

TIO submission to the Senate  
Inquiry into the Scams  
Prevention Framework Bill  
2024 [Provisions]  
January 2025

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## Executive Summary

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The Telecommunications Industry Ombudsman (**TIO**) offers information to assist the Senate Economics Committee with its inquiry and report on the Scams Prevention Framework Bill 2024 [Provisions] (**SPF Bill**).

Our role is to help consumers resolve their phone and internet disputes. Our dispute resolution services are free, fair, independent, and accessible and comply with the Government Benchmarks for Industry-Based Customer Dispute Resolution.<sup>1</sup> The TIO has been a key pillar of the telco consumer protection framework for over 30 years and its effectiveness is built on its strength as an industry-based ombudsman scheme with the experience, knowledge, and expertise required for the telco sector.

The TIO supports the Government's economy-wide approach to scams prevention across the scam ecosystem. However, we have serious concerns that the proposed SPF Bill has been introduced without resolving complex and novel issues with how Internal Dispute Resolution (**IDR**) and External Dispute Resolution (**EDR**) will work in practice.

The SPF must provide for a consumer-centric approach to providing consumer redress. Fundamental issues have been left to subordinate instruments, without adequate stakeholder consultation to ensure consumers will be able to navigate the SPF's multi-party approach to scam disputes in a timely and fair manner.

The approach proposed in the SPF Bill is untested in any other jurisdiction. While the effort to develop a world-first solution to the scourge of scams is to be applauded, the SPF Bill does not provide certainty about IDR pathways, how liability will be apportioned across entities, or when a consumer can access EDR. Customer journey mapping prepared by consumer groups in response to an Exposure Draft of the SPF Bill suggests that a scam complaint may take up to two years to resolve.<sup>2</sup>

We are also concerned that the EDR pathway for scam complaints will not achieve the intended objective of a straightforward EDR experience for consumers. Without further collaboration, consultation, and scenario testing, there is significant risk that consumers will be subject to unnecessary complexity and confusion between the TIO and Australian Financial Complaints Authority (**AFCA**).

Australians need a framework for scam prevention and redress as soon as possible. However, it must be done right. The SPF Bill should successfully address the fundamental IDR, EDR, and liability apportionment issues identified. Further, the Government should be required to conduct transparent and collaborative consultation across the different sectors. Committing to proper consultation and complaint scenario testing is the best way to safeguard the development of an SPF that will work for consumers, and regulated entities, and build trust and confidence that the SPF is delivering on its stated goals.

Our submission provides feedback on the SPF Bill based on our unique perspective as the industry-based EDR scheme for the telco sector, focusing on the implications of the SPF for complaint handling and the SPF's 'respond' principle.

We thank the Committee for considering the TIO's views as part of its inquiry and we look forward to answering any questions you may have about the matters raised in this submission.

<sup>1</sup> Treasury, [Benchmarks for Industry-based Customer Dispute Resolution](#) (2015)

<sup>2</sup> Joint Consumer Group Submission, [Scam Prevention Framework – Exposure Draft Legislation](#) (October 2024)

## List of recommendations

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**Recommendation 1:** The Committee should recommend that, when proposing any further amendments to the SPF Bill and developing subordinate instruments related to IDR, EDR, and liability apportionment, the Government conduct transparent, collaborative consultation and scenario testing. This consultation and scenario testing should bring together affected stakeholders from the telco, digital platforms, and banking industries, including EDR schemes, regulators, peak industry bodies, and consumer groups.

**Recommendation 2:** The Committee should recommend that the SPF Bill be amended to include guiding principles to assist with addressing the question of multi-party liability for scam losses.

**Recommendation 3:** The Committee should recommend amending subdivision G of the SPF Bill to ensure that subordinate instruments provide for minimum IDR standards on specific matters, including:

- minimum response times for regulated entities that receive IDR complaints for consumers
- information regulated entities must provide to consumers
- the contact methods and process for consumers to bring a complaint to one or more regulated entities
- the point at which a consumer can access EDR where IDR has failed.

**Recommendation 4:** The Committee should recommend that, when undertaking the EDR authorisation process, the Government conduct transparent consultation and scenario testing on behind-the-scenes EDR arrangements to facilitate an efficient and effective EDR experience for the consumer. This consultation and scenario testing should bring together affected stakeholders from the telco, digital platforms, and banking industries (including EDR schemes, regulators, peak industry bodies, and consumer groups).

