



9 January 2025

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: economics.sen@aph.gov.au

Dear Committee,

Scam Prevention Framework Bill 2024

The Australian Financial Markets Association (**AFMA**) is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets, including the capital, credit, derivatives, foreign exchange, energy, carbon, and other specialist markets. Our membership base is comprised of over 125 of Australia's leading financial market participants, including Australian and foreign banks, securities companies, state government treasury corporations, fund managers, energy firms, as well as other specialised markets and industry service providers.

AFMA welcomes the opportunity to make a submission to the Committee's Inquiry into the *Scam Prevention Framework Bill 2024 (the Bill)* and the proposed implementation of a Scam Prevention Framework (**SPF**).

Executive Summary

AFMA notes the following by way of executive summary:

- The ADIs that should be subject to the Mandatory Code are only those that are authorised by APRA to provide services to retail customers, as opposed to all ADIs. This should be made clear in the Bill and Explanatory Memorandum; and
- The Impact Statement that accompanies the Explanatory Memorandum should not undermine the Minister's authority to designate regulated sectors/services by assuming that foreign bank branches are within regulatory scope. As currently drafted, the Impact Statement explicitly includes foreign bank branches as being covered by the SPF. While, as noted above, we strongly urge foreign branches to be excluded, any decision to include them should only be made by the Minister.

Restatement of AFMA Position

Clause 1.1 of the Explanatory Memorandum that accompanies the Bill states “the Bill implements a legislative framework to protect Australian consumers against scams.” Accordingly, entities that are not licenced to provide services to consumers should be outside the scope of the Bill.

In AFMA’s submission to the Exposure Draft of the Bill, AFMA reiterated its overarching policy position as being that the only authorised deposit-taking institutions (**ADIs**) that should be subject to the Mandatory Code are those that are authorised by APRA to provide banking services to retail customers. AFMA’s policy position remains that foreign banks operating via Australian branches should be excluded because their APRA ADI authorisations only permit them to conduct banking business to “wholesale clients”.¹

In reiterating our policy position, AFMA highlights the significant, disproportionate and unnecessary compliance costs that would be borne by foreign branch ADIs if they were brought within scope. In particular, the preparations that retail banks - those licenced to conduct retail banking business - have already undertaken to implement scam mitigation measures means the relative uplift required to comply with the SPF provisions is reduced as compared with costs that will need to be incurred for banks with wholesale-only APRA authorisations. It is also not clear what the nature of the risks of scams and the resulting harm is for non-retail clients of banking services as, to date, the regulatory focus by the Australian Securities and Investments Commission has been primarily in relation to retail banking services.

We note that the Explanatory Memorandum states (at paragraph 1.17) that “all banks committed to implement a range of measures to improve scam protections and consumer outcomes through the industry-led *Scam Safe Accord*.” This statement is not accurate and poorly informed; the banks that made this commitment were the banks licenced to provide services to retail customers and this commitment was made through their representative associations, namely the ABA and COBA. At no point has AFMA sought to be involved in the ABA and COBA initiatives, and those associations did not seek to include us given the shared view that scams relate to retail banking operations and not wholesale entities. Accordingly, AFMA, which represents the wholesale sector, while acknowledging the harm that scams cause on Australian consumers, did not need to be part of the development of the Scam Safe Accord.

Designation of a Regulated Sector and Service

In designating a regulated sector, the Explanatory Memorandum makes it clear that the Minister may designate services by class and then may exclude certain classes of businesses or entities from the designation. AFMA agrees with this approach and specifically notes the example in Paragraph 1.41 of the Explanatory Memorandum regarding the potential exclusion of providers of purchase payment facilities on the basis that the “SPF code obligations may not be appropriately targeted at this type of business because this service does not operate like a traditional banking business.” AFMA’s position is that this rationale applies equally to wholesale banking.

Similarly, it is noted that the Bill and Explanatory Memorandum provide not only for the determination of regulated entities but also regulated services. The example at paragraph 1.53 of the Explanatory Memorandum states that, in relation to banks, it will only be the banking business of the entity that

¹ This submission uses the expressions “retail client” and “wholesale client” consistently with APRA’s use of those expressions in its [Guidelines - Overseas Banks Operating in Australia](#) (August 2021) in discussing the authorisations of foreign ADIs to conduct banking business.

would be a regulated service. Our view is that this example could contemplate that if the Minister does not designate non-retail banking services it will only be the retail banking services that would be the regulated services, which would also ensure that non-retail services provided by diversified institutions or foreign ADIs that are precluded by their ADI authorisations from accepting deposits from retail clients are not also inadvertently and unnecessarily brought into scope.

Comments from Impact Statement

Notwithstanding that the legislative framework allows only the Minister or the Minister's delegate to designate a sector or a service as being within the scope of the SPF, the Impact Statement that accompanies the Explanatory Memorandum appears to undermine the Minister's authority by suggesting that foreign bank branches will regardless be within regulatory scope. This is of significant concern to AFMA, given our policy position and agreement that matters of scope should be left to the Minister.

For example, the Impact Statement, in relation to in scope ADIs being required to join AFCA as the External Dispute Resolution (EDR) body, states:

"The SPF requirement to be a member of AFCA would apply to **all ADIs**, including those that might not have existing membership with AFCA, such as branches of foreign-owned banks. This is because these entities could also be involved in a scam and their customers are not invulnerable to the threat of a scam. (emphasis added)."

It is clearly inappropriate that the Impact Statement would pre-empt the Minister's discretion to designate foreign bank branches as being subject to the SPF. Moreover, the basis on which this conclusion is reached in the Impact Statement is flawed, insofar as, by definition, the customers of "these entities" are not consumers and hence should not be covered by the SPF.

AFMA recommends that the Impact Statement be re-issued to specifically acknowledge that only the Minister or a specifically-appointed delegate has the authority to designate sectors and services as being caught by the SPF and ensures that there are appropriate caveats to any regulatory impact that may arise under the SPF in terms of the scope of the entities that are captured.

* * * *

Thank you for the opportunity to provide a submission to the Bill. AFMA would welcome the opportunity to engage further.

Yours sincerely,



Rob Colquhoun