



# Scams Prevention Framework

**ACCC Submission to the Senate Economics  
Legislation Committee inquiry into the *Scams  
Prevention Framework Bill 2024***

20 December 2024

## Introduction

The Australian Competition and Consumer Commission (**ACCC**) welcomes the Government's introduction of the *Scams Prevention Framework Bill 2024* (the **Bill**) into Parliament and the opportunity to make a submission to the Senate Economics Legislation Committee.

As outlined in our previous submissions to Treasury, including in response to its consultation on the Exposure Draft of the legislation,<sup>1</sup> the ACCC strongly supports the establishment of an ecosystem-wide, mandatory and enforceable regime to effectively address and reduce scam activity in Australia.

### ACCC engagement on the Scam Prevention Framework

The ACCC, through the National Anti-Scam Centre, has engaged extensively with Treasury and other areas of government as the Scams Prevention Framework has developed. Our feedback draws on our scam expertise, having been responsible for running the Scamwatch service for over 15 years, our broad enforcement and compliance experience, and more recently the significant team focussed on awareness, prevention and disruption following the establishment of the National Anti-Scam Centre.

The ACCC appreciates the Government's adoption of many of the ACCC's proposed changes to the Bill made in our October 2024 submission. These include:

- the incorporation of an objective, reasonableness element in the definition of 'scam'. This is a critical definition in the Scams Prevention Framework, and we note this update now reflects the policy intention not to introduce a requirement for regulators (or other persons) to form a view as the subjective mind of a scammer, and
- the provision of a clear mechanism for co-regulators of the Scams Prevention Framework (including the Australian Securities and Investments Commission and the Australian Communications and Media Authority) to access the investigation and enforcement tools already provided for under their relevant legislation, limiting the need for regulators to rely upon the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) or seek delegation from the ACCC before taking action, as required.

The ACCC also understands that the Government has agreed to propose an amendment to the Bill so that the ACCC has the necessary function to exercise its compulsory information gathering powers (provided for in section 155 of the *Competition and Consumer Act 2010* (Cth) (**CCA**)) to monitor compliance with relevant aspects of the Scams Prevention Framework.

### Summary

In this submission, we respond to certain recommendations made by the Senate Standing Committee for the Scrutiny of Bills in its Scrutiny Digest 14 of 2024,<sup>2</sup> and identify opportunities to enhance crucial aspects of the Scams Prevention Framework. Key points the ACCC makes in this submission include:

1. The consideration of opportunities to enhance the proposed consumer redress scheme.
2. The need for consistency of requirements on regulated entities across sectors. Including more substantive detail about the Scams Prevention Framework principles in the primary legislation, rather than deferring such detail to sector-specific codes (**Scams Prevention Framework codes**) and/or rules (the **Scams Prevention**

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<sup>1</sup> ACCC, Submission in Response to Treasury's Scams Prevention Framework – Exposure Draft (4 October 2024), p 1.

<sup>2</sup> Senate Standing Committee for the Scrutiny of Bills, Scrutiny Digest 14 of 2024 (20 November 2024).

**Framework rules**) is one way to achieve this. In making this point, we also appreciate the Government's desire to have a Framework that is flexible and can be adapted to new technologies, emerging scam trends and new entities in designated sectors.

3. The importance of balancing personal privacy considerations against taking steps to efficiently disrupt scams.
4. The need for certification of internal dispute resolution (**IDR**) steps taken and compliance with obligations by regulated entities relevant to the handling of a Scams Prevention Framework consumer complaint.
5. The need for the Scams Prevention Framework to require regulated entities (and any authorised third-parties) to actively provide data to the National Anti-Scam Centre by way of reporting obligations under the Framework.
6. The importance of the ACCC remaining empowered to issue public warning notices for alleged contraventions of the Scams Prevention Framework

## 1. Consumer redress scheme opportunities

The ACCC has long advocated for consumers to be at the heart of any legislative framework designed to combat scams. Scam activity may take place across complex, sophisticated networks but the harm inflicted is on Australians as they go about their everyday lives so the focus must be on harm minimisation for consumers.<sup>3</sup> In our February 2024 submission to Treasury's consultation paper on the then-named Scams Code Framework, we called for consistency in the application of protections set out in codes across sectors to ensure all Australians are safeguarded and well supported through dispute resolution processes.<sup>4</sup> We have also advocated for a single external dispute resolution (**EDR**) body to simplify the complaints process for consumers and regulated entities alike.