**Recommendation 5:** The Committee should recommend amending section 58DB(2) of the SPF Bill to remove: “A failure to comply with this subsection does not invalidate an instrument made under subsection (1) authorising the scheme”.

## TIO submission to the Senate Inquiry into the Scams Prevention Framework Bill 2024 [Provisions]

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The TIO supports the Government's economy-wide approach to scams, and supports the designation of banks, digital platforms, and telcos as regulated entities in the first instance. We also support the six SPF principles (governance, prevent, detect, report, disrupt, and respond) which will provide a holistic approach to addressing scams across the scam ecosystem.

The TIO recognises actions taken by government and regulators to date to address scams, including the establishment of the National Anti-Scam Centre and the SMS Sender ID Registry. The TIO also supports the compliance and enforcement framework outlined in the SPF Bill, which provides regulators with the power to monitor, investigate, and enforce compliance with the SPF.

### 1. The SPF Bill's approach to IDR and EDR is unworkable because it has not been subject to transparent, collaborative consultation and solutions testing

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We are pleased that the SPF Bill has been referred to the Committee for inquiry and report. As we have previously noted, transparent and effective consultation on the SPF has been limited and has not been collaborative.<sup>3</sup>

Consultation on the SPF Bill was rushed and did not allow for all affected stakeholders, including the TIO, to work through complaint scenarios to ensure IDR and EDR options were workable and fit for purpose. We have yet to see any public consumer journey mapping prepared by government that outlines how IDR and EDR will work. In their submission to the SPF Exposure Draft, consumer groups' own journey-mapping estimated that it would take approximately two years for a consumer to go through IDR and EDR for a simple scam complaint.<sup>4</sup> In our experience, this is a reasonable assessment of the likely timeframe to resolve complex multi-party complaints. This timeframe is an unacceptable, unintended consequence of the current IDR and EDR options that must be addressed to ensure the SPF achieves its objectives and keeps consumers at the centre of SPF.

This submission highlights the aspects of the SPF Bill that should be amended to assist with addressing the currently unworkable approach to IDR and EDR. Moving forward, as IDR and EDR mechanisms are further developed, the Government needs to conduct targeted consultation that brings together all affected stakeholders to ensure IDR and EDR is sufficiently robust and consumer centric.

**Recommendation 1:** The Committee should recommend that, when proposing any further amendments to the SPF Bill and developing subordinate instruments related to IDR, EDR, and liability apportionment, the Government conduct transparent, collaborative consultation and scenario testing. This consultation and scenario testing should bring together affected stakeholders from the telco, digital platforms, and banking industries, including EDR schemes, regulators, peak industry bodies, and consumer groups.

<sup>3</sup> TIO, [Submission to the Scam Prevention Framework Exposure Draft](#) (October 2024)

<sup>4</sup> Joint Consumer Group Submission, [Scam Prevention Framework – Exposure Draft Legislation](#) (October 2024)

## 2. Changes are needed to ensure IDR and EDR are workable for consumers

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### 2.1 The SPF Bill must provide for multi-party liability for scam losses

The current provisions of the SPF Bill do not address the question of multi-party liability for scam losses. Instead, there is a provision under the 'respond' principle that requires regulated entities to 'have regard' to any guidelines prescribed by SPF rules for apportioning liability.<sup>5</sup>

The SPF Bill proposes the first multi-party, multi-industry IDR and EDR framework of its kind worldwide, but does not answer the key questions consumers who experience losses will have – how do I get my money back? How do I recover my losses?

Answering questions around multi-party and multi-industry liability is fundamental to the success of the SPF's 'respond' principle. Without clarity and detail on how liability apportionment will be addressed, scam complaints will take a disproportionate amount of time, effort, and resources to resolve. The unintended consequences likely to flow from failing to address the question of liability apportionment include:

- uncertainty for consumers - which regulated entity should a consumer raise their complaint with?
- regulated entities bouncing consumers between one another to avoid/reduce liability, or delaying a response to the consumer's complaint, increasing the risk of consumers experiencing complaint fatigue and accepting low-ball offers for compensation
- unmanageable caseload and delays at SPF EDR schemes if regulated entities refuse to compensate consumers fairly or the IDR process is drawn out by multi-party complexities, information asymmetry issues, and imbalances in knowledge and power between the consumer and regulated entities
- increased risks of inconsistent interpretation of SPF obligations – without overarching certainty regarding liability in the SPF Bill itself, EDR schemes are likely to be forced into a case-by-case approach, which will also add to lengthy delays in resolving complaints.

