



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: BLC:BMSlh031024

3 October 2024

Scams Taskforce
Market Conduct Division
Treasury
Langton Crescent
Parkes ACT 2600

By email: scampolicy@treasury.gov.au

Dear Sir/Madam,

Scams Prevention Framework – exposure draft legislation

Thank you for the opportunity to provide feedback on the effectiveness of exposure draft legislation to implement the Scams Prevention Framework (Framework). We note that Treasury is seeking feedback on whether the proposed Framework reflects the Government's policy intent as set out in the explanatory materials, and the privacy and compliance cost impacts of the proposals. The Law Society's Business Law and Privacy & Data Law Committees contributed to this submission.

General comments

The Law Society supports initiatives to prevent the significant and unacceptable impact of scams on Australian consumers, with losses amounting to \$2.74 billion in 2023.¹ We support the general structure of the proposed Framework, noting it will be incorporated under the *Competition and Consumer Act 2010*. Designated service providers will be required to comply with prescribed overarching scam prevention principles, and the Australian Competition and Consumer Commission (ACCC) will regulate and enforce compliance with the Framework.²

We note that, in order to reflect the Government's whole-of-ecosystem policy intent, including the adoption of a designation mechanism to encompass additional sectors over time, a multi-regulator approach to enforcement of mandatory sector-specific codes is proposed. Additionally, the Framework includes the application of both internal dispute resolution (IDR), and external dispute resolution (EDR), schemes, the provisions of which are detailed, complex and expansive. This may raise concerns regarding the overall effectiveness of the regime, including regulatory certainty and compliance issues for designated entities, as outlined further below.

¹ ACCC, 'Scam losses decline, but more work to do as Australians lose \$2.7 billion' (Media Release, 28 April 2024 <https://www.accc.gov.au/media-release/scam-losses-decline-but-more-work-to-do-as-australians-lose-27-billion>).

² Proposed Part IVF – Treasury Laws Amendment Bill 2024: Scams Prevention Framework, <https://treasury.gov.au/sites/default/files/2024-09/c2024-573813-ed.pdf>.

Regulated sectors

Initial designation

We note that the Government has indicated its intention to initially designate the following as regulated sectors:

- banks,
- telecommunications providers, and
- digital platform providers relating to social media, paid search engine advertising, and direct messaging services.³

We agree with the Business Law Section of the Law Council of Australia that additional high risk and/or interrelated sectors operating in the scam ecosystem should also be considered for initial designation. These include:

- superannuation funds,
- digital currency exchanges,
- payment service providers, and
- online marketplaces.⁴

While we acknowledge the Government has identified these sectors for possible future designation,⁵ we submit their initial exclusion may hamper the effectiveness of the Framework, potentially encouraging scammers to shift to unregulated platforms within the ecosystem. We appreciate the Government may seek to prioritise some sectors, due to time and resource constraints in developing multiple mandatory sector-specific codes. There may also be concern that some of those sectors identified for future designation may lack capacity to comply with the full suite of Framework obligations at the outset, noting they will include small and new businesses that are relatively scam risk immature.

We suggest consideration be given to an incremental approach, so that all high risk and interrelated sectors within the scam ecosystem, at present and as it evolves, may be brought under the Framework to require compliance with the high-level prescribed principles, as a minimum. The additional sector-specific codes and IDR requirements could be prescribed to apply to certain sectors, within specified time-frames, as appropriate. We also suggest a detailed timeframe for implementation is communicated to those sectors identified for future designation, to ensure their readiness, and to address potential Framework loopholes in a timely manner.

Future designations

In our view, the designation mechanism appropriately provides flexibility to ensure the Framework encompasses the scam ecosystem as it evolves, and as scammers target vulnerable channels. For instance, we note supermarket and other retail store gift cards are used as a transmission mechanism for the proceeds of scams, and that there is typically a surge in this activity during holiday seasons.⁶ We suggest monitoring the supermarket and retail sectors as possible upcoming candidates for future designation.

³ Treasury, 'Scams Prevention Framework Summary of reforms', September 2024, 8.
<https://treasury.gov.au/sites/default/files/2024-09/c2024-573813-summary.pdf>.

⁴ Law Council of Australia, Business Law Section submission to Treasury, 2 February 2024, [Scams - Mandatory Industry Codes](#), 2-3.

⁵ Treasury, above n 3.

