

Federal Court of Australia  
District Registry: Victoria  
Division: General

VID 1368 of 2024

**Australian Securities and Investments Commission**  
Plaintiff

**HSBC Bank Australia Limited (ACN 006 434 162)**  
Defendant

**AMENDED JOINT SUBMISSIONS ON LIABILITY AND RELIEF**

## Table of Contents

<b>A.</b>	<b>INTRODUCTION AND SUMMARY</b>	<b>4</b>
<b>B.</b>	<b>CONTRAVENTIONS OF THE CORPORATIONS ACT AND THE CREDIT ACT</b>	
B.1	Factual background: HSBC Australia's failure to have adequate fraud controls	7
B.1.1	Risk of unauthorised payments	8
B.1.2	Elevated risk of Unauthorised Payments on fast payment rails	9
B.1.3	HSBC Australia was required to have adequate prevention and detection controls to manage the risk of Unauthorised Payments	10
B.1.4	HSBC Australia failed to implement the Key Controls	12
B.2	Factual background: HSBC Australia's conduct in investigating and responding to reports of unauthorised transactions according to the ePayments Code	13
B.2.1	HSBC Australia's obligations under the ePayments Code and the HSBC Personal Banking Booklet	13
B.2.2	HSBC Australia's conduct in investigating and responding to reports of unauthorised transactions	16
B.2.3	HSBC Australia's failure to have adequate systems and processes to track compliance with ePayments Code requirements	17
B.2.4	HSBC Australia's failures to comply with the ePayments Code	18
B.3	Factual background: HSBC Australia's conduct in reinstating Blocked Customers' bank accounts	19
B.4	Obligations under Corporations Act, s 912A(1)(a) and Credit Act, s 47(1)(a)	21
B.4.1	Relevant principles: the "efficiently, honestly and fairly" obligation	21
B.5	Contravening conduct	24
<b>C.</b>	<b>APPROACH TO AGREED RELIEF</b>	<b>28</b>
<b>D.</b>	<b>DECLARATIONS</b>	<b>29</b>
D.1	Applicable principles	29
<b>E.</b>	<b>CIVIL PENALTIES</b>	<b>30</b>
E.1	Applicable principles	30
E.2	Maximum penalty	34
E.3	Penalty analysis	36
E.3.1	Nature and extent of the contraventions	36
E.3.2	Harm and/or loss caused	38
E.3.3	Benefit of contravening conduct to HSBC Australia	40
E.3.4	The size and financial position of HSBC Australia and the industry in which it operates	41
E.3.5	Prior contraventions of the Corporations Act and the Credit Act	42
E.3.6	Remediation	42
E.3.7	Cooperation	44

	E.3.8 Conclusion in respect of the agreed penalty	45
<b>F.</b>	<b>ADVERSE PUBLICITY ORDER</b>	<b>48</b>
<b>G.</b>	<b>COSTS</b>	<b>49</b>
<b>H.</b>	<b>CONCLUDING REMARKS</b>	<b>49</b>

## A. INTRODUCTION AND SUMMARY<sup>1</sup>

1. The defendant (**HSBC Australia**) is a large financial services institution holding both an Australian Financial Services Licence (**AFSL**) and an Australian Credit Licence (**ACL**). By reason of those licences, HSBC Australia was required to do *'all things reasonably necessary'* to ensure it provided financial services and credit activities efficiently, honestly and fairly under the Corporations Act and Credit Act.<sup>2</sup>
2. This Proceeding concerns contraventions of those obligations by HSBC Australia between 1 January 2020 to 30 November 2024 (**Relevant Period**) for failures relating to the prevention, detection and investigation of Unauthorised Payments on certain Customer accounts. HSBC Australia admits that it contravened its obligations as follows.
3. First, by failing to have adequate prevention and detection controls to manage the risk that Customers were exposed to, of falling victim to Unauthorised Payments, via HSBC Australia's internal account transfer (**IAT**) payment rail:
  - (a) in respect of Mobile Banking, in the period 29 May 2023 to 29 May 2024 (**FC Relevant Period**); and
  - (b) in respect of Online Banking, in the period 29 May 2023 to 13 December 2023.
4. During the period 8 January 2020 to 30 August 2024, HSBC Australia received a total of 1,022 reports of Unauthorised Payments with a total value of \$34.6 million (**UARs**).<sup>3</sup> During the FC Relevant Period, HSBC Australia experienced an increase in reports of Unauthorised Payments which saw HSBC Australia dealing with up to approximately 660 outstanding cases per month.<sup>4</sup> More than \$25 million of the UARs by value involved transactions made via the IAT payment rail, totalling 1,217 out of 2,350 reported unauthorised transactions.<sup>5</sup> The IAT is a payment rail for transactions between HSBC bank accounts and is a 'fast' payment rail that processed payments in real time.

---

<sup>1</sup> Unless otherwise defined in these submissions, capitalised terms have the meaning contained in the Glossary at Annexure A.

<sup>2</sup> ss 912A(1)(a) and (5A) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and ss 47(1)(a) and (4) of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**).

<sup>3</sup> SAFA, [76], [79]-[80].

<sup>4</sup> SAFA, [77].

<sup>5</sup> SAFA, [76.1]-[76.2].

5. Second, by failing to have adequate systems and processes between January 2020 and August 2023 to ensure that widespread and/or systemic non-compliance with requirements of the ePayments Code relating to investigating and responding to unauthorised transactions did not occur.<sup>6</sup> HSBC Australia's failures to comply with the ePayments Code were widespread and/or systemic.<sup>7</sup>
6. In respect of 97% of UARs, HSBC Australia failed to comply with one or more of the requirements in the ePayments Code (to which HSBC Australia had subscribed<sup>8</sup>), to:
  - (a) conduct investigations of reports of unauthorised transactions within prescribed timeframes; and
  - (b) refer to, consider or apply the Liability Rules in the ePayments Code for apportioning the liability for Unauthorised Payments as between the Customer and HSBC Australia.
7. Third, by failing to have in place an adequate system or process between January 2020 and April 2024 to ensure that Customers were advised of the process to reinstate full access or use of their accounts, within a reasonable time after Account Restrictions or Digital Blocks had been applied following a report of an unauthorised transaction.
8. During the Relevant Period, 585 Customers had some form of Account Restriction or Digital Block applied on one or more payment channels<sup>9</sup> after making a report of an unauthorised transaction<sup>10</sup> for the purpose of preventing further unauthorised transaction(s) from occurring on the account/s of the Customers.<sup>11</sup> Until April 2024, HSBC Australia did not have in place an adequate system or process for advising Customers of the process to reinstate full access or use of their accounts within a reasonable time having regard to the facts in each case, including the appropriateness of reinstating full access in all the circumstances.<sup>12</sup>

---

<sup>6</sup> SAFA, [84], [123].

<sup>7</sup> SAFA [110].

<sup>8</sup> Addressed from paragraph 41 below.

<sup>9</sup> SAFA, [110], [123.2]-[123.3].

<sup>10</sup> SAFA, [119]-[120].

<sup>11</sup> SAFA, [113].

<sup>12</sup> SAFA, [118].

9. The plaintiff (**ASIC**) and HSBC Australia join in seeking declarations of contraventions, a pecuniary penalty, an adverse publicity order and a costs order. The parties jointly submit that HSBC Australia's contraventions are serious and that the pecuniary penalty that HSBC Australia ought to pay is \$35 million.
10. The parties have prepared a Statement of Agreed Facts and Admissions in relation to liability (**SAFA**) as well as a Supplementary Statement of Agreed Facts and Admissions in relation to final relief (**SSAFA**), both dated 22 May 2026, and which set out the facts agreed between the parties pursuant to s 191 of the *Evidence Act 1995* (Cth) and admissions made by HSBC Australia for the purposes of this proceeding. Relevant paragraphs of both documents are referenced throughout these submissions.
11. The parties are also preparing a minute of proposed orders setting out the relief which the parties submit is appropriate and should be granted in the proceeding (**Agreed Proposed Orders**), and a proposed form of adverse publicity order, which the parties will provide to the Court separately. These joint submissions address the agreed relief sought in the Agreed Proposed Orders.
12. Based on the admitted contraventions referred to above, the parties jointly submit that the Court ought to make the orders and declarations set out in the Agreed Proposed Orders. In summary:
  - (a) for the reasons stated in Part D of these submissions, and based on the facts and admissions in the SAFA, declarations of contraventions of ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act should be made;
  - (b) for the reasons stated in Part E of these submissions, and based on the facts and admissions in the SSAFA, a pecuniary penalty should be imposed, and it is submitted that the appropriate amount is \$35 million;
  - (c) for the reasons stated in Part F of these submissions, an adverse publicity order should be made pursuant to s 1101B(1)(a)(i) of the Corporations Act and s 182(1) of the Credit Act; and
  - (d) an order should also be made pursuant to s 43 of the *Federal Court of Australia Act 1976* (Cth) for payment of ASIC's costs of and incidental to the proceeding within 30 days of the date of such an order being made.

## **B. CONTRAVENTIONS OF THE CORPORATIONS ACT AND THE CREDIT ACT**

### **B.1 Factual background: HSBC Australia's failure to have adequate fraud controls on the IAT payment rail**

13. The detailed facts relating to this proceeding are set out in the SAFA. The following paragraphs provide a short overview.
14. During the Relevant Period, HSBC Australia offered account holders in HSBC Australia's Wealth and Personal Banking business (**Customers**) various financial products, including:
- (a) Deposit Accounts;<sup>13</sup> and
  - (b) secured lending products<sup>14</sup> and unsecured lending products<sup>15</sup> (together **Lending Products** or **Loan Accounts**).
15. In respect of both Deposit Accounts and Lending Products, HSBC Australia provided its Customers the functionality to make and receive payments, including to third parties, using (among other payment channels):<sup>16</sup>
- (a) online banking through an internet browser banking platform (**Online Banking**); and
  - (b) mobile banking through a mobile banking platform which could be accessed by a HSBC-branded application on a mobile device (**Mobile Banking**),
- (**Digital Access** comprising access to Online Banking and/or Mobile Banking).
16. The underlying network or architecture by which a payment to or from a bank account to another bank account is facilitated is referred to as a 'payment rail'.<sup>17</sup>
17. During the Relevant Period, HSBC Australia used several different payment rails to transfer payments made by, or sent to, Customers.<sup>18</sup> These included 'fast payment rails'; namely, payment rails with the functionality to transfer a payment to or from a bank account in real-time or near real-time (within seconds).<sup>19</sup>

---

<sup>13</sup> Defined at SAFA, [10.1], [11].

<sup>14</sup> SAFA, [10.2].

<sup>15</sup> SAFA, [10.3].

<sup>16</sup> SAFA [13].

<sup>17</sup> SAFA, [4.14].

<sup>18</sup> SAFA, [48].

<sup>19</sup> SAFA, [4.6].

### **B.1.1 Risk of unauthorised payments**

18. During the FC Relevant Period, HSBC Australia's Customers were exposed, through forgery or account compromise (including via the fraud typologies set out at paragraph 19 below), to the risk of third parties:<sup>20</sup>

- (a) obtaining Digital Access<sup>21</sup> to Customers' Deposit Accounts or Loan Accounts (or both); and
- (b) making payments from the Customers' Deposit Accounts or Loan Accounts (or both) without the Customer's authority,

#### **(Unauthorised Payments).**

19. The typologies identified by HSBC Australia for Unauthorised Payments through Digital Access included (amongst others): token reactivation, smishing, phishing, vishing, remote access and malware.<sup>22</sup>

20. Most of these typologies typically involved third parties (i.e., malicious actors) using social engineering to direct, influence or convince a Customer to perform specific actions, such as revealing sensitive information such as login credentials which were then used by the third parties to access the Customer's account and make Unauthorised Payments.<sup>23</sup>

21. By no later than November 2020, HSBC Australia was aware of the risk to Customers of Unauthorised Payments through the typologies referred to at paragraph 19 above. Those typologies constantly evolved during the Relevant Period and perpetrators continually adapted their specific patterns of attack against financial institutions, such as HSBC Australia, and their customers.<sup>24</sup> Even with adequate prevention and detection controls in place, the risk of Unauthorised Payments cannot be eliminated.<sup>25</sup>

22. From around May 2021, HSBC Australia was also aware of the risk of Unauthorised Payments by means of malicious actors impersonating HSBC staff.<sup>26</sup>

---

<sup>20</sup> SAFA [40].

<sup>21</sup> SAFA, [13].

<sup>22</sup> SAFA, [46]; FASOC, particulars to [9] (which at [3] describes each of these typologies).

<sup>23</sup> SAFA, [4.17], [46].

<sup>24</sup> SAFA, [47].

<sup>25</sup> SSAFA, [16].

<sup>26</sup> SAFA, [47].