Several options have previously been put forward by stakeholders to address liability apportionment. These have included mandatory reimbursement from banks (with banks recovering from digital platforms and telcos where appropriate), pre-determined liability percentages, and the inclusion of overarching principles in the SPF Bill to guide future subordinate instruments.

However, none of these options have been fully considered as part of a collaborative public consultation process prior to the introduction of the SPF Bill.

The SPF Bill and Explanatory Materials should, at a minimum, provide guiding principles regarding liability to support the development of more detailed rules, and to give Parliament greater understanding of how the framework is intended to operate in practice. Guiding principles should include certainty for consumers about how much of their scam losses are recoverable and from whom, as well as simplicity for consumers and regulated entities to understand and apply the framework.

Further, as highlighted in **recommendation 1**, collaborative and transparent consultation will be key to determine the right liability apportionment model for the SPF. Liability options must be tested against scenarios that account for the different ways consumers engage with scammers and regulated entities, and the level of breach or 'fault' in different scenarios.

<sup>5</sup> SPF Bill, s 58BZE(1)(b)(ii).

**Recommendation 2:** The Committee should recommend that the SPF Bill be amended to include guiding principles to assist with addressing the question of multi-party liability for scam losses.

## 2.2 The SPF must support minimum standards for IDR

The current IDR provisions under the ‘respond’ principle in the SPF Bill require regulated entities to have an accessible and transparent IDR mechanism, which is intended to encourage early resolution of complaints.<sup>6</sup> However, the SPF Bill does not provide parameters for minimum IDR standards to support the efficient handling of complaints across industries. The SPF Bill’s requirement to ‘have regard’ to processes and guidelines prescribed by the SPF rules<sup>7</sup> also falls short of a requirement to comply with IDR standards set in the future, and for regulated entities to comply with their own processes.

Scam complaints often involve complex multi-issue and multi-party matters, as well as considerable power and information asymmetry between consumers and regulated entities. Robust and accessible IDR is fundamental to ensuring that consumers can access quick and fair resolutions, while supporting regulated entities to maintain trust and confidence with their consumer base. Effective IDR will also stop a significant number of complaints from progressing to EDR, reducing delays for the consumer and keeping SPF EDR caseloads manageable.

Telcos, banks, and digital platforms all have very different existing obligations regarding IDR. Telcos and banks are subject to separate industry specific obligations around complaint handling.<sup>8</sup> Digital platforms have no obligations in relation to dispute resolution. The ACCC’s Digital Platforms Inquiry recommended mandatory standards.<sup>9</sup> These have been supported in principle by Government, but no mandatory standards have been set. The digital platforms were expected to develop voluntary standards by mid July 2024, but these are not yet in place.<sup>10</sup> The absence of clear, consistent IDR obligations on all regulated entities undermines the effectiveness of the ‘respond’ principle of the SPF.

The SPF Bill is silent on the IDR matters that subordinate instruments must address. Providing this clarity could alleviate the uncertainty created by outstanding questions on how a consumer will navigate IDR:

- If a consumer is scammed, how will the consumer know which regulated entity to approach? It is unreasonable that a consumer would need to determine which regulated entity failed to meet its SPF obligations to raise a complaint. This is not just a problem between multiple parties from different sectors. For example, the SPF does not clarify when a scammer’s telco is responsible for a scam SMS coming through, or when the consumer’s telco is responsible for allowing the SMS to come through to the consumer’s mobile service.

<sup>6</sup> Explanatory Memorandum for SPF Bill, p55, para 1.258.

<sup>7</sup> SPF Bill, s 58BZE.

<sup>8</sup> See ASIC, [Regulatory guide 271 – Internal dispute resolution](#) (September 2021); Telecommunications (Consumer Complaints Handling) Industry Standard 2018.

<sup>9</sup> ACCC, [Digital platform services inquiry: Interim report No. 5 – Regulatory reform](#) (September 2022) pp88-97.

<sup>10</sup> The Hon Stephen Jones MP (Assistant Treasurer) and The Hon Michelle Rowland MP (Minister for Communications), [Joint media release – Government’s response to the ACCC’s major competition and consumer recommendations for digital platforms](#) (8 December 2023) accessed 12 December 2024.

