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FOI 3755
Document 1



Australian Government
The Treasury

Ministerial Submission

MS24-001441

FOR ACTION - Scams Code Framework – Arrangements for Telecommunications Providers and Progress to Single External Dispute Resolution

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP

CC: Treasurer - The Hon Jim Chalmers MP

TIMING

The Prime Minister's agreement is required by no later than **30 August** to enable consultation on exposure draft legislation establishing the Scams Code Framework (the Framework) to commence from September 2024 and meet timeframes for introduction in the 2024 Spring sittings.

Recommendation

s 22

- That you **sign** the joint letter from you and the Minister for Communications to the Prime Minister (Attachment B) seeking agreement to:

s 22

- prescribing the Australian Financial Complaints Authority (AFCA) as the single external dispute resolution (EDR) scheme for the three initial sectors under Framework.

Signed / Not signed

Signature

Date: 19 / 8 / 2024

KEY POINTS

s 34(3)



– s 22



- ✓✓✓ – The exposure draft legislation reflects yours and the Minister for Communication's subsequent decision on AFCA being prescribed as the single EDR scheme for the three initial sectors subject to the Framework s 22. Further detail is at Additional Information.

Legislative drafting approach for the telecommunications code

s 22



s 22

Further policy authority and next steps

- You and the Minister for Communications previously agreed to make AFCA the single EDR scheme for the three initial sectors under the Framework **s 22**. The next step is to obtain the Prime Minister's approval on this approach and to progress the streamlined approach for the telecommunications code.
 - A joint letter from you and the Minister for Communications to the Prime Minister requesting policy approval on these two matters is at Attachment B.
 - Treasury understands your Office has been engaging with Minister for Communication's Office on these matters.
 - The Prime Minister's approval would be urgently required, by no later than 30 August 2024, to enable these decisions to be reflected in exposure draft legislation to be released for consultation from September 2024. A delay in the Prime Minister's approval would risk delivery of the exposure draft legislation for consultation.
- Subject to approvals and the availability of OPC drafting resources, Treasury will provide further advice in the first half of September 2024 on the exposure draft legislation and seek your agreement to release it for consultation.
 - Subject to yours and Minister for Communication's agreement, and the Prime Minister's approval on the above matters, the arrangements for telecommunication providers and EDR would be communicated with industry prior to or as part of releasing the exposure draft legislation for consultation.

RISKS AND SENSITIVITIES

External dispute resolution

- The capability of AFCA to prepare to take on the expanded remit and have an effective scams EDR scheme in operation by the commencement of the sector codes depends on provision of initial funding from Government.
 - A separate process is underway for the Treasurer to seek the Prime Minister's agreement to bring forward a proposal to 2024-25 MYEFO to provide initial funding to AFCA to deliver the single EDR scheme s 22
 - s 22
- In the absence of initial funding for AFCA it is very unlikely that a single EDR scheme can be fully operational when the sector codes under the Framework come into effect.
 - Should this happen, AFCA would continue to consider scam complaints against its bank members, however there would be a gap during which obligations under sector-specific codes will commence and a single EDR scheme is fully operational unless AFCA agrees to commence implementation work prior to receiving funding.

Clearance Officer

s 22

Market Conduct and Digital Division

[Clearance Date]

Contact Officer

s 22

CONSULTATION

Department of the Prime Minister & Cabinet; DITRDCA; ACMA, AFCA, Law Division.

ATTACHMENTS

- A: Additional Information
- B: Joint Letter to the Prime Minister

ATTACHMENT A – ADDITIONAL INFORMATION

AFCA as the single EDR scheme for the three initial sectors under the Framework

- In line with your decision on **s 22** primary legislation for the Framework is being developed in a way that is flexible and allows for, but does not require, a single EDR scheme. To designate AFCA as the single EDR scheme for the three initial sectors, minor consequential amendments to Corporations legislation may also be required to ensure that ASIC's oversight powers in respect of AFCA extend to AFCA's expanded jurisdiction under the Framework.
 - These consequential amendments are being developed as part of the exposure draft legislation for the Framework.

Telecommunications code

s 22





THE HON STEPHEN JONES MP
 ASSISTANT TREASURER AND
 MINISTER FOR FINANCIAL SERVICES

THE HON MICHELLE ROWLAND MP
 MINISTER FOR COMMUNICATIONS

Ref: MS24-001441

The Hon Anthony Albanese MP
 Prime Minister
 Parliament House
 CANBERRA ACT 2600

Dear Prime Minister

s 34(3)

The legislation will introduce overarching obligations in the *Competition and Consumer Act 2010* (CCA), complimented with tailored obligations in sector-specific codes. **s 22**

We are writing to seek your agreement to adjusting the policy parameters in relation to the telecommunications sector and the approach to external dispute resolution (EDR) for the Framework, prior to consulting on exposure draft legislation. This will deliver on the Government's policy objectives for a whole-of-ecosystem approach to the Framework and strengthen consumer outcomes, while simplifying the legislative design to assist regulated entities and consumers to understand their obligations and rights under the Framework.

Further detail on each of these matters is detailed below, however, in summary we seek your agreement to:

- **s 22**
- designate the Australian Financial Complaints Authority (AFCA) as the single EDR scheme for scams complaints under the Framework for the three initial sectors under the Framework.

We seek your agreement to the matters outlined in this letter to enable exposure draft legislation to be released for consultation in early September 2024, and to meet timeframes for introduction of legislation in the 2024 Spring sittings. Subject to your agreement, we intend to announce the arrangements for the telecommunications code and EDR as part of releasing the exposure draft legislation, to give industry and consumers certainty on these arrangements under the Framework. Without these changes we expect industry stakeholders and consumers to raise strong concerns with the complexity of the Framework, as well as the lack of clarity on requirements for telecommunication providers and on EDR.

s 34(3)

Telecommunications sector**s 22****External dispute resolution**

Under the Framework, a Treasury Minister will have the power to require entities in a regulated sector to join an authorised EDR scheme. We consider AFCA to be the best choice as the authorised EDR scheme for scam disputes for the three initial sectors. Your early agreement to this approach is essential for us to work with AFCA and industry to deliver an effective EDR scheme that is operational when the Framework commences.

Currently, there are separate EDR schemes for the banking sector (AFCA) and the telecommunications sector (Telecommunications Industry Ombudsman (TIO)). Digital platforms do not have existing EDR arrangements. As scammers often operate across more than one sector in their deception of consumers, we consider a single EDR scheme will offer the best holistic experience to consumers. It would bring consistency in consideration of disputes, allow determination of shared responsibility between multiple parties regulated by the Framework and be less burdensome for consumers and industry than multi-scheme alternatives. There is strong support amongst consumer groups and parts of industry for a single EDR scheme under the Framework.

The most effective way to implement a single EDR scheme would be to leverage existing infrastructure. Having reviewed options, we consider AFCA is the only existing EDR scheme capable of scaling at pace to deliver a single EDR scheme for the three initial sectors. AFCA deals with a higher volume of complaints than the TIO, and has developed expertise relevant to scams from the complaints it currently receives in relation to the financial sector.

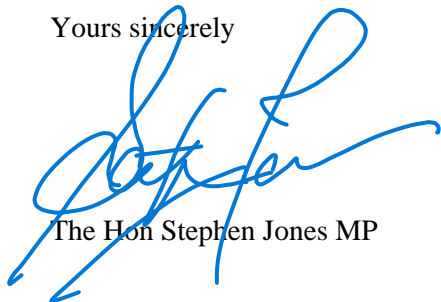
AFCA is willing to take on this expanded role but has indicated it would require additional funding before commencing any substantive work to implement these arrangements. AFCA advises that implementation requires adjusting AFCA's rules and funding model, introducing new dispute resolution approaches, processes and systems; and hiring and training additional specialist staff, which AFCA estimates would take approximately 14 months.

