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# Application for authorisation by the Australian Banking Association on behalf of its member retail banks

Parties to the proposed conduct

**1 Provide details of the applicants for authorisation, including:**

**1.1 name, address (registered office), telephone number and ACN**

**The Australian Banking Association (ACN 117 262 978)**  
Level 18, 6 O'Connell Street. Sydney 2000 Ph: (02) 8298 0417  
PO Box H218, Australia Square, NSW 1215

**1.2 contact person's name, position, telephone number and email address**

**ABA**

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**Legal representatives**

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+61 477 477 027

**1.3 a description of business activities**

The ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

For further information, please see section 2 of the submission in support of application for authorisation by the Australian Banking Association on behalf of its member retail banks (**Submission**).

**1.4 email address for service of documents in Australia.**

[Chris.Taylor@ausbanking.org.au](mailto:Chris.Taylor@ausbanking.org.au)

**2 If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:**

The ABA and the Member Banks listed in Annexure 1 of the Submission can each be contacted via the ABA's legal representatives:

## The proposed conduct

### 3 Provide details of the proposed conduct, including:

#### 3.1 a description of the proposed conduct and any documents that detail the terms of the proposed conduct

Please see section 3 to the Submission.

#### 3.2 the relevant provisions of the *Competition and Consumer Act 2010 (Cth)* (the Act) which might apply to the proposed conduct:

- cartel conduct (Division 1 of Part IV);
- contracts, arrangements or understandings that restrict dealings or affect competition (s 45); and/or
- concerted practices (s 45).

#### 3.3 the rationale for the proposed conduct

Please see section 4.2 and 4.3 of the Submission.

#### 3.4 the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.

Please see section 3.2 and 3.4 of the Submission.

### 4 Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.<sup>1</sup>

We refer to our email to the L Camilleri and A Hilton (ACCC) of 30 June 2023 and confidential attachment.

### 5 Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

Please see sections 4 and 5 of the Submission.

## Market information and concentration

### 6 Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

Broadly, the Member Banks compete for the provision of retail banking products and services.

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<sup>1</sup> Applicants are encouraged to consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct for which authorisation is sought.

- 7 Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

Broadly, Member Banks are active in the banking industry.

- 8 In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

The ABA submits that this is not a relevant consideration for purposes of assessing this application.

- 9 In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:**

**9.1 existing competitors**

likely entry by new competitors

**9.2 any countervailing power of customers and/or suppliers**

any other relevant factors.

Please see section 5 of the Submission.

## **Public benefit**

- 10 Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

Please see section 4 of the Submission.

## **Public detriment (including likely competitive effects)**

- 11 Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

Please see section 5 of the Submission.

## **Contact details of relevant market participants**

- 12 Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.**

The relevant industry associations are:

- **Customer Owned Banking Association**

+61 2 8035 8400

Suite 403, Level 4  
151 Castlereagh Street  
Sydney NSW 2000

- **Australian Payments Network**

+61 2 9216 4888

Suite 2, Level 17,  
Grosvenor Place  
225 George Street  
Sydney NSW 2001

- **Australian Payments Plus**

+61 2 9646 9222

255 George Street  
Sydney NSW 2000

- **Australian Financial Markets Association**

+61 2 9776 7900

Level 25, Angel Place  
123 Pitt St  
Sydney NSW 2000  
Australia

### **Additional information**

- 13 Provide any other information or documents you consider relevant to the ACCC's assessment of the application.**

Please see the Annexure to the Submission.

## Declaration by Applicant

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

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Signature of authorised person



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Vanessa Beggs

Chief Executive Officer (Acting)

This 10<sup>th</sup> day of July 2023



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# **The Australian Banking Association (ABA) on behalf of its ABA member banks**

Application for authorisation

10 July 2023

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## 1 Application for authorisation

The ABA seeks authorisation on behalf of its member banks (**Member Banks**) to participate in discussions for the purpose of developing potential industry initiatives to prevent, detect, disrupt and respond to scams affecting individual and small business customers and to develop and in principle agree to the content of a standard reflecting these initiatives, which agreement would be subject to a separate ACCC authorisation.