### **B.1.2 Elevated risk of Unauthorised Payments on fast payment rails**

23. The risk of Unauthorised Payments, including on internal payment rails, is elevated when Customers have the ability to transfer a payment from their HSBC Australia bank account to another account in real-time or near real-time (via fast payment rails). That risk is further elevated when the payment is made to an account outside of the HSBC Group because once funds are no longer within HSBC Australia's custody, it is significantly more difficult for HSBC Australia or its Customers to recover Unauthorised Payments from another bank.<sup>27</sup>
24. During the FC Relevant Period, the payment rails used by HSBC Australia included HSBC's IAT payment rail (for transactions between HSBC Australia bank accounts).<sup>28</sup>
25. The IAT payment rail was a fast payment rail and was available on:<sup>29</sup>
- (a) Online Banking for the entire FC Relevant Period (although the functionality to make payments to new payees was disabled between 14 December 2023 and 1 June 2024, when it was reintroduced after the implementation of the HSBC Group's new Online Banking platform, Banking 2.0<sup>30</sup>); and
  - (b) Mobile Banking for the entire FC Relevant Period.
26. The IAT payment rail accounted for 5.4% of all transactions on Mobile Banking and Online Banking, excluding bill payments, being 452,074 transactions out of a total of 8,296,755, in the period between 1 January 2023 and 31 May 2024, making it the third largest of five payment rails by number of transactions.<sup>31</sup>
27. Prior to the FC Relevant Period, HSBC Australia, including senior management, was aware:
- (a) that there were heightened fraud risks associated with the functionality to send payments through fast payment rails.<sup>32</sup> (Fast payment rails reduced HSBC Australia's ability to recover fraudulent payments);<sup>33</sup> and

---

<sup>27</sup> SAFA, [42], [43].

<sup>28</sup> SAFA, [48].

<sup>29</sup> SAFA, [48.1].

<sup>30</sup> SAFA, [4.2].

<sup>31</sup> SSAFA, [36].

<sup>32</sup> SSAFA, [33.2].

<sup>33</sup> SAFA, [50].

- (b) that there were increasing numbers of HSBC Australia accounts being used to facilitate the movement of money obtained through fraudulent transactions.<sup>34</sup>

### **B.1.3 HSBC Australia was required to have adequate prevention and detection controls to manage the risk of Unauthorised Payments**

28. By reason of HSBC Australia's obligations as the holder of its AFSL and ACL during the FC Relevant Period, HSBC Australia was required to have adequate detective and/or preventative fraud controls in place to manage the risk to Customers of Unauthorised Payments, including through fast payment rails.<sup>35</sup>
29. In the context of HSBC Australia's fraud controls framework, in order to adequately manage the risk of Unauthorised Payments through fast payment rails to a reasonable standard, it was necessary for HSBC to implement the Key Controls (identified and defined at 32 below) on fast payment rails, including the IAT payment rail.<sup>36</sup>
30. During the FC Relevant Period, HSBC Australia used a transaction monitoring platform known as the SAS enterprise fraud management system (**SAS EFM**), which contained various rules based on fraud typologies known to the Fraud Analytics team (**Fraud Rules**).<sup>37</sup>
31. In broad terms, SAS EFM operated as follows:<sup>38</sup>
- (a) SAS EFM analysed inputs from other systems, such as transaction and event data, to ascertain whether any of the Fraud Rules were triggered;
  - (b) if an event and/or transaction satisfied the conditions of the Fraud Rules, then SAS EFM would determine whether to permit a transaction, or raise an alert to HSBC's Fraud Operations Team for manual checking;
  - (c) if an alert was raised, the payment was not held or prevented from being processed by the payment engine unless real-time interception capability had been implemented (i.e., the capability of SAS EFM to intercept, hold, block or decline payments after receipt of payment instructions but before

---

<sup>34</sup> SSAFA, [33.3].

<sup>35</sup> SAFA, [51].

<sup>36</sup> SAFA, [61], [73]-[74], [123.1].

<sup>37</sup> SAFA, [54], [57].

<sup>38</sup> SAFA, [55]-[56].

those instructions are processed or fulfilled, enabling potentially fraudulent or otherwise restricted payments to be stopped in real-time<sup>39</sup>).

32. The effectiveness of fraud transaction monitoring on fast payment rails through SAS EFM was dependent on HSBC Australia having implemented the following:<sup>40</sup>
- (a) adequate Fraud Rules which were sufficiently supported by appropriate inputs and data, including information provided by behavioural biometrics<sup>41</sup> (such as BioCatch) and device-based identification technology<sup>42</sup> (such as ThreatMetrix) which could adequately detect potential Unauthorised Payments (including those made as a result of sophisticated social engineering tactics and typologies); and
  - (b) real-time interception capabilities for the Fraud Rules for fast payment rails,
- (together, the **Key Controls**).
33. Despite implementing some of the Key Controls on some payment rails during the Relevant Period, HSBC Australia did not implement the Key Controls on the IAT payment rail until the end of the FC Relevant Period.<sup>43</sup> The Key Controls would have increased protection for Customers when used in conjunction with HSBC Australia's existing controls to manage the risk of Unauthorised Payments on the IAT payment rail.<sup>44</sup> In the absence of those Key Controls, customers were at greater risk of suffering both financial loss and non-financial harm from Unauthorised Payments. Some customers did suffer those harms.<sup>45</sup>
34. Prior to the FC Relevant Period, HSBC Australia, including senior management, was aware that:<sup>46</sup>
- (a) prior to 2020, there had been a lack of investment in fraud controls and modernisation of fraud controls was required to address evolving and emerging fraud risks and to more efficiently prevent and detect fraud. A

---

<sup>39</sup> SAFA, [4.16], [59].

<sup>40</sup> SAFA, [60]–[61].

<sup>41</sup> SAFA, [65].

<sup>42</sup> SAFA, [66].

<sup>43</sup> SAFA, [72]; SSAFA, [44]

<sup>44</sup> SAFA, [74]

<sup>45</sup> SAFA, [73]–[74]; SSAFA, [15], [18], [22], [23].

<sup>46</sup> SSAFA, [33.4], [33.6].

book of work had been established to introduce new technology capabilities, enhance existing systems and refresh current models by the end 2021 / early 2022; and

- (b) there were gaps in HSBC Australia's controls to detect and prevent Unauthorised Payments on the IAT payment rail which could be addressed by one or more of the Key Controls.

35. Moreover, during the FC Relevant Period, HSBC Australia identified that the Key Controls were available and would enhance its ability to manage the risk of Unauthorised Payments.<sup>47</sup>

#### **B.1.4 HSBC Australia failed to implement the Key Controls**

36. While HSBC Australia implemented the Key Controls on other payment rails during the FC Relevant Period, it did not implement any of the Key Controls on the IAT payment rail on Mobile Banking and Online Banking.<sup>48</sup>

37. HSBC Australia failed to implement real-time interception capabilities in SAS EFM for the IAT payment rail for payments made through Mobile Banking and Online Banking until May 2024 (although the functionality to make payments to new payees on the IAT payment rail through Online Banking was decommissioned in December 2023).<sup>49</sup>

38. HSBC Australia also failed to implement adequate Fraud Rules which used information provided by behavioural biometrics through BioCatch and device-based identification capabilities through ThreatMetrix for the IAT payment rail until:<sup>50</sup>

- (a) 14 March 2024 on Mobile Banking; and
- (b) 24 May 2024 on Online Banking, although Customers could not make payments to new payees until 1 June 2024 when Online Banking was reintroduced after the implementation of Banking 2.0.

39. As a result of HSBC Australia's conduct, Customers who used Online Banking in the period 29 May 2023 to 13 December 2023 or Mobile Banking in the period 29 May 2023 to 29 May 2024 were exposed to an increased risk of Unauthorised

---

<sup>47</sup> SAFA, [64].

<sup>48</sup> SAFA, [59], [62], [69]-[72].

<sup>49</sup> SAFA, [72]; SSAFA, [44].

<sup>50</sup> SAFA, [72]; SSAFA, [44].

Payments in circumstances where the fast IAT payment rail used for transactions between two HSBC Australia accounts posed a higher fraud risk (as explained at paragraph 23 above).<sup>51</sup>

40. Between 1 January 2020 and 31 August 2024, reports of Unauthorised Payments predominantly involved transactions made via the IAT payment rail. 74.6% of reported unauthorised transactions by value, and 51.9% by volume, were made using the IAT payment rail during that period.<sup>52</sup> During the FC Relevant Period, HSBC Australia experienced an increase in reports of Unauthorised Payments.<sup>53</sup>

## **B.2 Factual background: HSBC Australia’s conduct in investigating and responding to reports of unauthorised transactions according to the ePayments Code**

### **B.2.1 HSBC Australia’s obligations under the ePayments Code and the HSBC Personal Banking Booklet**

41. The ePayments Code regulates electronic payments, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking, and BPAY. ASIC is responsible for the administration of the ePayments Code. The ePayments Code complements other regulatory requirements under the Corporations Act and Credit Act. HSBC Australia subscribed to the ePayments Code on 18 March 2013, and its subscription commenced on 20 March 2013.<sup>54</sup>
42. Two versions of the ePayments Code applied during the Relevant Period, referred to in the SAFA and these joint submissions as the ‘2016 ePayments Code’ and the ‘2022 ePayments Code’.<sup>55</sup>
43. As a subscriber, HSBC Australia was required during the Relevant Period to comply with the ePayments Code’s rules, including with respect to unauthorised transactions and reports of unauthorised transactions. It was also required to warrant that it would comply with the ePayments Code in the terms and conditions that it gave each of its consumer account holders.<sup>56</sup>

---

<sup>51</sup> SSAFA, [20]; SAFA, [42], [50].

<sup>52</sup> SAFA, [76].

<sup>53</sup> SAFA, [77].

<sup>54</sup> SAFA, [14].

<sup>55</sup> SAFA, [15].

<sup>56</sup> SAFA, [23].

44. During the Relevant Period, HSBC Australia issued various versions of its Personal Banking Booklet (**Booklet**)<sup>57</sup>, which formed part of its agreement with its Customers in respect of (among other products and services), Deposit Accounts and Lending Products as well as Digital Access services, as specified in the Booklet.<sup>58</sup>
45. Pursuant to clause 3 of the Booklet, HSBC Australia warranted that it would comply with the ePayments Code. The Booklet also contained standard terms which, in substance, provided that HSBC Australia would investigate complaints, transactions or unauthorised payments according to the timeframes set out in the ePayments Code.<sup>59</sup>
46. Clause 2.6 of the 2022 ePayments Code defined ‘unauthorised transaction’ as:<sup>60</sup>
- ‘a transaction that is not authorised by a user. It does not include any transaction that is performed by a user themselves or by anyone who performs a transaction with the knowledge and consent of a user’.
47. Clauses 2.6 and 9.1 of the 2016 ePayments Code, when read together, contained a substantively similar definition.<sup>61</sup>
48. At all times during the Relevant Period, the ePayments Code contained rules for the allocation of liability for losses arising from unauthorised transactions (**Liability Rules**).<sup>62</sup>
49. Under the ePayments Code, HSBC Australia was required to have an effective and convenient process for users to report unauthorised transactions. Whether an unauthorised transaction was in fact such a transaction for the purposes of the ePayments Code was only able to be determined after HSBC Australia had completed its investigation into the report in accordance with the ePayments Code.<sup>63</sup>
50. Under the 2022 ePayments Code, following receipt of a report of an unauthorised transaction, HSBC Australia was required.<sup>64</sup>

---

<sup>57</sup> SAFA, [4.3].

<sup>58</sup> SAFA, [34].

<sup>59</sup> SAFA, [35]-[36].

<sup>60</sup> SAFA, [19].

<sup>61</sup> SAFA, [18].

<sup>62</sup> SAFA, [24].

<sup>63</sup> SAFA, [25].

<sup>64</sup> SAFA, [27]-[29].

- (a) within 21 days to:
  - (i) complete the investigation of the report of an unauthorised transaction (**Investigation**) and advise the user, in writing of the outcome (**Investigation Outcome**), or
  - (ii) advise the user in writing of the need for more time to complete its investigation (**Extra Time Request**) (clause 18.1); and
- (b) within 45 days, to complete its Investigation, unless there were exceptional circumstances (clause 18.2); and
- (c) to tell a user who reports an unauthorised transaction the outcome of the report, and the reasons for the outcome, including references to the relevant Liability Rules (clause 18.4).