There are likely to be sensitivities from the telecommunications sector and digital platforms around becoming members of AFCA, as cost structures and processes differ between schemes. For example, the TIO's fees for a complaint that progresses to a decision stage are significantly less than AFCA's comparative fees. The TIO has also expressed a strong interest in operating the EDR scheme for the telecommunications sector and digital platforms in relation to scams, and telecommunications service providers may have expected TIO to be the EDR for their sector. However, we consider these sensitivities are more than offset by the benefits for consumers of a single EDR scheme for the three initial sectors and is consistent with the Government's objective for a whole-of-ecosystem approach to the Framework that places consistent obligations on all regulated businesses.

An early Government decision and announcement would provide more certainty for industry and time for implementation. Scams complaints are already being received by AFCA and the TIO, and this is likely to continue and escalate once the Framework is enacted, irrespective of whether a single EDR provider has been established. If a single EDR complaints mechanism for the three initial sectors is not in place, this will put considerable strain on existing EDR providers and result in poorer consumer outcomes where they have to go through different EDR schemes for redress. For this reason, we consider it essential to ensure capability and capacity is in place for a single EDR scheme for the three initial sectors when the Framework is enacted.

We have copied this letter to the Treasurer and Minister for Finance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Stephen Jones', with a long horizontal flourish extending to the right.

The Hon Stephen Jones MP

CC: Treasurer; Minister for Finance

Yours sincerely

The Hon Michelle Rowland MP



Australian Government
The Treasury

Ministerial Submission

MS24-001888

FOR ACTION - Scams Prevention Framework - Post Consultation Outcomes and Next Steps

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP

CC: Treasurer - The Hon Jim Chalmers MP

TIMING

URGENT – by 17 October 2024, to facilitate finalisation of the legislation for introduction into Parliament in the 2024 spring sitting period.

Recommendations

- That you **note** the stakeholder feedback received during consultation on the Exposure Draft Scams Prevention Framework (SPF) Bill (Attachment A).

Noted / To discuss

- That you **agree** to recommended policy changes to the SPF Bill and/or explanatory materials in response to consultation (Attachment B).

As discussed on 17/11

Agreed / Not agreed

- That you **note** the Impact Analysis for the SPF to support the Government's final policy decision (Attachments D & E).

Noted / To discuss

- That you **agree** to publish non-confidential submissions to the consultation on Treasury's website following introduction of the legislation.

Agreed / Not agreed

Signature




Date: 17 / 10 / 2024

KEY POINTS

- Treasury conducted public consultation on the Scams Prevention Framework Bill (the Bill) and explanatory memorandum (EM) from 13 September to 4 October 2024 (**s 22** refers).
 - Consultation included a virtual information session, with around 200 attendees; nine industry focused roundtables and bilateral meetings with stakeholders.
 - 84 submissions were received in response to consultation, including 67 from industry stakeholders and 17 from consumers. 12 of the submissions are confidential. A summary of stakeholder feedback, from the roundtables and written submissions is at Attachment A.
- Broadly, stakeholders supported the ecosystem approach and the Government's intent to introduce legislation to better protect Australian consumers from scam activity. This included supporting designating the initial sectors of banks, telecommunication providers and digital platforms, and encouragement to rapidly expand to other sectors including superannuation, other payment providers and cryptocurrency.
- Stakeholders provided consistent feedback on certain elements of the Bill, primarily focused on practical implementation challenges. Key issues raised included **s 22**
and how dispute resolution arrangements (IDR and EDR) may operate in practice.
- During consultation, Treasury also received advice from the Australian Government Solicitor through a Privacy Impact Assessment (PIA) of the SPF. The PIA recommended changes to minimise privacy concerns in the SPF and we have considered this advice.
- As per Office of Impact Analysis (OIA) guidance, we have also prepared an Impact Analysis to support the Government's final policy decision to establish the SPF (Attachments D & E). The Impact Analysis has been certified by Deputy Secretary of Markets Group Brenton Philp and assessed as 'good practice' by OIA.
 - The Impact Analysis will be published on the OIA website when the legislation is introduced to Parliament.
- Noting the above, Treasury has considered feedback received from industry stakeholders, consumer groups, consumers, regulators and the findings from the PIA and Impact Analysis and we have outlined recommended policy changes for the final Bill and EM for your consideration and approval (Attachment B).
 - Due to compressed timeframes, some minor and technical changes have already been actioned by the Office of Parliamentary Counsel (OPC).

Next steps

- Following your agreement, Treasury will provide comprehensive instructions to OPC and shortly share with you a revised Bill and EM. The final Bill, EM and materials to support the introduction of the Bill into Parliament will be provided to you in early November as part of the legislative approvals processes provided by the Program Governance Unit.
 - As the Bill makes changes to the *Corporations Act 2001* and *ASIC Act 2001*, you are required to seek approval from the states and territories through the Legislative and Governance Forum on Corporations. A letter for your signature will be provided as part of the briefing that will support the legislative approvals process.
- **s 34(3)** 
- As discussed with your Office, Treasury has prepared a draft letter for you to inform relevant Ministers, where there is an interaction between the Framework and policy matters in their portfolios, prior to Cabinet's consideration (Attachment C).
- Relatedly, Treasury is developing a comprehensive approach to engage with stakeholders on dispute resolution under the SPF and will brief you in due course.
 - We envisage the approach will involve developing and iterating various options with stakeholders to refine a workable dispute resolution model.
 - The key policy objectives are to have: 1) a complaints process that will deliver a consumer-centric experience for scam victims with a 'no wrong door' approach to IDR and 'single door' approach to EDR; 2) a model that incentivises cooperation to settle the majority of disputes without the need for escalation to EDR; and 3) a model that delivers workable integration between IDR and EDR with sufficient clarity on implementation.
 - It is intended that consultation commence as soon as practical, so that the outcomes can be consistently incorporated into sector codes and AFCA rules as appropriate.
- Treasury will continue to work closely with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts and regulators to ensure the Bill is enforceable.
 - Treasury also continues to engage with the National Anti-Scam Centre to ensure systems and processes are progressing to be operational at commencement of the Bill.
- Treasury has also updated the overall project timeline setting out indicative timeframes for passage of the Bill, policy development of designation instruments, code development and timeframes for dispute resolution (Attachment F).

s 34(1)(c)

Treasury is exploring options and will provide you with further advice on funding and the impacts for drafting timeframes.

- Subject to your agreement, Treasury will arrange for non-confidential submissions to be published, with the timing of publication to be discussed with your Office.

Clearance Officer

s 22

Market Conduct Division
16 October 2024

Contact Officer

s 22

CONSULTATION

Law Division; Attorney-General's Department, Department of Infrastructure, Transport, Regional Development, Communications and the Arts

ATTACHMENTS

- A: Consultation summary
- B: Policy positions and recommendations
- C: Draft letter to Ministers
- D: Impact Analysis
- E: Office of Impact Analysis certification letter
- F: Timeline

ATTACHMENTS D AND E HAVE BEEN EXCLUDED FROM SCOPE AS PUBLIC DOCUMENTS.

ATTACHMENT D IS A TREASURY REPORT ENTITLED *IMPACT ANALYSIS SCAMS PREVENTION FRAMEWORK* PUBLISHED IN OCTOBER 2024.

ATTACHMENT E IS A PUBLISHED LETTER DATED 14 OCTOBER 2024 FROM JOANNA ABHAYARATNE OF THE OFFICE OF IMPACT ANALYSIS TO BRENTON PHILP, A DEPUTY SECRETARY OF THE TREASURY.

Attachment A – Consultation Summary

- This attachment provides an overview of consultation feedback, including in Treasury hosted roundtables and bilateral meetings with industry, and from written submissions on the exposure draft Bill from industry, advocates and individual consumer.
- 84 submissions were received in response to consultation, including 67 from industry stakeholders and 17 from consumers; 12 of the submissions have been marked as confidential.

