Insurance Council of Australia

8 January 2025

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

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

Dear Sir/Madam

Inquiry into the Scams Prevention Framework Bill 2024

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee's Inquiry into the Scams Prevention Framework Bill 2024 (the SPF Bill).[1]

The Insurance Council is the representative body for the general insurance industry in Australia.

Our members represent approximately 90 per cent of total premium income written by private sector general insurers, spanning both insurers and reinsurers. Our work with our members, consumer groups and all levels of government serves to support consumers and communities when they need it most. As a foundational component of the Australian economy the general insurance industry employs approximately 46,000 people, generates gross written premium of $66 billion per annum, and on average pays out $159 million in claims each working day ($39.4 billion paid out per year).[2]

We recognise that the prevalence of scams in Australia is a significant issue, with Australians losing $2.74 billion to reported scams in 2023.[3] It is crucial that clear roles and responsibilities for Government, regulators and the private sector are in place to help combat scams.

The ICA supports the Government working to protect Australians from scams, including introducing initiatives such as the establishment of the Sender ID Register.[4] The Moneysmart tool also helps raise awareness regarding banking, crypto, investment and superannuation scams. For example, alerting consumers of methods that scammers may use to convince customers to share their personal details to gain access to online accounts or transfer money from their bank account or superannuation fund to the scammer's account.[5]

Many scams in other sectors are facilitated through sector-specific infrastructure and systems, such as online portals and bank transaction systems, which can be identified and disrupted by businesses that have implemented robust controls or reduced through appropriate consumer education.

In an insurance setting, monetary transactions typically come in the form of insurance policy purchase, renewal, claims or refund payments. Claim or refund payments are issued by the insurer via the customer's chosen payment method, following correspondence regarding the customer's insurance claim or policy change or cancellation request. Therefore, incidences where scammers pose as the

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[1] Scams Prevention Framework Bill 2024 [Provisions] – Parliament of Australia
[2] Please see General Insurance in Australia - Market Size, Industry Analysis, Trends and Forecasts (2024-2029) and APRA releases general insurance statistics for June 2023.
[3] Australian Competition and Consumer Commission (ACCC) (28 April 2024), Scam losses decline, but more work to do as Australians lose $2.7 billion.
[4] Department of Infrastructure, Transport, Regional Development, Communications and the Arts, SMS Sender ID Registry - Fighting SMS Impersonation Scams.
[5] Financial scams - Moneysmart.gov.au

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customer to receive insurance policy benefits, scam customers for money or benefit from gaining access to online accounts are less prevalent compared to other sectors.

The insurance industry is aware that customers can be targeted by other scam activity that may be beyond a business' control and can affect any sector. For example, email scams where phishing emails are designed to trick customers into providing personal information or clicking on links that lead to fake websites, or phone and SMS scams where scammers claim to be from the customer's trusted insurer.

A scammer may create a fake website mirroring an insurer's website to scam third parties, or a scammer may contact a customer seeking a payment to fast-track a claim or to repair the damaged insured asset. Customers may be more susceptible or exposed to scams after experiencing a natural disaster, due to the customer's heightened vulnerability and desire to fast-track or seek additional support on an insurance claim, although scams can occur at any time.

To combat consumer harm that can be caused by fraud and scams, the Insurance Council established a new counter fraud and scams function in May 2024.[6] This function has a focus on improving industry-wide capability for detecting organised fraud networks and identifying emerging fraud-related trends or criminal scams.

Designated sectors

The Insurance Council supports the introduction of a proportionate framework that takes a whole-of-ecosystem approach to provide Australian consumers with protection against scams. We suggest this should be introduced in a phased manner to allow for the required uplift in capability for relevant sectors.

The intention of the SPF Bill is to 'set mandatory obligations for businesses in designated sectors within the scams ecosystem to take action to address scams delivered over their services'.[7] The Insurance Council recommends clarification be provided on the intent and scope of the SPF Bill and in particular whether the scope of the Scams Prevention Framework (SPF) concerns scams which are facilitated through the sector in the day-to-day provision of services.

We note that the SPF Bill includes 'insurance businesses' as a class of business that may be designated as a regulated sector in the future.[8] We recommend further clarity be provided on the definition of a scam captured under the SPF Bill and the distinction between scams and other types of fraud. As mentioned above, the nature and variety of scams within insurance differ from other identified sectors and scam activity.

The SPF Bill includes certain matters the Minister must consider before designating a regulated sector, including considering:

a) scam activity in the sector;

b) the effectiveness of existing industry initiatives to address scams in the sector;

c) the interests of persons who would be consumers of regulated services for the sector if the SPF Bill was passed

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[6] Insurance Council of Australia, Media Release (21 May 2024), 'Insurance industry boosts fight against fraud and scams'.
[7] Treasury (November 2024), 'Scams – Mandatory Industry Codes Consultation paper', page 8.
[8] Scams Prevention Framework Bill 2024, Section 51 (xiv), 58AC(2).

