



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

9 January 2025

Senator Jess Walsh

Chair

Senate Standing Committees on Economics – Legislation Committee

PO Box 6100

Parliament House

Canberra ACT 2600

via email to: economics.sen@aph.gov.au

Dear Senator Walsh

Committee inquiry into the Scams Prevention Framework Bill 2024

The Australian Small Business and Family Enterprise Ombudsman welcomes the opportunity to comment on the Scams Prevention Framework Bill 2024 and its implications for the small business and family enterprise sector. We consider the successful passage of this bill and subsequent introduction of a new part of the *Competition and Consumer Act 2010* will result in a more robust regulatory framework able to provide greater levels of protection for individuals and businesses alike from scams.

From the impact analysis presented in the explanatory memorandum, it is clear most of the financial losses attributed to scams in 2023 affected individuals. However, the small business sector's share of all business losses was disproportionately high at \$17.3 million – equivalent to approximately 60 per cent of all business losses.¹

Unlike medium and large businesses, which often have specialist in-house expertise and strong governance mechanisms that reduce their exposure to risk from scammers, small businesses are, for a variety of reasons, more akin to individual consumers in their exposure to financial loss from the activities of scammers.

Small business' exposure to scam related risks is exacerbated by the combination of:

- their limited capacity and resources
- the increasing sophistication of scammers
- the current piecemeal and fragmented voluntary approach for key actors (best endeavours rather than legal requirements) that makes it easier for scammers to exploit regulatory gaps across the ecosystem.

It is therefore gratifying to note that section 58AH(1) describes a consumer as being either a natural person or a small business operator.

We are pleased to see the draft bill being considered by the committee now has more detail than in earlier drafts of the bill in crucial areas, such as how a regulated entity must comply with the

¹ The Treasury, *Scam Prevention Framework Bill 2024 – Explanatory Memoranda (Attachment 1: Impact Analysis)*, The Treasury, Australian Government, 2024, p 130



overarching principles of the Scams Prevention Framework. However, we still have some concerns in the following areas:

1. The proposed reliance on delegated legislation to set out the detail (sector specific codes and/or rules) regarding how the framework will work.
2. Whether the framework sufficiently supports small-business owners to readily seek redress when they have been affected by a scam.
3. Whether the framework will enable a small business to return to operations in a timely manner while a scam, or possible scam, is being assessed.

We therefore offer for the Committee’s consideration the following commentary and recommendations.

Recommendation 1: The Committee to consider whether including more detailed provisions in the bill, rather than leaving them to subordinate legislation, would help expedite and harmonise requirements across sectors and ensure regulated entities clearly understand their obligations.

The Standing Committee on the Senate Standing Committee for the Scrutiny of Bills *Scrutiny Digest 14 of 2024* (20 November 2024) invites senators to consider whether it is appropriate to leave matters integral to the operation of the Framework to delegated legislation.²

We recognise the Australian Government’s need to have a framework that is flexible and can be adapted to new technologies, emerging scam trends and new entities in designated sectors. However, like both the Australian Competition & Consumer Commission (ACCC) and the Law Council of Australia, we are concerned that the bill relegates a significant amount of detail, including obligations imposed on regulated entities, to sector codes – i.e. delegated legislation – rather than in the primary legislation. The Law Council of Australia warns that this approach has the potential to create uncertainty, while the ACCC considers that it could result in a lack of harmony across sectors, and the risk that regulated entities might not fully understand their obligations.³

The ASBFEO concurs with the ACCC and Law Council. We consider it vital that the Committee explore in more detail the benefits of expanding the primary legislation beyond just the enforcement framework to include what may constitute ‘reasonable steps’ or a ‘reasonable time’.

Recommendation 2: The Committee consider how best to ensure that scam victims secure redress or compensation in a timely manner.

Consistent with the Australian Securities & Investments Commission, the ACCC and the Telecommunications Industry Ombudsman (TIO), we stress the importance of a clear, comprehensive and readily enforceable legislative framework to protect consumers – including

² Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 14 of 2024*, The Senate, Australian Parliament, 20 November 2024, p 39.

³ Australian Competition & Consumer Commission, *Scams Prevention Framework – ACCC Submission to the Senate Economics Legislation Committee inquiry into the Scams Prevention Framework Bill 2024*, ACCC, Australian Government, 20 December 2024, p 2; Law Council of Australia, *Exposure Draft—Treasury Laws Amendment Bill 2024: Scams Prevention Framework*, Law Council, 17 October 2024, p 15.



small businesses – from scams and provide redress when they occur.⁴ Similarly, the Law Council has stated it is essential that scam victims are able to obtain redress in a timely manner.⁵ We are concerned that as section 58DB only provides that the ‘Minister may, by legislative instrument, authorise an external dispute resolution mechanism’, there is no guarantee that an external dispute resolution mechanism will be established.