Table 1 – Feedback during roundtables, meetings and consumers

Roundtables	Feedback
Information session 18 September Approx.190 attendees including industry representatives in banking and financial services, digital platforms and telecommunications; law firms, consulting firms, international policy makers, industry and consumer advocacy groups, regulators, AFCA.	<ul style="list-style-type: none">• The information session provided stakeholders with an overview of the SPF and the opportunity to ask questions. Stakeholders raised several questions about: s 22 s 22 – IDR/EDR arrangements, how they interact with existing schemes such as the TIO, whether they create liability principles or causes of action, and how consumers will navigate complaints with multiple entities and s 22
Major banks 24 September ABA; ANZ; CBA; ING; NAB; Westpac	 s 22 <ul style="list-style-type: none">• Seeking greater clarity on liability under internal and external dispute arrangements, including a suggestion that the Minister set rules on apportionment of liabilities between sectors which applies at IDR and EDR. Some banks noted that AFCA’s fairness jurisdiction may not be appropriate for the SPF.
Digital platforms 25 September DIGI; Google; X; Meta; Snapchat; Apple	<ul style="list-style-type: none">• s 22 Suggestion that reimbursement could be available only where an entity has not met code obligations to provide certainty and clarity on obligations; and the regulator could focus on the primary Framework and the issue of reasonableness. s 22 <ul style="list-style-type: none">• Raised concern about AFCA not being an appropriate EDR body for digital platforms and the lack of clarity around IDR arrangements (such as timeframes for response, liability assessment and compensation caps).
Superannuation 26 September Financial Services Council; Colonial First State; Vanguard; AMP; Association of Superannuation Funds of Australia; MUFG/Link Group; AwareSuper; Super Members Council	<ul style="list-style-type: none">• The proposed process for designating s 22 and opportunities to build upon voluntary commitments and existing IDR arrangements in sector codes. s 22 <ul style="list-style-type: none">• Lack of clarity on liability apportionment between regulated entities at IDR and EDR.
Consumer groups 30 September Consumer Action Law Centre; Australian Communications Consumer Action Network;	 s 22 <ul style="list-style-type: none">• Strongly advocated for a 'presumption of reimbursement' Framework, whereby a bank would compensate a consumer within a set period (e.g. 10 days) unless they could prove the consumer acted with gross negligence, and the bank could then chase other cross-sector participants to apportion liability behind the scenes.

Super Consumers; Financial Rights; CPRC; CHOICE; Consumer Credit Legal Service WA; West Justice, Indigenous Consumer Advocacy Network	<ul style="list-style-type: none"> Concerned that the primary law puts the onus on consumers to prove regulated entities breached their obligations when pursuing redress. Consumer groups argued that information asymmetry between scam victims and regulated entities will lead to poor consumer outcomes, as consumers will find it very hard to prove the regulated entity did the wrong thing. Concerned the SPF does not incentivise regulated entities to properly support and reimburse scam victims at the IDR stage, and the EDR stage will be overly complex and involve lengthy timeframes to reach final reimbursement outcomes. Suggested AFCA impose extra fees/increase levies on entities that engage in poor conduct. Suggested a 'no wrong door' approach at IDR and for dispute resolution arrangements to be subject to statutory review.
Telecommunications sector – large providers 1 October Communications Alliance; Telstra; Optus; TPG Telecom	<div>s 22</div> <ul style="list-style-type: none"> Queried how liability for reimbursement will be determined, and concern on telcos being apportioned liability when other sectors not using tools that telcos may be able to offer them. E.g. The ability to know if a phone number was recently ported. <div>s 22</div> <ul style="list-style-type: none"> Raised concerns about AFCA not being an appropriate EDR body for telcos and may result in confusion for consumers given TIO's existing role in that sector.
Telecommunications sector – smaller providers 1 October Communications Alliance; Aussie Broadband; Vocus; Symbio; Pivotel; Verizon; Twilio; Sinch; Macquarie Telecom; AARNet	<div>s 22</div>
Payments and FinTech sector 2 October AusPayNet; Visa; Mastercard; Revolut; AP+; PayPal; Fintech Australia; Digital Economy Council of Australia, Stripe	<div>s 22</div>
Community owned banks 2 October COBA; Cuscal; Regional Australia Bank; Beyond Bank; Great Southern Bank; Newcastle; Heritage; People First Bank; IMB Bank	<div>s 22</div>
Bilateral meetings	Feedback
Australia Post 25 September	<div>s 22</div>
AFCA and ASIC 27 September	<div>s 22</div> <ul style="list-style-type: none"> Raised concerns regarding IDR and indicating that 50-60 per cent of complaints are resolved after AFCA has referred the consumer back to the entity's IDR. Indicated to not rely on EDR to incentivise good IDR, as AFCA sees itself being an outsourced IDR.
ASBFEO 3 October	<ul style="list-style-type: none"> Supported the inclusion of small businesses as SPF consumers, but raised concern with intent regarding compensation and redress and recommend that there should be clear responsibilities to provide redress if entities are not meeting their obligations in the primary legislation. Raised concern with the IDR processes of digital platforms. Regaining access to online profile or accounts are an important element of redress and can be a primary focus of disputes with digital platforms, especially when a small business is relying on its online presence for its business. In ASBFEO's experience, access to accounts is often the primary issue and compensation can be considered down the track once access is resolved. Support a single EDR scheme and that being operated by AFCA.

<div>AFCX</div> <div>4 October</div>	<div>s 22</div>
<div>Twilio</div> <div>9 October</div>	<div>s 22</div>
<div>PayPal</div> <div>14 October</div>	<div>s 22</div>
<div>Cuscal</div> <div>10 October</div>	<div>s 22</div>
<div>Consumer feedback (17)</div>	
<div>s 22</div>	
<div><div><div><div></div></div><div>Dispute resolution and support for consumers affected by scams, including to:</div><div><div>– ensure any approaches to dispute resolution are accessible through clear pathways, transparent, and at minimal cost, time and burden to the consumer as possible,</div><div>– avoid the onus of proof being placed on the consumer to prove breaches of the SPF given that scam victims lack the funds and access to information to do so, including having entities provide relevant documents to an account or scam dispute in a specific time period,</div><div>– put in place a mandate or presumption for reimbursement for consumers who are affected by a scam transaction, with compensation decisions made early by entities,</div><div>– ensure that liability for scams is properly apportioned by dispute resolution bodies, and those bodies are appropriately resourced to manage the resulting caseload.</div></div></div></div>	
<div>s 22</div>	

Table 2 – Feedback from Industry Submissions

- The following table outlines a summary of key matters raised in industry stakeholder submissions, but is not a comprehensive reflection of feedback.
- * represents confidential submissions.