51. The 2016 ePayments Code included equivalent obligations.<sup>65</sup>

52. HSBC Australia was also required to consider and apply the relevant Liability Rules in conducting an investigation of a report of an unauthorised transaction made by its Customers.<sup>66</sup>

53. By reason of HSBC Australia's obligations as the holder of its AFSL and ACL, and the obligations arising under s 912A of the Corporations Act and s 47(1) of the Credit Act (addressed at paragraphs 79 to 81 below), HSBC Australia was required during the Relevant Period to have adequate systems and processes to:

- (a) ensure that widespread and/or systemic non-compliance with the prescribed timeframes in the ePayments Code did not occur, or otherwise prevent such non-compliance from occurring;
- (b) ensure that there was not a widespread and/or systemic failure to adequately consider, apply or refer to the Liability Rules in conducting and finalising Investigations and reporting Investigation Outcomes; and
- (c) identify, track and report the extent to which HSBC Australia was complying with the above requirements in the ePayments Code.

54. It was incumbent on HSBC Australia to do each of these things in order to ensure that it did '*all things reasonably necessary*' to ensure it provided financial

---

<sup>65</sup> SAFA, [32].

<sup>66</sup> SAFA, [33].

services and credit activities efficiently, honestly and fairly under the Corporations Act and Credit Act.

### **B.2.2 HSBC Australia’s conduct in investigating and responding to reports of unauthorised transactions**

55. During the Relevant Period, HSBC Australia received reports from Customers, including reports of unauthorised transactions (**UARs**) for the purposes of the ePayments Code. The UARs were recorded by HSBC Australia staff members as a FC-UAR and identified by a reference number from HSBC Australia’s unified case management system for fraud cases.<sup>67</sup>
56. During the Relevant Period until about August 2023, HSBC Australia’s systems and processes for the investigation of reports of unauthorised transactions and preparing information for the reporting of outcomes to Customers were in part recorded in internal documents. These documents did not refer to or have regard to, and did not seek to apply, the timeframes or processes referred to in the ePayments Code and the Booklet. They also did not refer to, or have regard to, or seek to apply the Liability Rules.<sup>68</sup>
57. During the Relevant Period until about November 2023, HSBC Australia’s systems and processes for the investigation of reports of unauthorised transactions, and reporting of outcomes to Customers, applied the HSBC Group’s expected timelines (referred to as **SLAs**). Those SLAs generally exceeded the timeframes required by the ePayments Code.<sup>69</sup>
58. As set out at paragraph 69 below, during the Relevant Period until August 2024, a significant proportion of the investigations of reports of unauthorised transactions undertaken by HSBC Australia did not comply with the timeframes or processes referred to in the ePayments Code (at paragraph 50 above), or the Booklet (as referred to at paragraph 45 above).<sup>70</sup>
59. During the Relevant Period until August 2023, HSBC Australia did not have in place adequate systems or processes in respect of the 21 and 45-day requirements set out in the ePayments Code.<sup>71</sup>

---

<sup>67</sup> SAFA, [79]-[80].

<sup>68</sup> SAFA, [84].

<sup>69</sup> SAFA, [85].

<sup>70</sup> SAFA, [86].

<sup>71</sup> SAFA, [87].

60. During the Relevant Period until August 2023, HSBC Australia also did not have in place adequate systems or processes to refer to, consider or apply the Liability Rules in conducting and finalising its investigation of reports of unauthorised transactions.<sup>72</sup>
61. Accordingly, during the Relevant Period until August 2023, HSBC Australia did not:<sup>73</sup>
- (a) refer to the Liability Rules in conducting and finalising its investigation of UARs;
  - (b) consistently consider or apply the Liability Rules in relation to unauthorised transactions; or
  - (c) refer to relevant clauses of the ePayments Code (including the Liability Rules) in reporting on the outcome of its investigation of UARs to Customers.

### **B.2.3 HSBC Australia's failure to have adequate systems and processes to track compliance with ePayments Code requirements**

62. From March 2021 until January 2024, HSBC Australia's Financial Crime Investigations Major Investigations (**FCMI**) team reported the number of open Payment Fraud and account takeover and 'scam' cases under investigation, which included reports of unauthorised transactions, to HSBC Australia's Wealth and Personal Banking Fraud Steering Committee.<sup>74</sup>
63. The reports were made by reference to the number of cases which had been open and under investigation for zero to 89, 90 to 180 and over 180 days. They did not refer to the investigation time frames of 21 and 45 days required by the ePayments Code.<sup>75</sup>
64. The Fraud Investigation Management (**FIM**) team also periodically reported the volume of received, open and completed 'scam' and 'payment & cheque' cases it managed (which included reports of unauthorised transactions as well as other fraud typologies) to the Wealth and Personal Banking Fraud Steering Committee

---

<sup>72</sup> SAFA, [89].

<sup>73</sup> SAFA, [88], [106].

<sup>74</sup> SAFA, [90].

<sup>75</sup> SAFA, [90].

(and to the Risk Ops and Compliance meetings between around May and September 2023).<sup>76</sup>

65. None of the reports of open cases being investigated by the FCMI and FIM teams during the Relevant Period identified the number of reported, open or completed reports of unauthorised transactions for the purposes of the ePayments Code, or reported how many open or closed reports of unauthorised transactions cases exceeded the 21-day or 45-day investigation and reporting time requirements.<sup>77</sup>
66. It was not until November 2024 that the FIM team implemented a process of tracking and reporting HSBC Australia's compliance with the time-frame requirements in the ePayments Code. This process involved a weekly reconciliation of communications to customers who had reported an unauthorised transaction.<sup>78</sup>
67. Prior to November 2024 (i.e., during the Relevant Period), HSBC Australia did not have in place any systems or processes to track and report the extent to which HSBC Australia was complying with the timeframe requirements in the ePayments Code.<sup>79</sup>

#### **B.2.4 HSBC Australia's failures to comply with the ePayments Code**

68. Between 8 January 2020 and 30 August 2024, HSBC Australia received 1,022 UARs.<sup>80</sup>
69. HSBC Australia failed to comply with the timeframe requirements in the ePayments Code set out at paragraphs 50 and 51 above in a significant proportion of the investigations of UARs. In each instance that HSBC Australia did not comply with the ePayments Code timeframe requirements, it breached the Booklet terms.
70. During the Relevant Period until August 2024, HSBC Australia's failures to comply with the ePayments Code and the Booklet terms were widespread and/or

---

<sup>76</sup> SAFA, [91].

<sup>77</sup> SAFA, [92].

<sup>78</sup> SAFA, [95].

<sup>79</sup> SAFA, [97].

<sup>80</sup> SAFA, [79]-[80], [100]-[102].

systemic. Of the 1,022 reports of unauthorised transactions received by HSBC Australia:<sup>81</sup>

- (a) for 749 UARs (73%), HSBC Australia took more than 21 days to advise the UAR Customer of the Investigation Outcome or the Extra Time Request;
- (b) for 888 UARs (87%), HSBC Australia took more than 45 days to complete its Investigation where there were no exceptional circumstances;
- (c) for 862 UARs, HSBC Australia produced the Investigation Reports relating to those UARs to ASIC. There were 160 UARs for which HSBC could not locate, and therefore did not provide, the Investigation Reports to ASIC. In 439 (51%) of the Investigation Reports produced to ASIC, HSBC Australia did not refer to the Liability Rules. HSBC Australia did not refer to relevant clauses of the ePayments Code (including the Liability Rules) in any Investigation Reports before August 2023;
- (d) for 800 UARs, HSBC Australia produced the Investigation Outcome relating to those UARs to ASIC. There were 222 UARs for which HSBC could not locate, and therefore did not provide Investigation Outcomes to ASIC. In 242 (30%) of those Investigation Outcomes which were produced to ASIC, HSBC Australia did not refer to relevant clauses of the ePayments Code (including the Liability Rules). HSBC Australia did not refer to relevant clauses of the ePayments Code (including the Liability Rules) in any Investigation Outcomes before August 2023; and
- (e) for 997 UARs (97%), HSBC Australia did not comply with one or more of the obligations referred to in paragraphs (a) to (d) above.

### **B.3 Factual background: HSBC Australia's conduct in reinstating Blocked Customers' bank accounts**

71. At all times during the Relevant Period, after a Customer made a UAR, HSBC Australia would review the nature of the reported unauthorised transaction and, where it considered necessary, apply certain restrictions to some or all accounts (**Account Restrictions**), put in place certain blocks on some or all facilities

---

<sup>81</sup> SAFA, [100]-[110].

available to Customers including through Online Banking and/or Mobile Banking (**Digital Block**), or apply a combination of both measures.<sup>82</sup>

72. The Account Restrictions and Digital Blocks included a number of different measures, including the suspension of access to one or more payment channels (which prevented Customers from effecting transactions through those channels), and the restriction of all transactions on one or more specified accounts. Some of the Account Restrictions or Digital Blocks meant that the Customer could continue to bank with HSBC Australia, but without access to the blocked or restricted banking facilities.<sup>83</sup>
73. During the Relevant Period, HSBC Australia's systems and processes for Account Restrictions and Digital Blocks were recorded in internal documents.<sup>84</sup>
74. While an investigation of a UAR was underway, HSBC Australia's usual practice was for certain Account Restrictions and/or certain Digital Blocks to remain in place. HSBC Australia adopted this practice to protect the Customer accounts the subject of the reported unauthorised transaction.<sup>85</sup>
75. At all times during the Relevant Period until April 2024, HSBC Australia did not have in place an adequate system or process for advising Customers of the process to reinstate full access or use of their accounts within a reasonable time having regard to the facts in each case, including the appropriateness of reinstating full access in all the circumstances.<sup>86</sup>
76. From no later than December 2023, HSBC Australia, including senior management, was aware that HSBC Australia's systems and processes for advising Customers of the process to reinstate access or use of their accounts were inadequate and that this could adversely impact Customers who were the subject of Account Restrictions or Digital Blocks.<sup>87</sup>
77. During the Relevant Period, 585 customers had some form of Account Restriction or Digital Block applied on one or more payment channels after

---

<sup>82</sup> SAFA, [111].

<sup>83</sup> SAFA, [114].

<sup>84</sup> SAFA, [112].

<sup>85</sup> SAFA, [115].

<sup>86</sup> SAFA, [118].

<sup>87</sup> SSAFA, [40].

making a UAR (**Blocked Customers**) to prevent further unauthorised transactions.<sup>88</sup>

78. The period between the date on which the Account Restriction or Digital Block was applied, and:<sup>89</sup>
- (a) the date on which HSBC Australia advised Blocked Customers of the process for reinstating full access to their account(s) (to the extent HSBC Australia has a record of such advice being given); and
  - (b) the date on which full access and use of the Blocked Customers' accounts was reinstated,
- varied widely between Blocked Customers.

#### **B.4 Obligations under Corporations Act, s 912A(1)(a) and Credit Act, s 47(1)(a)**

79. At all material times, HSBC Australia was the holder of an AFSL and ACL.
80. At all material times, as the holder of the AFSL, HSBC Australia was required pursuant to s 912A(1)(a) of the Corporations Act, to '*do all things necessary to ensure that the financial services covered by the AFSL were provided efficiently, honestly and fairly.*'
81. At all material times, as the holder of the ACL, HSBC Australia was required pursuant to s 47(1)(a) of the Credit Act, to '*do all things necessary to ensure that the credit activities covered by the ACL were engaged in efficiently, honestly and fairly.*'
82. The principles developed in the authorities in relation to s 912A(1)(a) of the Corporations Act on the meaning of the phrase 'efficiently, honestly and fairly' are equally applicable to s 47(1)(a) in the Credit Act.<sup>90</sup>

##### **B.4.1 Relevant principles: the 'efficiently, honestly and fairly' obligation**

83. In *ASIC v Camelot Derivatives Pty Ltd (in liq)*, Foster J accepted the following principles on the interpretation of s 912A(1)(a):<sup>91</sup>

---

<sup>88</sup> SAFA, [119], Annexure F; SSAFA, [28].

<sup>89</sup> SAFA, [120]-[122], Annexure F.

<sup>90</sup> *ASIC v Australia and New Zealand Banking Group Ltd* [2023] FCA 1150; (2023) 169 ACSR 649 at [51] (Beach J); *ASIC v Darranda Pty Ltd (Liability)* [2024] FCA 1015 at [240] (Hespe J) citing *ASIC v Membo Finance Pty Ltd (No 2)* [2023] FCA 126 at [37] (Yates J); *ASIC v Ferratum Australia Pty Ltd (in liq)* [2023] FCA 1043; (2023) 169 ACSR 553 at [47] (Kennett J) citing *Membo*.