In the absence of relevant delegated legislation being enacted, the only form of redress for a consumer is through the courts. Small businesses are unlikely to pursue compensation through such a mechanism for the following reasons:

- low cash reserves – almost two-thirds of small business have cash reserves of less than two months – meaning that most do not have the capacity to pursue a lengthy court process for redress from a scam
- the time and effort required from a small business owner to pursue redress through the court systems – the TIO estimates that based on customer journey mapping, prepared in response to the Exposure draft of the bill, a scam complaint may take up to two years to resolve.⁶

The ACCC, Law Council and the TIO all recognise the increasing complexity of scams makes it more likely that more than one party will be involved. The multi-party nature of scams coupled with the current lack of a systemic approach for apportioning liability further increases the difficulty of scam victims such as small business seeking redress in a timely manner.⁷

We therefore suggest that the Parliament consider including in either the primary legislation or the subordinate legislation:

- a model similar to the Faster Payments Scheme reimbursement requirement recently published by the United Kingdom, or the Shared Responsibility Framework recently introduced by Singapore
- a requirement that regulated entities must include compensation as an available remedy in their internal dispute resolution mechanisms.

Recommendation 3: The Committee consider how best to ensure that small businesses can return to business as usual as rapidly as possible while a possible scam is being investigated.

⁴ Australian Securities & Investments Commission, *Submission to the Inquiry into the Scams Prevention Framework Bill 2024*, p 1; Australian Competition & Consumer Commission, *Scams Prevention Framework – ACCC Submission to the Senate Economics Legislation Committee inquiry into the Scams Prevention Framework Bill 2024*, ACCC, p 2; Telecommunications Industry Ombudsman, *TIO submission to the Senate Inquiry into the Scams Prevention Framework Bill 2024 [Provisions]*, TIO, January 2025, p 16.

⁵ Law Council of Australia, *Exposure Draft—Treasury Laws Amendment Bill 2024: Scams Prevention Framework*, Law Council, 17 October 2024, p 5.

⁶ Telecommunications Industry Ombudsman, *TIO submission to the Senate Inquiry into the Scams Prevention Framework Bill 2024 [Provisions]*, TIO, January 2025, p 3.

⁷ Australian Competition & Consumer Commission, *Scams Prevention Framework – ACCC Submission to the Senate Economics Legislation Committee inquiry into the Scams Prevention Framework Bill 2024*, ACCC, Australian Government, 20 December 2024, p 2; Law Council of Australia, *Exposure Draft—Treasury Laws Amendment Bill 2024: Scams Prevention Framework*, Law Council, 17 October 2024, p 20f; Telecommunications Industry Ombudsman, *TIO submission to the Senate Inquiry into the Scams Prevention Framework Bill 2024 [Provisions]*, TIO, January 2025, p 6.



Section 58BZA of the draft bill provides regulated entities with a maximum of 28 business days safe harbour for any proportionate temporary disruptive action while investigating actionable scam intelligence it has received. We recognise that regulated entities should have access to a safe harbour to undertake necessary investigative work into a potential scam. However, while a 28-day safe harbour provision may be appropriate for regulated entities, it is in our opinion, far too long for a small business to be locked out of its digital platform.

Digital platforms have fundamentally changed the way in which Australian small businesses do business as they represent a valuable tool for small businesses to attract new customers, advertise and sell products and services, and build brand loyalty. Consequently, many small and family businesses rely heavily, often exclusively, on these platforms. Given the low levels of cash reserves that many small businesses hold, locking a small business out of their platform for up to 28 days could result in the business failing.

The explanatory memorandum for the bill states in paragraph 1.234 that the ‘safe harbour does not provide a protection for blunt and disproportionate action such as stopping all real-time payments, blocking calls and text-based messages.’⁸

We consider the scam prevention framework codes that will be developed in accordance with Division 3 of the draft bill are the ideal mechanism to set out an appropriate timeframe in which small business **must** be allowed to return to business, albeit with some restrictions, while a matter is investigated. Given the impact of a small business being locked out of its digital platform while a scam is investigated, we would encourage the drafters to consult widely on both timeframes and how a small business could be allowed to return to business while a scam is being investigated.

For the Committee’s information, ASBFEO has been actively resolving disputes between digital platforms and small business users for a number of years. It is the fastest growing category of assistance requests and scams can be an enterprise-ending event. If the Committee is inclined to consider a more detailed requirement on digital platform respondents to have mechanism for the timely and efficient recovery of small business accounts disabled or compromised by way of a scam, we are happy to share our experiences and insights.

If you require any further information or have any questions regarding the issues raised in this submission, please do not hesitate to contact the ASBFEO Advocacy team via email at advocacy@asbfeo.gov.au.

Yours sincerely

The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman

⁸ The Treasury, *Scam Prevention Framework Bill 2024 – Explanatory Memorandum*, The Treasury, Australian Government, 2024, p 50f