Feedback from industry submissions	
Regulators and other Govt entities (7)	
1. ASIC	<ul style="list-style-type: none"> Suggest reducing complexity and supporting enforceability through prescribing initial sectors, initial regulators and alternative powers for regulators in primary law; regulator investigation and monitoring powers as in the ASIC Act powers to be in primary law; and that the definition of scam be revised to remove ambiguity and subjective elements.
2. ACCC	<ul style="list-style-type: none"> Recommend more detail about reasonable steps in primary legislation rather than EM and including 'objectivity' regarding def of scam and enable relying on existing regulatory powers.
s 22	
4. Telecommunications Industry Ombudsman	<ul style="list-style-type: none"> TIO should handle scam complaints, and the SPF may undermine role of TIO and telco complaints generally. Suggests that only a multi-EDR scheme would work. Notes lack of clarity on IDR arrangements, and workability, confusion between scam and non-scam complaints.
5. Australian Financial Complaints Authority (AFCA)	<ul style="list-style-type: none"> AFCA provided a high-level public submission and a confidential officer-level feedback. AFCA also provided subsequent confidential officer-level feedback regarding liability apportionment. The public submission supports the overarching Framework; and recommends that primary legislation signpost liability and apportionment arrangements that can be applied in broad-based remediation at IDR/EDR in an individual or class of complaints. These arrangements can be contained in sector codes or another vehicle.
s 22	
6. Australian Small Business and Family Enterprise Ombudsman (ASBFEO)	<ul style="list-style-type: none"> Supportive of the Framework and recommends approach to IDR and EDR, in which entities should restore small businesses back while investigating claims, making changes to the ePayments code and incorporating a notice and action requirement.
7. Tasmanian Government (Department of Justice)	<ul style="list-style-type: none"> Largely supportive, but have suggested minor revisions to the draft legislation, as well as making provision for matters which can be included for infringement notices through SPF rules. Encouraged early drafting and release of subordinate legislation to support stakeholders.
Consumer advocacy (3)	
8. Consumer Action Law Centre Submission	<ul style="list-style-type: none"> The Framework is designed for businesses to take a minimum-standard compliance approach to obligations, rather than incentivising innovation to keep up with scammers who are always steps ahead. Indicated that the dispute resolution process is unworkable. Recommended a presumption of reimbursement upon the banks to enable rapid redress for consumers, and subsequent apportionment of liability between entities.
9. Community Council for Australia Submission	<ul style="list-style-type: none"> Small community organisations and charities do not have the capacity, nor should be held responsible for preventing and policing scams. Charities and not-for-profits should be reimbursed for scams losses.
10. Australian Communications Consumer Action Network (ACCAN) Submission	<ul style="list-style-type: none"> Presumption of reimbursement for scam losses with limited exception of gross negligence, should be built into the SPF. Place burden of proof on industry participants to demonstrate compliance when defending claims from scam victims.
Banks and financial services (20)	
11. ANZ	<ul style="list-style-type: none"> Recommend codes are primary source of obligations and that actionable scam intelligence should be narrowed. Scope of definitions are overly broad and should reflect identifiable instances of harm, with a closer nexus to the regulated entity. Raised concern that definition of scam may not adequately capture policy intent for scam activity. Made several technical drafting suggestions and minor recommendations.
12. AusPayNet	<ul style="list-style-type: none"> Recommend limiting scope of consumer definition and provide greater certainty about obligations in codes and regulatory guidance. Amend liability to account for distribution of responsibility across scam lifecycle and limit severe penalties to systemic breaches of the codes.
13. Australian Banking Association	<ul style="list-style-type: none"> The legislation should be used to have principles that enable the SPF, with more detail on application to specific sectors contained in regulatory instruments and complemented by clear liability rules and an apportionment mechanism established by the Minister.
14. Australian Finance Industry Association (AFIA)	<ul style="list-style-type: none"> Notes it is consulting on the AFIA Code of Conduct for members and supports additional consultations for future designations.
15. Bendigo Bank	<ul style="list-style-type: none"> Scam definition overlaps with AML/CTF, which complicates reporting and notes that penalties are too high.

Feedback from industry submissions	
16.CBA 17.CBA confidential supplementary submission	<ul style="list-style-type: none"> Supports liability apportionment for effective redress and authorising AFCA as a special purpose compensation complaint body to investigate compensation claims as a 'one stop shop', rather than through an IDR/EDR construct. Supports broadening and clarifying the definition of a scam to ensure that common scams, such as remote access and phishing scams, are captured and ensuring that actionable scam intelligence is used effectively and efficiently across the ecosystem, including reporting provided to regulators, and businesses sharing with each other through the established Anti-Scam Intelligence Loop. Suggests clarifying the civil penalty regime to ensure that civil penalties are proportionate and apply to systemic issues, not individual or 'one off' failures and alignment with payments reforms and revise of the ePayments Code. In its supplementary, confidential submission, CBA provided examples of inclusions and exclusions (i.e. extortion and Ponzi schemes) to the scam definition, specific examples of liability rules for each sector which also included responsibilities SPF consumers (and what would disqualify access to compensation). An edited version of the ePayments Code with changes CBA advocates for was also provided.
18.Customer-Owned Banking Association (COBA)	<ul style="list-style-type: none"> Proportionality is needed to adapt many aspects of the SPF to the obligations and liabilities of smaller banks, who have less resources, rely on third parties for service delivery, and will struggle to comply with the onerous obligations. General interaction with other regulatory regimes, privacy concerns when involving third-party consumers, AML/CTF, unfair contract terms. Entities need greater certainty on how to comply with competing duties without conflict. For transparency and predictability of obligations, codes should be finalised before designation occurs.
s 22	
20.Digital Economy Council of Australia	<ul style="list-style-type: none"> In managing risks associated with the SPF, banks may de-risk and limit or cease offering banking services impacting digital asset businesses. De-risking by banks may reduce competition and could drive economic activity into less regulated or unregulated sectors.
21.Finance Sector Union	<ul style="list-style-type: none"> Consider the role and resourcing of the finance sector workforce to ensure bank and AFCA staff have appropriate workload and training to deliver the SPF.
22.Financial Services Council	<ul style="list-style-type: none"> SPF duplicates existing obligations under the AML/CTF and creates that focuses solely on scams is inefficient/ineffective use of resources. Further consideration is required regarding the implications of needing to collect large amounts of sensitive personal data and balance these with organisation's need to manage data risks.
23.Financial Services - Information Sharing and Analysis Centre	<ul style="list-style-type: none"> Concern that the reporting regime does not adequately capture the interdependencies between scam activity and other forms of financial fraud. The approach to reporting should recognise these complexities and support an integrated approach to addressing these risks. There are a range of elective and mandatory reporting regimes in relation to scam information. These should be harmonised to the extent possible, with a single reporting portal.
24.Insurance Council of Australia	<ul style="list-style-type: none"> Recommends further clarification on the scope and intent of the SPF and codes and consideration on the considerations before a Minister considers designating a sector, including level and type of scam activity.
25.Mortgage and Finance Association of Australia	<ul style="list-style-type: none"> Minor suggestions relating to considering how entities and dispute resolution bodies should not shift responsibilities onto non-Code financial services.
26.NAB	<ul style="list-style-type: none"> Needs to be clear and practical in design. In practice, some compliance may not lead to positive outcomes. Existing reporting architecture could be better leveraged, such as AUSTRAC and the AFCX.
27.Westpac	<ul style="list-style-type: none"> Suggest better aligning the SPF Principles and Codes, including the interplay and application of penalties; clarifying liability and apportionment under IDR and EDR; ensuring all SPF Codes are approved by the ACCC. Suggests clarifying the scope of actionable scam intelligence, as well as what, when and how this intel should be reported; extending the safe harbour for actions taken after an entity reasonably considers an activity to be a scam; and clarifying the definition of a scam and SPF consumer.
s 22	
29.IDCARE	<ul style="list-style-type: none"> Recommends greater controls on personal information, expanding the definitions for consumer and scam, more detail in primary law for prevent, detect and response measures and more integration with AML/CTF and AUSTRAC processes.
30.WISE	<ul style="list-style-type: none"> Sought clarity on the meaning of unsuccessful scam attempt in the definition of a scam and advocates for a 12-month transitional period. Concerned about the definition of consumer having extra-territorial implications.
Future sectors (superannuation; payment providers) (4)	
31.FinTech Australia	<ul style="list-style-type: none"> Fintech is a varied sector and further consultation is needed prior to designation of that sector to ensure appropriate scope and regulator. Consider competition and third-party impacts at designation and generally. Third parties should have transparency of what an entity sees as 'reasonable steps' and dispute them if affected by those steps.
32.Association of Superannuation Funds Australia	<ul style="list-style-type: none"> Indicated concerns with civil penalties attached to broad, principles-based obligations. Supports additional consultation on designation and further guidance on definitions.
33.Berrill & Watson	<ul style="list-style-type: none"> Suggest expanding the existing jurisdiction and compensation limitations of AFCA to deal with breaches of the SPF and provide funding to the community sector for legal representation in complaints before AFCA for breaches of the SPF.
34.Australian Payments Plus	<ul style="list-style-type: none"> Recommend ensuring the SPF provides appropriate nuance to recognise the different payment methods in the ecosystem - in particular, do not support payment holds in certain circumstances where it would conflict

