

Mandatory Scams Code Framework

ACCI Submission

January 2024



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Introduction

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide comment to the consultation process on mandatory industry codes relating to scams, referred to as the framework.

ACCI acknowledges the importance of protecting Australians from scams. The impact of scams on Australians every year is significant, and we are strongly supportive of measures to prevent them from occurring.

We support the objective of the proposed framework, being to “make Australia a harder target for scam activity, and less attractive to scammers”.¹

For businesses of all sizes, scams can have a significant impact on their ability to conduct business and, where operating with more vulnerable customers, may have an adverse impact on their customer base, particularly for those operating solely online.

However, we do not believe that the proposed legislative framework is the appropriate mechanism to achieve this. Further, we are concerned with a number of the proposals set out in the consultation paper which look to impose onerous responsibilities on businesses – including small businesses – without sufficient detail.

As the consultation paper notes, scams do not just affect individuals – they can also impact businesses, particularly small businesses. Small business owners are time and resource poor, and often do not have the capacity to authenticate, verify or cross-reference links or payment information on every occasion. Unfortunately, this means that small businesses are susceptible to scams which can cripple their business operations and, in severe cases, impact the personal information of their customers.

ACCI submits that increasing resources to enhance awareness of scam activities rather than imposing further reporting obligations on businesses, especially small businesses, should be the government's priority. Given the current challenges faced by small businesses due to growing regulatory demands, we do not support additional regulatory burdens at this time.

Instead, we believe that additional resourcing and support for the National Anti-Scam Centre (NASC) should be prioritised. Raising awareness of scams, including of common types, of how to report them, and what to look out for, is key to preventing scams from occurring. Further, strengthening the NASC as the central point of contact and information for scams will be important as it develops its capabilities over the coming years.

We note that there are existing programs run by the Australian Competition and Consumer Commission (ACCC) which seek to increase awareness of scams within the community. Their website provides a number of resources, including mailing lists, which consumers can sign up to in order to receive updates and advice regarding the latest scams. Increased awareness of this and their other services, particularly the NASC, will be important as scam activity becomes more sophisticated.

At ACCI, we have actively shared information with our members regarding Scams Awareness Week and have been involved in consultations with the NASC and ACCC to canvass how it can increase awareness of scam activity for small businesses. We would welcome the NASC working more closely with industry, including with ACCI, to ensure that information regarding the latest scam activity reaches our members,

¹ Pg.6.

particularly our small business members, and would support increased resourcing for the NASC to facilitate this work.

While we do not support all elements of the framework as currently proposed, we take this opportunity to provide feedback where improvements can be made to increase its potential effectiveness, should it move forward.

Legislated scams code framework

Legislative approach

Scams are constantly adapting to changing technologies and practices, enabling scammers to find new vulnerabilities to target, to deceive customers and to avoid detection. The evolving nature of scam activities make them difficult to combat. It also means that any response to scams needs to be easily amenable to these changes.

While we agree that more needs to be done to reduce the impact of scams on Australian consumers, we are concerned that a legislative framework will not be flexible enough to adequately respond to new scams as they arise.

Legislative reform is a difficult, timely and costly process to undertake. Additionally, legislation often requires amending after implementation, due to gaps identified or because of evolving technologies and approaches, for example, further extending this process. As such, we do not believe that legislation is the appropriate vehicle to protect consumers from scams.

Alternative approaches can be adopted which set the clear roles and responsibilities for government, regulators and the private sector to address scams, which is noted as the intent of the proposed framework.² In addition to boosting awareness-raising resourcing as set out above, we urge government to consider an alternative approach to legislating a framework to set expectations for dealing with scams.

Existing measures and work underway

There are a number of private sector and government-led measures which have the sole intent of protecting Australians from scams, such as those outlined in the consultation paper.³ In addition, there are a number of interrelated regimes, systems and initiatives currently in development or undergoing reform which will seek to have an impact on scam activity.⁴ Some of these initiatives have only recently come into force – or have not as yet – so it has not been possible to properly assess their effectiveness.

While ACCI appreciates the urgent need to tackle scam activity, we believe that it would be more prudent to allow these measures to operate, or to be finalised in line with their own reform process, before implementing an additional and overlapping mechanism.

Accordingly, government should reconsider a legislative approach to anti-scam measures at this juncture until key pieces of interrelated reforms have been finalised.

² Pg.4.