<sup>91</sup> *ASIC v Camelot Derivatives Pty Ltd (in liq)* [2012] FCA 414; (2012) 88 ACSR 206 at [69]. See also, *ASIC v Westpac Banking Corporation (No 2)* [2018] FCA 751; (2018) 266 FCR 147 (*Westpac No 2*) at [2347]-[2348] (Beach J); *ASIC v AGM Markets Pty Ltd (in liq) (No 3)* [2020] FCA 208; (2020) 275

- (a) The words ‘efficiently, honestly and fairly’ must be read as a compendious indication meaning a person who goes about their duties efficiently having regard to the dictates of honesty and fairness, honestly having regard to the dictates of efficiency and fairness, and fairly having regard to the dictates of efficiency and honesty;<sup>92</sup>
- (b) The words ‘efficiently, honestly and fairly’ connote a requirement of competence in providing advice and in complying with relevant statutory obligations. They also connote an element not just of even handedness in dealing with clients but a less readily defined concept of sound ethical values and judgement in matters relevant to a client’s affairs.<sup>93</sup>
- (c) The word ‘efficient’ refers to a person who performs his [or her] duties efficiently, requiring that the licensee is adequate in performance, produces the desired effect, is capable, competent and adequate. Inefficiency may be established by demonstrating that the performance of a licensee’s functions falls short of the reasonable standard of performance that the public is entitled to expect.<sup>94</sup>

84. The following principles have emerged from subsequent authorities:

- (a) Section 912A(1)(a) is part of the statute’s legislative policy to require social and commercial norms or standards of behaviour to be adhered to by a licensee.<sup>95</sup>
- (b) A contravention of the ‘efficiently, honestly and fairly’ standard does not require a contravention or breach of a separately existing legal duty or

---

FCR 57at [505] (Beach J); *ASIC v Lanterne Fund Services Pty Limited* [2024] FCA 353 at [86] (McEvoy J).

<sup>92</sup> *Camelot Derivatives Pty Ltd* [2012] FCA 414; (2012) 88 ACSR 206 at [69] (Foster J). See also, *ASIC v Cassimatis (No 8)* [2016] FCA 1023; (2016) 336 ALR 209; at [674] (Edelman J); *ASIC v Avestra Asset Management Ltd* [2017] FCA 497; (2017) 348 ALR 525 at [191] (Beach J); *Westpac No 2* [2018] FCA 751; (2018) 266 FCR 147 at [2347] (Beach J); *AGM Markets* [2018] FCA 751; (2020) 275 FCR 57 at [506], [517]-[518] (Beach J); *ASIC v Westpac Banking Corporation (Omnibus)* [2022] FCA 515; (2022) 407 ALR 1 at [60], [64]-[66] (Beach J); *ASIC v National Australia Bank Ltd* [2022] FCA 1324; (2022) 164 ACSR 358; at [350]-[351] (Derrington J); *ASIC v Commonwealth Bank of Australia* [2022] FCA 1422 at [147] (Downes J).

<sup>93</sup> *Camelot Derivatives Pty Ltd* [2012] FCA 414; (2012) 88 ACSR 206 at [69] (Foster J). See also, *AGM Markets* [2020] FCA 208; (2020) 275 FCR 57 at [508] (Beach J); *Story v National Companies and Securities Commission* (1988) 13 NSWLR 661 at [672] (Young J).

<sup>94</sup> *Story* (1988) 13 NSWLR 661 at 679 (Young J); *AGM Markets* [2020] FCA 208; (2020) 275 FCR 57 at [508] (Beach J).

<sup>95</sup> *ASIC v Telstra Super Pty Ltd* [2026] FCA 527, [421] (Neskovcin J), citing *Commonwealth Bank* [2022] FCA 1422 at [144] (Downes J).

obligation, whether statutory, fiduciary, common law or otherwise. The statutory standard itself is the source of the obligation.<sup>96</sup>

- (c) Conduct may fail to meet the statutory expression even if it cannot be described as dishonest and a breach of the standard is not limited to conduct that is 'morally wrong in the commercial sense'.<sup>97</sup> A finding of contravention can be made even where it is not shown that the contravener engaged in intentional wrongdoing.<sup>98</sup>
- (d) The word 'ensure' imports a forward-looking element into the obligation. It is necessary not only to act efficiently, honestly and fairly from day to day, but to take steps to guard against lapses from that standard by employees or representatives, before any specific instance of non-compliance has arisen.<sup>99</sup>
- (e) The obligation is primarily directed to the systems and procedures of licensees by which their standards of conduct in the provision of their services are assured.<sup>100</sup>
- (f) Establishing that a licensee has contravened of s 912A(1)(A) requires the identification of the 'things' that it was necessary for the licensee to do, but which it omitted to do. Contraventions arise from the failure to do these distinct 'things'.<sup>101</sup>
- (g) The obligation requires that licensees look ahead to how they will be providing the financial services in question, assess what issues may arise that could result in those services not being provided efficiently, honestly and fairly, and design and adopt measures to address the risk of those matters occurring, and (depending on the context) their consequences.<sup>102</sup>

---

<sup>96</sup> *Westpac (No 2)* [2018] FCA 751; (2018) 266 FCR 147 at [2350]; *AGM Markets* [2020] FCA 208; (2020) 275 FCR 57 at [512]; *ASIC v Macquarie Bank Limited* [2024] FCA 416 at [49] (Wigney J).

<sup>97</sup> *ASIC v RI Advice Group Pty Ltd (No 2)* [2021] FCA 877; 156 ACSR 371 at [377] (Moshinsky J); *ASIC v Australia and New Zealand Banking Group Ltd* [2023] FCA 1150; (2023) 169 ACSR 649 at [55] (Beach J).

<sup>98</sup> *ASIC v MLC Nominees Pty Ltd* [2020] FCA 1306; (2020) 147 ACSR 266 at [51] (Yates J).

<sup>99</sup> *Commonwealth Bank* [2022] FCA 1422 at [146] and [156] (Downes J), citing *ASIC v AMP Financial Planning Pty Ltd (No 2)* [2020] FCA 69; (2020) 377 ALR 55 at [105] (Lee J); *Ferratum* [2023] FCA 1043; (2023) 169 ACSR 553 at [49] (Kennett J).

<sup>100</sup> *ASIC v Australia and New Zealand Banking Group Limited (Retail Cases Omnibus)* [2025] FCA 1593 at [29] (Beach J); *ASIC v Diversa Trustees Limited* [2023] FCA 1267 at [153] (Button J).

<sup>101</sup> *ASIC v AustralianSuper Pty Ltd* [2025] FCA 102; (2025) 172 ACSR 615 at [144] (Hespe J)

<sup>102</sup> *Diversa Trustees* [2023] FCA 1267 at [152] (Button J).

- (h) The obligation is not static. A licensee cannot establish a procedure at the outset, and hold doggedly to it, no matter the flaws that experience may reveal.<sup>103</sup>
- (i) Contravention does not rely on any proof of finding of intent – the standard may be unintentionally breached. Contravention is generally a matter of objective analysis, though evidence of the actual intention of the alleged infringer may sometimes be relevant.<sup>104</sup>
- (j) Though s 912A requires the licensee to conform to high standards of commercial morality and ethics, it does not require standards of absolute perfection whereby any possibility of error or mistake is eliminated;<sup>105</sup> rather, it is a reasonable standard of performance.<sup>106</sup>
- (k) In a technical area, the reasonable standard of performance is to be assessed by reference to the reasonable person qualified in that area, and likely the subject of expert evidence before the Court.<sup>107</sup>

85. Insofar as there is doubt in the authorities as to whether ‘efficiently, honestly and fairly’ is to be construed compendiously,<sup>108</sup> the parties submit it is not necessary to resolve the question in this case.<sup>109</sup> Whether the phrase is to be construed compendiously or not does not affect whether HSBC Australia contravened s 912A(1)(a) (and s 47(1)(a) of the Credit Act).

## **B.5 Contravening conduct**

86. Multiple contraventions may be treated as one or more ‘courses of conduct’ where there is an interrelationship between the legal and factual elements of

<sup>103</sup> *Diversa Trustees* [2023] FCA 1267 at [152] (Button J).

<sup>104</sup> *National Australia Bank Ltd* [2022] FCA 1324; (2022) 164 ACSR 358 at [352] (Derrington J); *Ferratum* [2023] FCA 1043; (2023) 169 ACSR 553 at [49] (Kennett J); *ASIC v Australia and New Zealand Banking Group Ltd* [2023] FCA 1150 at [55] (Beach J); *Lanterne* [2024] FCA 353 at [88] (McEvoy J).

<sup>105</sup> *National Australia Bank Ltd* [2022] FCA 1324; (2022) 164 ACSR 358 at [357] and [364] (Derrington J); *Diversa Trustees* [2023] FCA 1267 at [149] (Button J); *Macquarie* [2024] FCA 416 at [50] (Wigney J).

<sup>106</sup> *Commonwealth Bank* [2022] FCA 1422 at [152] (Downes J); *Diversa Trustees* [2023] FCA 1267 at [149] (Button J); *Lanterne* [2024] FCA 353 at [86(b)] (McEvoy J).

<sup>107</sup> *ASIC v RI Advice Group* [2022] FCA 496; (2022) 160 ACSR 204 at [49] (Rofe J).

<sup>108</sup> *ASIC v Westpac Securities Administration Limited* [2019] FCAFC 187; (2019) 272 FCR 170. See, [162]-[176] (Allsop CJ), [286]-[291] (Jagot J), [421]-[427] (O’Byrne J).

<sup>109</sup> See *ASIC v AustralianSuper Pty Ltd* [2025] FCA 102; (2025) 172 ACSR 615 at [141] (Hespe J); *Lanterne* [2024] FCA 353 at [89]-[93] (McEvoy J); See also *ASIC v Oztures Trading Pty Ltd trading as Binance Australia Derivatives* [2026] FCA 509 at [69] (Moshinsky J).

each of the offences.<sup>110</sup> Whether separate contraventions should be treated as a course of conduct is a question of fact having regard to the circumstances of the case.<sup>111</sup>

87. The parties submit that by the conduct described in the SAFA and described at each of paragraphs 89, 90(a), 90(b), 90(c), 92 below, HSBC Australia engaged in three courses of conduct by which it failed to do all things necessary to ensure it provided financial services and credit activities efficiently, honestly and fairly. The three courses of conduct concern:

- (a) HSBC Australia's failure to have adequate prevention and detection controls to manage the risk that Customers were exposed to of falling victim to Unauthorised Payments as set out in paragraph 89 below;
- (b) HSBC Australia's failures in respect of the ePayments Code, as set out in paragraph 90 below. Although HSBC's conduct constituted three distinct contraventions, each of those failures is appropriately characterised as a single course of conduct, ultimately resulting from HSBC Australia's failure to have adequate systems and processes to ensure widespread and systematic non-compliance with the requirements of the ePayments Code did not occur; and
- (c) HSBC Australia's failure to have in place an adequate system or process to ensure that Customers were advised of the process to reinstate full access or use of their accounts within a reasonable time after Account Restrictions or Digital Blocks had been applied following a report of an unauthorised transaction, as described at paragraph 91 below.

88. By each of these three courses of conduct, HSBC Australia breached ss 912A(1)(a) and 912A(5A) of the Corporations Act and ss 47(1)(a) and 47(4) of the Credit Act.

89. As to the specific contraventions of the Corporations Act and the Credit Act, HSBC Australia admits that in the period 29 May 2023 to 29 May 2024, it failed to have adequate prevention and detection controls to manage the risk that

---

<sup>110</sup> *Construction, Forestry, Mining and Energy Union (CFMEU) v Cahill* [2010] FCAFC 39; (2010) 269 ALR 1 at [39] (Middleton and Gordon JJ).

<sup>111</sup> *Cahill* [2010] FCAFC 39; (2010) 269 ALR 1 at [39] (Middleton and Gordon JJ). See also *ABCC v Construction, Forestry, Maritime, Mining and Energy Union* [2019] FCAFC 59; (2019) 269 FCR 262 at [11]–[12] (Allsop CJ, Griffiths J agreeing).

Customers were exposed to, of falling victim to Unauthorised Payments, to a reasonable standard, by reason of:

- (a) in respect of Online Banking:
  - (i) in the period 29 May 2023 to 13 December 2023, failing to implement real-time interception capabilities in respect of the transactions made on the IAT payment rail; and
  - (ii) in the period 29 May 2023 to 13 December 2023, failing to create Fraud Rules which used information provided by BioCatch and ThreatMetrix to enhance HSBC Australia's ability to detect and reduce the risk that Customers were exposed to of falling victim to Unauthorised Payments using the IAT payment rail; and
- (b) in respect of Mobile Banking:
  - (i) in the period 29 May 2023 to 29 May 2024, failing to implement real-time interception capabilities in respect of the transactions made on the IAT payment rail; and
  - (ii) in the period 29 May 2023 to 13 March 2024, failing to create Fraud Rules which used information provided by BioCatch and ThreatMetrix to enhance HSBC Australia's ability to detect and reduce the risk that Customers were exposed to of falling victim to Unauthorised Payments using the IAT payment rail,

(together, the **Fraud Controls Contravention**).