Feedback from industry submissions	
	<p>with existing payment scheme rules that provide for immediate payment. Suggested an alternative in this case it would be for the Framework to allow for an instant response (either accept or reject). This should be more nuanced, particularly in the EM.</p> <ul style="list-style-type: none"> Do not support the application of civil penalties for a single scam incident as it would lead to risk aversion in detect and disrupt actions and undesirable outcomes. Highlights the importance of closely managing interactions of different regulatory reforms involving payment providers (including licensing regime and ePayments).
Digital platforms (8)	
35.Cyber Security Certification Australia (CSCAU)	<ul style="list-style-type: none"> Supports the Framework and suggest that additional guidance for smaller businesses which would be regulated entities. Consider providing small business-specific guidance on preventing and detecting scams, such as by endorsing existing small business guidance, such as SMB1001, a multi-tiered cyber security certification standard.
36.DIGI	<ul style="list-style-type: none"> Preference for ACCC to adopt a greater role in notice/takedown function to give digital platforms stronger certainty on what online activity attracts obligations. Seek risk-based tailoring in practice for different digital services, i.e. tiered 'reasonable' standard and penalties to be more proportionate to size/risk of digital platforms. Flag practical concerns for digital platforms to give effect to principles that warrants further consult prior to designation i.e. reporting volume, speed of detection/takedown.
37.Google	<ul style="list-style-type: none"> ACCC or another regulator should be empowered to issue specific takedown notices. Timeframes in obligations to investigate reported scam ads within 48 hours and to remove reported scam content within 24 hours aren't workable. Broadly states that there will be over removal of content.
38.Infoblox	<ul style="list-style-type: none"> Largely supportive but suggests implementing a protective domain name system service; the SPF should provide a centralised domain takedown service to accelerate the takedown of domains used in scams; register legitimate domain particulars at a central portal to be managed by the regulator; and report known compromised domains to the regulator, such that these domains can be blocked by ISP providers under the Telecommunications Act.
39.Internet Association of Australia	<ul style="list-style-type: none"> Noted the disproportionate burden placed on smaller entities by legislative obligations and suggests a 6-month transitional period and phased approach with a threshold approach to allow smaller entities to comply.
40.Meta	<ul style="list-style-type: none"> Concerned that EDR it could create an insurance policy for organised criminals to target Australians and lower the guard of consumers. Concerned that the workability and burdens in apportioning liabilities between sectors could lead to adversarial blame-shifting that hinders collaboration. Disagrees that a compensation regime will be effective but recommends appropriate materiality thresholds for losses; that a timeframe of six years to bring forward a claim is too long; and that there should be minimum standards for substantiation of claims to demonstrate the consumer has not acted fraudulently or with gross negligence. Expressed concerns with excessive number of reports that may need to be shared and suggested adding reasonable grounds and likelihood of serious harm thresholds for information sharing. Stated that the definition of scam is overly broad and may overlap with Privacy Act-related obligations beyond Australia.
41.Tech Council of Australia	<ul style="list-style-type: none"> Generally wary of excessive regulation and expressed concerns over broad definitions, general statements surrounding clarity and examples on definitions and EDR.
42.The App Association	<ul style="list-style-type: none"> Expressed concerns that requirements to identify users at risk of scam may undermine consumer privacy and data security by encouraging the collection of more data. Imposing a mandate of real time monitoring will undermine the fundamental principle of encryption. Would likely require back doors into systems which would increase their vulnerability to exploitation, unauthorised access and surveillance. Erosion of end-to-end encryption could create a disproportionate advantage for larger platforms with the resources to comply with new regulations. SMEs may struggle to navigate the trade-offs between compliance and providing a business model based on privacy and security.
Telecommunication sectors (10)	
43.Australian Mobile Telecommunications Association	<ul style="list-style-type: none"> General objection to complexity and overlap of SPF and the multi-regulator model, with desire for a tailored approach, given that some principles do not fit particularly well to the sector. Preference to address other gaps in telco sector scam prevention.
44.Communications Alliance	<ul style="list-style-type: none"> Recommend moving principle-based obligations from primary law to codes, to reduce quadruple jeopardy and accelerating practical measures to fight scams including SMS sender ID registry and reforms to the numbering plan.
45.Optus	<ul style="list-style-type: none"> Recommends removing obligations from principles to subordinate only; having subordinate legislation commence at the time of sector designation; and adjust alerting/reporting to consumer requirements/ Recommends an EDR for businesses; no liability when meeting sector requirements nor for non-telco specific financial losses'; and safe harbour from any action type if meeting sector requirements.
46.Pivotel	<ul style="list-style-type: none"> Supports further arguments made in Communications Alliance's submission.
47.Transaction Network Services	<ul style="list-style-type: none"> Suggests information on what qualifies as 'reasonable steps' in either the legislation itself or the explanatory materials and providing safe harbour from liability for providers based on the use of reasonable robust analytics. Recommend incorporating verified identity solutions and robust analytics as mandatory steps within the Framework will significantly bolster businesses' ability to prevent, detect and disrupt scams.
48.Twilio	<ul style="list-style-type: none"> Supports further arguments made in Communications Alliance's submission.

Feedback from industry submissions	
49. Uniti Group	<ul style="list-style-type: none"> Concerned that while having a single EDR has efficiencies, it is likely to cause customer confusion in telco sector which already uses TIO. Uniti has some concerns over compliance costs for EDR, and technical solutions. Highlights if these are significant will likely be passed on to consumers.
s 22	
51. Telstra*	<p>s 22</p> <p>provide additional worked examples and greater clarity on how EDR would operate.</p>
s 22	
Legal advocacy bodies (4)	
53. Caxton Legal Centre	<ul style="list-style-type: none"> Supports the SPF and that the definition of consumer includes indirect relationships.
54. Law Society of NSW	<ul style="list-style-type: none"> Generally supportive of the Framework, indicated concerns with EDR, stressed the importance of proper alignment with privacy protection principles
55. Legal Aid Queensland	<ul style="list-style-type: none"> Suggests immediate action and shortened transitional period of 6 month given the high scam losses Indicated concerns with long time frame for consumers to get an outcome via EDR, further recommend placing the onus of proof on businesses and not the consumer, and if the business is liable, consumers should be compensated immediately.
56. Global Legal Entity Identifier Foundation	<ul style="list-style-type: none"> Suggests the use of Legal Entity Identifier in the Framework as it's the only global standard identifier for entities participating in financial transactions.
Other (11)	
s 22	
s 22	
s 22	
60. Deloitte	<ul style="list-style-type: none"> Definition of consumer should be refined, with reference to UK's differentiation between authorised and unauthorised fraud. Raised some concerns around the uplift required, stating it can take between 3-5 years to build disruption capabilities Supports leveraging the AFCX and calls on Government to provide more clarity on what their role will be.
61. SBS	<ul style="list-style-type: none"> SBS notes that online and broadcast services may potentially be designated, but argues its unwarranted 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.
62. Tata Consultancy Services	<ul style="list-style-type: none"> Concerned scam definition too broad and that there is inadequate support for vulnerable community members. Indicated lack of clarity around cross-border scams and that the reporting obligations are burdensome.
63. Tattarang	<ul style="list-style-type: none"> Unless underlying issues of jurisdictional effectiveness is addressed, the Bill's measures and any civil penalties that may be imposed are effectively unenforceable. Indicated that corporate residency should be required of social media platforms to address issue of jurisdictional effectiveness.
64. Refundee	<ul style="list-style-type: none"> The reimbursement of scam losses is a crucial element that is required to incentivise the improvement of standards and should therefore feature as one of the key principles. A seventh overarching principle of 'reimbursement' should be added. This would place an obligation of the sending bank such that when a customer has been the victim of an authorised fraud their bank should reimburse them. Claims for redress could become complex with multiple 'entities' involved from all three 'sectors'. A victim's bank is the most obvious 'entity' for a victim of fraud to engage to seek redress and should thus be responsible for paying financial redress, with a high-level cost allocation to other 'entities' in the same and other 'sectors' operating at arms-length from the victim.
65. OK Group	<ul style="list-style-type: none"> OK Group is concerned with the EM's 'disrupt' assertions, noting the current confirmation of payee solution offered by Australian Payments Plus is exclusive to New Payments Platform participants and is primarily influenced by Australia's large four banks, giving rise to risks that market power is misused. OK Group considers that active Government and ACCC involvement in regulations and code-setting to promote good consumer and competition outcomes can help mediate this concern.
66. Cyber Security Certification Australia	<ul style="list-style-type: none"> In its experiences with small to medium enterprises, Cyber Security Certification Australia suggested considering providing small business-specific guidance on preventing and detecting scams, such as by endorsing existing small business guidance, such as SMB1001.
67. Business Council of Australia	<ul style="list-style-type: none"> Expressed concerns with potentially conflicting regulatory layers between the Framework and sector codes. Is not supportive of a large number of existing reporting requirements and expressed concern with the ACCC being overwhelmed with excessive reports on scams. Stated that definitions, on scams and actionable scams intelligence, is too broad and need to be refined, the former could remove the "personal information" related aspects, and the latter should only relate to confirmed scams.

