



4 October 2024

Mr Tom Dickson
Scams Taskforce
Market Conduct Division
Treasury
Langton Crescent
Parkes ACT 2600
Submitted via email to scampolicy@treasury.gov.au

Dear Mr Dickson,

SCAMS PREVENTION FRAMEWORK – EXPOSURE DRAFT LEGISLATION

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia.¹ We appreciate the opportunity to respond to Treasury's consultation on the exposure draft legislation of the Scams Prevention Framework (SPF).²

We represent over 150 members, including bank and non-bank lenders, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

¹ [Australian Finance Industry Association \(afia.asn.au\)](https://afia.asn.au).

² Treasury, [Scams Prevention Framework – exposure draft legislation](#) ('Exposure Draft'), October 2024
Australian Finance Industry Association
The Commons on George, Level 3, 388 George Street, Sydney NSW 2000
ABN 13 000 493 907

INTRODUCTORY COMMENTS

AFIA welcomes the government's efforts to modernise Australia's response to scams, an issue which has cost Australian's billions of dollars. AFIA members have contributed to a number of efforts to safeguard customers, including education initiatives for customers, and the deployment of payee technology by banks, credit unions, and building societies, among other enhancements.³

Scams are a significant issue for Australians. The most recent Targeting Scams report published by the Australian Competition and Consumer Commission (ACCC) shows that in 2023, Australians lost \$2.74 billion to scams,⁴ down from \$3.15 billion in 2022. However, AFIA acknowledges that while improvements are occurring, more work needs to be done to protect consumers.

AFIA has recently released consultation on the AFIA Code of Conduct which includes obligations for our members to take reasonable steps to protect personal information from misuse and sets guidelines for AFIA members to protect customers from scams and fraudulent activities. This involves not asking customers for passwords or pins unsolicited, not asking for remote access, and not asking customers to make payments through unusual mechanisms.⁵

While the SPF will not initially apply to many financial services organisations, AFIA acknowledges the Minister for Financial Services' ability to designate new sectors.⁶ Due to the unique and diverse nature of non-bank lenders (NBLs) AFIA recommends separate consultations be held prior to this expansion.

DEFINITIONS

As AFIA discussed in the previous consultation on Mandatory Scams Codes, there is a critical need for additional clarification in the definition of a 'scam'. The current definition under Section 58AG is broad,⁷ with Treasury acknowledging this in the Explanatory Materials.⁸

'The definition of 'scam' 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. SPF rules may prescribe specific kinds of attempts to engage an SPF consumer of a regulated sector that are not scams for the purposes of the SPF.'

As previously submitted, AFIA suggests including additional clarification to the definition of a scam, and an alignment across jurisdictions and industries. We consider that providing additional clarity

³ Treasury, [Scams Prevention Framework – Explanatory Materials](#) ('Explanatory Materials'), October 2024, p 7

⁴ ACCC, [Targeting scams: report of the ACCC on scams activity 2023](#), (April 2024)

⁵ AFIA, [AFIA Finance Industry Code of Practice Consultation Draft](#), (September 2024)

⁶ Exposure Draft, Schedule #, Division 1, s 58AC

⁷ Explanatory Materials, (October 2024), p 15

⁸ AFIA Submission 29 January 2024, [Scams – Mandatory Industry Codes](#)

will help consumers to better understand whether a scam has occurred and what their rights are, while also enabling businesses to respond effectively.⁹

Further, the Minister is empowered to exclude specific activities, to further narrow down the policy intent.¹⁰ AFIA welcomes the Minister's ability to clarify exclusions but suggests that the initial definition should be more precise to minimise ambiguity. AFIA also recommends these definitions and exclusions be clarified prior to the implementation of the SPF, to provide greater certainty to industry before significant compliance costs are incurred.

CLEAR GUIDELINES

Another element raised in the Exposure Draft is the description of taking 'reasonable steps' in scam prevention.¹¹ The steps outlined include:

- Making resources accessible to consumers to assist these consumers to identify scams and to minimise the risk of harm from scams; and
- Identifying consumers that have a higher risk of being targeted by a scam, and providing warnings to those consumers.¹²

While AFIA appreciates these examples, AFIA believes that clearer guidelines would help businesses more efficiently allocate resources to anti-scam efforts. AFIA recommends Treasury provides guidance to accompany the legislation which includes specific examples on what is a scam and what steps should be taken to meet the requirements under the Act, to better assist customers and businesses to combat scams.

AFIA also notes that there can be concerns about the reliability and accuracy of scam intelligence. Businesses that act on unverified or incorrect information could lead to wrongful accusations, which may risk consumer detriment. It is not currently clear whether businesses who acted in good faith, but on incorrect intelligence, would be considered liable, should a consumer seek redress. AFIA recommends businesses not be held liable under the SPF, or other legislation which interacts with it, for acting on incorrect or unverified information. Clear guidelines should be established to define what constitutes 'sufficient and credible' intelligence for reporting purposes.

