

SUBMISSION

Senate Economics Legislation Committee – Scams Prevention Framework Bill 2024

9 January 2024

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Contents

1. Forward to ASFA's Submission	2
2. The problem of scams in the Australian economy	3
3. The work being undertaken by ASFA to help combat scams and other forms of financial crime	4
4. The recommendations from ASFA's last submission on the Scams Prevention Framework (SPF)	5
5. ASFA's comments on changes between the draft legislation and the bill as introduced	7
6. Attachment A – ASFA's Submission to Treasury on the Scams Prevention Framework – Exposure Draft Legislation	10

File: 2025/01

Senator Jess Walsh
Chair – Senate Economics Legislation Committee
Parliament House
Canberra
ACT 2600
Australia
Via email:

9 January 2024

Dear Senator Walsh,

Scams Prevention Framework Bill 2024 (the SPF Bill)

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Senate Economics Legislation Committee (the Committee's) inquiry.

About ASFA

ASFA has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA-regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers. We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

1. Forward to ASFA's Submission

ASFA strongly supports the Government's Scams Prevention Framework (SPF), subject to the caveats outlined below and in **Attachment A** of this submission, which was previously provided to Treasury on 4 October 2024.¹

This submission will first outline the problem of scams confronting the Australian economy. Secondly, it will outline the extensive work being undertaken by ASFA to ensure the superannuation sector is actively combatting these issues. Thirdly, it will emphasise the key recommendations from our last submission on these issues to Treasury. Fourthly and finally, it will note any key differences between the draft legislation and the final legislation which ASFA considers merit further comment.

At the outset, ASFA wishes to underscore our unwavering commitment to combatting scams effectively. As we said in our prior submission to Treasury on the draft legislation:²

ASFA wishes to emphasise that our \$3.9 trillion sector wants to assist the Government in dealing with scams. Our membership has been on the front foot in proactively seeking combat scams and issues related to other heinous forms of financial crime.

¹ ASFA Submission to Treasury, Scams Prevention Framework – Exposure Draft Legislation 2024 ([4 October 2024](#)).

² Ibid, 2.

We note that it is not proposed the SPF should apply to superannuation in the first round of designations. However, page 8 of the Government's previous consultation documents did indicate:³

The Treasury Minister may use the designation mechanism to designate further sectors and the relevant regulator into the framework over time where scam activity shifts. This could include superannuation funds...

It is due to this indication, and the superannuation sector's extensive work to combat scams and financial crime more broadly (as outlined in section 3 of this submission), that we are making a submission to this inquiry.

2. The problem of scams in the Australian economy

ASFA is fully aware of the serious risk scams pose across the Australian economy. The latest figures from the Australian Competition and Consumer Commission (ACCC)'s and National Anti-Scam Centre (NASC)'s [Targeting Scams Report](#) notes, in 2023 Australians lost approximately \$2.74 billion to scams.⁴

It is worth noting this number has gone down in recent years. For example, in 2022, the same report found Australians had lost \$3.1 billion, which was an 80 per cent increase on the preceding year of 2021.⁵ This indicates that many Australians are becoming more vigilant against scams, as the overall value of reported loss scams declined sharply in 2023, by some 13 per cent or \$360 million.⁶

However, scams do not affect all Australians equally. While the headline number declined between 2022 and 2023, certain groups were disproportionately affected. For example:⁷

- Losses for people over the age of 65 increased by 13.3 per cent in 2023 to \$120 million. All other age groups reported a decrease in losses. People over the age of 65 were disproportionately impacted by investment scams.
- Losses to job scams rose by 151.2 per cent to just over \$24.3 million. Disproportionately impacting people looking for part-time work or seeking to supplement their income and ease cost of living pressures.
- Culturally and Linguistically Diverse (CALD) communities were particularly vulnerable to scams. They made 14,396 reports (increase of 26.1%) with \$60.5 million in total reported losses (increase of 6.9%). The median and average reported losses are higher for CALD communities than for all reporters.⁸

Therefore, in all work undertaken to combat scams, the Committee must remain cognisant of the fact that while, according to the ACCC, overall reported scam losses have declined in recent years, certain categories of vulnerable people have experienced increased losses. ASFA stands ready to work with the Government in designing frameworks that will help to address these issues. We have already been taking active measures to combat scams and financial crime in advance of our inclusion in the SPF, as outlined in detail below.