Attachment B – Policy issues and recommendations

s 22



Changes to policy			
Key feature	Issue raised	Treasury recommendation	Minister's decision
s 22			
Dispute resolution	<u>Operation of IDR</u> Both consumer and industry stakeholders raised concerns about the lack of clarity on IDR arrangements in primary law, particularly where multiple entities are involved in a scam. Feedback highlighted the importance of co-operation between regulated entities involved in the same scam, in order to support efficient IDR arrangements that avoids the consumer going through multiple IDR processes and inundation of complaints at EDR.	Treasury recommends that sector codes require regulated entities to engage and cooperate with one another to facilitate the resolution of disputes prior to escalation to EDR. Ahead of this, further stakeholder consultation will be undertaken on the operation of dispute resolution arrangements. The explanatory memorandum will set out the policy intent that consumers should not be bounced between multiple IDR processes, and that the sector codes will set out consumer-centric and prescriptive IDR requirements.	Agreed To discuss
	<u>Statutory review</u> Consumer groups submitted that the dispute resolution arrangements should be subject to statutory review. s 22	Treasury recommends incorporating a requirement for a statutory review of the dispute resolution arrangements under the SPF. Subject to drafting, the provision will provide that the Minister must cause a review within 3 years of the commencement of the first sector code, allowing for flexibility to start the review earlier if there are known issues. The report of the review will be tabled in Parliament.	Agreed To discuss
	<u>Proportionate liability and liability guidelines</u> Industry stakeholders strongly sought clarity around how liability may be apportioned between regulated entities where regulated entities have breached SPF obligations. This is relevant where multiple regulated entities have breached SPF obligations and have caused or contributed to loss or harm arising from a scam. This could include for example, a sending bank, a receiving bank, a telecommunication service provider, and a digital platform. Many stakeholders (including AFCA) have also sought specific liability apportionment guidelines to be provided in the framework. <i>Noted</i>	Treasury recommends provisions relating to actions for damages to allow for proportionate liability consistent with those set out in the CCA and Corporations Act, so that a court can apportion liability between regulated entities having regard to the extent to which an entity is responsibility for the damage or loss. In apportioning liability, the court will consider the actions of the consumer and any unregulated entities involved. This means that regulated entities' liability for compensation under the SPF may be less than 100% in circumstances where regulated entities are not fully and wholly causing or contributing to the scam loss (i.e. unregulated entities involved and/or consumer has been contributorily negligent). This approach is consistent with other proportionate liability frameworks. s 42	Agreed To discuss
	<u>Remediation</u> ASIC has suggested that a regulator should have the ability to seek damages for scam losses suffered by consumers in court, consistent with similar provisions in the ASIC Act.	Treasury recommends a regulator having the ability to seek damages on behalf of scam victims, where a regulator is taking legal action against a regulated entity.	Agreed To discuss

Changes to policy			
Key feature	Issue raised	Treasury recommendation	Minister's decision
	<p>AFCA suggested that:</p> <ul style="list-style-type: none"> regulated entities should be subject to obligations to actively identify and remediate consumers in line with pre-determined liability rules where a breach in obligations under the SPF is identified that impacts a number of their customers. the ACCC have the specific power to direct a regulated entity to remediate in line with pre-determined liability rules in circumstances where there is evidence that regulated entities have caused harm and not provided sufficient remediation for consumers. 	<p>Treasury does not recommend a requirement for regulated entities to remediate where the entities have self-identified a breach that may lead to scam harm for their customers or where the regulator has directed the entity to undertake remediation of this kind, for a number of reasons:</p> <ul style="list-style-type: none"> would be difficult to operationalise without pre-determined liability rules (the viability of which is subject to pending legal advice). it is unclear how this will operate in a scam context where multiple regulated entities are involved who may not always be aware if a person was involved in a specific scam, making it difficult for regulated entities to manage and quantify the risk and impose considerable and unknown costs on regulated entities. may have the unintended effect that regulated entities limit information sharing to avoid triggering liability. this would involve a significant change in policy position and would require further consultation with stakeholders so could be considered as part of the statutory review of dispute resolution arrangements. 	
s 22			
s 22			
s 22			



THE HON STEPHEN JONES MP
ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

Ref: MS24-001888

Member for **X**
Parliament House
Canberra ACT 2600

Dear **X**

As you are aware, the Albanese Government released exposure draft legislation to establish a new Scams Prevention Framework (the Framework).

Treasury consulted on the Framework from 13 September to 4 October 2024, held nine industry specific roundtables and bilateral meetings with key stakeholders and received 84 written submissions. I have received advice on feedback from stakeholders to inform changes to the legislation to improve its clarity and practical implementation for industry to enable regulators better enforce the Framework. These are not substantial changes from the policy positions reflected in the exposure draft legislation.

s 34(3)

I am writing to inform you of this Cabinet Submission, as the Framework interacts with relevant policy being led in your portfolio [NOTE: as outlined below / extract from the following table]. Treasury officials have been engaging with relevant officials in developing the legislation.

My Office is available to discuss the anti-scams agenda with your staff, to support your consideration of the Cabinet Submission and enable appropriate policy authority via **s 34(2)**

This Framework fulfils the Government's pre-election commitment to Australians to introduce tough new industry codes on digital platforms, telcos and banks.