90. In respect of the ePayments Code, HSBC Australia admits that:

- (a) between January 2020 and August 2023, it failed to have adequate systems and processes to ensure that widespread and/or systemic non-compliance with the prescribed timeframes in the ePayments Code set out in paragraphs 50 and/or 51 above did not occur, or otherwise prevent such non-compliance occurring;
- (b) between January 2020 and August 2023, it failed to have adequate systems and processes to ensure that there was not a widespread and/or systemic failure to:
  - (i) refer to the Liability Rules in conducting and finalising its investigation into reports of unauthorised transactions;

- (ii) adequately consider or apply the Liability Rules in relation to unauthorised transactions; and
  - (iii) refer to the relevant clauses of the ePayments Code when reporting the outcome of investigations to Customers;
- (c) between January 2020 and November 2024, it failed to have adequate systems and processes to identify, track and report the extent to which HSBC Australia was complying with the requirements in the ePayments Code set out in paragraphs [50] and [51],

(each of which individually constituted a failure by HSBC Australia to do 'all things necessary' to ensure it provided financial services and credit activities efficiently, honestly and fairly, and together, constitute the **ePayments Code Contraventions**).

91. HSBC Australia admits that between January 2020 and April 2024, it failed to have in place an adequate system or process to ensure that Customers were advised of the process to reinstate full access or use of their accounts, within a reasonable time after Account Restrictions or Digital Blocks had been applied following a report of an unauthorised transaction, having regard to the facts in each case, including the appropriateness of reinstating full access in all the circumstances (**Back to Banking Contravention**).

92. Having regard to HSBC Australia's admitted conduct, HSBC Australia admits that during the Relevant Period, by reason of the conduct set out in each of paragraphs 89, 90, 91 it failed to do all things necessary to ensure that:

- (a) the financial services covered by its AFSL (being the provision of the Deposit Accounts); and
- (b) the credit activities covered by its ACL (being the provision of the Loan Accounts),

were engaged in efficiently, honestly and fairly, resulting in:

- (c) five contraventions of ss 912A(1)(a) and (5A) of the Corporations Act;
- (d) five contraventions of ss 47(1)(a) and (4) of the Credit Act; and
- (e) a total of 10 contraventions.

### C. APPROACH TO AGREED RELIEF

93. The correct approach to civil regulatory orders which are sought on an agreed basis is explained in *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate and Ors (FWBII)*.<sup>112</sup> In that case, the High Court reaffirmed the practice of acting upon agreed penalty submissions, as explained in *NW Frozen Foods Pty Ltd v ACCC*<sup>113</sup> and *Minister for Industry, Tourism and Resources v Mobil Oil Australia Pty Ltd*.<sup>114</sup>
94. The plurality in *FWBII* emphasised the ‘important public policy involved in promoting predictability of outcome in civil penalty proceedings’ which ‘assists in avoiding lengthy and complex litigation and thus tends to free the courts to deal with other matters and to free investigating officers to turn to other areas of investigation that await their attention’.<sup>115</sup> Their Honours also stated:<sup>116</sup>
- Subject to the court being sufficiently persuaded of the accuracy of the parties’ agreement as to facts and consequences, and that the penalty which the parties propose is *an* appropriate remedy in the circumstances thus revealed, it is consistent with principle and ... highly desirable in practice for the court to accept the parties’ proposal and therefore impose the proposed penalty.
95. A further reason for courts acting upon such submissions is that they are advanced by a specialist regulator able to offer ‘informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance’, albeit that such submissions will be considered on their merits in the ordinary way.<sup>117</sup>
96. The above principles are not confined to agreed submissions on pecuniary penalties but apply equally to agreement on other forms of relief.<sup>118</sup>

---

<sup>112</sup> *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate and Ors* [2015] HCA 46; (2015) 258 CLR 482 (*FWBII*).

<sup>113</sup> *NW Frozen Foods Pty Ltd v ACCC* [1996] FCA 1134; (1996) 71 FCR 285.

<sup>114</sup> *Minister for Industry, Tourism and Resources v Mobil Oil Australia Pty Ltd* [2004] FCAFC 72; (2004) ATPR ¶41-993 (Branson, Sackville and Gyles JJ).

<sup>115</sup> *FWBII* [2015] HCA 46; (2015) 258 CLR 482 at [46] (French CJ, Kiefel, Bell, Nettle and Gordon JJ).

<sup>116</sup> *FWBII* [2015] HCA 46; (2015) 258 CLR 482 at [58] (French CJ, Kiefel, Bell, Nettle and Gordon JJ) (emphasis in original).

<sup>117</sup> *FWBII* [2015] HCA 46; (2015) 258 CLR 482 at [60]–[61] (French CJ, Kiefel, Bell, Nettle and Gordon JJ).

<sup>118</sup> See *FWBII* [2015] HCA 46; (2015) 258 CLR 482 at [24], [57]–[59], [63] (French CJ, Kiefel, Bell, Nettle and Gordon JJ), [103], [107] (Keane J).

## D. DECLARATIONS

### D.1 Applicable principles

97. Section 1317E(1) of the Corporations Act provides (and provided during the Relevant Period) that if the Court is satisfied that a person has contravened a 'civil penalty provision',<sup>119</sup> the Court must make a declaration of contravention. Section 1317E(2) relevantly provides:

The declaration must specify the following:

- (a) the Court that made the declaration;
- (b) the civil penalty provision that was contravened;
- (c) the person who contravened the provision;
- (d) the conduct that constituted the contravention.

98. Similarly, s 166 of the Credit Act relevantly provides (and provided during the Relevant Period):

*Declaration of contravention*

- (2) The court must make the declaration if it is satisfied that the person has contravened the provision.
- (3) The declaration must specify the following:
  - (a) the court that made the declaration;
  - (b) the civil penalty provision that was contravened;
  - (c) the person who contravened the provision;
  - (d) the conduct that constituted the contravention.

*Declaration of contravention conclusive evidence*

- (4) The declaration is conclusive evidence of the matters referred to in subsection (3).

99. The language of s 1317E(1) and s 166(2) is mandatory. The Court is required to make a declaration of contravention if satisfied that a person has contravened a civil penalty provision.<sup>120</sup>

100. On the basis of the agreed facts as set out in the SAFA, the parties submit that the Court can be satisfied that HSBC Australia has contravened s 912A(5A) of the Corporations Act and s 47(4) of the Credit Act and further submit that it is

---

<sup>119</sup> Including s 912A(5A) of the Corporations Act: see s 1317E(3) of the Corporations Act.

<sup>120</sup> *ASIC v Australia and New Zealand Banking Group Limited* [2023] FCA 256 at [41]-[46] (O'Bryan J); *ASIC v Westpac Banking Corporation* [2026] FCA 651 (McEvoy J).

appropriate that the Court makes the declarations set out in the Agreed Proposed Orders.

101. The parties jointly propose that the Court make declarations of contravention under each of the Corporations Act and the Credit Act, corresponding to HSBC Australia's:
- (a) Fraud Controls Contravention;
  - (b) ePayments Code Contraventions; and
  - (c) Back to Banking Contravention.

## **E. CIVIL PENALTIES**

### **E.1 Applicable principles**

102. Section 1317G(1) of the Corporations Act provides that the Court may make an order that a person pay to the Commonwealth a pecuniary penalty if, inter alia, a declaration of contravention of a civil penalty provision by the person has been made under s 1317E. Section 167(2) of the Credit Act is in substantially the same terms.
103. Section 1317G(2) of the Corporations Act and s 167A of the Credit Act are to the effect that the pecuniary penalty must not exceed the maximum pecuniary penalty applicable to the contravention of the relevant civil penalty provisions.
104. The primary purpose of civil penalties is to secure deterrence, both specific and general. They are 'primarily if not wholly protective in promoting the public interest in compliance'.<sup>121</sup> A penalty must have the necessary 'sting or burden' to secure 'the specific and general deterrent effects that are the raison d'être of its imposition'.<sup>122</sup>
105. The plurality in *Pattinson*<sup>123</sup> affirmed the well-known statements of French J, as his Honour then was, in *Trade Practices Commission v CSR Ltd*.<sup>124</sup> In that case, his Honour listed several factors that informed the assessment of a penalty of

---

<sup>121</sup> *FWBII* [2015] HCA 46; (2015) 258 CLR 482 at [55] (French CJ, Kiefel, Bell, Nettle and Gordon JJ); see also at [110] (Keane J). See also *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13; (2022) 274 CLR 450 at [15]-[16], [43], [45], [55] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

<sup>122</sup> *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (CFMEU)* [2018] HCA 3; (2018) 262 CLR 157 at [116] (Keane, Nettle and Gordon JJ).

<sup>123</sup> *Pattinson* [2022] HCA 13; 274 CLR 450 at [18] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

<sup>124</sup> *Trade Practices Commission v CSR Ltd* [1991] ATPR ¶41-076 (French J).

appropriate deterrent value under the *Trade Practices Act 1974* (Cth). His Honour stated:<sup>125</sup>

The assessment of a penalty of appropriate deterrent value will have regard to a number of factors which have been canvassed in the cases. These include the following:

1. The nature and extent of the contravening conduct.
2. The amount of loss or damage caused.
3. The circumstances in which the conduct took place.
4. The size of the contravening company.
5. The degree of power it has, as evidenced by its market share and ease of entry into the market.
6. The deliberateness of the contravention and the period over which it extended.
7. Whether the contravention arose out of the conduct of senior management or at a lower level.
8. Whether the company has a corporate culture conducive to compliance with the Act, as evidenced by educational programs and disciplinary or other corrective measures in response to an acknowledged contravention.
9. Whether the company has shown a disposition to co-operate with the authorities responsible for the enforcement of the Act in relation to the contravention.

106. The above factors are not a ‘rigid catalogue of matters for attention’. The court’s task remains to determine what is an ‘appropriate’ penalty in the circumstances of the particular case.<sup>126</sup>

107. The plurality in *Pattinson* also considered the role of the statutory maximum, noting that it is ‘but one yardstick that ordinarily must be applied’, and should be treated ‘as one of a number of relevant factors to inform the assessment of a penalty of appropriate deterrent value’.<sup>127</sup> Their Honours rejected an approach by which the statutory maximum penalty was required to be reserved exclusively for the worst category of contravening conduct.<sup>128</sup> However, they emphasised that there should be ‘some reasonable relationship between the theoretical maximum

---

<sup>125</sup> *CSR Ltd* [1991] ATPR ¶41-076 at [42].

<sup>126</sup> *Pattinson* [2022] HCA 13; (2022) 274 CLR 450 at [19] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

<sup>127</sup> See *Pattinson* [2022] HCA 13; (2022) 274 CLR 450 at [53]–[55] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

<sup>128</sup> *Pattinson* [2022] HCA 13; (2022) 274 CLR 450; at [10], [49]–[51] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

and the final penalty imposed'; the relationship of reasonableness being established by reference to a need for deterrence having regard to the circumstances of the contravener and the circumstances of the contravention.<sup>129</sup>

108. In *Pattinson*, the plurality also recognised (at [45]) that principles relating to totality, parity and course of conduct may assist as analytical tools in determining civil penalties. The course of conduct principle was considered by the Full Court in *Australian Competition and Consumer Commission v Cement Australia Pty Ltd*.<sup>130</sup> The Full Court stated at [424] that the course of conduct principle is a useful 'tool' in the determination of appropriate civil penalties. The Full Court continued:

... As we have already indicated, the principal object of the penalties imposed by s 76 of the [Trade Practices Act 1974 (Cth)] is that of specific and general deterrence. With this in mind, in a civil penalty context, the course of conduct principle can be conceived of as a recognition by the courts that the deterrent effect in respect of a civil penalty (at both a specific and general level) is measured by reference to the nature of the conduct for which it is imposed. It is therefore of paramount importance to identify whether multiple contraventions constitute a single course of conduct or separate instances of conduct, so as to ensure that an appropriate deterrent effect is achieved by the imposition of the penalty or penalties in respect of that particular conduct.

109. Whether or not the course of conduct framework of analysis is used, the Court's task remains to determine an appropriate penalty which is proportionate to the wrongdoing viewed as a whole and having due regard to the need to avoid double punishment.<sup>131</sup>
110. Further, where multiple separate penalties are to be imposed upon a particular wrongdoer, the 'totality principle' requires the Court to make a 'final check' of the penalties to be imposed on a wrongdoer, considered as a whole. It will not necessarily result in a reduction. However, in cases where the Court believes that the cumulative total of the penalties to be imposed would be too high, the Court should alter the final penalties to ensure that they are 'just and appropriate'.

---

<sup>129</sup> *Pattinson* [2022] HCA 13; (2022) 274 CLR 450 at [10], [53]–[55] (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ).

<sup>130</sup> *Australian Competition and Consumer Commission v Cement Australia Pty Ltd* [2017] FCAFC 159; 258 FCR 312 at [421]–[428] (Middleton, Beach and Moshinsky JJ).