In a superannuation specific context, the Australian Financial Complaints Authority (AFCA)'s research notes that while AFCA received nearly [11,000](#) complaints in relation to scams overall in 2023-24, only 20 of these (or 0.18 per cent) related to superannuation funds.⁹ However, while the overall number of super-related scam complaints is small, the losses average approximately \$88,736 for those 20 complainants.

³ Treasury, Scams Prevention Framework: Summary of Reforms ([September 2024](#)).

⁴ ACCC, 'Scam losses decline, but more work to do as Australians lose \$2.7 billion' ([28 April 2024](#)).

⁵ ACCC, 'Targeting Scams: Report of the ACCC on Scams Activity 2022' ([April 2023](#)).

⁶ ACCC, 'Scam losses decline, but more work to do as Australians lose \$2.7 billion' ([28 April 2024](#)).

⁷ Ibid.

⁸ ACCC, 'Targeting Scams: Report of the NASC on scams Activity in 2023' ([April 2024](#)).

⁹ AFCA (Lead Ombudsman Heather Gray), 'Protect Your Super From Scammers' ([27 August 2024](#)).

3. The work being undertaken by ASFA to help combat scams and other forms of financial crime

Given ASFA's acknowledgment of the significant problem of scams across the economy, and noting the superannuation sectors relatively mature performance outlined above, ASFA would also like to draw the Committee's attention to some initiatives which our members have proactively committed to, as a sign of ASFA's desire to work collaboratively with the Government to strengthen protections in relation to scams and combat financial crime more generally. ASFA's work in this area includes the following:

1. ASFA's Better Practice Guidance on Minimum Fraud Controls for Superannuation Funds ([here](#))
2. ASFA's Financial Crime Protection Initiative ([FPCI](#)), which seeks to help industry and consumers work together to fight financial crime through:
 - Enhancing collaboration and knowledge sharing between funds and critical service providers including custodians, administrators and technology providers
 - Developing industry-wide frameworks to combat financial and cybercrime
 - Connecting the superannuation sector, relevant government agencies and related financial services bodies
 - Helping make Australians aware of the actions they can take to protect their super and data from scammers.

ASFA's FCPI was launched in September 2024, bringing together the relevant experts from across our broad membership. The group met in October and November 2024 and ASFA is now convening two working groups as part of this initiative, focused on developing standards in relation to Scams and Cyber Security.

3. ASFA's [recent submission](#) on reforming Australia's Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regime.
4. ASFA's [8 August 2024](#) appearance before the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the Financial Services Regulatory Framework in Relation to Financial Abuse and [joint statement](#) on this topic with the Super Members Council and Women in Super. There, we called for – 'urgent legal reform to stop abusers getting victim's super'.
5. ASFA's [11 October 2024](#) submission on the reforms to Australia's privacy laws, where we agreed with the Attorney-General, the Hon Mark Dreyfus KC MP, that:¹⁰

Strong privacy laws and protections are critical to building public trust and confidence in the digital economy, and driving the investments needed to keep people's data safe. The right to privacy is a fundamental human right.

6. ASFA's [25 October 2024](#) submission to the Parliamentary Joint Committee on Intelligence and Security in relation the Government's Cyber Security Legislative Package.

The above summary of ASFA's recent work around scams, financial crime, AML/CTF privacy, cyber security and financial abuse demonstrates our firm commitment to anti-scams laws is part of a wide range of activities we are undertaking to combat all forms of financial crime. These various types of financial crime, including scams, need to be viewed holistically and as interrelated, as do any regulations which seek to combat them

¹⁰ *Commonwealth Parliamentary Debates*, House of Representatives, [12 September 2024](#), 21 (The Hon. Mark Dreyfus KC MP)(Privacy and Other Legislation Amendment Bill 2024 – Second Reading Speech)

4. The recommendations from ASFA's last submission on the Scams Prevention Framework (SPF)

In ASFA's previous submission provided to Treasury on the SPF draft legislation on 4 October 2024, we made the following recommendations, the full submission is provided in **Attachment A**.¹¹