Yours sincerely

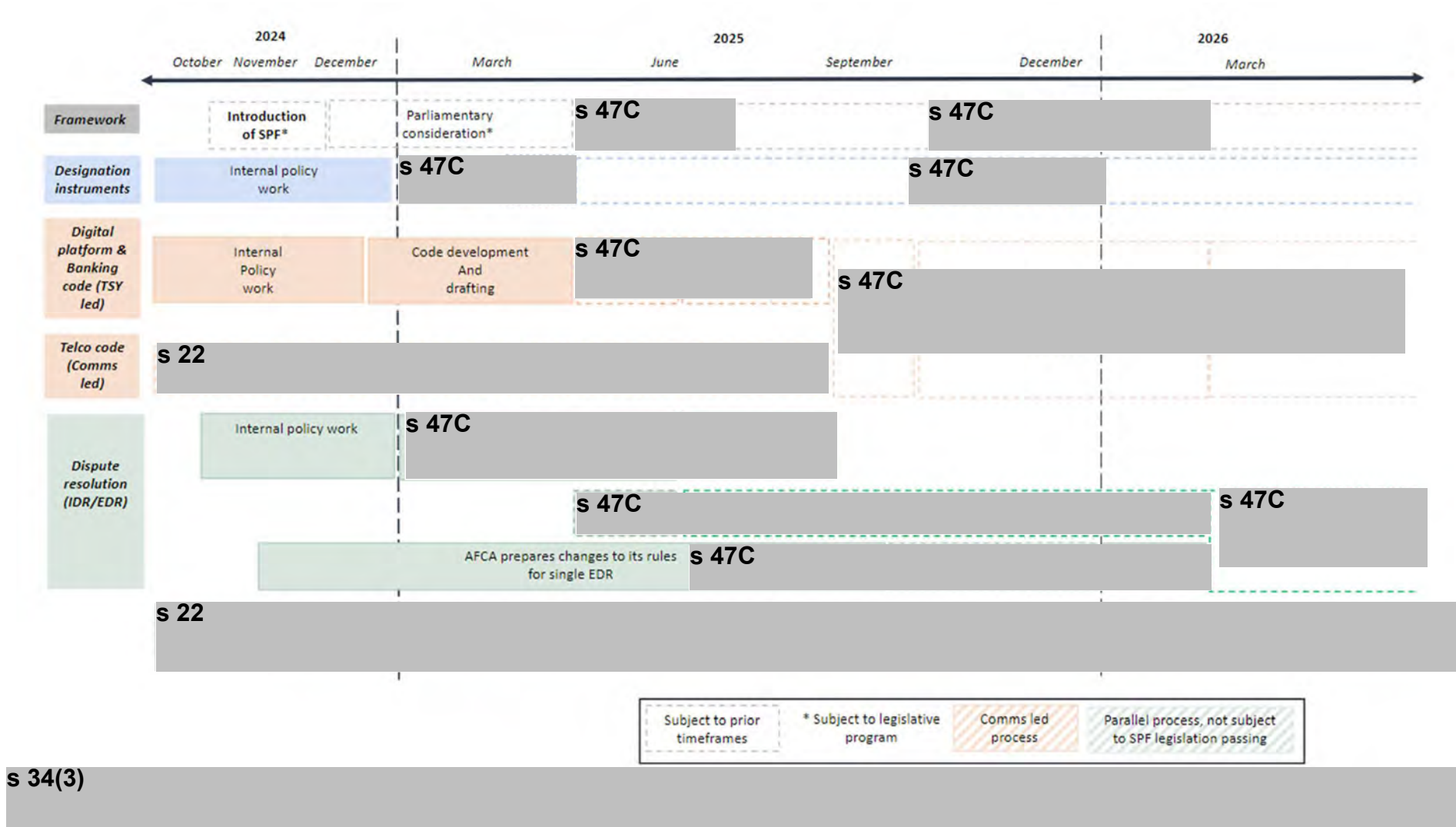
The Hon Stephen Jones MP

CC: The Hon Michelle Rowland MP, Minister for Communications

Portfolios and policies that interact with the scams prevention framework legislation

Minister and Portfolio	Policy or legislation interacting with the Framework
The Hon Tony Burke MP, Minister for Home Affairs	<p>Cyber security agenda including cyber security strategy and action plan and the associated reporting mechanisms and governance structures.</p> <p>Cyber security and scams initiatives can interact in terms of requirements on businesses to increase consumer protective measures and victim reporting and support.</p>
The Hon Ed Husic MP, Minister for Industry and Science	<p>Artificial intelligence (AI) agenda including regulation of the use of this technology.</p> <p>Regulation on the use of AI technology may interact with Framework by enabling or restricting businesses for scam prevention or limiting the ability of scammers to use it for perpetrating scams.</p>
The Hon Mark Dreyfus KC MP, Attorney-General	<p>Legislation and policy in relation to financial crime such as the Anti-Money Laundering and Counter Terrorism Financing (<i>AML/CTF Act 2006</i>), high tech crime and electronic surveillance which include provisions to prevent and protect the use of technological networks for malicious purposes, privacy reforms, fraud and cybercrime, people smuggling and human trafficking.</p> <p>Multiple policies and pieces of legislation administered by the Attorney-General's Department are inter-related and can pose similar requirements on SPF regulated businesses around knowing customers and verifying user/customers identity to detect fraudulent behaviour.</p>
The Hon Bill Shorten MP, Minister for Government Services	<p>Government service delivery mechanisms to contact, request action and make payments to and from Australian consumers can be affected by requirements under the Framework to detect and block communications and transactions of certain characteristics or targeted to 'vulnerable' consumers.</p>
The Hon Kathy Gallagher MP, Minister for Finance	<p>Digital ID agenda has complementary interactions with the Framework in terms of reinforcing the need for reliable consumer identity verification mechanisms when using / accessing products and services from regulated businesses online and protecting their identity data to avoid harms such as scams.</p>
The Hon Jason Clare MP, Minister for Education	<p>Policy and mechanisms used for delivery of Child Care Subsidy (CCS) and interactions with the higher education system on what relates to raising awareness and reducing international students being used for mule accounts.</p> <p>Requirements under the Framework may have impact on interactions with consumers in relation to contact, action and payments around CCS as well as further educating students to tackle fraudulent practices and behaviours that enable scams such as mule accounts.</p>

Attachment F – Timeline





Australian Government
The Treasury

Ministerial Submission

MS24-001681



FOR ACTION - Approval of exposure draft legislation establishing the scams protection framework

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP
CC: Treasurer - The Hon Jim Chalmers MP

TIMING

URGENT – By 11 September 2024, to enable the Communications Minister to review and approve the legislative package ahead of planned three week consultation period opening on 13 September 2024.

RECOMMENDATION

- That you approve the release of the scams protection framework exposure draft legislation at Attachment A, explanatory memorandum at Attachment B for public consultation (subject to any minor editorial changes).

Approved / Not approved

- That you agree that the exposure draft legislative consultation package will include document outlining the vision of the reforms , to be finalised with your Office.

Agreed / Not agreed

- That you agree the public consultation will be conducted over a three week period from 13 September to 4 October 2024 with the intent to meet the Spring A introduction timetable.




Agreed / Not agreed

- That you sign the letter at Attachment C to the Communications Minister, the Hon Michelle Rowland MP, seeking her agreement to release exposure draft legislative consultation package.

Signed / Not signed

Signature	Date: / /2024
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KEY POINTS

- Treasury seeks your approval to release an exposure draft legislative package establishing the scams protection framework (the framework) for public consultation.
 - The package consists of a draft bill (Attachment A) accompanied by a draft explanatory memorandum (Attachment B).
 - The package will also include a paper outlining the vision of the reforms, which Treasury will finalise with your Office ahead of release.
 - A summary of the key policy outcomes in the draft bill and expected stakeholder reactions is at Attachment D, and a draft media release is at Attachment E.
 - Following discussions with you and your Office, the draft bill has been revised to reflect the changes you have agreed, particularly in relation to definitions, as outlined at Attachment F.
- **s 22**

- Following approval from you and the Minister for Communications, the package will be made available on the Treasury website, with consultation open to the public for a three week period commencing 13 September.
 - **s 22**

 - **s 22**

- Treasury continues to manage risks to support introduction of the bill on 21 November, including potentially extensive stakeholder feedback over the consultation period, competing legislative priorities, and limited OPC drafting resources.

- The framework complements the Government’s broader effort to modernise Australia's laws for the digital age, including reforms to Australia’s privacy, money laundering and cyber settings, modernisation of the payment system, enhancing online safety, as well as and the rollout of Digital ID and eInvoicing infrastructure for businesses.

External dispute resolution (EDR) – Cabinet Submission

s 34(3)



Risks and sensitivities

• **s 22**



• **s 22**



• **s 22**



s 22



ADDITIONAL INFORMATION

Summary of the package

- The policy features reflected in the draft bill are largely consistent with the positions you have previously agreed and in the 2024-25 Cabinet authority s 22

These features are set out in further detail at Attachment D.

