



# File Note

**Matter name** AA1000645 – Australian Banking Association – Oral submissions

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**ACCC parties** ACCC: Tony Hilton (TH), Elizabeth Batten (EB)

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**Other parties** Paul Adams (PA)

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**Date** Monday, 30 October 2023

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**Time** 3-3.30pm (AEDT)

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**Phone to**

**Phone from**

**Meeting**

**Other**

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PA is a Fellow of the Institute of Chartered Accountants and member of the Law Institute of Victoria. Over the last 4 years, PA has advocated on a pro bono basis on behalf of a victim of a romance scam, including advocating for reforms and raising concerns with various parties including banks, the Australian Banking Association, ACCC, ASIC, AFCA, and several federal members of parliament.

PA seeks to bring attention to the issue of banks processing transactions which they know relate to scam activity. PA seeks the introduction of tighter banking laws and ASIC Regulations and processes so that banks will be held responsible if they process a transaction they know to be related to illegal scam activity. PA believes that the banks are aiding and abetting and/or complicit in scam transactions when they know transactions to be illegal. PA believes that it is up to the banking industry to put regulations and processes in place, and for the Banking Act and ASIC Regulations to be tightened.

PA gave one example where two banks, on behalf of the same customer, transferred in excess of \$900,000 across 31 transactions over a three year period. The customer presented as a vulnerable person, being elderly with English as a second language and with significant vision impairment. Both banks recognised from the outset that the proposed transactions were illegal scam transactions but still processed those transactions.

In respect of one of the relevant banks, the customer sought on one occasion to transfer \$75,000. However, the branch bank manager refused to process that transaction, recognising it as illegal.

The customer then went to a different branch of the same bank on the same day and the transaction was processed without question. There were no red flags raised on her account.

PA indicated that most of the 31 transactions were reportable to AUSTRAC. PA knows that these transactions were not reported to AUSTRAC, ASIC or APRA.

PA submitted formal complaints with AFCA, ASIC, ACCC, the ABA and AUSTRAC over a 3 year period.

After three mediations, AFCA stated that there were serious matters to be addressed. Several AFCA determinations read in favour of the customer, however the outcome was ultimately made in favour of the banks.

The serious matters raised in the complaints have not been satisfactorily addressed and banks continue to deny, delay and defend unconscionable conduct.

In PA's opinion there are many provisions in the Corporations Act 2001, the ASIC Act 2001 and the ASIC Regulations that are regularly disregarded by banks.

AFCA has confirmed with PA that it is very common for banks to process transactions when they know those transactions to be illegal.

PA is also concerned that AFCA itself does not refer serious matters to appropriate authorities when it becomes aware of those matters.

PA sees the issue as being that banks do not have the legal or ABA authority to stop the conduct at the bank branch level. For example, where the customer goes to a branch counter and attempts to process a transaction, the bank realises that the transaction is questionable and that the customer may be vulnerable.

PA considers that harm would be largely avoided if banks were legally required to obtain a letter from a customer's accountant, solicitor, Power of Attorney etc confirming that a proposed transaction is in the best interest of the customer in order for the bank to be able to proceed with a transaction.

PA noted that he had discussed this issue with several bank managers who indicated that they wished they had the authority to stop these types of transactions.

PA noted previous engagement with the ACCC, and referenced emails between PA and the ACCC dated 17/2/21 and 12/3/21 (ACCC reference 363491).

PA considers that the application for authorisation is a good idea and that all banks should have processes in place which are consistent and particularly the clear authority at the branch level not to process a transaction when they know the customer is being scammed.

PA noted the prevalence of romance scams and the resulting harm to many Australians.

PA is concerned that romance scams will continue in large numbers until the ABA and all authorities combine to put together appropriate safeguards to protect bank customers.

TH noted that the government is looking at cross-industry code to stop scams.

PA is in favour of proposed legislative reforms, including a cross-industry code to stop scams.

PA is disappointed at the lack of progress over many years in the banking industry combatting romance scams.

As settlements in the noted example above have been obtained from certain banks, albeit unsatisfactory settlements, PA will not disclose the names of the banks concerned with that matter. PA is only concerned that the banking industry seriously addresses the illegal romance scamming problem in the future to alleviate the significant effect romance scams have on the vulnerable and elderly.

ASIC Media Release [23-288MR](#) dated 31 October 2023, concerning the Reportable Situations Regime, criticizes AFSL holders for their negligence in not complying with the Regime, citing staff negligence or error, even where there are repeat or multiple breaches, or multiple breaches were grouped together.

Reportable responsibilities of AFSL holders have been in place for several decades.