1. There should be a longer transition period than is currently proposed, preferably 6-to-12 months after the bill receives Royal Assent. Currently, the bill takes effect the day after Royal Assent, per [page 1](#).
2. ASFA seeks confirmation as to how long a newly designated sector has before it must comply with all the civil penalty provisions related to the 'overarching SPF principles' in Division 2 of the bill. Currently, it appears once a sector is designated under clause 58AC, it is immediately subject to all the 'overarching obligations' in Division 2. A newly designated sector should be allowed a 6-to-12-month transition period before all these new obligations apply, to enable a prudent, effective transition and operational uplift.¹²
3. ASFA recommends there should be additional consultation prior to the designation of any further sectors by the Minister pursuant to clause 58AC(1). This consultation should allow for the making of written submissions as to whether future designations are appropriate or should be tailored in any way to meet specific circumstances.
4. In general, ASFA recommends there should be a review of the current framework where both breaches of a code and breaches of the SPF principles constitute civil penalty provisions.¹³ In general, ASFA is more comfortable with specific obligations contained within codes being enforceable, as outlined in clause 58CA. Especially when considering that, under the scheme as drafted, codes cannot be inconsistent with SPF principles.¹⁴ This is because these codes are developed with substantial industry input and have a sufficient degree of granularity and specificity to render obligations more clearly than the SPF principles, which are expressed at a higher level of generality. If SPF principles are to remain civil penalty provisions, then detailed guidance should be issued in relation to each of the six SPF principles to outline exactly what is required to meet each of the principles' requirements.
5. ASFA recommends that prior to the making of any sector specific code for superannuation under clause 58CB, there should be separate and extensive consultation with the superannuation sector to determine which body should draft that code and what its content should be. This should include the opportunity for written submissions on the content of the code. The code should also use existing industry frameworks as its basis.
6. ASFA recommends further detailed guidance should be released in relation to the definition of a 'scam' under clause 58AG and the definition of 'actionable scams intelligence' under clause 58AI. These terms are currently quite broad and require further clarification.
7. ASFA recommends further clarification of the how information sharing scheme under clauses 58EF to 58EI would interact with existing obligations under the AML/CTF Act 2006, regarding Suspicious Matter Reports (SMRs) and the Notifiable Data Breach Scheme (NDB) under *Privacy Act 1988* (Cth) (the Privacy Act). We want information sharing to avoid duplication and maintain consistency between these three regimes.

¹¹ ASFA Submission to Treasury, Scams Prevention Framework – Exposure Draft Legislation 2024 ([4 October 2024](#)).

¹² Clause 58AC defines regulated sectors and clause 58BA defines when the overarching principles apply.

¹³ See clauses 58FG on SPF principles and 58CA in relation to code provisions.

¹⁴ Clause 58CC(1).

8. ASFA recommends the SPF framework should be reviewed due to recent major reforms to the legislation below being finalised, to ensure the draft bill is both consistent with and compliments this legislation:
- The Privacy Act – which has major reforms currently before Parliament in the form of the Privacy and Other Legislation Amendment Bill 2024
 - The AML/CTF Act – which has major reforms currently before Parliament in the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024
 - Changes to the Security of Critical Infrastructure Act 2018 and new cyber security legislation which has been [announced](#) by the Home Affairs Minister, the Hon. Tony Burke MP.

Care must be taken to ensure that all this legislation works in harmony to protect Australians from financial crime and scams appropriately without creating regulatory duplication.

9. In respect of the proposed multi-regulator approach in Division 5, Subdivision B - ASFA has the following comments. As superannuation funds are not currently directly regulated by ACCC (excepting enforcement litigation). Therefore, confirmation of the following aspects would assist:
- how the ACCC as regulator will operate i.e. their remit (similar to the clarity currently provided on other regulators like ASIC, APRA and AUSTRAC)
 - clearly defined guidance as to the expectations on regulated entities, particularly in relation to meeting the SPF principles-based obligations
 - This will assist regulated entities to be compliant and also form a basis for determining breaches and reportability
 - Case studies and scenarios in the guidance will assist entities in understanding the criteria for assessing breaches and reportability to implement appropriate mechanisms
10. In respect of reporting requirements under Division 2, Subdivision E, with the ACCC as the primary regulator and reporting requirements in primary law there is the challenge of duplicate intel being reported to different regulators. ASFA has the following comments in this regard:
- It is understood that this most likely will be addressed in sector specific codes
 - If a centralised government source is being considered, it would be worthwhile to assess this across the government agencies and regulators to achieve alignment between reporting requirements from different legislation
 - Adjustments may be needed to ensure alignment across different legislation, for example, the *Competition and Consumer Act 2010* (Cth)(the CCA) covers scams intelligence reporting, compared to the *Anti-Money Laundering and Counter-Terrorism Act 2006* (Cth)(the AML/CTF Act) covering Suspicious Matter Reports (SMRs). SMRs are all inclusive and if there is no carve out in AML/CTF Act or the CCA, actionable scams intelligence will need to be reported via SMRs to AUSTRAC as well as to the ACCC.