For the avoidance of doubt, this application relates to development of the initiatives and a draft industry standard only. The ABA will seek a further authorisation for implementation of the standard.

The potential for any anti-competitive effect, given the limited scope of the conduct is negligible. However, there is a technical risk that development of the initiatives and the standard, absent authorisation, may give rise to contravention of sections 45AF, 45AG, 45AJ, 45AK and/or 45 of the CCA. Authorisation is therefore sought to allow Member Banks to have discussions and exchange information necessary to develop a scam prevention, detection and disruption initiative that is as robust, effective and broad-reaching as possible.

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## 2 Applicants

### 2.1 ABA

The ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA benefits from the active participation of 20 member banks in Australia (**Member Banks**) and works with government, regulators and other stakeholders to ensure Australia's banking customers continue to benefit from a prudentially stable, competitive and accessible banking industry.

### 2.2 Applicants

The ABA seeks authorisation on behalf of:

- its Member Banks (listed in **Annexure 1**) and their subsidiary banks; and
- any banks that may become ABA members in the future,

(together, the **Applicants**).

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## 3 Proposed conduct

### 3.1 Description of conduct

The ABA seeks ACCC authorisation for the Applicants to explore and develop initiatives for inclusion in a banking industry standard to prevent, disrupt and respond to scams affecting individual and small business customers (**Industry Standard**). The ABA anticipates that development of the Industry Standard will require:

- discussions and exchange of information between the Applicants regarding matters directly necessary for purposes of developing the Industry Standard, including:
  - the scope and provisions of the Industry Standard eg how Member Banks can ensure that there is an effective operational framework for protecting consumers against increasingly sophisticated scams that pose a high risk to their financial wellbeing;
  - the role(s) of Member Banks in identifying, reporting, disrupting and responding to scams in coordination with other sectors, regulators, government, law enforcement or other relevant stakeholders;
  - the role(s) of suppliers of services who have a key role to play in scam disruption in relation to the Industry Standard including financial services providers, payment platforms and service providers, digital platforms and telecommunications providers;
  - scam activity, including the volume of scam activity, victims, types of scams carried out and how they are carried out;
  - the nature and extent of financial, reputational and other impacts of scams on individuals and small businesses (including customers of the Applicants);
  - existing measures deployed by Applicants to prevent, disrupt and respond to scams and the effectiveness of those measures;
  - identification of potential scam perpetrators and actions that may be taken to monitor and raise awareness of their activities;
  - potential industry measures to prevent, detect, disrupt and respond to scams – for example, preventing or delaying payments to specific high-risk businesses, accounts or destinations associated with scam activity;
  - the impact of current and potential measures on the Applicants' businesses;
  - options for the adoption of a payee verification solution or solutions, and the potential providers of that solution – to ensure that consumers are more aware of who they are making transfers to, and to reduce the number of scams that rely on the payer not knowing who they are paying come to fruition;
  - information required to prepare a separate application to the ACCC for authorisation of the Industry Standard and respond to any queries that the ACCC may have;
  - responses and submissions to any consultation undertaken by government related to scams; and
- an agreement in principle between the Applicants on the form and content of the Industry Standard, subject to a separate ACCC authorisation.

(the **Proposed Conduct**).



### **3.2 The term of the authorisation sought**

The ABA seeks authorisation for the Proposed Conduct for a period of 12 months from the date on which authorisation is granted. This period reflects the time that the Applicants consider will be required to develop the Industry Standard in an expedited timeframe, but also takes into account the complexity of developing a robust, effective and systemic scam disruption standard that is capable of implementation by a range of participants with differing resources, capabilities and customer profiles. This includes potentially engaging with suppliers and vendors of services that are key to scam prevention. This will also allow time for effective engagement with the ACCC and Government, and other interested parties such as consumer groups, for the development of the Industry Standard and other related scam disruption measures.

