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Senate Economics Legislation Committee

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Inquiry into Scams Prevention Framework Bill 2024

Thank you for the opportunity to provide a submission into the Senate Economics Legislation Committee inquiry into the provisions of the Scams Prevention Framework Bill 2024. This submission makes four key recommendations and should be read in conjunction with the recommendations contained in the submission made by the Australian Banking Association (ABA).

Introduction

Bendigo Bank (the Bank) continues to invest heavily in scam prevention, reporting and response management, cyber security measures and fraud and scams detection technology and is actively uplifting customer and community awareness and education on scams.

In the financial year ending June 2024, the Bank prevented \$34.4 million in fraudulent transactions.

The Bank has delivered on all commitments in the ABA's Scam-Safe Accord; many ahead of set timeframes. In the past two years, the Bank has:

- Established a fraud management framework and an anti-scams strategy.
- Enabled customers to use facial and/or fingerprint recognition and multi-factor authentication to verify digital banking login credentials.
- Tightened transaction rules blocking high-risk payments to cryptocurrency platforms.
- Removed all unexpected links from SMS messages.
- Increased the size of its financial crime risk team.
- Partnered with Commonwealth Bank to enable confirmation of payee for 2.5 million customers, Namecheck, which has prevented more than 96,000 mistaken or scam payments worth more than \$39 million for our customers since February 2024.
- Participated in the AFCX and FRX and were part of the first National Anti-Scam Centre investment scam fusion cell on investment scams.
- Provided regular alerts about current scams, including bank impersonation scams, targeting customers and maintains a webpage with information for customers on how to keep their details safe on its website.
- Introduced behavioural biometrics to monitor and check account activity.
- Launched face-to-face Banking Safely Online sessions, with more than 200 sessions delivered to more than 1,000 community members.
- Introduced additional authorisation required for payments to new payees via e-banking and risk-based delays for some NPP payments.



These interventions and mitigations have contributed to a 34 percent year on year reduction of total losses from scams and fraud. Of course, we recognise the need to continually improve in this area as scams and fraud become more sophisticated.

Bendigo Bank welcomes the new Scams Protection Framework (SPF) regulation and supports the principles-based obligations, the whole-of-ecosystem approach to combatting scams and the intention to designate a single external dispute resolution scheme for scams.

We list four recommendations below, as well as explain them further detail from page 3 of this submission.

List of recommendations

1. Add a provision to state when information has already been provided to one regulator, it does not need to be provided to another.
2. Include a specific provision in the Bill that states civil penalties only apply for systemic, serious or egregious conduct.
3. Reflect penalties for the pre-existing industry codes in the *Competition and Consumer Act 2010*.
4. Replicate the industry code-making powers in the *Telecommunications Act 1997*. This includes the ability to request, approve and revoke an industry-code. This would also include an additional rule-making power in Division 4 of the Bill to allow the Minister to make rules about how liability will be apportioned. It is anticipated AFCA will provide guidance on what it considers to be appropriate, fair and honest in its decisions when dealing with complaints.

Key recommendations

1. Ensure reporting requirements align and strengthen other existing reporting channels

The Scams Prevention Framework Bill 2024 (the Bill) outlines reporting requirements for regulated entities to the SPF Regulator and/or the SPF Code Regulator regarding specific scam incidences.¹

The banking sector, through its current industry-led scams framework and existing legislative obligations, has reporting channels for these scam incidences. For example, the Bank has industry reporting mechanisms in place to share information and reach an effective resolution quickly. This includes reporting to the Fraud Reporting Exchange (FRX) operated by the Australian Financial Crimes Exchange (AFCX), it also allows for shared intelligence and secure communications between banks with agreed timeframes, reducing the need for

¹ See sections 58BH, 58BR, 58BS etc.



multiple phone calls and emails. The Bank considers these existing channels to be working well.

The definition of scam in the Bill overlaps with the fraud definition contained in the *Anti-Money Laundering and Counter-Terrorism Rules Instrument 2007 (No. 1)* (AML/CTF Rules) alongside reporting and information disclosure under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). Therefore, the reporting requirements for scams could replicate and overlap with existing and well-established reporting to the Australian Reporting and Transaction Analysis Centre (AUSTRAC), namely; Suspicious Matter Reports (SMR) scenarios for suspected fraudulent transactions.

The AML/CTF Act also precludes the sharing and disclosure of such information of parties which have been reported in an SMR outside of the parties mentioned in Section 123 of the AML/CTF (the 'Tipping Off' provision) with strict exemptions which would not include providing this information to the ACCC in most circumstances. The overlap of these reporting requirements would mean each individual case would have double the reporting obligations to different regulators.

All banks have finite resources and need to prioritise resources prudently to ensure they are being used most effectively. These resources are best focussed on protecting customers by monitoring and responding to scam activity.

The increased, and in some cases overlapping, reporting requirements may have little impact on reducing scams, but instead place resource strain on both the regulated entities as well as the regulators in managing the influx of reports. For example, the Bank considers due to the broad definition of 'actionable scam intelligence' where the Bank has received information (such as someone moving money overseas) but has not verified the information or formed reasonable suspicion, it will need to be reported to the regulator. This amount of information could also be sub-optimal for the regulator, limiting the effectiveness of the information, and pull resources from internal fraud departments.