5. ASFA's comments on changes between the draft legislation and the bill as introduced

In relation to changes which have occurred between the draft legislation and the bill as introduced, ASFA has the following comments:

1. ASFA welcomes the changes to clause 58AA, related to the 'objects' of the legislation, which clarifies the legislation's extra-territorial effect in certain circumstances. This change recognises the international and cross-border nature of combatting scams in the modern age.
2. ASFA welcomes the new clause 58AD(5)(a), which did not exist in the draft bill, which provides that the Minister may exempt specific businesses or services from an otherwise regulated sector. This provides appropriate flexibility and discretion.
3. ASFA supports clause 58AE(1)(a)(i), which requires the Minister to consider the 'effectiveness of existing industry initiatives to address scams' before designating a sector subject to the SPF.
4. ASFA supports the new clause 58AE(b)-(c), which require that the Minister consults, inter alia:

[T]he businesses or services making up the sector, or such associations or other bodies representing them as the Minister thinks appropriate

This change is consistent with recommendations 3 and 5 from ASFA's prior submission, outlined above.

5. ASFA welcomes that clause 58AI clarifies that the definition of 'actionable scams intelligence' indicates in note 1 that:

Whether there are reasonable grounds for such a suspicion is an objective test.

Relevant information for this test may include:

- a. *information about the mechanism or identifier being used to 9 scam SPF consumers, such as URLs, email addresses, phone numbers, social media profiles, digital wallets and bank account information of the scam promoters; and*
- b. *Information about the suspected scammer; and*
- c. *information (including complaints) provided by SPF consumers.*

However, for clarity, ASFA suggests that this language should be included in the legislative language defining the term 'actionable scams intelligence', not simply in a drafting note.

6. ASFA supports the changes in the final legislation in clause 58BA(a) which replaces the phrase 'have appropriate strategies' to comply with the overarching SPF principles with the new phrase 'take reasonable steps' to do so. This is a more clearly understood legislative phrase. We also support the related change to the bill as introduced which defines the term 'reasonable steps' in clause 55BB. These changes provide greater clarity to regulated entities. However, clause 55B would still benefit from the provision of greater regulatory guidance, including detailed examples.
7. ASFA supports the simplified clause 58BC in relation to the SPF principle of governance. We also support the new clause 58BH, which confirms that 'sector-specific details' can be further articulated in the relevant SPF codes. Placing more granular obligations for compliance within the sector specific codes is consistent with the principles articulated in recommendation 4 from our previous submission, as outlined above.

8. ASFA supports the simplified clause 58BI in relation to the SPF Principle 2 to prevent scams.
9. ASFA supports clause 58BL in relation to SPF Principle 3 to detect scams. We specifically welcome that clause 58BP allows for the term 'reasonable steps' in relation to this principle to be defined in sector-specific codes. This is consistent with recommendation 4 from our previous submission insofar as more granular obligations should be contained in sector-specific codes, not the overarching principles.
10. ASFA supports clause 58BQ in relation to SPF Principle 4 to report scams. However, we note that careful consideration must be given to how the information sharing provisions (such as those in clauses 58BU and 58BV) interact with regulated entities other legal obligations – for example under the *Privacy Act 1988* (Cth)(the Privacy Act) or the *Anti-Money Laundering Act 2006* (Cth)(the AML/CTF Act). This concern is outlined in greater detail in recommendations 7 to 11 of our previous submission on these issues, as outlined above. These concerns apply with equal force to clause 58EG regarding information sharing between SPF regulators.
11. ASFA supports clause 58BW in relation to SPF Principle 5 to disrupt scams. Further, clause 58BX's appropriately defines reasonable steps in this context helps to clarify the legislative language. We would welcome this information being supplemented by further guidance. The principle of proportionality outlined in 58BX(3) is also welcome. As is the allowance that the term 'reasonable steps' can be defined in sector specific codes in clause 58BZ and the safe harbour in clause 58BZA.
12. ASFA supports clause 58BZB in relation to SPF Principle 6 to respond to scams, including membership of appropriate Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR) schemes in relation to scams complaints. ASFA welcomes that details in relation to these frameworks can be set out in sector specific codes under clause 58BZH. We also urge that any SPF Rules made under this Act, including as referenced in clause 58BZB and elsewhere, should be subject to further detailed consultation with industry.¹⁵
13. ASFA supports clause 58CA, which allows the Minister to make a sector specific code for each regulated sector. We note that these codes can only deal with the matters outlined in clause 58CC. We ask that the Minister work with ASFA, and the superannuation sector more broadly, on the relevant content for any code prior to applying it to our sector, through an extensive, consultative and collaborative process of engagement. Any frameworks developed by industry at such time as the SPF is extended to superannuation should serve as the starting point for an appropriate code.
14. Consistent with our previous submission, ASFA recommends that if the SPF is extended to superannuation, AFCA would be the most appropriate EDR mechanism under clause 58DB, as they are already familiar with the superannuation sector.
15. Consideration should be given to whether ASIC may be a more appropriate SPF regulator for the superannuation sector than the ACCC under clause 58EB, if the scheme is extended to superannuation, given their extensive familiarity with our sector. This may avoid regulator duplication and the overextension of ACCC resourcing. The ACCC is the default regulator under clause 58EB, but this can be changed by either the Commission themselves under 58EC or the Minister under clause 58ED. The possibility of ASIC being a more appropriate regulator for certain sectors is expressly contemplated by the legislation in clause 58FH.