- How would a consumer have trust in the IDR process when significant the information asymmetry would exist between the consumer and regulated entities? We understand that amendments have been proposed<sup>11</sup> to require regulated entities to provide consumers with a statement of compliance with its obligations as part of the internal dispute resolution purpose. While this is positive, it does not fully address the burden on consumers to understand SPF obligations and navigate inconsistent IDR processes.
- When can a consumer access EDR after IDR has failed? EDR is usually only accessed after the industry member has had a reasonable opportunity to resolve the complaint. How will this work where there are multiple regulated entities across multiple industries who are involved (or may be involved) in a scam complaint?

Amendments to the SPF Bill are recommended to ensure that subordinate instruments will address the right minimum IDR standards across regulated entities.

Whether or not these amendments are made to the SPF Bill, as highlighted in **recommendation 1**, it is crucial that the outstanding questions about how consumers navigate IDR are resolved through comprehensive and transparent consultation and scenario testing. This consultation must bring together stakeholders from all regulated industries, including EDR schemes, peak industry bodies, regulators, and consumer groups.

**Recommendation 3:** The Committee should recommend amending subdivision G of the SPF Bill to ensure that subordinate instruments provide for minimum IDR standards on specific matters, including:

- minimum response times for regulated entities that receive IDR complaints for consumers
- information regulated entities must provide to consumers
- the contact methods and process for consumers to bring a complaint to one or more regulated entities
- the point at which a consumer can access EDR where IDR has failed.

## 2.3 SPF EDR pathways must minimise consumer confusion and prevent unintended consequences that will negatively impact the SPF

We agree that the EDR pathways and process should be as simple as possible for consumers to access. We recognise the merit in a ‘single front door’ to EDR for consumers who have been scammed and note the Government’s intention to designate AFCA as the sole SPF EDR scheme for banks, telcos, and digital platforms in the Explanatory Materials.

Despite the Government’s intention to create a straightforward pathway for consumers, we are concerned about the additional complexity for consumers of navigating the EDR environment and consider that the unintended consequences and additional complexity of this approach need further consultation and examination.

### **Being ‘scammed’ doesn’t lend itself to a single, straightforward EDR pathway**

Consumers do not differentiate between a scam (as defined in the SPF Bill) and other similar matters involving financial loss or deceit. Consumers contacting the TIO sometimes describe their

<sup>11</sup> See [statement of compliance amendment proposed by Ms Steggall MP \(House of Representatives, 11 September 2024\)](#).



complaint as a 'scam' even though their complaint is about another matter, such as fraud, spam and even mis-selling.

The TIO identified over 3,049 complaints received between 1 January 2024 and 16 September 2024 where the consumer's description of their complaint indicated the consumer believed they were the victim of a 'scam'. Based on a detailed review of these complaints, only 331 complaints fell within the definition of a scam under SPF. Of the over 3,049 complaints, 486 complaints related to fraud, falling outside of the SPF's scam definition and with the fraud issues being the subject of existing telco-specific obligations. This means most consumers who have complained to the TIO this year about what they believe to be a 'scam' would fall outside the definition of scam under the SPF Bill and would be unable to have their complaint resolved through AFCA's process.

Examples of complaints that a consumer may mistakenly direct to AFCA but could only be brought to the TIO include:

- a fraudster obtaining a consumer's information (for example, through a data breach) and then using it to deceive a telco into providing the scammer with access to the consumer's account. Where the only identifiable attempt to deceive is perpetrated by the scammer onto the telco (and not an SPF consumer), the scam is not captured by the SPF, but is currently captured by telco obligations aimed at preventing fraud
- a fraudster conducting an unauthorised SIM swap because the telco did not properly verify the consumer's identity, leading to the consumer having money withdrawn from their account and loans applied for in their name.

The below case study shows the complexity of a complaint about fraud (and not within the jurisdiction of AFCA under the SPF), which could be confused with scams, and involves multiple telco issues that the TIO currently handle as part of its jurisdiction.

### **Delaney deals with the flow-on effects of an unauthorised SIM swap**

Delaney's mobile service stopped working. When she called her provider, Mode Telco, it told her she had approved a SIM swap, which she hadn't. She visited her local store and had her mobile number returned to her within the hour.

During this hour, the fraudster accessed Delaney's email and multiple cryptocurrency accounts, and used her mobile number to obtain codes to reset her passwords. Over the next three weeks, further attempts were made by fraudsters to access Delaney's accounts. When we asked Mode Telco to investigate Delaney's complaint, it found a fraudster had impersonated a Mode Telco staff member to gain access to Delaney's account and process a SIM swap. Mode Telco said this fraudster was able to provide enough information and credentials to trick staff into believing the fraudster was acting under Delaney's instructions.