<sup>131</sup> See e.g., *ACCC v Samsung Electronics Australia Pty Ltd* [2022] FCA 875 at [47] (Murphy J), citing *Transport Workers Union of Australia v Registered Organisations Commissioner (No 2)* [2018] FCAFC 203; (2018) 267 FCR 40 at [83]–[91] (Allsop CJ, Collier and Rangiah JJ).

111. In determining the appropriate penalty, it is relevant to consider steps taken to ameliorate loss or damage (such as payment of compensation) as potentially mitigatory considerations.<sup>132</sup>
112. Co-operation with authorities in the course of investigations and subsequent proceedings can properly reduce the penalty that would otherwise be imposed. The reduction reflects the fact that such co-operation: increases the likelihood of co-operation in future cases in a way that furthers the object of the legislation; frees up the regulator's resources, thereby increasing the likelihood that other contravenors will be detected and brought to justice; and facilitates the course of justice.<sup>133</sup>
113. Differences in the facts and circumstances which underlie different cases mean there is often no substantial assistance to be gained in comparing the penalties imposed in other cases where the facts differ.<sup>134</sup> As Beach J has explained:<sup>135</sup>
- ...it is conceptually problematic to look at penalties in other cases to calibrate a figure in the present case when all that one has from the other cases are single point determinations produced by opaque intuitive synthesis. Deconvolution analysis of the single point determinations in order to work out the causative contribution of any particular factor is unrealistic.
114. This is especially so where the cases involve different legislative schemes. Such cases can be of limited analogical value and must be treated with caution.<sup>136</sup>
115. Ultimately, the consistency that is sought is 'consistency in the application of the relevant legal principles, not some numerical or mathematical equivalence'.<sup>137</sup> As McEvoy J noted in *ASIC v Westpac*, 'each case must turn on its own facts, and the court is not generally assisted by a comparison of penalties imposed in other cases.'<sup>138</sup>

---

<sup>132</sup> *Australian Competition and Consumer Commission v Woolworths Limited* [2016] FCA 44; [2016] ATPR ¶42-251 at [166]-[167] (Edelman J); *Australian Competition and Consumer Commission v AGL South Australia Pty Ltd* [2015] FCA 399; (2015) 146 ALD 385 at [38] (White J).

<sup>133</sup> *FWBII* [2015] HCA 46; (2015) 258 CLR 482 at [46]; *NW Frozen Foods* [1996] FCA 1134; (1996) 71 FCR 285 at 293-294.

<sup>134</sup> See *Singtel Optus Pty Ltd v ACCC* [2012] FCAFC 20; (2012) 287 ALR 249 at [60] (Keane CJ, Finn & Gilmour JJ); *Woolworths Limited* [2016] FCA 44; [2016] ATPR ¶42-251 at [133]-[134] (Edelman J); *ACCC v Hillside (Australia New Media) Pty Ltd trading as Bet365 (No 2)* [2016] FCA 698 at [28] (Beach J); *Flight Centre Ltd v ACCC (No 2)* [2018] FCAFC 53; (2018) 260 FCR 68 at [69] (Allsop CJ, Davies and Wigney JJ).

<sup>135</sup> *ASIC v Commonwealth Bank of Australia* [2020] FCA 790 at [77] (Beach J).

<sup>136</sup> *ASIC v Australia and New Zealand Banking Group Ltd* [2018] FCA 155 at [22(2)] (Middleton J); *ASIC v HCF Life Insurance Company Pty Limited (Penalty)* [2025] FCA 454 at [13] (Jackman J).

<sup>137</sup> *Hili v The Queen* [2010] HCA 45; (2010) 242 CLR 520 at [18].

<sup>138</sup> *ASIC v Westpac Banking Corporation* [2026] FCA 651 at [173].

## E.2 Maximum penalty

116. Section 1317G(4) of the Corporations Act and s 167B(2) of the Credit Act set out the relevant formula for the calculation of the applicable maximum. At all relevant times, s 1317G(4) of the Corporations Act has provided as follows:

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate*

- (4) The **pecuniary penalty applicable** to the contravention of a civil penalty provision by a body corporate is the greatest of:
- (a) 50,000 penalty units; and
  - (b) if the Court can determine the benefit derived and detriment avoided because of the contravention — that amount multiplied by 3; and
  - (c) either:
    - (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
    - (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units — 2.5 million penalty units.

117. At all relevant times, s 167B(2) of the Credit Act was in relevantly similar terms to s 1317G(4) of the Corporations Act.<sup>139</sup>

118. The meaning of ‘annual turnover’ of a body corporate during a 12-month period is defined in s 9 of the Corporations Act and s 5(1) of the Credit Act. Relevantly, for the purposes of each of those enactments, the definition of ‘annual turnover’ includes the sum of the values of all supplies (as defined) made, or likely to be made, by any body corporate related to the body corporate, subject to applicable legislative exclusions.

119. During the Relevant Period (1 January 2020 to 30 November 2024), the value of a penalty unit was:

- (a) \$210 between 1 January 2020 and 30 June 2020;
- (b) \$222 between 1 July 2020 and 31 December 2022;
- (c) \$275 between 1 January 2023 and 30 June 2023;

---

<sup>139</sup> Except that instead of referring to ‘50,000 penalty units’, s 167B(2)(a) referred to ‘the penalty specified for the civil penalty provision multiplied by 10’.

- (d) \$313 between 1 July 2023 and 6 November 2024; and
  - (e) \$330 between 7 November 2024 and 30 November 2024.
120. Where a single contravention extends over a period of time during which the value of a penalty unit changed, the maximum penalty may be calculated by reference to the highest penalty unit value applicable during that period. The fact that a lower penalty amount was applicable at some time during the contravention may be a relevant factor to be taken into account when fixing the penalty.<sup>140</sup>
121. In respect of HSBC Australia's contraventions of s 912A of the Corporations Act and s 47 of the Credit Act, the maximum penalty per contravention is therefore as follows:
- (a) Fraud Controls Contravention (29 May 2023 to 29 May 2024):  
\$782,500,000 (being the value of 2.5 million penalty units at \$313 per unit);<sup>141</sup>
  - (b) ePayments Code Contraventions (January 2020 to November 2024):  
\$111,527,441.30 for each contravention (being 10% of HSBC Australia's annual turnover in the 12-month period to 31 January 2020);<sup>142</sup> and
  - (c) Back to Banking Contravention (January 2020 to April 2024):  
\$111,527,441.30 (being 10% of HSBC Australia's annual turnover in the 12-month period to 31 January 2020).<sup>143</sup>
122. The parties submit that there are 10 contraventions as follows:
- (a) two contraventions (one of each of s 912A(1)(a) of the Corporations Act and s 47(1)(a) of the Credit Act) as a result of failing to have adequate fraud controls (as identified at paragraph 89 above);
  - (b) six contraventions (three of each of s 912A(1)(a) of the Corporations Act and s 47(1)(a) of the Credit Act) as a result of HSBC Australia's failures in

---

<sup>140</sup> *ASIC v Australia and New Zealand Banking Group Ltd (Retail Cases Omnibus)* [2025] FCA 1593 at [106] (Beach J). See also *Wollermann v Fortrend Securities Pty Ltd (No 2)* [2025] FCA 443 at [42]-[43] (O'Callaghan J) and cases cited therein; *Fair Work Ombudsman v Grouped Property Services Pty Ltd (No 2)* [2017] FCA 557 at [394] – [401] (Katzmann J); *Environment Protection Authority v Port Stephens Council* [2011] NSWLEC 209; (2011) 186 LGERA 235 at [3] (Craig J); *ASIC v National Australia Bank Limited (No 2)* [2023] FCA 1118; (2023) 171 ACSR 176 at [68]-[70], [90]-[91], [93] (Derrington J).

<sup>141</sup> See also SSAFA, [10.2].

<sup>142</sup> SSAFA, [10.1].

<sup>143</sup> SSAFA, [10.1].

respect of the ePayments Code (as identified at paragraph 90 above);  
and

- (c) two contraventions (one of each of s 912A(1)(a) of the Corporations Act and s 47(1)(a)) of the Credit Act as a result of HSBC's failure to have in place an adequate system or process to advise customers of reinstatement (as identified as paragraph 91 above).

### **E.3 Penalty analysis**

123. The parties jointly submit that an aggregate penalty of \$35 million be imposed for HSBC Australia's admitted contraventions of ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act. The parties jointly submit that the sum is appropriate to achieve the objects of specific and general deterrence.
124. A summary of the key matters that the parties consider relevant to the issue of penalty is set out below.

#### **E.3.1 Nature and extent of the contraventions**

125. The nature of the contravening conduct is explained in Part B above.
126. The contraventions were serious, extended over a significant period and affected a large number of HSBC Australia's Customers.
127. In respect of the Fraud Controls Contravention, HSBC Australia failed to implement the Key Controls on the IAT payment rail for a period of 12 months, despite having implemented the Key Controls on other payment rails,<sup>144</sup> and notwithstanding HSBC Australia's awareness (and awareness of senior management of HSBC Australia) that fast payment rails posed a heightened fraud risk because they reduced HSBC Australia's ability to recover fraudulent payments.<sup>145</sup>
128. The failure affected Customers transacting through both Online Banking and Mobile Banking. During the period January 2020 to 31 August 2024, the IAT payment rail accounted for 74.6% by value (\$25.8 million out of \$34.6 million) and 51.9% by volume of all reported unauthorised transactions.<sup>146</sup>

---

<sup>144</sup> SAFA, [72].

<sup>145</sup> SAFA, [50], [73].

<sup>146</sup> SAFA, [76].

129. In respect of the ePayments Code Contraventions, the failures were widespread and systemic, spanning a period of up to 59 months, and affected a significant number of the 1,022 Customers who made UARs between 8 January 2020 and 30 August 2024.
130. The scale of HSBC Australia's non-compliance was significant and persistent, as identified at paragraph 70 above.<sup>147</sup> Further, prior to November 2024, HSBC Australia did not have in place any systems or processes to track and report the extent to which HSBC Australia was complying with the prescribed requirements in the ePayments Code.<sup>148</sup> Such systems and processes were necessary to ensure HSBC Australia could provide the authorised services under its AFSL and ACL in accordance with the ePayments Code, and the Booklet (by which it had contracted with Customers). They constituted systems and processes to which s 912A(1)(a) obligations are directed.<sup>149</sup>
131. In respect of the Back to Banking Contravention, HSBC Australia had no adequate system or process to advise Customers of the steps available to them to reinstate access to their accounts following the application of Account Restrictions or Digital Blocks for a period of approximately 52 months.<sup>150</sup> This conduct affected up to 585 Customers who had some form of Account Restriction or Digital Block applied following a report of an unauthorised transaction.<sup>151</sup>
132. HSBC Australia was aware during the Relevant Period of risks and shortcomings in its systems but failed to address them.<sup>152</sup>
133. In respect of the Fraud Controls Contravention, HSBC Australia, including senior management, was aware prior to 29 May 2023 that there were heightened fraud risks associated with fast payment rails, that there were increasing numbers of HSBC Australia accounts being used to facilitate fraudulent transactions, and that there were gaps in its controls on the IAT payment rail, which could be

---

<sup>147</sup> SAFA, [110].

<sup>148</sup> SAFA, [96].

<sup>149</sup> *ASIC v Australia and New Zealand Banking Group Ltd (Retail Cases Omnibus)* [2025] FCA 1593 at [29] (Beach J); *Diversa Trustees* [2023] FCA 1267 at [153] (Button J). See also *ASIC v United Super Pty Ltd* [2025] FCA 1453 at [34]-[37] (O'Callaghan J).

<sup>150</sup> SAFA [118].

<sup>151</sup> SAFA [119]; SSAFA [28]

<sup>152</sup> SSAFA, [33]-[34].

addressed by one or more of the Key Controls.<sup>153</sup> The increase in scams (including Unauthorised Payments) in Australia and targeting HSBC Australia customers had also been brought to the attention of HSBC Australia's Board of Directors.<sup>154</sup>

134. In respect of the ePayments Code Contraventions, HSBC Australia, including senior management, was aware during the Relevant Period that there was a significant and growing backlog of fraud cases under investigation, and that HSBC Australia was not complying with certain provisions of the ePayments Code for all Customers.<sup>155</sup>
135. In respect of the Back to Banking Contravention, HSBC Australia, including senior management, was aware from no later than December 2023 that its systems and processes for advising Customers of the reinstatement process were inadequate and could adversely affect Customers subject to account blocks or restrictions.<sup>156</sup>

### **E.3.2 Harm and/or loss caused**

136. As a result of the contravening conduct, Customers were exposed to a greater risk of suffering both financial loss and non-financial harm from Unauthorised Payments,<sup>157</sup> which risk is itself recognised as a form of harm to consumers.<sup>158</sup> Further, some Customers did in fact suffer such harm.<sup>159</sup> There is also an interrelationship between the harm suffered in respect of each contravention.<sup>160</sup>
137. The parties are unable to quantify precisely the financial loss suffered as a result of HSBC Australia's contravening conduct. Even with adequate prevention and detection controls in place, the risk of Unauthorised Payments cannot be eliminated. Accordingly, even if the contraventions had not occurred, it is likely that some Customers would nonetheless have suffered loss and non-financial harm as a result of Unauthorised Payments.<sup>161</sup>

---

<sup>153</sup> SSAFA, [33].