¹⁵ See for example, the Minister's general rule-making power under the Act in clause 58GE.

16. Under clause 58FK, in relation to civil penalties, the penalty for a tier 1 contravention is the highest of:
1. \$52,715,850 (i.e. 159,745 penalty units of [\\$330](#)).
 2. Three times the total value of the benefit derived from the contravention.
 3. 30 per cent of the adjusted turnover of the body corporate during the breach period.

Given the significant and indeterminate nature of these civil penalty provisions, consideration should be given to whether a single maximum penalty should be provided for, with lesser penalties to be proportionately adjudicated via judicial discretion.

The same considerations should be applied to civil penalties in relation to tier two contraventions under clause 58FL.

Subject to the comments above and in our previous attached submission, ASFA looks forward to continuing to work with the Government to combat scams and all other forms of financial crime.

We would welcome an opportunity to discuss these recommendations with the Committee further.

Yours sincerely

James Koval

Head of Policy and Advocacy

SUBMISSION

Attachment A – ASFA’s Submission to Treasury on the Scams Prevention Framework – Exposure Draft Legislation

4 October 2024

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File: 2024/37

Ms Shellie Davis
Director – Scams Taskforce
Market Conduct Division
Treasury
Langton Cres,
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Submitted via email to: shellie.davis@treasury.gov.au

4 October 2024

Dear Ms Davis

Scams Prevention Framework – Exposure Draft Legislation

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to this consultation by Treasury.¹⁶

About ASFA

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.9 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

Part 1 - ASFA's Opening Comments on the Framework

ASFA is supportive of the Government's strong approach to combatting scams as pivotal to protecting businesses and consumers. We note for example that in calendar year 2023, research from the Australian Competition and Consumer Commission (ACCC) shows Australians lost \$2.74 billion to scams.¹⁷ This is not acceptable and ASFA and the superannuation sector stand with the Government in seeking to combat the scourge of scams.

The first part of this submission will provide some general context on ASFA's work to combat scams. The second part will provide a summary of ASFA's understanding of the key elements of this Scams Prevention Framework (SPF). The third and final part of this submission will provide ASFA's specific recommendations on how the framework could be improved or clarified to maximise effectiveness.

We note that in the first instance, the SPF is not intended to apply to the superannuation sector. However, the consultation documents indicate the Minister may extend the Framework, including by:¹⁸

*[D]esignating further sectors...into the framework over time where scam activity shifts. This could include **superannuation funds**, digital currency exchanges, other payment providers and transaction-based digital platforms like online marketplaces.*

¹⁶ Treasury, Scams Prevention Framework – Exposure Draft Legislation ([13 September 2024](#)).

¹⁷ Australian Competition and Consumer Commission (ACCC), *Scam losses decline but more work to do* ([28 April 2024](#)).

¹⁸ Treasury, *Summary of Reforms* ([13 September 2024](#)), 8.

Therefore, ASFA is making this submission to ensure any future application of the SPF to superannuation takes into consideration appropriately the unique circumstances of our sector.