This period does not include the period for which the Industry Standard will be in place. As mentioned above, the ABA intends to seek a further authorisation for the purpose of implementing the Industry Standard at the appropriate time.

### **3.3 Counterfactual**

Absent authorisation, Members Banks would not be able to meaningfully and effectively discuss and develop an Industry Standard to prevent, detect and disrupt scams, without exposing themselves to potential competition law risks.

The Federal Government has recently announced that a legislated cross-industry Code will be introduced for banks, telcos, social media platforms and others in the near-term. The ABA considers that this will take some time to develop. The Industry Standard will be capable of implementation as soon as the Industry Standard is authorised by the ACCC (by way of a separate application), preventing avoidable losses to customers in the interim period prior to the legislation of the cross-industry code.

Member Banks have also been encouraged by government to develop the Industry Standard because a robust and well considered banking industry standard can form the building blocks of the legislated cross-industry code.

To the extent Member Banks are not able to engage in effective, multilateral discussions now, this would impede the development of the Industry Standard and could potentially delay the development of a legislated cross-industry code. In addition, the consultation period in respect of a cross-industry code could be prolonged as Member Banks may not, absent authorisation, be able to effectively coordinate on a response to government's consultation on the legislated code.

### **3.4 Urgency requires interim authorisation**

The ABA also applies for interim authorisation for the period up until the ACCC has granted final authorisation.

The ABA and Member Banks have taken into account the feedback received from the ACCC in its response to the Draft Australian Banking Association Scams Standard and their parallel engagement with the Federal Government in relation to the urgency with which the Industry Standard must be developed. The ABA and Members Banks

acknowledge the detriment caused by scams on a daily basis, the importance of finding robust and meaningful solutions and urgency with which action needs to be taken.

The ABA and Member Banks stand ready to begin work on an Industry Standard that has a meaningful impact on the prevention, detection and disruption of scams as soon as possible and therefore require urgent interim authorisation to commence meaningful engagement (which they have not been able to do given the potential competition law risks).

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## 4 Public benefits

### 4.1 The proliferation of scams in Australia

Scams are a form of economic crime affecting millions of Australians each year. The ACCC's 2022 Targeting Scams reported losses of over \$3.1 billion in 2022, an increase of 79% compared to the previous year. The ACCC considers there is likely an underestimate of actual losses<sup>1</sup> and the ABA also notes the current lack of a single comprehensive source of data. The ACCC has repeatedly highlighted the need for multiple sectors to take action, with banks and payments providers playing a key role.

In 2022, Australians' losses to scams increased, with average losses up 54% to almost \$20,000.<sup>2</sup> These can be life-changing losses and the process of recovery from a high loss scam is long and difficult.

The ACCC has reported trends towards more sophisticated scams such as investment scams where scammers impersonate Australian companies to promote initial public offerings, often coinciding with the legitimate company's listing, and impersonation scams where scammers replicate the interface and branding of trusted brands or government organisations to extract personal information or request a transfer of funds.<sup>3</sup>

According to ASIC's Report 761 in April 2023 (**ASIC Scams Report**) which reviewed the scam related activities of the four major Australian banks:<sup>4</sup>

- Scams are increasing in volume and sophistication, causing significant financial and other harm to Australian consumers, including the most vulnerable people in Australia; and
- more than 31,700 customers of the four largest Member Banks collectively lost more than \$558 million through scams between 1 July 2021 and 30 June 2022. This was an increase of 49% in customers and 50% in financial losses compared to the previous 12-month period.

### 4.2 Steps taken to date to combat scams are not sufficiently effective

Member Banks are already individually implementing prevention, detection and disruption initiatives to combat scams and recover losses – the ABA understands Australian banks

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<sup>1</sup> Australian Competition & Consumer Commission, *Targeting scams 2022: Report of the ACCC on scams activity 2022* (April 2023), p 6. Available at: <https://www.accc.gov.au/system/files/Targeting%20scams%202022.pdf>.

