

CONFIDENTIAL – RESTRICTION OF PUBLICATION CLAIMED

13 December 2023

Scams Taskforce  
Market Conduct and Digital Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Email: [scampolicy@treasury.gov.au](mailto:scampolicy@treasury.gov.au)

Dear Taskforce members,

**Re: *Scams – Mandatory Industry Codes Consultation paper dated November 2023***  
**(Consultation)**

We welcome the opportunity to participate in the Consultation and support the proposed Scams Code Framework (**Framework**).

**Our purpose and approach**

Judo Bank's purpose is to be the most trusted SME business bank in Australia. Judo Bank was built as a specialist pure play SME bank specifically to support and advocate for the Australian SME economy – why we exist, and how we operate, is purpose-built for Australian SMEs, who would benefit from the Government's efforts in the areas of cyber security and combatting scam activity.

Our core philosophy is that every SME is unique, and that relationships are built on deep understanding and trust. Our relationship promise is that our SME customers deal directly with the decision maker(s) in market, who are empowered SME specialists. For that reason, we consider our relationship-centric approach to be increasingly unique.

We are well placed to comment on the Consultation as we are a bank without physical branches and our Term Deposit customers generally only interact with us via our Melbourne-based call centre or via our website and/or web-based or mobile digital banking applications.

**Submission**

This submission addresses the following questions in the Consultation as they relate to **banks** only, namely:

- **Question 7:** "What impacts should the Government consider in deciding a final structure of the Framework?"
- **Question 15:** "Are there additional overarching obligations the Government should consider for the Framework?"
- **Question 29:** "Are there any impediments to sharing or acting on intelligence received from another business or industry bodies?"

- **Question 34:** “Are sector-specific obligations, in addition to the overarching obligations in the CCA, appropriate to address the rising issue of scams?”

as follows:

- where a bank’s customer has breached the bank’s terms and conditions regarding payments or transfers from their account to a third-party account that is not under the customer’s control (**Third-Party Account**), has been warned by the sending bank’s fraud function that a requested transfer is likely to relate to a scam and/or misled the sending bank regarding the purpose of the relevant payment, the bank should not be liable where it has taken reasonable steps to warn or stop the customer making a payment out of their account to a Third-Party Account.
- if a bank has absolutely no notice of, or direct or indirect involvement in, an impersonation or other scam and a person who is **not** an existing customer of the bank has suffered loss, that bank should have no liability to the impacted person and no responsibility to take any steps to stem the scam beyond advising the person of relevant scam-related resources they may wish to take advantage of if/when contacted by the person. Actual knowledge of the scam must be a pre-requisite to requiring any remedial action from a bank that has been innocently drawn into an impersonation or other scam. The AFCA Rules should be amended to clarify this – that if the bank has no relationship with the impacted consumer, and it had no knowledge of the scam and has acted appropriately to advise the impacted person of that fact (once contacted) and directed them to appropriate resources on scams, no AFCA complaint may be lodged against the bank by that person.
- regarding any sector-specific code for banks, smaller banks cannot be expected to meet the same obligations as far larger banks with bigger and better-resourced fraud teams. The penalties and other Framework requirements should be based on the relative level of revenue and/or sophistication/scale/complexity of the relevant bank.
- information-sharing arrangements under the Framework must be expressly exempted from the prohibitions against anti-competitive conduct under the CCA (ie. a bank that works with the NASC, AFCX and/or other banks in relation to a scam should not be prosecuted for doing so by the ACCC).
- the Framework should establish a publicly available number or contact email for impacted consumers and a separate dedicated number or contact email that is bank-specific so that the matter can be dealt with swiftly and appropriately through the correct channels.

I would be pleased to discuss any aspect of this submission with you. You can either contact me, or my colleague Yien Hong, General Counsel and Company Secretary (+61 432 321 733; [yien.hong@judo.bank](mailto:yien.hong@judo.bank)).

Yours faithfully,



Joseph Healy  
Chief Executive Officer