

Scams Taskforce
Market Conduct Division
Treasury
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By email: scampolicy@treasury.gov.au

Dear Scams Taskforce

SCAMS PREVENTION FRAMEWORK – EXPOSURE DRAFT LEGISLATION

The Mortgage and Finance Association of Australia (**MFAA**) welcomes the opportunity to make a submission on the Treasury Laws Amendment Bill 2024: Scams Prevention Framework (the **draft Bill**).

The MFAA is Australia's peak industry body for the mortgage and finance broking industry with over 15,000 members which includes mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage and finance broking industry. Brokers play a critical role in intermediated lending, providing access to credit and promoting choice in both consumer and business finance. The broking industry makes a significant contribution to lending in Australia, with brokers currently facilitating 73.7% of all new residential home loans¹ and approximately four out of ten small business loans² in Australia.

As an industry association, the MFAA's role is to provide leadership and to represent its members' views. This includes advocating for balanced legislation, policy and regulation and encouraging policies that foster competition and improve access to credit products and credit assistance for all Australians.

SUBMISSION

The MFAA sees the proposed legislative framework for establishing mandatory industry codes as an important component of the Government's overall scams strategy. It is particularly important because of its aim of shifting responsibility away from consumers and small businesses and toward the businesses that could inadvertently be vehicles for scam activities, particularly online platforms and banks.

¹ MFAA media release, [Mortgage broker market share remains strong in June quarter](#), 9 September 2024.

² Productivity Commission research paper [Small business access to finance: The evolving lending market](#) pg 44.

Key points of our submission regarding the draft Bill are:

- The definitions for scam and consumer are, in our view, suitable for the purposes of the framework.
- The principles-based framework provides the Federal Government with the flexibility to act quickly to designate other sectors of the economy should scam activity shift over time.
- In saying this, caution should be taken for obligations imposed on designated sectors to not be then transferred on non-designated sector participants which may not have the same capacity or capability as larger institutions (such as banks) to comply with code requirements.
- The Australian Financial Complaints Authority (AFCA) is provided with additional resourcing should it be prescribed as the applicable EDR scheme under the framework.
- Mortgage and finance brokers are well-placed to provide consumers with education on protecting themselves from scams.

Definitions

We understand from the explanatory materials, this definition of a 'scam' within the draft Bill is deliberately broad to capture the wide range of activities scammers engage in and their ability to adapt and to adopt evolving behaviours over time. As such the MFAA supports the definition of a scam as proposed considering it sufficiently broad to capture the two most common types of scam-related activity observed by our members, those being impersonation and payment redirection scams.³

We have no particular view on the definition of a Scams Prevention Framework (SPF) consumer other than to note it is broad and that we support the definition of SPF business consumer which aligns to that of the recently updated Code of Banking Practice definition of a small business.

Principles-based obligations

The MFAA believes the principles-based and code-driven framework meets the objective to provide Government the flexibility to act quickly to designate other sectors of the economy should scam activity shift over time.

In addition, the Framework's principles-based obligations allow regulated entities to tailor their practices to focus on consumer-centric outcomes beyond just technical compliance, leading to a more holistic approach to consumer protection.

We understand that once the legislation is enacted that Government will move to designating the banking, telecommunications and digital platforms sectors as regulated entities, and to developing the sector-specific codes where minimum standards will be established.⁴ It is noted that the banking industry has already pleasingly materially progressed to deliver higher levels of protections to consumers through the launch of the ABA's Scam-Safe Accord.

When implementing these codes, it is important to strike the right balance to ensure regulated entities fulfil their obligations without shifting these responsibilities onto their distribution channels, such as brokers. Instead, banks (in partnership with the MFAA) should collaborate with brokers (in addition to their own staff) to provide education and training, helping them to support scam awareness and education for the consumers who rely on their services.

³ MFAA response to Treasury consultation *Scams – Mandatory Industry Codes*, 29 January 2024, <<https://cdn.sanity.io/files/t0x3ukgp/production/3f244cb8c4266d7ddcc61891bcd866e97b7488b2.pdf>>.

⁴ Treasury, *Scams Prevention Framework – Summary of reforms*, September 2024, <<https://treasury.gov.au/sites/default/files/2024-09/c2024-573813-summary.pdf>>.

EDR Scheme

As noted in the consultation documents, the Treasury Minister intends to prescribe the Australian Financial Complaints Authority (AFCA) as the single external dispute resolution (EDR) scheme for the initial sectors designated under the framework. We believe this makes it clear and simple for consumers to escalate a complaint to one EDR scheme, even where there may be multiple firms potentially from different sectors that ultimately share liability. As such, ensuring AFCA is sufficiently resourced and able to scale up to meet the demand is important to a framework designed with consumer-centric outcomes.

Importantly also, AFCA should be cautious not to impose code obligations related to specific sectors on non-code signatories, such as those in the non-bank lending sector (or brokering industry), to ensure that entities within non-designated sectors not bound by a SPF code are not unfairly held to standards to which they have not agreed.

Education

Mortgage and finance brokers are well placed to guide and educate consumers on protecting themselves against scams.

With nearly 75% of mortgages, as well as a significant portion of small business lending, being facilitated by mortgage brokers, their role in educating customers about scams is crucial. As brokers frequently interact face-to-face with customers, they are ideally positioned to raise scam awareness when helping consumers with a mortgage or business lending. We see an opportunity for the National Anti-Scam Centre, along with a formal obligation for regulated entities (in this case banks), to work closely with businesses, especially intermediaries like brokers, to launch a unified education campaign that helps all Australians better detect and avoid scams.

CLOSING REMARKS

If you wish to discuss this submission or require further information, please contact either me at naveen.ahluwalia@mfaa.com.au or Stefania Riotto at stefania.riotto@mfaa.com.au.

Yours sincerely

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