— s 22



— s 22



— s 22



- Regulated entities will be required to be a member of a prescribed EDR scheme as a condition to providing a service regulated by the framework in Australia. The EDR scheme relevant to each sector will be prescribed in a legislative instrument. The draft bill will enable a single EDR scheme for the framework, to be administered by AFCA s 34(3)





— s 22



- s 22
[Redacted]
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[Redacted]

Stakeholder consultation plan

- Treasury has worked with industry, consumer groups and other stakeholders throughout development of the proposed reforms and we will continue to engage with them during the consultation period.
- Treasury intends to hold an information session, industry roundtables and issue specific workshops to gather direct feedback from stakeholders on the legislative package. Treasury will engage DITRDCA on their participation in the consultation sessions.
- Stakeholders are likely to have strong interest across several areas of the bill, and some may wish to put their views to you directly.

- s 22

- s 22

- s 22

- s 22

- Telecommunication providers and digital platform service providers will express concern and pushback on the requirement to be a member of a AFCA as a condition to providing a service regulated by the framework in Australia.
- Stakeholders are likely to ask for more detail on consumer redress arrangements, including on liability apportionment of the EDR scheme.

Next steps

- Subject to both your and the Minister for Communication's agreement, Treasury will publish the draft legislative package on its website on 13 September, with consultation to be open until 4 October.
- At the conclusion of consultation, Treasury will provide you with a summary of stakeholder feedback and advice on issues raised in feedback for your consideration. It is likely that you will also be required to finalise the policy design in consultation with the Prime Minister and other relevant ministers.
- Subject to OPC resourcing availability, and the extent of changes in response to feedback, Treasury will finalise the legislative package following stakeholder feedback and will provide you with a final package for approval in early November.

Clearance Officer

s 22

Market Conduct Division
11 September 2024

Contact Officer

s 22

CONSULTATION

Law Division, DITRDCA

ATTACHMENTS

- A: Exposure Draft Legislation
- B: Draft Explanatory Memorandum
- C: Letter to Minister Rowland MP
- D: Summary of policy outcomes and expected stakeholder views
- E: Media release
- F: Changes to draft bill – scams protection framework

ATTACHMENTS A & B HAVE BEEN REMOVED
AS OUT OF SCOPE PUBLIC DOCUMENTS



THE HON STEPHEN JONES MP
ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

Ref: MS24-001681

The Hon Michelle Rowland MP
Minister for Communications
Parliament House
CANBERRA ACT 2600

Dear Minister

I am writing to seek your agreement to release a draft legislative package establishing the Scams Prevention Framework (the Framework), for public consultation. The package consists of a draft bill (Attachment A) accompanied by a draft explanatory memorandum (Attachment B).

The draft bill would require designated sectors to take robust steps to prevent, detect, disrupt, respond to and report scams occurring on their services. This will include a requirement on entities within designated sectors to become a member of a prescribed external dispute resolution (EDR) scheme.

The Framework would also provide legislative authority to make sector-specific codes that can include more prescriptive requirements on the regulated entities to protect Australian consumers from scams. Consistent with the proposal agreed at the 2024-25 Budget, I intend to first designate banks, telecommunication, social media, digital messaging and search advertising services. **s 22**

s 22

The draft bill includes proposed consequential amendments to the ACMA Act to enable ACMA to disclose information relating to the Framework to the prescribed EDR scheme and other regulators.

Subject to your agreement, the package will be made available on the Treasury website, with consultation open to the public for a three week period commencing 13 September 2024. I propose to also include a short paper outlining the vision of the reforms. This would enable Treasury, in consultation with your Department, to finalise the bill ready for introduction into the Parliament on 21 November 2024. To facilitate this timeframe, I ask for your response by 12 September 2024.

s 34(3)

Thank you for our joint work to develop this important reform to better protect Australians from scammers. I look forward to continuing to work with you on this important reform to better protect all Australians.

Yours sincerely

The Hon Stephen Jones MP

Enc

Scams Protection Framework (SPF) –Summary of policy outcomes and expected stakeholder views

Policy feature	Policy outcome reflected in ED legislation	Expected stakeholder views
s 22		

Policy feature	Policy outcome reflected in ED legislation	Expected stakeholder views
s 22		
Dispute resolution	<p>The primary legislation establishes an obligation for regulated entities to be a member of a prescribed EDR scheme if the entity provides services regulated by the SPF. The EDR scheme relevant to each sector would be prescribed by the Minister in a legislative instrument.</p> <p>The Minister may authorise an existing EDR scheme as an SPF EDR scheme for one or more regulated sectors (e.g. the AFCA scheme), or authorise a new scheme if satisfied it meets the requirements prescribed by the SPF rules.</p>	<p>This is likely to be a key issue for stakeholders.</p> <p>While consumer groups and the banking sector will strongly support an AFCA-led single EDR scheme, telcos and digital platforms and the TIO will be sensitive to this decision.</p>

Policy feature	Policy outcome reflected in ED legislation	Expected stakeholder views
	Note: The amendment for AFCA to deal with complaints about receiving banks and mule accounts for scams is to be progressed independently of the scams framework legislation.	Digital platforms will raise concerns with the requirement to join an EDR scheme as a condition to providing SPF regulated services in Australia.
	The primary legislation establishes an obligation for regulated entities to have an accessible and transparent internal dispute resolution mechanism.	Stakeholders will likely seek additional detail on specific IDR requirements (this will be in sector codes) and how IDR will interact with EDR.

The Hon Stephen Jones MP
Assistant Treasurer and Minister for Financial Services

*****MEDIA RELEASE****

SCAMS PROTECTION FRAMEWORK – RELEASE OF EXPOSURE DRAFT LEGISLATION

Today the Albanese Government is opening consultation on draft legislation to establish the Scams Protection Framework.

The Government's fight against scams is showing early signs of success, with scam losses declining in 2023 for the first time since 2016, however industry needs to do more.

The legislation would create obligations for industry to take robust steps to prevent, detect, disrupt, respond to and report scams occurring on their services. These obligations would initially apply to for banks, telcos, social media, direct messaging and paid search advertising services.

The legislation would enable the Minister to make sector-specific codes that will include additional mandatory requirements on the regulated entities to protect consumers from scams.

Consumer protections are at the heart of the Government's reforms. The framework will require regulated entities to be a member of a prescribed external dispute resolution (EDR) scheme.

The Government intends to nominate the Australian Financial Complaints Authority (AFCA) as the single EDR scheme for all scam complaints made under the framework for the first three sectors. This will provide consumers a clear pathway for redress, including compensation, where a regulated entity has done the wrong thing.

The Scams Protection Framework will be complemented by strong regulator enforcement action and tough penalties for non-compliance, with the recent Budget allocating \$37.3 million over four years for the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission and the Australian Communications and Media Authority to administer and enforce the new rules.

This Framework compliments the recent passage of *the Telecommunications Amendment (SMS Sender ID Register) Bill 2024*, that will enable the Australian Communications and Media Authority to establish Australia's first SMS Sender ID Registry, which will help prevent scammers imitating trusted industry or government brand names – such as Linkt or myGov – in text message headers.

These reforms build on the significant investment by the Government in last year's Budget to combat scams, which included \$86.5 million to establish the National Anti-Scam Centre and fulfils its pre-election commitment to Australians.

Exposure draft legislation and explanatory materials can be found on the Treasury website [\[LINK\]](#). Submissions will remain open until [\[4 October 2024\]](#). Interested parties are encouraged to share their feedback, which will shape the development of a final bill for introduction to Parliament later this year.

**QUOTES ATTRIBUTABLE TO ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES
STEPHEN JONES:**

OFFICE TO INPUT

Changes to the exposure draft legislation

s 22



Table 1: Changes to the bill

Provision	Proposed change
s 22	
Consequential amendments	Included minor changes to the Corporations Act to explicitly enable AFCA to be the external dispute resolution scheme for non-financial sectors and to enable ASIC to continue having oversight of AFCA even with an expanded jurisdiction.