ASFA wishes to emphasise that our \$3.9 trillion sector wants to assist the Government in dealing with scams. Our membership has been on the front foot in proactively seeking combat scams and issues related to other heinous forms of financial crime. It is for this reason that we have taken the following active steps recently:

1. Launching ASFA's *Better Practice Guidance on Minimum Fraud Controls for Superannuation Funds*. This took effect from 1 July 2024 with a 12-month transition period and demonstrates ASFA's commitments to appropriate safeguards when it comes to privacy, identity verification and Anti-Money Launder and Counter Terrorism-Financing (AML/CTF) obligations. The guidance is publicly available [here](#) and indicates ASFA and our members commitment to strong standards and accountability.
2. Launching ASFA's Financial Crime Protection Initiative (FCPI) in [September 2024](#). This seeks to engage our over 100 members across the superannuation sector in collective efforts to fight and prevent financial crime, through focusing on the following:
 - Enhancing collaboration and knowledge sharing between funds and critical service providers including custodians, administrators and tech providers.
 - Developing industry-wide frameworks to combat financial and cybercrime.
 - Connecting the superannuation sector, relevant government agencies and related financial services bodies.
 - Helping make Australians aware of the actions they can take to protect their super and data from scammers.
3. Issuing a joint statement in [August 2024](#), with Women in Super and the Super Members Council (SMC), condemning domestic and family violence and financial abuse in relation to superannuation and calling for swift reforms to address these issues. We also appeared before the Parliamentary Joint Committee in Relation to Corporations and Financial Services [inquiry](#) into these matters to re-affirm our commitment to meaningfully addressing these issues.

ASFA's strong support for efforts to effectively address all forms of financial crime, including scams, is evident from the above.

We remain ready to continue to work with Government to tackle these issues. As our CEO, Mary Delahunty has said – 'the rapid pace of development of risk in this area means public and private partnerships will be necessary to meet and beat' these threats.¹⁹

ASFA wants to assist the Government in combatting scams and that is why we support the objectives of these reforms. Our recommendations, in Part 3 of this submission, are intended to help ensure the framework most effectively meets its underlying objective to maximise consumer safety and fight scams, while avoiding regulatory confusion or duplication.

[Part 2 - ASFA's Summary of the SPF Framework](#)

ASFA notes this legislation would insert a new Part IVF into the *Australian Competition and Consumer Act 2010* (Cth)(the ACCA).

¹⁹ ASFA, *Leading the Charge: Superannuation Peak Body Launches Initiative to Safeguard Savings from Financial Crime* ([17 September 2024](#)).

The amending legislation is to be known as the Treasury Laws Amendment Bill 2002: Scams Prevention Framework (the draft bill).

For the avoidance of doubt, this submission is made with reference to the following documents:

1. The [draft bill](#), as provided by Treasury for consultation on 13 September 2024.
2. The Draft Explanatory Materials.²⁰
3. Treasury's Summary of the Reforms.²¹

On [13 September 2024](#), when announcing these reforms, the Assistant Treasurer and Minister for Financial Services, the Hon. Stephen Jones noted there are four key aspects to the scheme, which will initially apply only to banks, telecommunications and digital platform services. The four key elements are as follows:²²

1. To Enable the Minister to designate sectors and establish sector-specific codes. The Codes will impose mandatory obligations on designated sectors to combat scammers and protect Australians.²³
2. Mandate designated sectors to have Internal Dispute Resolution (IDR) mechanisms that are accessible and transparent for customers.²⁴
3. Enable an External Dispute Resolution (EDR) scheme to be nominated for all scam complaints made under the Framework.²⁵
4. Build a coordinated intelligence sharing ecosystem by mandating timely reporting and information sharing across industry and government.²⁶

ASFA also notes that, in addition to the four items outlined above, the Government's legislation includes six economy-wide principles, to be known as the 'overarching principles of the Scams Prevention Framework' (SPF principles).

These SPF principles, summarised in [clause 58BA](#), must be adhered to, beyond the obligations in mandatory industry codes that apply to sectors the Minister has designated.

