CECS) was established in December 2000 following a favourable determination issued by the Commission in August 2000.

In CECS the management of clearing primarily involves setting minimum standards to protect and enhance the security, integrity and efficiency of ATM and EFTPOS interchanges. Currently, Australia has more than 22,500 ATMS and 503,000 EFTPOS terminals.

High Value Clearing System

The High Value Clearing System (HVCS) was established by APCA in 1997 as part of the more general development of Real Time Gross Settlement (RTGS) in Australia.

¹ APCA database of direct entry users as at December 2004.

The mechanism for HVCS participating members exchanging payments with each other is the SWIFT Payment Delivery System (PDS). The SWIFT PDS uses SWIFT's FIN-Copy product (configured in Y mode) to exchange payment messages between its participating members.

Australian Cash Distribution and Exchange System

The Australian Cash Distribution and Exchange System (ACDES) governs the exchange and distribution of wholesale cash. ACDES was established in December 2001.

Until August 2001, notes and coins not in circulation were owned and managed by the Reserve Bank and held in more than 80 armoured carrier depots around Australia. The establishment of ACDES followed the decision of the Reserve Bank to transfer the ownership and management responsibility for this cash to a number of banks.

IV. BECS REGULATIONS AND PROCEDURES

The BECS Regulations encompass membership criteria, suspension and termination provisions, representation arrangements, fees, the management committee for the system, the advisory council, member meetings, settlement and dispute resolution. The BECS Procedures encompass the rules for conducting exchanges, file specifications and standard forms. No further comment will be made on the Procedures. They are technical in their nature and are directed to ensuring that exchanges are conducted efficiently and securely. Some essential and important features of the Regulations are drawn out below.

Consideration of the termination and suspension provisions of the Regulations and their public benefit is covered in a separate section (Section V) because these are the only provisions for which authorisation is sought. APCA's assessment is that no other provisions of the Regulations are at material risk of breaching the Trade Practices Act. Membership of BECS is voluntary. To the extent membership is regarded as being necessary for business reasons, the membership criteria are inclusive and conditions of membership are solely directed to protecting the efficiency and integrity of the system.

Regulations

Membership Criteria

Entitlement to membership is now functionally based. Prior to recent amendments, members had to be "providers of payment services" which essentially meant being a deposit taking institution. Now members have to be "senders" or "issuers" (or represent and settle for such bodies) of payment instruments cleared under the BECS rules. This represents a complete opening of membership in line with APCA's revised Constitution.

There are two membership categories. Tier 1 Members must directly exchange items with all other Tier 1 Members and clear and settle directly using an ESA or by such other means as recommended by the management committee and determined by the board. Additionally, a Tier 1 Member will be taken to directly exchange items with other Tier 1 Members where it uses the services of any other person to directly exchange items electronically for that Tier 1 Member. A Tier 2 Member clears and settles through a representative. Tier 1 Members must be prudentially supervised or otherwise be of undoubted standing to protect the integrity of the system.

Representation Arrangements

A Tier 2 Member must appoint a Tier 1 Member to receive items on its behalf and settle for the obligations incurred as a result of the exchange of items addressed to or initiated by the Tier 2 Member. The commercial relationship between the two parties is a matter for them and is not covered in BECS rules. However, the BECS rules do specify particular requirements for a representation arrangement to protect the efficiency and integrity of the system.

Fees

An entrance fee of \$5,000 is levied on all new Members of BECS to recover the Company's administrative costs. This fee is significantly less than the fee of \$32,500 that applied to incoming Tier 1 Members prior to the recent amendments to the Regulations.

An operational change fee of \$10,000 (indexed from the commencement date of the system) is levied on Members that require other Members to deliver items to a new BSB address. This fee is set to partly recover the cost incurred by Members in changing their systems to recognise a new BSB. It is used to lower the operating fees charged by APCA.

APCA levies a monthly operating fee on each Tier 1 Member to cover its costs of administering the system. A proportion of these costs is levied equally among Members and the balance in proportion to transaction volume. Each Member also pays an annual fee to APCA of \$1,000 as a contribution to covering administrative costs.

Management Committee

Under Board delegation, a management committee oversees BECS as noted in Section I above.

The Committee is chaired by a director nominated by the Board under Article 8.3(a) of the Constitution. Committee members represent a number of banks that each have more than 5% of transaction volume and are therefore entitled to individual representation. Two members represent constituencies of banks that collectively have more than 5% of transaction volume. Credit unions and building societies are represented by industry bodies as of right and the Reserve Bank is represented as of right. The chairman of the BECS Advisory Council also attends meetings of the management committee usually with one other member of the Advisory Council. There is provision for two discretionary seats to be allocated by the Board to accommodate Members of BECS that do not have 5% of transaction volume and which cannot find representation through a constituency.

