

SUBMISSION

Scams Prevention Framework – Exposure Draft Legislation

4 October 2024

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Ms Shellie Davis
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Treasury
Langton Cres,
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Submitted via email to: shellie.davis@treasury.gov.au

4 October 2024

Dear Ms Davis

Scams Prevention Framework – Exposure Draft Legislation

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to this consultation by Treasury.¹

About ASFA

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.9 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

Part 1 - ASFA's Opening Comments on the Framework

ASFA is supportive of the Government's strong approach to combatting scams as pivotal to protecting businesses and consumers. We note for example that in calendar year 2023, research from the Australian Competition and Consumer Commission (ACCC) shows Australians lost \$2.74 billion to scams.² This is not acceptable and ASFA and the superannuation sector stand with the Government in seeking to combat the scourge of scams.

The first part of this submission will provide some general context on ASFA's work to combat scams. The second part will provide a summary of ASFA's understanding of the key elements of this Scams Prevention Framework (SPF). The third and final part of this submission will provide ASFA's specific recommendations on how the framework could be improved or clarified to maximise effectiveness.

We note that in the first instance, the SPF is not intended to apply to the superannuation sector. However, the consultation documents indicate the Minister may extend the Framework, including by:³

¹ Treasury, Scams Prevention Framework – Exposure Draft Legislation ([13 September 2024](#)).

² Australian Competition and Consumer Commission (ACCC), *Scam losses decline but more work to do* ([28 April 2024](#)).

³ Treasury, *Summary of Reforms* ([13 September 2024](#)), 8.

*[D]esignating further sectors...into the framework over time where scam activity shifts. This could include **superannuation funds**, digital currency exchanges, other payment providers and transaction-based digital platforms like online marketplaces.*

Therefore, ASFA is making this submission to ensure any future application of the SPF to superannuation takes into consideration appropriately the unique circumstances of our sector.

ASFA wishes to emphasise that our \$3.9 trillion sector wants to assist the Government in dealing with scams. Our membership has been on the front foot in proactively seeking combat scams and issues related to other heinous forms of financial crime. It is for this reason that we have taken the following active steps recently:

1. Launching ASFA's *Better Practice Guidance on Minimum Fraud Controls for Superannuation Funds*. This took effect from 1 July 2024 with a 12-month transition period and demonstrates ASFA's commitments to appropriate safeguards when it comes to privacy, identity verification and Anti-Money Launder and Counter Terrorism-Financing (AML/CTF) obligations. The guidance is publicly available [here](#) and indicates ASFA and our members commitment to strong standards and accountability.
2. Launching ASFA's Financial Crime Protection Initiative (FCPI) in [September 2024](#). This seeks to engage our over 100 members across the superannuation sector in collective efforts to fight and prevent financial crime, through focusing on the following:
 - Enhancing collaboration and knowledge sharing between funds and critical service providers including custodians, administrators and tech providers.
 - Developing industry-wide frameworks to combat financial and cybercrime.
 - Connecting the superannuation sector, relevant government agencies and related financial services bodies.
 - Helping make Australians aware of the actions they can take to protect their super and data from scammers.
3. Issuing a joint statement in [August 2024](#), with Women in Super and the Super Members Council (SMC), condemning domestic and family violence and financial abuse in relation to superannuation and calling for swift reforms to address these issues. We also appeared before the Parliamentary Joint Committee in Relation to Corporations and Financial Services [inquiry](#) into these matters to re-affirm our commitment to meaningfully addressing these issues.

ASFA's strong support for efforts to effectively address all forms of financial crime, including scams, is evident from the above.

We remain ready to continue to work with Government to tackle these issues. As our CEO, Mary Delahunty has said – 'the rapid pace of development of risk in this area means public and private partnerships will be necessary to meet and beat' these threats.⁴

ASFA wants to assist the Government in combatting scams and that is why we support the objectives of these reforms. Our recommendations, in Part 3 of this submission, are intended to help ensure the framework most effectively meets its underlying objective to maximise consumer safety and fight scams, while avoiding regulatory confusion or duplication.

⁴ ASFA, *Leading the Charge: Superannuation Peak Body Launches Initiative to Safeguard Savings from Financial Crime (17 September 2024)*.

Part 2 - ASFA's Summary of the SPF Framework

ASFA notes this legislation would insert a new Part IVF into the *Australian Competition and Consumer Act 2010* (Cth)(the ACCA).

The amending legislation is to be known as the Treasury Laws Amendment Bill 2002: Scams Prevention Framework (the draft bill).