The ACCC, therefore, supports the designation of the Australian Financial Complaints Authority (**AFCA**) as the sole EDR body for scam-related complaints for the three initially designated sectors. This is an important step in providing consumers with a simple, single pathway to seek redress and recover, which is an essential component of the Scams Prevention Framework. We observe the effectiveness of this pathway in practice is likely necessitate close work with the Telecommunications Industry Ombudsman to navigate inevitable grey areas that may arise and ensure a smooth experience for consumers.

The ACCC supports AFCA's position in its submission to Treasury's consultation on the then-named Scams Code Framework that there should be 'a clear articulation of liability for losses arising from scam complaints and, if there are to be multiple parties (within and across sectors) that might share liability in a particular case, clarity about how liability will be allocated'.<sup>5</sup> Determining and apportioning liability on a case-by-case basis will be complex and resource-intensive, and risks causing additional distress to victims throughout the process.

We note the introduction of the Shared Responsibility Framework in Singapore on 16 December 2024. Without necessarily adopting the position taken in the Shared Responsibility Framework, guidance of this kind provided in that Framework would strengthen the dispute resolution process and provide welcome clarity to AFCA, regulated entities and consumers. The ACCC encourages consideration of different models for

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<sup>3</sup> E.g. ACCC, Submission in Response to the Treasury's Scams – Mandatory Industry Codes Consultation paper (5 February 2024) p 2.

<sup>4</sup> E.g. ACCC, Submission in Response to the Treasury's Scams – Mandatory Industry Codes Consultation paper (5 February 2024) p 2.

<sup>5</sup> AFCA, Submission in Response to the Treasury's Scams – Mandatory Industry Codes Consultation paper (January 2024) p 21.

consumer redress and compensation in IDR and EDR processes, such as appropriately designed and regulated compensation pools.

Whichever model is ultimately adopted, it must be as simple and accessible as possible for consumers to mitigate distress and delays for consumers and costs for participants. As outlined in our submission on the Exposure Draft of the legislation, we consider the Scams Prevention Framework should be designed to avoid a situation where consumers feel they must turn to third parties to assist with money recovery and compensation. While some of these third parties can offer consumers a legitimate service, there is considerable evidence that scammers also mimic money recovery services to re-engage victims. Dependence on these services can also mean a significant reduction in any compensation consumers receive due to third-party service fees.

## 2. The importance of consistent requirements on regulated entities across sectors

The ACCC notes the Senate Standing Committee for the Scrutiny of Bills has asked the Senate, as a whole, to consider the appropriateness of leaving certain matters integral to the operation of the scheme to delegated legislation.<sup>6</sup> The Committee in its report points to examples of such matters including the creation of Scams Prevention Framework codes, the designation of businesses and services as regulated sectors and exemptions for persons or businesses from being regulated entities.

The ACCC raised similar concerns with the deferral of key obligations including the ‘detect’, ‘disrupt’, ‘respond’ and ‘report’ principles to future Scams Prevention Framework codes and/or Scams Prevention Framework rules in our submission on the Exposure Draft of the legislation.<sup>7</sup> Our motivation in doing so was to avoid the risk of inconsistent standards or obligations across different sectors or industries given the different code development pathways.

The ACCC considers that the inclusion of more detailed provisions in the primary legislation could assist in harmonising requirements across sectors and ensure regulated entities clearly understand their obligations. For example, we would welcome detailed provisions in the primary legislation about what may constitute ‘reasonable steps’ or a ‘reasonable time’.

## 3. Personal privacy matters

The ACCC notes the Senate Standing Committee for the Scrutiny of Bills has drawn the Senate’s attention to sections 58BT and 58BV of the Bill, querying whether these power to use or disclose personal information contain sufficient safeguards to appropriately protect the right to privacy; the appropriateness and necessity of providing that the ACCC (as the Scams Prevention Framework general regulator) need not notify any person that it has collected, used or disclosed their personal information; and the appropriateness of amending the Bill to enhance certain privacy protections.<sup>8</sup>

The ACCC has previously argued that, to give full effect to its role as the Scams Prevention Framework general regulator, it will sometimes need to rapidly share personal information with various scam ecosystem participants. This will be critical to scam disruption and facilitating action to minimise harm relating to a scam and preventing similar scam activity in future. The Scams Prevention Framework does not currently authorise the ACCC, as the Scams Prevention Framework general regulator, to share personal information with private

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<sup>6</sup> Senate Standing Committee for the Scrutiny of Bills, Scrutiny Digest 14 of 2024 (20 November 2024), pp 36-39.