<sup>2</sup> Australian Competition & Consumer Commission, *Targeting scams 2022: Report of the ACCC on scams activity 2022* (April 2023), p 6.

<sup>3</sup> *Ibid*, [3.2].

<sup>4</sup> Report 761: Scam prevention, detection and response by the four major banks April 2023.

spent approximately \$19 billion on IT systems in 2021 to build system resilience, including against scams.<sup>5</sup> Though some joint initiatives are in place between Member Banks, these initiatives are focused on reporting scams that have already been carried out, and these initiatives do not have industry-wide or cross sectoral coverage. For example, the Australian Financial Crimes Exchange (**AFCX**) platform launched by the four major banks and operated by an independent body enables the reporting of fraudulent transactions between member banks.

Member Banks have undertaken their own initiatives, including:

- NameCheck applies advanced technology to support a customer making a first time payment. It provides a customer with an indication of whether the account name entered by the customer matches a BSB and account number;<sup>6</sup>
- Westpac Verify, which alerts customers to a potential account name mismatch for payments to a new BSB and account number via the New Payments Platform;<sup>7</sup>
- NAB's removal of links in text messages, to make it as simple as possible for customers to know whether a message from NAB is legitimate and encourage them not to click on links;<sup>8</sup>

Members have also been involved in several joint initiatives with regulators.

- in 2018, the Scam Technology Project was launched in collaboration with Australian Communications and Media Authority (**ACMA**), the ACCC and the Australian Cyber Security Centre upon request of the Minister for Communications and the Arts to address the proliferation of scams over the telecommunications network – the resulting *Reducing Scam Calls Code* (among other measures), is estimated to have led to a 50% reduction in phone scam reports to the ACCC in 2022 but telephony still accounts for a majority of scams cases reported to banks and ACCC;
- in 2021, AusPayNet established the Economic Crime Forum to bring together law enforcement, intelligence agencies, regulators and key stakeholders in the banking and payments ecosystem (including the ABA) to share intelligence on emergence threats, collaborate on joint responses and tactical initiatives through quarterly meetings – the Forum's current priority is scams;<sup>9</sup>
- the Fraud Reporting Exchange (**FRX**) platform launched in May of this year by the four major banks and operated by an independent body enables the reporting of fraudulent transactions between member banks.

Both the individual and joint initiatives of banks have supported some improvements. Notwithstanding these initiatives, there is clearly a need for greater cooperation among Member Banks to respond to and address the increasing seriousness of the situation.

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<sup>6</sup> Commonwealth Bank, *NameCheck*. Available at: <https://www.commbank.com.au/support/security/namecheck.html>.

<sup>7</sup> Westpac, *More scam protection for customers with the launch of 'Westpac Verify'* (5 March 2023). Available at: <https://www.westpac.com.au/about-westpac/media/media-releases/2023/5-March/>.

<sup>8</sup> National Australia Bank, *NAB removes links in text messages to protect customers* (7 July 2023). Available at <https://news.nab.com.au/news/nab-removes-links-in-text-messages/>.

<sup>9</sup> Australian Payments Network, *The Economic Crime Forum*. Available at: [https://www.auspaynet.com.au/sites/default/files/2022-11/The\\_Economic\\_Crime\\_Forum.pdf](https://www.auspaynet.com.au/sites/default/files/2022-11/The_Economic_Crime_Forum.pdf).

In the ASIC Scams Report, ASIC found that banks could do more to protect Australians for the financial loss of scams, including because:

- the overall approach to scams strategy and governance was highly variable and, overall, less mature than expected;
- while there are examples of emerging good practice, there is a great deal of variability in steps taken by banks to help prevent their customers from becoming the victim of a scam;
- there are gaps and inconsistencies in the abilities of the banks to detect and stop scam payments—for example, the ability to hold payments in real-time differed between banks and depended on the specific payment channel and network involved.