<sup>154</sup> SSAFA, [34].

<sup>155</sup> SSAFA, [37].

<sup>156</sup> SSAFA, [40].

<sup>157</sup> SSAFA, [15].

<sup>158</sup> *ASIC v Westpac Securities Administration Limited* [2021] FCA 1008 at [66] (O'Bryan J).

<sup>159</sup> SSAFA, [15].

<sup>160</sup> SSAFA, [17].

<sup>161</sup> SSAFA, [16].

138. The harm to HSBC Australia's Customers is illustrated by five sample Customers (who have been de-identified in the SSAFA):<sup>162</sup>
- (a) **Customer A:** Customer A is a 51-year-old Customer based in New South Wales, who worked as a dental technician. Customer A lost approximately \$47,000 (representing almost all of her savings at the time) to a scammer masquerading as a HSBC representative in September 2023;
  - (b) **Customer B:** Customer B is a 25-year-old Customer based in New South Wales, who worked as an architectural assistant on a part time and casual basis while completing his master's degree. He lost a total of approximately \$50,000 (representing his life savings at the time) to scammers masquerading as representatives of HSBC and Commonwealth Bank in June 2023;
  - (c) **Customer C:** Customer C is a 57-year-old Customer based in Victoria. Customer C is the husband of Customer D. They live together with their two children. Customers C and D lost approximately \$48,000, which was transferred out of their home loan account, to a scammer masquerading as a HSBC representative in October 2023;
  - (d) **Customer D:** Customer D is a 56-year-old Customer based in Victoria. Together with Customer C, she lost approximately \$48,000 to a scammer in October 2023; and
  - (e) **Customer E:** Customer E is a 41-year-old Customer based in Victoria. He lives with his wife and two children. He lost approximately \$50,000 to a scammer in October 2023.
139. Each of Customers A to E has had, or is planned by HSBC Australia to have, all funds returned to them by way of recall, direct payments or the Redress Program (see E.3.6 below). For each Customer A to E, HSBC Australia returned a substantial proportion (being 90% or more) of the funds between September and November 2024 after Customers A to D had lodged an internal complaint with HSBC Australia and after Customers A to E had lodged a complaint against HSBC Australia with the Australian Financial Complaints Authority (**AFCA**).<sup>163</sup>

---

<sup>162</sup> SSAFA, [18].

<sup>163</sup> SSAFA, [19].

140. In respect of HSBC Australia’s failure to have adequate controls, Customers were exposed to a greater risk of direct losses suffered as a result of Unauthorised Transactions using the IAT payment rail.
141. During the period 8 January 2020 to 30 August 2024, HSBC Australia received a total of 1,022 reports of UARs. \$25.8 million out of a total of \$34.6 million of reported unauthorised transactions made from Customers’ accounts during that period were via the IAT payment rail.<sup>164</sup> Customers were also exposed to the risk of indirect financial harm. Some Customers lost the ability to earn interest on their lost funds, were charged additional interest on loans, or had to borrow money or realise other assets to pay expenses and meet home loan obligations.<sup>165</sup>
142. In respect of the ePayments Code Contraventions, HSBC Australia’s breaches of the ePayments Code contributed to some of the Customers who made UARs suffering non-financial harm, including emotional distress and inconvenience over an extended period. Each of Customers A to E reported experiencing feelings of frustration or stress as a result of HSBC Australia’s conduct.<sup>166</sup> Delays in investigations and failures to apply the Liability Rules also compounded the initial financial harm suffered by some Customers as a result of scams, including loss of interest as a result of the delay.<sup>167</sup>
143. HSBC Australia’s Back to Banking Contravention contributed to customers experiencing both financial harm (for example, being unable to make payments or incurring interest charges or loss of earnings),<sup>168</sup> and non-financial harm (including inconvenience from having to set up accounts with other banks and redirect payments, and frustration).<sup>169</sup>

### **E.3.3 Benefit of contravening conduct to HSBC Australia**

144. The parties are unable to precisely quantify the gains and or benefits obtained by HSBC Australia from its contravening conduct.<sup>170</sup> Nonetheless, HSBC Australia

---

<sup>164</sup> SSAFA, [21].

<sup>165</sup> SSAFA, [22].

<sup>166</sup> SSAFA, [27].

<sup>167</sup> SSAFA, [17.2].

<sup>168</sup> SSAFA, [29].

<sup>169</sup> SSAFA, [30].

<sup>170</sup> SSAFA, [13].

made certain cost savings and delayed capital expenditure as a result of the contraventions.<sup>171</sup>

145. In respect of the Fraud Controls Contravention, by not implementing the Key Controls on the IAT payment rail until after the FC Relevant Period, HSBC Australia did not incur the costs associated with implementing those controls until a date after the FC Relevant Period.<sup>172</sup>
146. In respect of the ePayments Code Contraventions, HSBC Australia did not implement adequate systems and processes to comply with its obligations under the ePayments Code between January 2020 and August 2023, and the teams responsible for investigating UARs were not adequately resourced to deal with the increasing volume of reports during the Relevant Period. HSBC Australia subsequently increased its dedicated fraud staff by 65 FTE positions from 2023.<sup>173</sup> ASIC submits that this increase is illustrative of the resourcing shortfall during the Relevant Period.

#### **E.3.4 The size and financial position of HSBC Australia and the industry in which it operates**

147. The financial position of HSBC Australia is summarised in the SSAFA.<sup>174</sup>
148. During the Relevant Period, HSBC Australia was Australia's 10<sup>th</sup> largest retail bank by total resident assets, with a share of total resident assets of \$61.223 billion, representing approximately 1.2% of the Australian banking sector. By cash and deposits, it was Australia's 7<sup>th</sup> largest retail bank, with deposits of \$4.288 billion.<sup>175</sup>
149. HSBC Australia is a wholly owned subsidiary of HSBC Holdings plc, one of the largest banks in the world by total assets.<sup>176</sup> HSBC Holdings' profit before tax for FY2025 was approximately \$30 billion.<sup>177</sup> The size of a corporate group of which the contravener forms part has been found to be relevant to the issue of penalty.<sup>178</sup>

---

<sup>171</sup> SSAFA, [14].

<sup>172</sup> SSAFA, [14.1].

<sup>173</sup> SSAFA, [14.2].

<sup>174</sup> SSAFA, [7]-[12].

<sup>175</sup> SSAFA, [9].

<sup>176</sup> SSAFA, [7].

<sup>177</sup> SSAFA, [12].

<sup>178</sup> *ASIC v Westpac Securities Administration Limited* [2021] FCA 1008; 156 ACSR 614 at [80]-[84] (O'Bryan J); *ASIC v RI Advice Group Pty Ltd (No 3)* [2022] FCA 84; (2022) 158 ACSR 321 at [45]

150. The industry in which HSBC Australia operates is a relevant factor when considering the matter of deterrence and determining a pecuniary penalty amount.<sup>179</sup>
151. In *ASIC v Australia and New Zealand Banking Group Ltd (No 3)*, Allsop CJ made the following observations in the context of the banking industry (in a case which involved findings of unconscionable conduct):<sup>180</sup>

The deterrent nature of the penal response is the central, if not the sole, purpose of an object of the penalty. A number of matters need to be stated about that here. The banking industry is large and involves consumer choices. There should be, and is, by the agreed penalty, a strong deterrent as to conduct which risks the rights of consumers and customers, by reference to any approach which risks their interests against the interests of the Bank. The considerations of the contract of adherence and its administration, to which I have referred, are central in this regard. Put in economic terms, the market efficiency upon which consumer confidence rests, relies on reliability, good faith, fairness and honesty of conduct. It should be made clear to all businesses – here, banks, but all businesses – that the consumer should be dealt with in a way that accords with the Australian business conscience for which Parliament has legislated, and here, banks should be, as the submissions make clear, left in no doubt of the need for proper and strong compliance programs, sufficient to detect and address conduct of the present kind.

152. Those obligations to which Allsop CJ referred (being reliability, good faith, fairness and honesty of conduct) are of fundamental importance and underpin the functioning of the Australian economy.<sup>181</sup>

### **E.3.5 Prior contraventions of the Corporations Act and the Credit Act**

153. HSBC Australia has not previously been found to have engaged in any contraventions of a similar nature.<sup>182</sup>

### **E.3.6 Remediation**

154. The remediation of affected customers is relevant to the assessment of penalty.<sup>183</sup>
155. In August 2025, HSBC Australia commenced implementing a large-scale remediation program (**Redress Program**). That program involves HSBC Australia reassessing the UARs of 1,045 Customers who had reported an

---

(Moshinsky J) and *ASIC v AMP Financial Planning Pty Ltd (No 2)* [2020] FCA 69; (2020) 377 ALR 55 at [183]-[185] (Lee J).

<sup>179</sup> *ASIC v Westpac Banking Corporation* [2026] FCA 651 at [118]-[120] (McEvoy J).

<sup>180</sup> *ASIC v Australia and New Zealand Banking Group Ltd (No 3)* [2020] FCA 1421 at [74] (Allsop CJ).

<sup>181</sup> *ASIC v Westpac Banking Corporation* [2026] FCA 651 at [120] (McEvoy J).

<sup>182</sup> SSAFA [31].

<sup>183</sup> *ASIC v Westpac Securities Administration Limited* [2021] FCA 1008; (2021) 156 ACSR 614 at [76] (O'Bryan J).

unauthorised transaction in the period January 2020 to November 2024.<sup>184</sup> The Redress Program was designed to ensure adherence with the ePayments Code and ASIC's Regulatory Guide 277 (RG277), so that, if eligible, Customers would receive redress as part of the Redress Program.<sup>185</sup>

156. As at 21 May 2026, HSBC Australia had made payments to customers totalling \$27,915,700.56, which consisted of:
- (a) \$7,148,535.65 reimbursed under the Redress Program since August 2025;
  - (b) \$14,300,289.88 reimbursed to customers between 2020 and 2025 prior to the Redress Program; and
  - (c) \$6,466,875.03 being amounts recalled by HSBC Australia from other financial institutions and returned to customers between 2020 and 2025 prior to the Redress Program.<sup>186</sup>
157. Some of the reimbursements referred to above were made to Redress Customers after they commenced a complaints process against HSBC Australia using HSBC Australia's internal complaints process and/or a complaint to AFCA, including Customers A to E as referred to at paragraph 139 above.<sup>187</sup>
158. In addition, HSBC Australia has also taken steps to significantly enhance its capabilities for responding to fraud, including:
- (a) enhancements to its fraud detection and prevention capabilities, including through the integration of new technology;
  - (b) improvements to processes for investigating and responding to reports of unauthorised transactions in accordance with the ePayments Code; and
  - (c) improvements to the process by which customers are able to get back to banking following an account restriction or block.<sup>188</sup>
159. HSBC has also taken further steps in addition to the implementation of the Key Controls on the IAT payment rail, including:

---

<sup>184</sup> SSAFA, [47].

<sup>185</sup> SSAFA, [47].

<sup>186</sup> SSAFA, [58].

<sup>187</sup> SSAFA, [59].

<sup>188</sup> SSAFA, [41].

- (a) implementing a new fraud monitoring and detection platform (Feedzai), which leverages machine learning and predictive model-based decisioning to monitor and intercept potentially fraudulent transactions;
- (b) implementing a bespoke web-based workflow system (SmartOps) in April 2025 which centralises fraud case management to a single platform;
- (c) internally developing updated mandatory training and liability decision guides which set out the key processes and rules to be followed when determining liability for unauthorised payments;
- (d) establishing, in February 2025, a dedicated customer facing Fraud Connect team, which is available 24 hours a day, seven days a week and serves as a specialised first point of contact for customers affected by fraud and scams;
- (e) implementing various technologies in conjunction with HSBC Australia's telecommunications providers to reduce the risk of impersonation scams;
- (f) participating in BioCatch Trust, which builds on the existing BioCatch capability by allowing participating banks to share certain fraud-related risk indicators with each other; and
- (g) introducing, in 2025, an automated name-checking step performed by HSBC Australia before payments are processed, which checks whether the payee account details broadly match the receiving bank's account records, thereby reducing the risk of misdirected payments.<sup>189</sup>

### **E.3.7 Cooperation**

160. HSBC Australia has cooperated during ASIC's investigation, including by voluntarily providing information and records to assist with ASIC's investigations and making staff members available to meet with ASIC on a voluntary basis both of which resulted in the investigation being completed expeditiously. However, there were some issues with the quality of the notice responses initially provided by HSBC Australia some of which took a substantial period of time to rectify.<sup>190</sup>

161. HSBC Australia initially contested the Proceedings. After evidence was filed by both parties, HSBC Australia admitted the contraventions as set out in the

---

<sup>189</sup> SSAFA, [45].