<sup>7</sup> ACCC, Submission in Response to Treasury’s Scams Prevention Framework – Exposure Draft (4 October 2024) p 7.

<sup>8</sup> Senate Standing Committee for the Scrutiny of Bills, Scrutiny Digest 14 of 2024 (20 November 2024), pp 42-43.

sector entities that are not 'regulated entities' to disrupt scams (see section 58BV of the Bill).

The ACCC acknowledges the importance of balancing disruption activity with privacy considerations, and we are committed to compliance with the *Privacy Act 1988* (Cth). We consider, however, that the objective of improving scam disruption in Australia would be seriously undermined if the ACCC could not quickly share intelligence with all relevant persons (e.g. because it had to manually de-identify personal information or obtain the consent of individuals before sharing it).

The ACCC considers it essential that the Scams Prevention Framework authorise fast and efficient sharing of personal information. This will allow for enhanced and efficient disruption of scam activity and protect Australians from the serious harm that results from scams (including between regulators and regulated entities, entities in other sectors that are not designated under the Scams Prevention Framework, law enforcement and other relevant government agencies). Maintaining this important balance could be assisted by the insertion of a 'sole purpose' requirement in relation to the use of data by recipients that are not regulators (such as regulated entities and non-regulated entities), which would set boundaries to address understandable concerns around data use.

## 4. Certification of IDR processes

In our October 2024 submission,<sup>9</sup> the ACCC recommended the Scams Prevention Framework require regulated entities to provide consumers with certain standard, clear and intelligible information in response to a complaint during the IDR process. In the absence of any meaningful detail from regulated entities about the steps taken to investigate such a complaint, consumers will be unclear on next steps, including whether to pursue EDR.

The ACCC notes the Hon Zali Steggall MP has proposed an amendment which, if made, would require regulated entities to provide certain certification statements as part of the IDR process. Regulated entities would need to give a statement in response to a Scams Prevention Framework consumer's complaint about whether it has complied with its obligations under the Framework.<sup>10</sup> Provision of certification statements would address concerns previously expressed by the ACCC regarding the risk of information asymmetries for consumers when engaging with regulated entities in IDR processes, and the ACCC is therefore supportive of the introduction of such an IDR certification process.

## 5. Need for a requirement on regulated entities to proactively provide data to the National Anti-Scam Centre

The ACCC runs the National Anti-Scam Centre; bringing together experts from government, industry, law enforcement and consumer organisations to share insights and opportunities to target scam activity to reduce the devastating financial and emotional harm caused by scams. The benefits of this improved cooperation across the anti-scam ecosystem are already being observed. Enhanced information sharing, supported by the National Anti-Scam Centre's significant technology build, will enable the high-frequency, secure data sharing required by the Scams Prevention Framework. Data sharing is essential to fuel disruption activities at scale and quickly cut off scammers' contact with Australians.

The National Anti-Scam Centre has been working with prospective data sharing partners to facilitate sharing of actionable scam intelligence on a voluntary basis. By making information sharing mandatory, the Bill will amplify and accelerate scam prevention and

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<sup>9</sup> ACCC, Submission in Response to Treasury's Scams Prevention Framework – Exposure Draft (4 October 2024) p 6.

<sup>10</sup> The Hon Zali Steggall MP, Proposed amendments to the *Scams Prevention Framework Bill 2024*, available at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r7275](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7275).

disruption efforts, coordinate and consolidate currently disparate sector efforts to fight scams and alleviate concerns about data sharing in the absence of a legislative basis for doing so.

We note that regulated entities will be permitted to use a third-party provider to meet certain reporting obligations under the Framework. Whilst we strongly support opportunities for enhanced efficiencies and timely sharing of information, third party providers reporting to the ACCC on behalf of regulated entities must be required to provide reports to the ACCC in an active manner and not merely rely on ACCC (or another Scams Prevention Framework code regulator) staff manually downloading or logging into to a portal to access reports. Data sharing is critical to a successful regulatory regime by producing a more comprehensive picture of scam activity in Australia than individual entities' intelligence alone can. Data is ultimately the foundation of effective public warning and targeted disruptive action and as such, appropriately regarded as a public good in this context. Effective reporting requirements on regulated entities will equip the ACCC in our role as the general regulator to fulfill the objectives of the Scams Prevention Framework through ingesting and sharing timely, actionable scams data with partners.