Additionally, AFIA considers that the reporting obligations relating to the sharing of intelligence to regulators would benefit from greater clarity and further examples to mitigate against any risk of hesitancy in sharing information.¹³ AFIA supports the significant work of industry collaboration and recommends any efforts to combat scams encourage the development and expansion of industry

⁹ Ibid.

¹⁰ Exposure Draft, Schedule #, item 1, ss 58AG(3) and 58GE(1)

¹¹ ss 58BJ and 58BW

¹² s 58BI providing examples

¹³ s 58BX

coordinated bodies such as the Australian Financial Crimes Exchange (AFCX).¹⁴ This fosters deeper and more effective collaboration between industry and government outside the formalities of legislation. AFIA notes as scams which affect one financial institution tend to affect all, intra-organisation sharing facilitates greater understanding and prevention of scam threats.

OBLIGATIONS

AFIA has consistently supported a collaborative framework that promotes coordination across various industries and sectors to combat scams.¹⁵ AFIA is also supportive of a principles-based framework with clear responsibilities assigned to businesses.

AFIA acknowledges the critical importance of anti-scam measures to provide protection to consumers. We believe the obligations proposed should also be balanced against existing requirements and consider the practical implications for businesses implementing the measures.

AFIA advocates for more practical measures that consider the diverse nature of markets and the varying capacities of businesses. For example, the implementation of a tiered compliance system where obligations are proportionate to the size, risk profile, and complexity of the organisation. It may be more appropriate that smaller institutions with lower risk levels should face fewer compliance burdens, aligning compliance costs with actual risk to consumers, and directing scam mitigation strategies where the most benefit to customers will be felt.

AFIA also recommends phased implementation of the SPF, to allow organisations time to address concerns and adjust processes. This approach minimises disruption to business operations and allows for smoother transitions, reducing the immediate financial and operational impact on businesses. By phasing in requirements, businesses can adapt their systems and processes more effectively.

SPECIFIC CONCERNS WITH PROPOSED REGULATORY MECHANISMS AND PENALTIES

- *Civil penalty provisions*

While AFIA supports mechanisms to encourage compliance with scam obligations, the introduction of significant civil penalties for contraventions of SPF principles and codes raises issues about proportionality and practicality, particularly for smaller institutions.

Under Part 4 of the *Regulatory Powers Act*, a civil penalty provision can be enforced by obtaining an order for a person to pay a pecuniary penalty for contravention of the provision. Tier 1 contraventions involve breaches of key SPF principles, including Prevent, Detect, Disrupt, and Respond, with a

¹⁴ Financial Crimes Exchange, <<https://www.afcx.com.au/>>

¹⁵ AFIA Submission (2024)

maximum penalty of \$50,000,185.¹⁶ Tier 2 contraventions involve breaches of an SPF code or principles related to Governance and Report, with a maximum penalty of \$10,000,350.¹⁷ AFIA is concerned that the magnitude of these penalties may be disproportionate, especially for smaller institutions.

- *Alignment with existing legal obligations*

AFIA recognises the importance of implementing anti-scam strategies but seeks further explanation on how the new obligations will align with existing privacy, competition, and other regulatory frameworks. As AFIA has discussed in a previous submission, ensuring transparency in scam monitoring and prevention is crucial. However, businesses require clear guidance on balancing these obligations with privacy laws to avoid inadvertently breaching data protection regulations.¹⁸ For example, clear processes for unblocking payments or accounts are essential to prevent unnecessary disruption to consumers while complying with the SPF.

- *Multi-regulator approach*

AFIA supports a multi-regulator model to allow for sector specific enforcement of the SPF.¹⁹ However, AFIA stresses the importance of clear processes to avoid duplicative actions by multiple regulators. With additional regulatory powers, businesses may face overlapping demands, leading to inefficiencies and increased compliance costs. Financial firms already have robust internal and external dispute resolution mechanisms; therefore, AFIA suggests these existing frameworks, including within existing industry codes, should be recognised within the SPF to prevent redundancy.

Further, by engaging with industry stakeholders when developing sector-specific codes and obligations, the SPF can ensure they are practical and consider operational capabilities. Offering transparency in how sectors are designated as regulated under the SPF, including the criteria used and the consultation process involved, will help businesses understand their obligations and prepare accordingly.

CONCLUSION

AFIA remains committed to working collaboratively with government, regulators, and other stakeholders to strengthen Australia's response to scams. By addressing the concerns outlined above the SPF can more effectively protect consumers while supporting businesses in their vital role in combating scams. We believe that a balanced and well-considered approach will enhance consumer trust and contribute to a more secure financial ecosystem for all Australians.

¹⁶ Explanatory Materials, p 62

¹⁷ Exposure Draft, p 63

¹⁸ AFIA Submission (2024)

¹⁹ Exposure Draft, Schedule #, item 1, s 58EA

Thank you for providing the opportunity to respond to this consultation. Our members look forward to providing comments and feedback as the review develops and welcome the opportunity to discuss further.

If you would like to discuss any of these topics further with me, please contact me at roza.lozusic@afia.asn.au or 0431 261 201.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roza Lozusic', with a stylized flourish extending to the right.

Roza Lozusic
Executive Director, Policy and Public Affairs