Each member of the management committee has a vote in proportion to the transaction volume of the BECS Member or Members that he/she represents. More than 50% of eligible votes is required to pass a resolution. Any matter can be referred to the Board. All changes to the Regulations as distinct from Procedures must be approved by a meeting of BECS Members and by the Board.

Advisory Council

APCA established the BECS Advisory Council in 1999. Advisory Councils have available to them the same information as do management committees except for rare occasions when a particular piece of information is declared to be confidential by the chairman of the management committee.

Advisory Councils meet regularly and determine their workplans and agendas in consultation with the applicable management committee. Normally two members of the management committee attend Advisory Council meetings at the invitation of the Councils. Currently the BECS Advisory Council draws its members from processors/switches, technology providers, message standards organisations, payroll bureaux and government and commercial users of BECS.

Members Meetings

At least one meeting of all BECS Members must be held each year.

Settlement

Tier 1 Members are required to provide finality of settlement through an ESA at the Reserve Bank or through another means recommended by the management committee and approved by the Board.

Failure to Settle

Failure to settle rules were put in place in August 2004 following approvals by the Reserve Bank pursuant to the Payment Systems and Netting Act 1998 (Cth) and the Cheques Act 1986 (Cth).

Disputes

A dispute between Members or between the Board/management committee and a Member, which has application to the BECS Regulations or Procedures, can be referred to the management committee or the Board for determination and allocation of costs.

V. SUSPENSION AND TERMINATION

Suspension and termination provisions in similar terms are included in all of APCA's clearing system regulations. They are effectively last resort steps. They have not been used or specifically contemplated since APCA's establishment. They are however necessary to safeguard the integrity and efficiency of payments clearing and settlement. The suspension and termination provisions in BECS are currently authorised. They form part of the BECS Regulations authorised by the Commission in 1994 and have not been changed in the current amended BECS Regulations. The circumstances that supported their previous authorisation and the rationale for their authorisation have not changed.

The suspension and termination provisions (Regulations 4.24 to 4.35) if invoked have the effect of excluding the institution concerned from participating in the system. Note this does not per se exclude the institution concerned from the process of clearing items or settlement but the institution would need bilateral arrangements with other participants outside of BECS in order to do so. Potentially an excluded institution might have difficulty engaging other participants. To that extent exclusion from the system would have an adverse impact on the institution concerned. It is for this reason that APCA considers that authorisation is a prudent course to adopt.

Suspension can occur only in a limited range of circumstances (refer to Regulation 4.24(a) to (f)). Two of these are if a Member's prudential supervisor requests suspension or if the Member agrees to suspension. The circumstances where APCA can unilaterally suspend a Member are as follows:

- (a) if a Member no longer satisfies the membership criteria;
- (b) during a period when a Member has operational difficulties preventing it from discharging its obligation under the rules (i.e., when a Member is suffering a "Disabling Event");
- (c) if a Member becomes insolvent or fails to settle its clearing obligations; and
- (d) if a Member breaches relevant provisions of the Constitution, the Regulations or the Procedures and does not rectify the breach or provide a satisfactory explanation within a prescribed time period.

In lieu of suspending a Member, the management committee may impose conditions on the membership of that Member, including changing the capacity in which that Member may participate in the System, or may vary any provision of the Procedures in relation to the exchange of Items addressed to or drawn on that Member (refer to Regulation 4.27). The rights and obligations of that Member will then be subject to any such conditions or variations. The management committee may at any subsequent time vary or revoke any such conditions or variations.

Termination of membership (refer to Regulations 4.30 to 4.32) can follow suspension provided any breach of the rules has not been remedied, the Board has consulted with the Member's prudential supervisor, if such a supervisor exists, and the Member has been provided with the opportunity to make submissions to the Board regarding termination. Otherwise termination occurs only as a result of a Member resigning, becoming insolvent, or ceasing to exist.

Public Benefit

The scope of the application of the suspension and termination provisions is limited to protecting the efficiency and integrity of BECS and by extension the integrity of bulk electronic clearing and settlement. Clearing and settlement as explained in Section II is central to a well-functioning payments system. It is therefore in the public interest to maintain the efficiency and integrity of all aspects of clearing and settlement. APCA's bulk electronic clearing system – BECS – can play its part effectively only if its Members operate in accordance with APCA's Constitution and the BECS Regulations and Procedures. Suspension and termination provide 'last resort' sanctions to ensure compliance.

Without these sanctions, the efficiency and integrity of BECS would be diminished and the confidence of members and users of BECS would be reduced.

By comparison, the detriment is not great and is clearly outweighed by the public benefit. Although a member who is suspended or terminated may be adversely affected as indicated above, there are a number of safeguards over the exercise of the suspension and termination powers, including the possibility of a review by the APCA Board of any suspension and the involvement of the APCA Board in any termination, as well as the ability of the Reserve Bank to monitor the performance of the management committee and the Board through its representation on both bodies.

In all the circumstances, therefore, the relevant suspension and termination provisions result, or are likely to result, in such a benefit to the public that they should be authorised.