Delaney said after her accounts had been compromised, she spent hours contacting various agencies, including her bank, superannuation fund, Medicare, and her internet provider. She also had to replace her identity documents and credit cards.

Mode Telco offered to cover the cost of replacing Delaney's identity documents and any remaining charges on Delaney's account so she could transfer her service to another provider.

\*Names of all parties have been changed

Consumers presenting with telco scam complaints may also be experiencing several telco related issues, which are likely to go beyond just scam obligations and require significant telco expertise. Non-scam telco issues could, for example, include financial hardship, mis-selling, identity verification, and connectivity issues flowing from credit management activity, technical issues, or account changes. Redress sought following a scam is also not limited to reimbursement of scam losses.

The following scam issues fall within the proposed SPF definition of a scam, but may involve other non-scam telco issues that would remain within the TIO's jurisdiction, necessitating the splitting of complaint issues and potentially consumers being bounced between AFCA and the TIO:

- consumers who have been scammed, and as a result are now experiencing financial hardship and cannot afford to pay their telco bills.<sup>12</sup>
- consumers being subject to a telco impersonation scam, and then encountering other issues with the telco when they raise the issue of a scammer impersonating them, such as inappropriate upselling or misleading sales advice (within the TIO's non-scam telco jurisdiction).

A consumer can access EDR through AFCA as a 'single front door', but this does not negate the need for behind-the-scenes EDR arrangements to prevent unnecessary complexity, delays, and confusion during multi-party dispute resolution. The consumer experience of scams and fraud in the telco sector is multifaceted and requires expertise across the entire telco regulatory framework, not just scam obligations. A simple EDR pathway for consumers cannot be achieved without considering the practical experience of accessing and engaging with EDR for consumers.

Additionally, as highlighted in **recommendation 1**, consultation with existing EDR schemes, consumer and industry organisations, and regulated entities on the practical implications of the 'single front door' is required to ensure that consumers can simply and efficiently navigate the EDR landscape. Failure to address this issue will undermine consumer confidence in the 'respond' principle of the SPF.

### **The requirement for the Minister to consider certain matters when authorising an EDR scheme is meaningless due to the no-invalidity clause**

The SPF Bill allows the Minister to authorise EDR schemes for one or more regulated sectors and requires the Minister to consider the six Benchmarks for Industry-Based Customer Dispute Resolution before doing so.<sup>13</sup> The Benchmarks (accessibility, independence, fairness, accountability, efficiency and effectiveness) support best practice in industry-based dispute resolution services.<sup>14</sup>

The SPF Bill caveats the requirement to consider the Benchmarks by stating that a failure to comply with the requirement to consider those matters does not invalidate the instrument – known as a no-invalidity clause.<sup>15</sup> As the Senate Standing Committee for the Scrutiny of Bills points out, there are significant scrutiny concerns because it can '... limit the practical efficacy of judicial review to provide a remedy for legal errors.'<sup>16</sup>

<sup>12</sup> Telco obligations to support consumers experiencing financial hardship are contained in the Telecommunications (Financial Hardship) Industry Standard 2024.

<sup>13</sup> Scams Prevention Framework Bill 2024, s 58DB(1)(2).

<sup>14</sup> Treasury, [Benchmarks for Industry-based Customer Dispute Resolution](#) (February 2015). See also, Treasury, [Key Practices for Industry-based Customer Dispute Resolution](#) (February 2015).

<sup>15</sup> SPF Bill, s 58DB(2).

<sup>16</sup> Senate Standing Committee for the Scrutiny of Bills, [Scrutiny Digest 14 of 2024](#) (20 November 2024) p41, para 1.116.

The Explanatory Memorandum does not provide any justification for including a no-invalidity clause for the designation of EDR schemes. It is crucial that there is an unrestricted requirement for the Benchmarks to be fully and properly considered before EDR schemes are designated. A failure to do so could result in ineffective EDR and undermine the SPF.

**Recommendation 4:** The Committee should recommend that, when undertaking the EDR authorisation process, the Government conduct transparent consultation and scenario testing on behind-the-scenes EDR arrangements to facilitate an efficient and effective EDR experience for the consumer. This consultation and scenario testing should bring together affected stakeholders from the telco, digital platforms, and banking industries (including EDR schemes, regulators, peak industry bodies, and consumer groups).

**Recommendation 5:** The Committee should recommend amending section 58DB(2) of the SPF Bill to remove: “A failure to comply with this subsection does not invalidate an instrument made under subsection (1) authorising the scheme”.