⁶ Gift card fraud was reported to have increased by 110% in the second half of 2023, see 'Retail fraud surges 700% during 2023 holiday season, Cequence reveals' eCommerceNews, 14 December 2023, <https://ecommercenews.com.au/story/retail-fraud-surges-700-during-2023-holiday-season-cequence-reveals>.

Multi-regulator model

We note the tiered regulatory design of the Framework will be administered and enforced by way of a multi-regulator model, with the ACCC as a general regulator. We acknowledge the policy intent is to harness existing regulatory relationships and supervision, and surveillance frameworks already established by the various regulators across sectors.⁷ At the same time, in our view, this structure highlights the burden of regulatory compliance on business, with the potential for duplication of actions and inconsistencies in interpretation and application.

The Law Society notes the investment in resources required by businesses to comply with multiple regulatory arrangements. We endorse the Law Council's suggestion that regulatory duplication and overlap may be avoided through a coordination mechanism and/or consultation obligations.⁸

External Dispute Resolution

The Law Society supports opportunities for scam victims to access dispute resolution processes that ensure effective and timely remedies to recover funds. The Framework prescribes an EDR scheme for escalation of complaints where they are not resolved at the sector-specific IDR stage. We note the Government intends to prescribe the Australian Financial Complaints Authority (AFCA) as the EDR scheme for the initial sectors designated under the Framework.⁹ While we do not oppose the selection of AFCA in principle, we note AFCA's authority will be considerably expanded beyond the scope of its existing EDR jurisdiction, which is currently confined to complaints in relation to financial services.

Importantly, regulated entities within the telecommunications industry will now be required to join the AFCA EDR scheme. This may have implications for consumers, given the existing EDR arrangements administered by the Telecommunications Industry Ombudsman (TIO). Apart from potential jurisdictional questions as to the proper forum for a complaint, we note the TIO has expressed concern that the proposal will create confusion and complicate processes, particularly for vulnerable consumers.¹⁰

We also observe that, where regulated entities in the banking sector may hold existing AFCA membership, those in the digital platform services sector will largely be new to this environment. Additional resourcing, and access to technological expertise beyond AFCA's current scope of operation, will be required to support this broader jurisdiction. The potential for multi-sector issues to arise is also noted, given the lifecycle of a scam may involve numerous regulated entities. It is essential that AFCA is equipped to manage new and complex complaint scenarios to ensure the Framework is effective and fair.

We suggest further consideration may also be warranted for adoption of a separate EDR scheme for small business. We note that the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) has put itself forward as an external escalation point to advance the informal arrangements it has in place with a number of digital platforms. It is also noted that ASBFEO has experienced increased requests for dispute assistance between small businesses and digital platforms.¹¹

⁷ Treasury Laws Amendment Bill 2024: Scams Prevention Framework, Explanatory Materials, <https://treasury.gov.au/sites/default/files/2024-09/c2024-573813-em.pdf>, [1.27].

⁸ Law Council of Australia, above n 4, 3-4.

⁹ Treasury, above n 3, 9.

¹⁰ Telecommunications Industry Ombudsman, 'Statement regarding Government's announcement about scam complaints', 12 September 2024, <https://www.tio.com.au/news/statement-regarding-governments-announcement-about-scam-complaints>.

¹¹ ASBFEO submission to Treasury, 'Scams – Mandatory Industry Codes', dated 15 February 2024, Non-confidential submissions (A-B), <https://treasury.gov.au/consultation/c2023-464732>:

Privacy

The Law Society notes the Government's intention that the Framework is to be introduced as part of a broader effort to modernise Australia's laws including reforms to privacy legislation.¹² However, we note privacy reforms are ongoing, and the Government has acknowledged that the *Privacy Act 1988* has not kept pace with the adoption of digital technologies. We are concerned that there be proper alignment between the Framework and robust privacy protection principles, notwithstanding that the two reform processes may run to different timeframes.

Consultation

While we recognise the urgent need for implementation of scam prevention measures to protect Australians, we are also concerned that the relatively short consultation period for submissions on the exposure draft legislation may not reveal all relevant unintended consequences. We note the Government's intention to introduce the Bill to Parliament later this year, and suggest the Bill may benefit from a Parliamentary Committee review process, including a more comprehensive consultation process.

Any questions in relation to this letter should be directed to Sonja Hewison, Policy Lawyer, at sonja.hewison@lawsociety.com.au or on (02) 9926 0219.

Yours faithfully,



Brett McGrath
President

¹² Explanatory Materials above, n 7 [1.10].