For the avoidance of doubt, this submission is made with reference to the following documents:

1. The [draft bill](#), as provided by Treasury for consultation on 13 September 2024.
2. The Draft Explanatory Materials.⁵
3. Treasury's Summary of the Reforms.⁶

On [13 September 2024](#), when announcing these reforms, the Assistant Treasurer and Minister for Financial Services, the Hon. Stephen Jones noted there are four key aspects to the scheme, which will initially apply only to banks, telecommunications and digital platform services. The four key elements are as follows:⁷

1. To Enable the Minister to designate sectors and establish sector-specific codes. The Codes will impose mandatory obligations on designated sectors to combat scammers and protect Australians.⁸
2. Mandate designated sectors to have Internal Dispute Resolution (IDR) mechanisms that are accessible and transparent for customers.⁹
3. Enable an External Dispute Resolution (EDR) scheme to be nominated for all scam complaints made under the Framework.¹⁰
4. Build a coordinated intelligence sharing ecosystem by mandating timely reporting and information sharing across industry and government.¹¹

ASFA also notes that, in addition to the four items outlined above, the Government's legislation includes six economy-wide principles, to be known as the 'overarching principles of the Scams Prevention Framework' (SPF principles).

These SPF principles, summarised in [clause 58BA](#), must be adhered to, beyond the obligations in mandatory industry codes that apply to sectors the Minister has designated.

The clauses of the bill related to the SPF principles are also civil penalty provisions under [clauses 58FG to 58FJ](#) of the draft bill. Therefore, breaches of the SPF principles can be subject to penalties of almost \$50 million for bodies corporate or \$2.5 million for individuals.¹²

⁵ Treasury Laws Amendment Bill 2024: Scams Prevention Framework – [Exposure Draft Explanatory Materials](#).

⁶ Treasury, *Summary of Reforms* ([13 September 2024](#)).

⁷ The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), *Albanese Government unveils Scams Prevention Framework for public consultation* ([13 September 2024](#)).

⁸ The Minister's powers to designate certain sectors are in [clauses 58AC to 58AF](#).

⁹ See [clause 58BZC](#).

¹⁰ See [clause 58BZD](#) and also Division 4 of the draft bill, specifically [clauses 58DA to 58DE](#).

¹¹ See Division 5, Subdivision C, specifically [clauses 58EF to 58EI](#).

¹² The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), *Albanese Government unveils Scams Prevention Framework for public consultation* ([13 September 2024](#)). See too clause 58FH(2)(a) which creates a maximum penalty for 'tier one' contraventions of 149,745 penalty unites. A Commonwealth penalty unit is currently \$330. So the maximum penalty is \$49,415,850 from [1 July 2024](#). The penalties for individuals are in clause 58FH(3)

The six economy-wide SPF obligations are outlined below – they are in Division 2 of the bill:¹³

1. Governance frameworks regarding scams - as outlined in [clauses 58BB to 58BH](#) under Subdivision B.
2. To prevent scams – as outlined in [clauses 58BI to 58BL](#) under Subdivision C.
3. To detect scams – as outlined in [clauses 58BM to 58BP](#) under Subdivision D.
4. To deport scams – as outlined in [clauses 58BQ to 58BU](#) under Subdivision E.
5. To disrupt scams – as outlined in [clauses 58BV to 58BZ](#) under Subdivision F.
6. To respond to scams – as outlined in [clauses 58BZA to 58BZE](#) under Subdivision G.

ASFA notes that what is required under each of the six economy-wide principles is outlined in detail in the draft explanatory materials provided with the draft bill.¹⁴

Finally, we note the bill requires regulated entities in all designated sectors to have transparent Internal Dispute Resolution (IDR) framework ([clause 58BZC](#)) and be part of an External Dispute Resolution (EDR) framework ([clause 58BZD](#)).

The Minister has indicated his intention to designate the Australian Financial Complaints Authority (AFCA) as the EDR scheme for the first three regulated sectors.¹⁵

ASFA notes superannuation is already subject to mandatory IDR and EDR requirements under the *Corporations Act 2001* (Cth)(the Corporations Act) and ASIC's [RG271](#) and [RG267](#).

Given this context, if there was an extension of the framework to superannuation, as suggested in the consultation documents, it would be appropriate for the existing IDR and EDR requirements which already apply to superannuation to be maintained, including existing AFCA membership.¹⁶

Part 3 - ASFA's Specific Recommendations on the Framework

ASFA supports the policy objectives of the framework insofar as it will help to combat scams. However, we make recommendations to better allow for appropriate transition and effectiveness.

Notwithstanding the fact superannuation is to be excluded from the first round of designation, ASFA has the following recommendations:

1. There should be a longer transition period than is currently proposed, preferably 6 to 12 months after the bill receives Royal Assent. Currently, the bill takes effect the day after Royal Assent, per [page 1](#).
2. ASFA seeks confirmation as to how long a newly designated sector has before it must comply with all the civil penalty provisions related to the 'overarching SPF principles' in Division 2 of the bill. Currently, it appears once a sector is designated under clause 58AC, it is immediately subject to all the 'overarching obligations' in Division 2. A newly designated sector should be allowed at 6-to-12-month transition period before all these new obligations apply, to allow for transition and operational uplift.¹⁷
3. ASFA recommends there should be additional consultation prior to the designation of any further sectors by the Minister pursuant to clause 58AC(1). This consultation should allow for the making of written

¹³ Treasury, *Summary of Reforms* ([13 September 2024](#)), 6-7.