Instead, the Bank recommends this Bill may benefit from greater consideration of the existing regulatory reporting channels to capture this reporting information. This includes where possible, utilising existing regulator information sharing provisions, to minimise the amount of duplication required by regulated entities. This includes an additional provision to state when information has already been provided to one regulator, it does not need to be provided to another.



Bendigo Bank recommendation:

1. The addition of a provision to state when information has already been provided to one regulator, it does not need to be provided to another.

2. Clarify the role of the ACCC in targeting significant, egregious breaches of the Framework

The Bill outlines a tiered approach to the civil penalty amounts. These amounts can be upwards of \$50 million (currently the penalty units stipulated in the Bill would result in a pecuniary amount of \$50,000,186). The Bill outlines the Australian Competition and Consumer Commission (ACCC) will have supervision of regulated entities' conduct under the SPF.

The ACCC currently has a strong role in monitoring and taking enforcement action for systemic, significant or cross-sectoral breaches of the *Competition and Customer Act 2010* (Competition and Customer Act) and may not be fully resourced to monitor and enforce all scams reported to the agency when the framework is legislated.

Commencing in the 2024-25 Budget, the ACCC received \$37.3 million over four years from 2024-25 with \$8.6 million per year thereafter to administer and enforce mandatory industry codes for regulated businesses to address scams on its platforms and services, initially targeting telecommunications, banks and digital platforms services relating to social media, paid search engine advertising and direct messaging.

When this legislation is passed by the Parliament, there is likely to be increased expectations and pressures on the ACCC to monitor and enforce the framework. The Bank proposes, with the ACCC's finite resources, the agency should prioritise enforcement of significant and egregious breaches of the obligations to best achieve the policy intent of the legislation. Doing so will maintain confidence among stakeholders subject to the framework and its associated civil penalties.

It is the Bank's view the Bill could be strengthened by including a provision reflecting the policy intent that the penalties will only be imposed for serious and egregious breaches of the principles.

Furthermore, Bendigo Bank's view is the current framework carries a relatively high risk of single breaches being reported to the ACCC. Noting the subjective nature of reports to be assessed on a case-by-case basis and on their own merits, such purported breaches should not be considered indicative of the overarching conduct by an entity subject to the framework.

The high civil penalty amount does not appear to reflect any other code-related civil penalty regimes. Instead, it reflects the penalties for egregious and serious anti-competitive conduct in Part VI of the Competition and Customer Act, which stipulates \$50 million penalties. The



Bank's concern is the penalty is too high for the offending conduct. A penalty reflecting the pre-existing industry codes in the Competition and Customer Act would be more appropriate.

Bendigo Bank recommendation:

2. Include a specific provision in the Bill that states civil penalties only apply for systemic, serious or egregious conduct.
3. Reflect penalties for the pre-existing industry codes in the *Competition and Consumer Act 2010*.

3. Clarify the apportionment of liability to strengthen internal dispute resolution and external dispute resolution

Division 4 of the exposure draft Bill outlines the External Dispute Resolution (EDR) authority (namely: AFCA) mechanism for the SPF. The Bank supports the single-body EDR scheme proposed in the legislation. We consider this will lead to quicker and more effective outcomes for customers. The single-body EDR scheme will also ensure outcomes are applied consistently and more predictably across the regulated sectors, allowing all regulated entities to be held to a consistent standard, resulting in better outcomes for customers.

While Bendigo Bank acknowledges the SPF Internal Dispute Resolution (IDR) will be the primary method for resolving customer complaints, the Bill remains silent on how liability will be apportioned across the regulated sectors and how coordination across the regulated sectors would occur. The Bill also does not allow regulated entities to add third parties into their IDR processes. The lack of these mechanisms will significantly reduce the impact of effectiveness of the IDR schemes and cause more cases to go to EDR.

FOR EXAMPLE: *A customer is a victim to a scam and initiates an IDR process with their bank. The bank undertakes an examination and finds it was an investment scam advertisement, initiated via a digital platform, which has not met its obligations under the framework.*

Under this scenario, the bank would either offer the customer compensation for the portion of compensation the bank believes it is at fault for or decline compensation if the bank has identified it has complied with all its requirements under the Code. This scenario results in potentially lengthy delays to reach an outcome due to customers either having to go through separate IDR processes, or more cases being escalated to EDR.

Guidance should be provided on liability apportionment. If this was provided, regulated entities would be able to apply this guidance in IDR processes, ensuring customers get satisfactory outcomes quickly.



The Bank considers; given the wide-spread impact of the industry, and the experience the banking sector has on implementing dispute resolution procedures; the liability apportionment should be industry-led. Where industry cannot agree within a specific period, the Minister should have the ability to override through a rule-making power.

Bendigo Bank recommendation:

4. Replicate the industry code-making powers in the *Telecommunications Act 1997*. This includes the ability to request, approve and revoke an industry-code. This would also include an additional rule-making power in Division 4 of the Bill to allow the Minister to make rules about how liability will be apportioned. It is anticipated AFCA will provide guidance on what it considers to be appropriate, fair and honest in its decisions when dealing with complaints.