The clauses of the bill related to the SPF principles are also civil penalty provisions under [clauses 58FG to 58FJ](#) of the draft bill. Therefore, breaches of the SPF principles can be subject to penalties of almost \$50 million for bodies corporate or \$2.5 million for individuals.²⁷

The six economy-wide SPF obligations are outlined below – they are in Division 2 of the bill:²⁸

1. Governance frameworks regarding scams - as outlined in [clauses 58BB to 58BH](#) under Subdivision B.
2. To prevent scams – as outlined in [clauses 58BI to 58BL](#) under Subdivision C.
3. To detect scams – as outlined in [clauses 58BM to 58BP](#) under Subdivision D.
4. To deport scams – as outlined in [clauses 58BQ to 58BU](#) under Subdivision E.
5. To disrupt scams – as outlined in [clauses 58BV to 58BZ](#) under Subdivision F.

²⁰ Treasury Laws Amendment Bill 2024: Scams Prevention Framework – [Exposure Draft Explanatory Materials](#).

²¹ Treasury, *Summary of Reforms* ([13 September 2024](#)).

²² The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), *Albanese Government unveils Scams Prevention Framework for public consultation* ([13 September 2024](#)).

²³ The Minister's powers to designate certain sectors are in [clauses 58AC to 58AF](#).

²⁴ See [clause 58BZC](#).

²⁵ See [clause 58BZD](#) and also Division 4 of the draft bill, specifically [clauses 58DA to 58DE](#).

²⁶ See Division 5, Subdivision C, specifically [clauses 58EF to 58EI](#).

²⁷ The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), *Albanese Government unveils Scams Prevention Framework for public consultation* ([13 September 2024](#)). See too clause 58FH(2)(a) which creates a maximum penalty for 'tier one' contraventions of 149,745 penalty units. A Commonwealth penalty unit is currently \$330. So the maximum penalty is \$49,415,850 from [1 July 2024](#). The penalties for individuals are in clause 58FH(3)

²⁸ Treasury, *Summary of Reforms* ([13 September 2024](#)), 6-7.

6. To respond to scams – as outlined in clauses [58BZA to 58BZE](#) under Subdivision G.

ASFA notes that what is required under each of the six economy-wide principles is outlined in detail in the draft explanatory materials provided with the draft bill.²⁹

Finally, we note the bill requires regulated entities in all designated sectors to have transparent Internal Dispute Resolution (IDR) framework ([clause 58BZC](#)) and be part of an External Dispute Resolution (EDR) framework ([clause 58BZD](#)).

The Minister has indicated his intention to designate the Australian Financial Complaints Authority (AFCA) as the EDR scheme for the first three regulated sectors.³⁰

ASFA notes superannuation is already subject to mandatory IDR and EDR requirements under the *Corporations Act 2001* (Cth)(the Corporations Act) and ASIC's [RG271](#) and [RG267](#).

Given this context, if there was an extension of the framework to superannuation, as suggested in the consultation documents, it would be appropriate for the existing IDR and EDR requirements which already apply to superannuation to be maintained, including existing AFCA membership.³¹

[Part 3 - ASFA's Specific Recommendations on the Framework](#)

ASFA supports the policy objectives of the framework insofar as it will help to combat scams. However, we make recommendations to better allow for appropriate transition and effectiveness.

Notwithstanding the fact superannuation is to be excluded from the first round of designation, ASFA has the following recommendations:

1. There should be a longer transition period than is currently proposed, preferably 6 to 12 months after the bill receives Royal Assent. Currently, the bill takes effect the day after Royal Assent, per [page 1](#).
2. ASFA seeks confirmation as to how long a newly designated sector has before it must comply with all the civil penalty provisions related to the 'overarching SPF principles' in Division 2 of the bill. Currently, it appears once a sector is designated under clause 58AC, it is immediately subject to all the 'overarching obligations' in Division 2. A newly designated sector should be allowed at 6-to-12-month transition period before all these new obligations apply, to allow for transition and operational uplift.³²
3. ASFA recommends there should be additional consultation prior to the designation of any further sectors by the Minister pursuant to clause 58AC(1). This consultation should allow for the making of written submissions as to whether future designations are appropriate or should be tailored in any way to meet specific circumstances.
4. In general, ASFA recommends there should be a review of the current framework where both breaches of a code and breaches of the SPF principles constitute civil penalty provisions.³³ In general, ASFA is more comfortable with specific obligations contained within codes being enforceable, as outlined in clause 58CA. Especially when considering that, under the scheme as drafted, codes cannot be inconsistent with SPF principles.³⁴ This is because these codes are developed with substantial industry input and have a

²⁹ Treasury Laws Amendment Bill 2024: Scams Prevention Framework – [Exposure Draft Explanatory Materials](#), 24-47.

