



GIFT AND PREPAID CARD  
ASSOCIATION AUSTRALIA

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Level 17  
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Scams Taskforce  
Market Conduct and Digital Division  
The Treasury  
Langston Crescent  
Parkes ACT 2600

Email: [scampolicy@treasury.gov.au](mailto:scampolicy@treasury.gov.au)

Dear Scams Taskforce

### **Scams - Mandatory Industry Codes**

The Australian Gift and Prepaid Card Association (**AGPCA**) welcomes the opportunity to respond to the consultation paper titled "Scams - Mandatory Industry Codes" (**Consultation Paper**) regarding the proposed scams code framework.

### ***About the AGPCA***

The AGPCA is the trade body and membership organisation which represents the key players in Australia's gift and prepaid card market. Our diverse membership base which includes, but is not limited to, retailers, issuers, schemes, processors, distributors, card manufacturers and program managers provides us with holistic knowledge of the gift and prepaid card industry. We believe regulations should be appropriately targeted and risk based, and not result in unintended consequences that could negatively impact consumer choice and diversity within the industry. It is our view that any regulations should continue to support a healthy and competitive industry, but not at the cost of the consumer who could be impacted by compliance costs, product complexity, and a reduction in choice.

### ***Submissions***

This submission has been developed in consultation with the AGPCA's members and represents the body's view on the proposed scams code framework.

The AGPCA provides its feedback on the following questions raised in the consultation paper: 1, 5, 7, 21 and 45. For the avoidance of doubt, any question not responded to by the AGPCA, should not be taken to mean that the AGPCA agrees with the views expressed in the Consultation Paper.

**1. Does the Framework appropriately address the harm of scams, considering the initial designated sectors and the proposed obligations outlined in this paper?**

The AGPCA supports a whole of eco-system approach as it allows for a better alignment of responsibility across relevant businesses exploited in scams. For example, for the banking industry, it allows for appropriate recognition of the role played by the telecommunications industry in failing to sufficiently manage call spoofing. While the fraud perpetrated by the scammer may involve tricking a customer into drawing funds on a bank account or sending gift card numbers, it is the call spoofing which

has been responsible for the customer failing to recognise the scam. This is consistent with ASIC's view in 'Report 761: Scam prevention, detection and response by the four major banks' which recognises that "*banks have a critical role as part of a broader industry ecosystem that includes financial institutions, telecommunications providers, social media platforms and digital platforms, among others*".

The AGPCA agrees that there is a need for a coordinated effort between Government, regulators, and the private sector. However, submits that not every participant in the private sector has the same financial and operational capabilities. It is therefore important to ensure that any sector-specific code and standard is appropriately drafted to cater for the differences in sizes, resources, contribution to risks, and operational capability.

#### **5. Is the Framework sufficiently capable of capturing other sectors where scams may take place or move to the future?**

While the AGPCA agrees with the Framework applying to banks, telecommunications providers, and digital communications platforms, it is submitted that it would be inappropriate for further sectors to be designated in the future at the discretion of the "relevant Minister".

The expansion of the regime to new and, as yet, undefined sectors should be subject to the rigour required for legislative change through the Parliamentary process. Given the significant obligations that would be imposed and unprecedented penalties proposed for non-compliance and the potential for inadequately defined sectors, it would not make sense for the expansion of the regime to be at the discretion of a single Minister. For example, in the context of gift cards, there is some complexity in how distribution networks operate and, in many cases, intermediaries in these networks have no meaningful opportunity to manage scam risks.

At the very least, it is submitted that any further expansion of the regime should be subject to extensive industry consultation before being implemented through legislation and there should be a review period after the reforms are implemented to assess their effectiveness.

#### **7. What impacts should the Government consider in deciding a final structure of the Framework?**

It is submitted that the Framework should accommodate for anonymous products and not mandate customer identification. For example, gift card products are anonymous in nature as the purchaser intends to "gift" the product to the gift recipient. Any mandate to collect purchaser or user information would be unworkable and prohibitive for such products.

Any such control would also fail to achieve regulatory intent of the Framework and adequately address scams, on the basis that mandating the unnecessary collection of personal information would more likely heighten the risk of scams given there would be much more personal information collected by businesses, such as retailers, who do not have the same data security and cyber protection resources and controls as banks.

#### **21. Are there any other processes or reporting requirements the Government should consider?**

The AGPCA acknowledges that an anti-scam strategy would be an important and effective regulatory initiative for the prevention and detection of scams.

However, it is submitted that the controls should be targeted at products and services which present scam risk or at least, material scam risk. Some *de minimis* thresholds should apply. For example, the scam risk presented by a gift card which can only be redeemed for attending a movie cinema is significantly lower than the scam risk presented by an open loop prepaid card which allows cash withdrawals or refunds. It is important that appropriate recognition be given to these points of distinction to ensure the regulatory burden of the regulatory controls is not disproportionate to the risk of losses from scams.

While there is little evidence of gift cards being used to perpetrate scams and other frauds, there is evidence that gift cards are relied upon to receive the proceeds of a scam. For example, a scam or fraud might be perpetrated by the impersonation of a supplier or government authority and gift cards would only be used as a means of paying the scammer who would transfer the gift cards (or goods redeemed using gift cards) in a secondary market for value. The primary source of risk in that circumstance sits with the supplier or government authority or the telecommunications provider who allowed its communications to be convincingly impersonated.

It is submitted that an appropriate regulatory response should be principally directed at the facilitation of the impersonation, rather than at the gift card industry.

The AGPCA recognises the importance of consumer awareness and education in relation to the potential for scammers to rely on anonymous means of payment such as cash, crypto currency or gift cards as a means of protecting their own anonymity when benefiting from proceeds of crime. Some AGPCA members have already actively undertaken their own consumer awareness initiatives, including warnings to customers who purchase multiple gift cards. These initiatives are supported by staff training.

Currently, these initiatives are taken on a voluntary basis and it is submitted that such initiatives would be more effective if they were implemented on a sector-wide basis through commitments made by industry code. For example, having regard to the proposal to make the ePayments Code mandatory and more widely applicable, it is submitted that it would be an appropriate code to impose obligations in relation to consumer education and awareness and staff training for scam risks.

**45. Should the penalties for breaches of sector-specific codes, which sit in their respective sector legislation, be equal across all sectors?**

No. It is submitted that the penalties are not appropriate for a new body of law. These are the highest civil penalties imposed under any Australian law and yet to date, the relevant conduct has not been of sufficient concern to warrant any laws. Australia's highest penalties should be reserved for the most egregious and well recognised misconduct and should not apply to matters where the government is only now considering whether it should regulate or not.

The Attorney-General's Department publication, *'A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers'*, provides that civil penalty provisions are most likely appropriate and effective where each of the following circumstances exists:

1. There is no serious moral culpability warranting criminal prosecution of offences.
2. The quantum of the penalty justifies the time and expense of court proceedings.
3. Corporate wrongdoing is present.

We query the extent to which there is corporate wrongdoing. The Framework proposes internal and external dispute resolution for compensation. Businesses are likely to bear the financial cost of scams through compensation. It does not make sense to further punish businesses with civil penalties. Compensation alone should be an adequate redress. Businesses would be incentivised to ensure they exceed their obligations under the Framework so that they can reduce the quantum of compensation they would be subject to.



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Civil penalties contradict the "whole of eco-system approach" and seeks to shift the blame on businesses. Consumers and Government have a role to play too.

If you would like to contact the Association, please direct any questions or queries to Kim Pattison at [kim.pattison@au.gt.com](mailto:kim.pattison@au.gt.com)

*William Feutrill*

Kind regards  
William Feutrill  
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