#### 4.3 Industry collaboration is required and has manifest public benefits

Scams originate from and are implemented throughout the systems of all participants in the payments ecosystem. Allowing collaboration between the Member Banks to develop the Industry Standard will ensure there will be a robust, effective and fit for purpose mechanism in place to:

- enable efficient exchange of information and coordination of processes to prevent and detect scams and protect consumers from scams and identity misuse;
- articulate the roles and responsibilities of each participant in the Industry Standard and the consequences for non-compliance with their obligations; and
- improve the ability of customers to report and recover losses from the responsible entity in a timely manner and for the responsible entity to assist the customer to address their losses.

Scamwatch data indicates that the most common place a victim will report a scam is to their bank.<sup>10</sup> Member Banks recognise their critical role in preventing, detecting and disrupting scams. Ensuring that Member Banks can meaningfully communicate and co-operate for the purpose of developing the Industry Standard is crucial to fulfilling that role.

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## 5 Public detriment

The Proposed Conduct may be seen to give rise to the following theoretical competitive detriment (noting that, given the very limited scope of the Proposed Conduct, any theoretical detriment is highly unlikely to manifest):

- Member Banks may obtain a degree of visibility in relation to other Member Banks' confidential information relating to the impact of scams on their customers, measures in place to combat scams and the effectiveness of those measures, that they would not otherwise have had access to. The ABA submits that this does not give rise to any public (including competitive) detriment and is, in any event,

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<sup>10</sup> Australian Competition & Consumer Commission, *Targeting scams 2022: Report of the ACCC on scams activity 2022* (April 2023), [2.4]. Available at: <https://www.accc.gov.au/system/files/Targeting%20scams%202022.pdf>.

manifestly outweighed by the significant public benefits that arise from the development of the Industry Standards; and

- the Proposed Conduct has the potential to dampen the incentive of Member Banks to innovate in relation to scam prevention, detection and disruption. The ABA submits that it is in Member Banks' commercial and reputational interests to continue to innovate in relation to scams:
  - these are important measures by which customers distinguish providers and on which customers choose to acquire a particular product from a particular service provider; and
  - Member Banks often themselves may refund customer losses from scams and would therefore want to reduce their potential exposure in this regard as much as possible. As noted above, in 2021 alone financial institutions refunded almost \$103 million to customers who were victims of scams.

While it is premature to assess the competitive impact of any Industry Standard itself (noting that the implementation of the Industry Standard would be the subject of a separate authorisation), the ABA notes that, whatever form the Standard ultimately takes, it would be a minimum standard and industry participants would be free to innovate and offer higher levels of scam prevention, detection and disruption. The coming together of Member Banks to develop an Industry Standard will not dampen innovation in relation to scams.

In any event, while the implementation of the proposed conduct, absent authorisation, may give rise to contravention of sections 45AF, 45AG, 45AJ, 45AK and/or 45 of the CCA, the ABA submits that any competitive detriments that may arise from the Proposed Conduct are manifestly outweighed by the significant public benefits that arise from preventing the harms to consumers that arise as a result of scam activity.

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## Annexure 1 – ABA Member Banks

- 1 AMP Bank Limited
- 2 Australia and New Zealand Banking Group Limited
- 3 Arab Bank Australia Limited
- 4 Bank Australia
- 5 Bank of China
- 6 Bank of Queensland Limited
- 7 Bank of Sydney
- 8 Bendigo and Adelaide Bank Limited
- 9 Citigroup Pty Ltd
- 10 Commonwealth Bank of Australia
- 11 HSBC Bank Australia Limited
- 12 ING Bank (Australia) Limited
- 13 J.P. Morgan Australia and New Zealand
- 14 Macquarie Bank Limited
- 15 MUFG Bank Limited
- 16 MyState Bank
- 17 National Australia Bank Limited
- 18 Rabobank Australia Limited
- 19 Suncorp Bank
- 20 Westpac Banking Corporation