

4 October 2024

Scams Taskforce
Market Conduct Division
Treasury
Langton Cres
PARKS ACT 2600

BY EMAIL ONLY: scampolicy@treasury.gov.au

Dear Scams Taskforce,

Submission on Treasury Amendment Bill 2024: Scams Protection Framework

Thank you for the opportunity to provide feedback on the draft Treasury Amendment Bill 2024: Scams Protection Framework (the **Draft Legislation**).

About Caxton Community Legal Centre

Caxton Community Legal Centre (**Caxton**) is Queensland's largest community legal centre. We are an independent, non-profit community organisation providing free legal advice, social work services, information and referrals to low income and disadvantaged persons. A number of the services delivered by Caxton frequently encounter and assist clients who have been affected by scams, including the Financial Rights Service, the Seniors Financial Protections Service and the Seniors Legal and Support Service.

Need for Scams Protection Framework

We are broadly supportive of the measures set out in the Draft Legislation. As noted in the explanatory materials, scams not only cause financial loss, but also cause psychological and emotional harm. Caxton staff working in the above three services, have witnessed this first hand while working with clients who have been scammed. These clients experience anxiety, depression, trouble sleeping, thoughts of self-harm and feelings of guilt, humiliation and worthlessness. It is common for these clients to withdraw from their families and friends and experience profound loneliness.

In addition, staff from the Seniors Financial Protections Service (SFPS) report that many older people, particularly those in culturally and linguistically diverse communities, are so fearful of being scammed that they do not engage with the digital economy or social media. These older people are excluded from a variety of benefits. A common example encountered by SFPS workers is where clients who are struggling financially and who are eligible for various concessions or rebates, are unable to apply for them because applications must be made online.

There is an urgent need for protection from the serious financial and psychological harm and the financial and social exclusion caused by scams. The framework that the Draft Legislation seeks to introduce is an important step in meeting this need.

Response to Consultation Questions

1. Does the draft legislation effectively achieve the policy objectives set out in this document?

The Draft Legislation, if passed, would establish a broad, overarching framework for preventing scams. In our view, this is an appropriate approach which provides for a cohesive response to an ever-evolving problem, spanning multiple service sectors. The draft legislation grounds the six SPF principles in law and provides a comprehensive legislative foundation on which to build. The effectiveness of the draft legislation in protecting Australians from scams will depend on the details contained in the SPF sector codes and other subordinate legislation. The framework itself though, is an excellent first step in achieving the policy objectives.

We make the following comments:

- Definition of 'Scam'– We appreciate the breadth and inclusivity of the definition of 'Scam' in the Draft Legislation, noting that it captures situations where the scammer is known to the victim in real life, as well as situations where the scammer is unknown. We believe that the breadth is necessary to protect Australians from scams and should be retained. It will particularly benefit our older clients who often know and place trust in the person who scams them and strengthen laws that address financial elder abuse.
- Definition of 'SPF Customer' – Similarly we appreciate that the definition of 'SPF Customer' includes people who do not have a direct customer relationship with the relevant regulated entity. This is essential given that many scams are facilitated using services provided by an entity that the victim does not have a direct relationship with. For example, where they are asked to deposit money in an account in a bank where they are not a customer. The breadth of this definition should also be retained.
- Internal and external dispute resolution – We agree with the idea of a single EDR scheme which would allow SPF customers to make a single complaint against multiple relevant entities across industry sectors. It is unclear from the Draft Legislation whether SPF customers would need to complete multiple IDR processes, i.e., one with each entity, before proceeding to make a complaint with the EDR scheme. Noting the psychological and emotional harm caused by scams, our view is that pursuing multiple IDR processes may be unnecessarily onerous on scam

victims and may dissuade them from acting. We recommend that this process be made as streamlined and as clear as possible. Ideally an IDR complaint against one entity should be sufficient, with the potential to add other entities when an EDR complaint is made.

We note that Banks and other entities have greater abilities and knowledge of when a scam is a known or recognised scam than the average consumer. This could create a power imbalance in an EDR process as the bank will be better placed than the customer to know what actions they have taken to disrupt the scam or protect the customer from the scam. We propose that there should be some mechanism for this information to be shared with the customer at the beginning of the process.

- Compensation – Access to IDR and EDR must be coupled with a genuine right to compensation in order to be effective. We appreciate the Draft Legislation provides for SPF customers to bring actions for damages. In our view the process to obtain compensation for financial loss should be as unburdensome as possible and that regulated entities be encouraged to offer appropriate amounts of compensation during the IDR process.

2. Does the draft legislation include an appropriate level of detail, noting subordinate legislation can provide more prescriptive obligations?

As noted above, the Draft Legislation is broad and doesn't include prescriptive detail on how regulated entities must meet their obligations under the SPF. We appreciate that it is likely more appropriate to place this detail in the SPF sector codes and other subordinate legislation, given both the differences between the sectors, and the need for legislative flexibility in order to adapt and change as scams evolve over time

We make the following comments:

- Governance processes must be agile – we appreciate that the structure of the SPF allows flexibility for legislators to adapt to new scam types. In our view, regulated entities must develop the agility to adopt new processes and procedures at a rate that complements the flexibility of the legislative structure. We recommend that sector codes and other subordinate legislation include requirements for regulated entities to develop and demonstrate this agility in their governance frameworks.
- Training and culture – The Financial Rights Service at Caxton has assisted a number of scam victims who have been assisted by bank tellers to transfer money to the scammer. In each situation, the teller should reasonably have known that the customer was being scammed when they

over-rode or ignored 'red flags' in making the transfers. This indicates to us that the tellers did not take these red flags seriously, or simply wanted to avoid the work and difficulty of following the appropriate procedures to protect the customer.

If the SPF is to be effective in protecting customers from scams, the SPF sector codes must place prescriptive obligations on regulated entities not only to train their staff, but also to create a culture where scams are taken seriously, and staff rewarded for taking steps to protect customers, rather than penalised for taking extra time with the customer.

Scammers are very apt at building trust with customers and encouraging them not to trust banks and similar institutions. Regulated entities need to invest time and resources in becoming a trusted source of information for customers. We recommend that SPF sector codes require regulated entities to work with psychologists and scam experts to ensure that their front-line staff are trained at communicating meaningfully with clients, who may already be being influenced by scammers.

Banks should consider retaining bank branches and consider other ways to retain relationships of trust with their customers. They should ensure that all written and verbal warnings about scams are made in a meaningful attempt to educate or help a customer, not just to enable the bank to tick a box.

- Regulation of scam disruption tools – Tools used to disrupt scams, such as authentication apps should be carefully regulated in the SPF sector codes. The use of these tools must be genuine attempts to ensure transactions are legitimate, do not exclude people already struggling with technology-based protections, and not replace customised safeguards that work well for diverse groups. It is essential that the tools used are not susceptible to infiltration by scammers.

3. Are there provisions in the draft legislation that are better suited to subordinate legislation?

We do not believe so.

Conclusion

Thank you for providing us with the opportunity to provide feedback on the Scams Framework. This submission was drafted by Amanda Hess, Managing Senior Lawyer,

Financial Rights and Housing Security, with assistance from lawyers and social workers in the Seniors Legal and Support Service and Seniors Financial Protections Service. Please contact Amanda on 07 3214 6333 if you have any questions or for further discussions about any matters covered by this submission.

Yours faithfully



Cybele Koning
Chief Executive Officer

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SERVICE