

Scams Taskforce
Market Conduct Division
Treasury
Langton Crescent
Parkes ACT 2600



Via email: scampolicy@treasury.gov.au

4 October 2024

Dear Madam/Sir,

Treasury Laws Amendment Bill 2024: Scams Prevention Framework Exposure Draft

SBS welcomes the opportunity to comment on the Exposure Draft Treasury Laws Amendment Bill 2024: Scams Prevention Framework (the **Bill**). SBS appreciates the need for well-designed measures to mitigate risks and protect consumers from harms arising from scams.

This submission notes the potential inclusion of SBS's online and broadcast services in the Scams Prevention Framework, and submits that due to the negligible scam activity originating from our platforms, the high level of existing regulatory safeguards, and the nature of the digital ad supply chain, that the potential inclusion of our services in the Framework is unwarranted.

Potential designation of SBS services

We note that further to proposed subparagraph 58AC(2)(c)(ii) and proposed subparagraph 58AC(2)(c)(iii), the Bill would provide the Treasury Minister with the discretionary power to designate an electronic service or a broadcasting service, and could therefore bring SBS's online and broadcasting services within the scope of the Framework.

We note that digital platform services are identified as a priority for designation¹, which may potentially capture some SBS digital services. Whilst broadcasting services are not included in the list of sectors that the Treasury Minister intends to designate (*Scams Prevention Framework – Summary of reforms*, p 4), we remain concerned regarding the potential for designation.²

This potential inclusion of SBS's services in the Framework is unwarranted, and could give rise to burdensome compliance impacts.

Our concerns remain that regulatory intervention must be appropriate to the circumstances of how these scams are reaching consumers, and the varying levels of control capabilities that industry participants have over the appearance of scams.

Scam activity on SBS's digital platforms

We refer to our 5 March 2024 submission³ to the Taskforce in response to the *Scams – Mandatory Industry Codes* consultation paper. In that submission, SBS noted that scam ads arising through the ad tech supply chain have impacted SBS's online services and audiences, and we are therefore supportive of appropriate measures being put in place to address those scams.

¹ Refer to p 8, Summary of Reforms

² Under 'electronic services' (within the meaning of the Online Safety Act 2021) pursuant to the proposed subparagraph 58AC(2)(c)(ii), or under 'broadcasting services' (within the meaning of the Broadcasting Services Act 1992) pursuant to proposed subparagraph 58AC(2)(c)(iii).

³ https://www.sbs.com.au/aboutus/wp-content/uploads/2024/06/SBS-submission_Scams-%E2%80%93-mandatory-industry-codes_March-2024.pdf

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However, that submission also outlined the relative levels of control that different parties within the digital ad supply chain have over the appearance of scam ads on digital platforms. SBS's view remains that, given control over scam ads resides at other parts of the ad tech supply chain (including the demand side platforms (DSPs) and supply side platforms (SSPs)), any new regulatory framework should not place obligations on entities such as SBS, which possess relatively very minimal control over scam ads arising through the ad tech supply chain, including the extremely limited ability to check the legitimacy of the advertisers and their ads. This limitation is inherent in the nature of the ad tech supply chain, and is not unique to SBS.

We reiterate our view that regulatory obligations should attach to DSPs, and similarly SSPs. Some tech giants are both a DSP and an SSP including Google – which is very dominant and comprehensive in its market and supply chain position, enabling it to address scam ads more effectively.

If it is not preferred to amend the Bill in this way, an additional decision-making criteria should be added to proposed new section 58AE to require consideration of the level of control a digital service has over the appearance of scam activity on their platform, as part of a designation decision.

The inclusion of broadcast services is unwarranted, and potentially imposes unnecessary compliance burdens

We note that broadcast services are listed in proposed new subparagraph 58AC(2)(c)(iii) as a sector which could be designated by the Treasury Minister, and therefore brought into the Framework.

We note that broadcasting services are not amongst the sectors identified for designation in the initial stages of the new framework, and that there are a range of designation criteria available to the Treasury Minister which would appear to mitigate the risk of an unwarranted designation. However, SBS queries the inclusion of broadcast services as an identified sector in s 58AC, given the negligible scam activity on broadcast platforms and the very high levels of existing regulation on these services. Indeed, SBS considers there to be grounds to wholly exclude broadcast services from the Framework through a specific exemption.⁴

SBS broadcast services neither produce nor carry scams, and are subject to long-standing, robust and comprehensive checks and control mechanisms that are frequently reviewed to ensure they are fit for purpose. These include:

- Legislative frameworks including the *Special Broadcasting Service Act 1992*, which requires the Board to maintain the independence and integrity of SBS, among other duties, as well as existing publisher liability that exists under the *Competition and Consumer Act 2010*;
- The *SBS Code of Practice*⁵ (publicly available and subject to regular public reviews and approval by the SBS Board);
- Rigorous editorial protocols and checks;
- Other economy- and sector-wide laws and regulations; and
- Industry-leading and easily accessible complaint handling process, with possible recourse to the independent SBS Ombudsman and the Australian Communications and Media Authority (ACMA)

Any third-party ads on SBS's broadcast services must comply with a range of Advertising Codes made by the Australian Association of National Advertisers (AANA) and administered by the advertising regulator, Ad Standards.

⁴ For a comparable approach, we note that content produced by SBS subject to its Code of Practice is proposed to be excluded from the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024

⁵ <https://www.sbs.com.au/aboutus/sbs-code-of-practice/>



SBS's television ads must also be classified and reviewed by ClearAds, an industry body which ensures pre-publication compliance with relevant advertising rules and regulations, and advertising Codes of Practice.

As noted above, SBS acknowledges that broadcast services are not amongst the sectors identified for designation in the initial stages of the new framework. However, the inclusion in the Bill of a specific power to designate broadcast services remains of concern, and appears to be inconsistent with the absence of scam activity on these platforms, the high levels of audience trust, and the extensive and fit for purpose regulatory arrangements which already apply.

We therefore submit that broadcasting services which are inherently low risk, and already extensively regulated, should not be within the scope of the Bill. If this approach is not preferred, we recommend that subparagraph 58AC(2)(c)(iii) be removed from the Bill.

The potential inclusion of SBS in the Framework could give rise to burdensome compliance impacts

If SBS were designated by the Treasury Minister, this would lead to a range of not insignificant compliance requirements, and SBS would be required to divert resources away from its core public service priorities. Therefore, it is important that any additional regulation and obligations that apply to SBS are clearly warranted, and this submission argues that additional regulation of SBS's services is not justified in the current environment (as outlined above). The potential compliance impact would be disproportionate to the negligible risk of scam activity on SBS's broadcast services. It would also not reflect the fact that primary control over scam ads on digital platforms lies with DSPs and SSPs.

Thank you again for the opportunity to comment on the Bill and proposed framework. If you have any queries or would like further information, please contact Clare O'Neil, SBS Director of Corporate Affairs (clare.oneil@sbs.com.au).

Yours sincerely,

A handwritten signature in blue ink that reads "James Taylor". The signature is fluid and cursive, with a long horizontal stroke at the end.

James Taylor
Managing Director