³⁰ The Hon. Stephen Jones MP (Assistant Treasurer and Minister for Financial Services), *Albanese Government unveils Scams Prevention Framework for public consultation* ([13 September 2024](#)).

³¹ Treasury, *Summary of Reforms* ([13 September 2024](#)), 8.

³² Clause 58AC defines regulated sectors and clause 58BA defines when the overarching principles apply.

³³ See clauses 58FG on SPF principles and 58CA in relation to code provisions.

³⁴ Clause 58CC(1).

sufficient degree of granularity and specificity to render obligations more clearly than the SPF principles, which are expressed at a higher level of generality. If SPF principles are to remain civil penalty provisions, then detailed guidance should be issued in relation to each of the six SPF principles to outline exactly what is required to meet each of the principles' requirements.

5. ASFA recommends that prior to the making of any sector specific code for superannuation under clause 58CB, there should be separate and extensive consultation with the superannuation sector to determine which body should draft that code and what its content should be. This should include the opportunity for written submissions on the content of the code. The code should also use existing industry frameworks as its basis.
6. ASFA recommends further detailed guidance should be released in relation to the definition of a 'scam' under clause 58AG and the definition of 'actionable scams intelligence' under clause 58AI. These terms are currently quite broad and require further clarification.
7. ASFA recommends further clarification of the how information sharing scheme under clauses 58EF to 58EI would interact with existing obligations under the AML/CTF Act 2006, regarding Suspicious Matter Reports (SMRs) and the Notifiable Data Breach Scheme (NDB) under *Privacy Act 1988* (Cth) (the Privacy Act). We want information sharing to avoid duplication and maintain consistency between these three regimes.
8. ASFA recommends the SPF framework should be reviewed in light of the fact that there are currently major ongoing reforms to the legislation below being finalised, to ensure the draft bill is both consistent with and compliments this legislation:
 - i. The Privacy Act – which has major reforms currently before Parliament in the form of the Privacy and Other Legislation Amendment Bill 2024
 - ii. The AML/CTF Act – which has major reforms currently before Parliament in the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024
 - iii. Changes to the Security of Critical Infrastructure Act 2018 and new cyber security legislation which has been [announced](#) by the Home Affairs Minister, the Hon. Tony Burke MP.

Care must be taken to ensure that all this legislation works in harmony to protect Australians from financial crime and scams appropriately without creating regulatory duplication.

9. Noting that Treasury has indicated Minister Jones wishes to pass this bill before the end of 2024, further advice on timelines would, as always be greatly appreciated.
10. In respect of the proposed multi-regulator approach in Division 5, Subdivision B - ASFA has the following comments. As superannuation funds are not currently directly regulated by ACCC (excepting enforcement litigation). Therefore, confirmation of the following aspects would assist
 - how the ACCC as regulator will operate i.e. their remit (similar to the clarity currently provided on other regulators like ASIC, APRA and AUSTRAC)
 - clearly defined guidance as to the expectations on regulated entities, particularly in relation to meeting the SPF principles-based obligations. This will assist entities regulated entities to be compliant and also form a basis for determining breaches and reportability
 - Case studies and scenarios in the guidance will assist entities in understanding the criteria for assessing breaches and reportability to implement appropriate mechanisms

11. In respect of reporting requirements under Division 2, Subdivision E, with the ACCC as the primary regulator and reporting requirements in primary law there is the challenge of duplicate intel being reported to different regulators. ASFA has the following comments in this regard:

- It is understood that this most likely will be addressed in sector specific codes
- If a centralised government source is being considered, it would be worthwhile to assess this across the government agencies and regulators to achieve alignment between reporting requirements from different legislation
- Adjustments may be needed to ensure alignment across different legislation, for example, the *Competition and Consumer Act 2010* (Cth)(the CCA) covers scams intelligence reporting, compared to the *Anti-Money Laundering and Counter-Terrorism Act 2006* (Cth)(the AML/CTF Act) covering Suspicious Matter Reports (SMRs). SMRs are all inclusive and if there is no carve out in AML/CTF Act or the CCA, actionable scams intelligence will need to be reported via SMRs to AUSTRAC as well as to the ACCC.

Thank you again for the opportunity to participate in this consultation. Should you wish to discuss this submission, or any of our recommendations, please contact ASFA Senior Policy Adviser, Sebastian Reinehr, at sreinehr@superannuation.asn.au or on 0474 704 992.

Yours sincerely

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