Wherever possible, whether a regulated entity is reporting direct to the ACCC (or another Scams Prevention Framework code regulator) or using an authorised third party, regulated entities should be required to adhere to the ACCC and the National Anti-Scam Centre's existing data sharing standards and processes (including use of application programme interfaces, or 'APIs'). This will create efficiencies, avoid data gaps and eliminate the need for additional frictions such as staff manually extracting and verifying data from a third-party portal.

As identified in our October 2024 submission,<sup>11</sup> the ACCC should be able to require regulated entities (or authorised third-parties) to meet certain requirements for data sharing. This includes the recommendation that the time-period prescribed for reports under the Scams Prevention Framework could be covered by Notifiable Instruments, rather than in the Scams Prevention Framework rules.<sup>12</sup>

## 6. Public warning notices

The Senate Standing Committee for the Scrutiny of Bills recommends the Senate consider the appropriateness of proposed section 58FZL in the Bill, which enables the ACCC to issue public warning notices, with consideration provided to the impacts of such a notice on both procedural fairness and individual privacy; whether regulators will be required to take down public warning notices issued which, upon review, are incorrect, and what type of matters may lead a regulator to reasonably suspect conduct may constitute a contravention of the Scams Prevention Framework.

The ACCC is currently empowered under the CCA to issue public warning notices under section 51ADA (and various other provisions of the CCA, e.g. section 223 of the Australian Consumer Law in relation to consumer law matters). Public warning notices are an important enforcement tool for the ACCC to efficiently resolve a matter and notify consumers of the alleged conduct.

There is a high statutory threshold that must be met before the ACCC can issue a public warning notice warning about the conduct of a corporation or other person:

- a. it must have **reasonable grounds** to suspect the conduct may constitute a contravention of an applicable industry code by the corporation or other person

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<sup>11</sup> ACCC, Submission in Response to Treasury's Scams Prevention Framework – Exposure Draft (4 October 2024) p 3.

<sup>12</sup> ACCC, Submission in Response to Treasury's Scams Prevention Framework – Exposure Draft (4 October 2024) p 3.



- b. it must be **satisfied that one or more persons has suffered, or is likely to suffer, detriment** as a result of the conduct, and
- c. it is **satisfied that it is in the public interest** to do so.

The ACCC has robust internal governance processes in place in relation to the issuance of a public warning notice. Procedural fairness is a central consideration at each stage when a public warning notice is likely to be recommended to the Commission as an appropriate enforcement outcome for a matter. For example:

- ACCC enforcement teams must establish a sufficient factual basis for the Commission to be satisfied there are the requisite reasonable grounds to suspect the conduct engaged in may constitute a contravention of an applicable industry code (e.g. evidence obtained under section 155 of the CCA). Internal and/or external legal advice is often obtained in relation to the evidentiary basis,
- the Commission will consider the ACCC's Compliance and Enforcement policy and priorities, precedent matters, prior contraventions and factors such as the extent of the harm, size of the corporation, and steps taken to remedy the alleged conduct, and
- the person concerned is typically alerted to an investigation of the alleged conduct and the proposal to issue a public warning notice. The ACCC often invites a response from the person concerned to the ACCC's allegations, including steps taken (or proposed to be taken) to address the alleged conduct.

The ACCC has published guidance<sup>13</sup> on its use of public warning notices and maintains a public warning notice register.<sup>14</sup> The ACCC may decide to revoke a public warning notice, and we note the issuance of a public warning notice is also an administrative decision that can be subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1966* (Cth).

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<sup>13</sup> ACCC, ACCC powers to issue infringement, substantiation and public warning notices (25 February 2011) available at: <https://www.accc.gov.au/about-us/publications/serial-publications/business-snapshot/accc-powers-to-issue-infringement-substantiation-and-public-warning-notices>.

<sup>14</sup> ACCC, Public Warning Notice Register, available at: <https://www.accc.gov.au/public-registers/public-warning-notice-register>.