<sup>190</sup> SSAFA, [60].

Liability SAFA, agreed with ASIC the terms of the Liability SAFA, and agreed with ASIC an appropriate penalty for the admitted contraventions.<sup>191</sup>

162. Cooperation of the above kind should be encouraged. By its conduct, HSBC Australia has indicated an acceptance of wrongdoing and has avoided the need for a contested trial on liability and relief. The proposed penalties include an allowance for the cooperation, reflecting the level of cooperation HSBC Australia provided.

### **E.3.8 Conclusion in respect of the agreed penalty**

163. Having regard to the facts and admissions set out in the SAFA and SSAFA and the matters set out above, the parties jointly submit that an appropriate total pecuniary penalty in this case is \$35 million, broken down as follows:

- (a) Fraud Controls Contravention: \$10,000,000;
- (b) ePayments Code Contraventions: \$22,500,000; and
- (c) Back to Banking Contravention: \$2,500,000.

164. Those proposed amounts reflect the parties' assessment of the appropriate pecuniary penalty for each course of conduct, having regard to the matters set out in section **E.3**, including the duration and seriousness of the contraventions and the resulting financial and non-financial harm to Customers. In particular:

- (a) **Fraud Controls Contravention:** The proposed figure of \$10,000,000 reflects the seriousness of HSBC Australia's conduct. While no controls can eliminate Unauthorised Payments entirely, HSBC Australia's failure to implement on the IAT payment rail the same Key Controls it had implemented on other rails materially increased the volume and value of Unauthorised Payments through that rail. The sum is less than that proposed for the ePayments Code Contraventions, reflecting the materially shorter duration of this course of conduct (12 months) and the penalty necessary to achieve the object of deterrence in respect of each set of contraventions.<sup>192</sup>
- (b) **ePayments Code Contraventions:** The proposed penalty of \$22,500,000 reflects that the ePayments Code Contraventions comprise three contraventions which extended over a longer period (up to 59

---

<sup>191</sup> SSAFA, [61].

<sup>192</sup> SSAFA [6.1].

months),<sup>193</sup> affected approximately 1,000 Customers, and resulted in widespread and/or systemic failures to comply with the ePayments Code in relation to 97% of reports of unauthorised transactions.<sup>194</sup> Those failures compounded the harm already suffered by Customers who had fallen victim to Unauthorised Payments, including the financial impact arising from failure to properly apply the Liability Rules, which resulted in some Customers not being reimbursed until HSBC Australia commenced its Redress Program in August 2025.<sup>195</sup>

The contraventions also arose in circumstances where:

- (i) HSBC Australia had voluntarily subscribed to the ePayments Code on 18 March 2013, more than six years before the Relevant Period commenced;
- (ii) HSBC Australia had contracted with Customers on the basis that it warranted compliance with the ePayments Code;
- (iii) HSBC Australia, including its senior management, was aware during the Relevant Period that there was<sup>196</sup> a backlog of fraud investigations; that there were an increasing number of cases under investigation which exceeded the timeframes in the ePayments Code;<sup>197</sup> and that it was not complying with certain provisions of the ePayments Code for all customers;<sup>198</sup> and
- (iv) notwithstanding that awareness,<sup>199</sup> the conduct forming the first and second ePayments Code Contraventions continued until about August 2023, and HSBC Australia did not implement adequate systems and processes to identify, track and report its compliance with the ePayments Code (the subject of the third ePayments Code Contravention) until November 2024, some 15 months later.

---

<sup>193</sup> SSAFA [6.2].

<sup>194</sup> SAFA [110], [110.5].

<sup>195</sup> SSAFA [17.2], [27], [58.1].

<sup>196</sup> SSAFA [37.1].

<sup>197</sup> SSAFA, [37.2].

<sup>198</sup> SSAFA [37.4].

<sup>199</sup> HSBC was taking steps but these were inadequate, e.g. SSAFA [38].

In that context, the higher proposed penalty on account of the ePayments Code Contraventions provides both an appropriate measure of specific deterrence (against HSBC Australia repeating the conduct) and general deterrence (against other ePayments Code subscribers treating their voluntary commitments to the Code, and their contractual warranties to customers, as anything other than binding obligations to be complied with).

- (c) **Back to Banking Contravention:** The smallest proposed penalty (\$2,500,000) is proposed in respect of the Back to Banking Contraventions. Although extending over a period of approximately 52 months,<sup>200</sup> the Back to Banking Contraventions concerned a failure to have an adequate system or process to advise Customers of the process to reinstate their accounts.<sup>201</sup> The conduct contributed to only *some* Blocked Customers suffering financial and non-financial harm. HSBC Australia, including senior management, was aware for only part of the Relevant Period (from December 2023) that the relevant systems and processes were inadequate.<sup>202</sup>

165. Having regard to the totality principle, the parties have considered whether the aggregate of \$35,000,000 is just and appropriate in light of the wrongdoing viewed as a whole, and submit that it is.
166. The parties consider that, in light of HSBC's cooperation and other mitigating factors, the total penalty ought to be reduced by approximately 15%, meaning that, had there not been a degree of cooperation and other mitigating factors, the total pecuniary penalty sought would have been \$41.25 million.
167. The parties submit that the proposed pecuniary penalties reflect the nature of HSBC Australia's contraventions. This sum, together with the declarations proposed to be made by the Court, puts a price on the contraventions that is appropriate to deter both repetition by HSBC Australia or contravention by other providers of financial services, and specifically, banks.

---

<sup>200</sup> SSAFA [6.3].

<sup>201</sup> SAFA [118], [123.4].

<sup>202</sup> SSAFA, [40].

## F. ADVERSE PUBLICITY ORDER

168. Section 182(1) of the Credit Act gives the Court power to make adverse publicity orders against a person who has contravened a civil penalty provision. An adverse publicity order is defined in s 182(2) of the Credit Act as follows:

- (2) An **adverse publicity order** is an order that:
- (a) requires a person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; or
  - (b) requires a person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

169. An analogous power is contained in s 1101B(1) of the Corporations Act.<sup>203</sup> The Court has a broad discretion as to whether to make such orders.<sup>204</sup>

170. The purpose of adverse publicity orders is both punitive and protective (in the sense of dispelling incorrect or false impressions, alerting the public and customers to the fact of contravening conduct, aiding the enforcement of the primary orders and preventing repetition of contravening conduct).<sup>205</sup>

171. The Court may determine the appropriate form and manner of any adverse publicity notice ordered.

172. The Agreed Proposed Orders contain a "Written Notice" at Annexure A and include an adverse publicity order (**AP order**) that requires HSBC Australia :

- (a) within 30 days of the date of the AP order, to publish the Written Notice on its website, <https://www.hsbc.com.au>,
- (b) within 30 days of the date of the AP order, to publish the Written Notice to Customers via its Mobile Banking application; and
- (c) within 30 business days of the date of the AP order, send a copy of the Written Notice to the last known email or postal address of each of the Customers who lodged a report of an unauthorised transaction with

---

<sup>203</sup> [not used]

<sup>204</sup> *ASIC v National Australia Bank* [2025] FCA 947 at [90] (Neskovcin J).

<sup>205</sup> *ASIC v National Australia Bank* [2025] FCA 947 at [90] (Neskovcin J); *ASIC v Aware Financial Services Australia Ltd* [2022] FCA 146 at [35] (Moshinsky J); see also *ASIC v Commonwealth Bank of Australia (No 2)* [2021] FCA 966 at [7]-[17] (Lee J); *ASIC v Australia and New Zealand Banking Group Ltd* [2022] FCA 1251; (2022) 164 ACSR 428 at [238] (O'Callaghan J); *ASIC v AustralianSuper Pty Ltd* [2025] FCA 102 at [251]-[252].

HSBC Australia (as identified in Annexure A to the Agreed Proposed Orders),

173. The manner of distribution, which includes publication on the contravener's website and publication on a mobile application, is similar to the form of order made in *Australian Securities and Investments Commission v AustralianSuper Pty Ltd*.<sup>206</sup>
174. The parties submit that the Court can be satisfied that the proposed adverse publicity order is appropriate to alert the public, and HSBC Australia's customers, to the fact that HSBC Australia engaged in the contravening conduct.

**G. COSTS**

175. The Court has power to award costs pursuant to s 43 of the Federal Court Act. The parties jointly seek an order that HSBC Australia pay ASIC's costs of the proceeding as agreed.

**H. CONCLUSION**

176. For the reasons set out above, the parties seek that the Court make declarations and orders in the form set out in the Agreed Proposed Orders.

**Date:** 18 June 2026

These submissions have been jointly prepared by Paul Liondas KC, Fleur Shand, Paul Annabell and Laila Hamzi of counsel for ASIC and Kane Loxley SC and Amir Chowdhury of counsel for HSBC Australia.

---

<sup>206</sup> *Australian Securities and Investments Commission v AustralianSuper Pty Ltd* [2025] FCA 102.

## **ANNEXURE A**

### **GLOSSARY**

**Account Restrictions** means the application by HSBC Australia of certain restrictions to some or all accounts after a Customer lodged a report of an unauthorised transaction

**ACL** means HSBC Australia's Australian Credit Licence Number 232595

**AFSL** means HSBC Australia's Australian Financial Services Licence Number 232595

**Agreed Proposed Orders** means the minute of proposed orders prepared by the parties

**ASIC** means the plaintiff, the Australian Securities and Investments Commission

**Banking 2.0** means the new Online Banking platform that was implemented in June 2024; to replace the HSBC Group's then existing Online Banking platform, known as the Global Service Platform (**GSP**)

**Booklet** means the various versions of the Personal Banking Booklet issued by HSBC Australia, dated 19 July 2020, 26 September 2020, 30 November 2020, 24 September 2021, 26 November 2021, 1 August 2022, 7 October 2022, 15 November 2022, 2 June 2023, 3 November 2023 (which only applied to products or services opened after that date), 11 April 2024 and 17 July 2024

**Corporations Act** means the *Corporations Act 2001* (Cth)

**Credit Act** means the *National Consumer Credit Protection Act 2009* (Cth)

**Customers** means account holders in HSBC Australia's Wealth and Personal Banking business

**Digital Access** means Mobile Banking and Online Banking

**Digital Blocks** means the placing by HSBC Australia of certain blocks on some or all facilities available to a Customer including through Online Banking and/or Mobile Banking after a Customer lodged a report of an unauthorised transaction

**ePayments Code** means the ePayments Code referred to at paragraph 42

**fast payment rail** means a payment rail with the functionality to transfer a payment to or from a bank account in real-time or near real-time (within seconds)

**FC Relevant Period** means the period from 29 May 2023 to 29 May 2024

**FCMI team** means HSBC Australia's Financial Crime Investigations Major Investigations team

**FIM team** means HSBC Australia's Fraud Investigation Management team

**Fraud Rules** means rules contained in HSBC Australia's transaction monitoring platform known as the SAS enterprise fraud management (or SAS EFM) system Key Controls

**HSBC Australia** means the defendant, HSBC Bank Australia Limited (ACN 006 434 162)

**IAT payment rail** means HSBC Australia's internal account transfer payment rail for transactions between HSBC Australia bank accounts using HSBC's HUB core banking system

**Liability Rules** - the ePayments Code contained rules for the allocation of liability for losses arising from unauthorised transactions

**Mobile Banking** means banking through a mobile banking platform which could be accessed by a HSBC-branded application on a mobile device

**Online Banking** means banking through an internet browser-based banking platform

**real-time interception** means the capability to intercept, hold, block or decline payments after receipt of payment instructions but before those instructions are processed or fulfilled, enabling potentially fraudulent or otherwise restricted payments to be stopped in real-time

**Relevant Period** means the period 1 January to 30 November 2024

**SAFA** means the Statement of Agreed Facts and Admissions in relation to liability;

**SAS EFM** means the SAS enterprise fraud management system

**SLAs** means HSBC Australia's systems and processes for the investigation of reports of unauthorised transactions, and reporting of outcomes to Customers

**social engineering** is where techniques are used by malicious actors to direct or influence individuals or staff to perform specific actions such as opening an attachment, visiting a website, revealing credentials, disclosing confidential or sensitive information or transferring funds

**SSAFA** means the Supplementary Statement of Agreed Facts and Admissions in relation to final relief

**UAR** means reports of unauthorised transactions

**Unauthorised Payments** means third-parties, through forgery or account compromise (including by social engineering) obtaining Digital Access to a Customer's Deposit

Accounts or Loan Accounts; and making payments from the Customer's Deposit  
Accounts or Loan Accounts (or both) without the Customer's authority