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d) the likely consequences (including benefits and risks) resulting from making the instrument; and

e) any other matters the Minister considers relevant.[9]

We support further consultation on the matters for consideration under Section 58AE, including further clarity on the level and type of scam activity. In addition to the matters listed under Section 58AE, the Insurance Council recommends that the Minister further consider if the scam activity is:

- facilitated through the sector in the day-to-day provision of services;
- systemic and ongoing, or one-off minor/isolated instances which would not warrant designation; and
- managed through existing legislative and regulatory requirements for the prevention and management of scam activity. For example, under the Financial Accountability Regime (FAR), scam management is a key function for which there is required to be executive accountability.[10]

If general insurance is considered in the future as a regulated designated sector under the SPF Bill, we strongly recommend appropriate consultation is undertaken by Treasury with the general insurance industry and relevant stakeholders, to consider the matters listed above and potential uplift required.

Support for a principles-based approach

The SPF Bill should be flexible and responsive to future changes in the scams ecosystem. It is appropriate for the SPF Bill to be principles-based and scalable to allow the sector-specific Codes to provide further detail and prescription appropriate to the relevant industry.

Where more detailed expectations are contained in the proposed sector-specific Codes, engagement with key regulators will be crucial to ensure a holistic and cohesive regulatory approach is taken.

We note a number of the SPF principles require regulated entities to take 'reasonable steps'. What constitutes 'reasonable steps' is not defined in the SPF Bill and the explanatory materials state 'Whether a regulated entity has taken reasonable steps is an objective assessment.' Factors such as the size of the regulated entity, the services of the regulated entity, their consumer base, and the specific types of scam risk they face may be relevant to the steps that are reasonable for a regulated entity to take.[11]

The explanatory materials state 'In some cases, taking reasonable steps to meet one or more of the SPF principles may require a regulated entity to take steps beyond the sector-specific obligations set out in an SPF code'.[12]

Regulated entities will require further guidance on expectations and what will constitute reasonable steps, outside sector-specific Codes. As reasonable steps will be dependent on existing regulatory obligations, a holistic approach to the reasonable steps requirement will be required.

Further detail and guidance around reasonable steps and obligations in the proposed sector-specific Codes is welcomed. Defined terms within sector-specific Codes, where possible, will also be helpful to enhance coordination and information sharing.

[9] Scams Prevention Framework Bill 2024, Section 58AE.
[10] ASIC Regulatory Guide (RG) (279), Financial Accountability Regime: Information for accountable entities'.
[11] Explanatory Memorandum - Scams Prevention Framework Bill 2024, Section 1.118.
[12] Explanatory Memorandum - Scams Prevention Framework Bill 2024, Section 1.18.

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Further considerations

As noted in the Treasury's consultation summary, the SPF may represent a significant uplift and change to business operations depending on the nature of the regulated sector, requiring it to be introduced in a phased and proportionate manner.[13]

The insurance industry's existing systems and controls will differ to the identified regulated sectors given the nature of insurance business, collaboration through the new counter fraud and scams function and existing regulatory requirements, such as the regulation of scam activities under the FAR mentioned above.

The principles-based obligations underpinning the framework which requires regulated entities to detect scams, report on scams, and disrupt scams could necessitate significant uplift, dependent on the nature of the sector, such as within administrative processes, data collection, technology and resources.

In relation to the disrupt obligations, further detail and guidance will be required on the extent of 'information about activities that are the subject of the entity's actionable scam intelligence' that can be shared with consumers and any implications this may have on privacy requirements.[14]

We welcome further clarity on whether mechanisms will be put in place across regulated entities for scam intelligence sharing, including those not subject to the SPF.

Further, it will be important to ensure that the sector-specific Codes do not duplicate existing regulatory requirements, such as reporting obligations or the FAR noted above, and align appropriately with other relevant industry codes.

The Insurance Council agrees that a safe harbour provision is appropriate for regulated entities who are acting in good faith to comply with the SPF Bill provisions and have taken appropriate disruptive action when investigating a scam.[15] We note that regulated entities will not be liable in a civil action or civil proceeding for taking action to disrupt an activity where the provisions under Section 58BZA(1) and (2) apply.

Further guidance will be required on what type of scam disruption action will fall under this provision and to what extent this protects regulated entities from civil or class actions. In the insurance industry for example, insurance companies may pause or deny claims pending fraud investigation where this is proportionate.

Transition arrangements

The Insurance Council supports consideration of phased transition arrangements for the penalty provisions across the framework as outlined in the SPF Bill.[16] We believe that a phased transition period for the introduction of the SPF for designated sectors is required given the uplift required across the identified industries to incorporate the general, as well as sector specific obligations.

If insurance is considered in the future as a regulated designated sector under the SPF, in addition to our recommendations above, specific consultation should be considered by Treasury on an appropriate transitional timeframe.

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[13] Treasury, September 2024, 'Scams Prevention Framework – Summary of reforms', page 4.
[14] Scams Prevention Framework Bill 2024, Section 58BZ.
[15] Scams Prevention Framework Bill 2024, Section 58BZA.
[16] Treasury, September 2024, 'Scams Prevention Framework – Summary of reforms', page 8; Explanatory Memorandum - Scams Prevention Framework Bill 2024, pages 173 and 177.

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Conclusion

Thank you for the opportunity to provide a submission. If you have any questions or comments in relation to our submission, please contact

Yours sincerely,

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