¹⁴ Treasury Laws Amendment Bill 2024: Scams Prevention Framework – [Exposure Draft Explanatory Materials](#), 24-47.

¹⁵ The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), *Albanese Government unveils Scams Prevention Framework for public consultation* ([13 September 2024](#)).

¹⁶ Treasury, *Summary of Reforms* ([13 September 2024](#)), 8.

¹⁷ Clause 58AC defines regulated sectors and clause 58BA defines when the overarching principles apply.

submissions as to if future designations are appropriate or should be tailored in any way to meet specific sector circumstances.

4. In general, ASFA recommends there should be a review of the current framework where both breaches of a code and breaches of the SPF principles constitute civil penalty provisions.¹⁸ In general, ASFA is more comfortable with specific obligations contained within codes being enforceable, as outlined in clause 58CA. Especially when considering that, under the scheme as drafted, codes cannot be inconsistent with SPF principles.¹⁹ This is because these codes are developed with substantial industry input and have a sufficient degree of granularity and specificity to render obligations more clearly than the SPF principles, which are expressed at a higher level of generality. If SPF principles are to remain civil penalty provisions, then detailed guidance should be issued in relation to each of the six SPF principles to outline exactly what is required to meet each of the principles' requirements.
5. ASFA recommends that prior to the making of any sector specific code for superannuation under clause 58CB, there should be a separate and extensive consultation with the superannuation sector to determine which body should draft that code and what its content should be. This should include the opportunity for written submissions on the content of the code. The code should also use existing industry frameworks as its basis.
6. ASFA recommends further detailed guidance should be released in relation to the definition of a 'scam' under clause 58AG and the definition of 'actionable scams intelligence' under clause 58AI. These terms are currently quite broad and require further clarification.
7. ASFA recommends further clarification of the how information sharing scheme under clauses 58EF to 58EI would interact with existing obligations under the AML/CTF Act 2006, regarding Suspicious Matter Reports (SMRs) and the Notifiable Data Breach Scheme (NDB) under *Privacy Act 1988* (Cth) (the Privacy Act). We want information sharing to avoid duplication and maintain consistency between these three regimes.
8. ASFA recommends the SPF framework should be reviewed in light of the fact that there are currently major ongoing reforms to the legislation below being finalised, to ensure the draft bill is both consistent with and compliments this legislation:
 - i. The Privacy Act – which has major reforms currently before Parliament in the form of the Privacy and Other Legislation Amendment Bill 2024
 - ii. The AML/CTF Act – which has major reforms currently before Parliament in the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024
 - iii. Changes to the Security of Critical Infrastructure Act 2018 and new cyber security legislation which has been [announced](#) by the Home Affairs Minister, the Hon. Tony Burke MP.Care must be taken to ensure that all this legislation works in harmony to protect Australians from financial crime and scams appropriately without creating regulatory duplication.
9. Noting that Treasury has indicated Minister Jones wishes to pass this bill before the end of 2024, further advice on timelines would always be greatly appreciated.

¹⁸ See clauses 58FG on SPF principles and 58CA in relation to code provisions.

¹⁹ Clause 58CC(1).

10. In respect of the proposed multi-regulator approach in Division 5, Subdivision B - ASFA has the following comments. As superannuation funds are not currently directly regulated by ACCC (excepting enforcement litigation). Therefore, confirmation of the following aspects would assist
- how the ACCC as regulator will operate i.e. their remit (similar to the clarity currently provided on other regulators like ASIC, APRA and AUSTRAC)
 - clearly defined guidance as to the expectations on regulated entities, particularly in relation to meeting the SPF principles-based obligations
 - This will assist entities regulated entities to be compliant and also form a basis for determining breaches and reportability
 - Case studies and scenarios in the guidance will assist entities in understanding the criteria for assessing breaches and reportability to implement appropriate mechanisms
11. In respect of reporting requirements under Division 2, Subdivision E, with the ACCC as the primary regulator and reporting requirements in the primary law there is the challenge of duplicate intel being reported to different regulators. ASFA has the following comments in this regard:
- It is understood that this most likely will be addressed in sector specific codes
 - If a centralised government source is being considered, it would be worthwhile to assess this across the government agencies and regulators to achieve alignment between reporting requirements from different legislation
 - Adjustments may be needed to ensure alignment across different legislation, for example, the *Competition and Consumer Act 2010* (Cth)(the CCA) covers scams intelligence reporting, compared to the *Anti-Money Laundering and Counter-Terrorism Act 2006* (Cth)(the AML/CTF Act) covering Suspicious Matter Reports (SMRs). SMRs are all inclusive and if there is no carve out in AML/CTF Act or the CCA, actionable scams intelligence will need to be reported via SMRs to AUSTRAC as well as to the ACCC.

Thank you again for the opportunity to participate in this consultation. Should you wish to discuss this submission, or any of our recommendations, please contact ASFA Senior Policy Adviser, Sebastian Reinehr, at sreinehr@superannuation.asn.au or on 0474 704 992.

Yours sincerely



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