³ Pgs.4-6

⁴ Pg.7.

Affected businesses

The framework will initially set mandatory obligations for businesses in designated sectors. The sectors proposed are telecommunications, banking and digital communications platforms.

ACCI notes that unlike the banking and telecommunications sectors, the 'digital communications platforms' sector is a new sector being proposed for the purposes of this legislation and not currently defined through other legislative instruments. There is, however, draft legislation proposing the legal definition of a new 'digital platform services'⁵ sector which received significant feedback during public consultation, including from several associations who highlighted concerns with the scope of the definition and proposed exemptions for specific services to avoid unintended consequences.

Given the previous and current concerns with defining this new sector, the initial framework should be restricted to banking and telecommunications where industry can clearly identify whether they are captured by the legislation or not. Further targeted consultation is needed to better explore expansion to capture media services and digital platforms.

Small business impacts

ACCI does not believe that the proposed framework adequately accounts for business size and capabilities with a one-size-fits-all approach.

As currently proposed, all businesses in the banking, telecommunications and digital platforms sectors, including small businesses, would be subject to the same obligations, regardless of their size and capabilities. As we go on to address, some of these obligations are onerous, particularly when considering the plethora of regulatory changes currently underway in parallel to this proposal.

While we accept that some of the proposed obligations are appropriate for larger businesses, ACCI is concerned that the impost on small businesses will be too great and ultimately, some obligations may not be met.

We urge the government to consider reworking the principles-based framework to account for what is 'reasonably practicable' or to exempt small businesses from some of the proposed obligations. This would allow small businesses to focus on their day-to-day operations instead of creating materials and systems to prevent or respond to scams which they are more likely to fall victim to than their customers. Consultation on which obligations should be considered reasonable for a small business should occur before any framework is legislated.

At the very least, there should be a transition period for small businesses to ensure they are able to implement requirements under the legislative framework. Educative materials and support must also be made available to facilitate compliance. This would enable small businesses to adequately prepare for their additional responsibilities under the framework, as well as observe what works well for bigger businesses. This would also enable regulatory bodies to tailor educative materials for small businesses to ensure they are able to comply with their obligations.

In addition, a dedicated hotline should be established to support small businesses to navigate any obligations, as well as to provide advice on how to proceed following any scam activity which affects the

⁵ [Communications Legislation Amendment \(Combating Misinformation and Disinformation\) Bill 2023](#).

small business. The hotline should be operated by the NASC who have the appropriate expertise and, ideally, responsibilities and resourcing through this framework.

ACCI notes that there are a vast array of definitions of 'small business', including those based on turnover and on headcount. We urge government to apply a consistent definition of what qualifies as a 'small business' for the purposes of this framework, and for other regulatory matters moving forward. To assist, ACCI would support a 'small business' as one with 19 or fewer full-time employees, which is a definition adopted by the Australian Small Business and Family Enterprise Ombudsman, among others.

Proposed obligations

ACCI considers the proposed ecosystem-wide obligations to be contained in the *Competition and Consumer Act 2010* too onerous for the initial framework noting our previous comments around other regulatory reform activities that will have cross-over implications.

For example, where "large-scale scam activity" is detected,⁶ businesses would be obliged to notify other regulators – not just their own – as well as other businesses and the NASC. As a business attempts to deal with the fallout of any scam activity, contacting and providing the same or similar information to a range of different bodies, organisations and businesses is not an appropriate use of their resources and creates needless duplication.

Taking a risk-based, principles-based approach would better suit the problem whereby the appropriate regulatory response may be for a business to take 'reasonable steps' to prevent misuse of its services by scammers, with further examples of what constitutes reasonable steps outlined in clear industry-specific and size-specific guidance materials. The proposed obligations listed in the consultation paper would be examples of what may be expected from a multi-national employer in a mature sector which would look significantly different to the expectations on a small business in the loosely defined 'digital platform sector'.⁷

For further example, ACCI is supportive of the obligation that where a business is aware that a consumer may be or has been subjected to a scam, they must raise this with the consumer in a timely manner and would consider this a 'reasonable step' in responding to a scam that they are aware of.

We recommend that the final framework first be trialled in the three proposed high-risk sectors before rolled out broadly. ACCI stresses the need to ensure that the framework be "flexible enough to account for the differing nature and sizes of regulated business" keeping in mind the special needs of small businesses as detailed above.

Above all, further consultation with industry will be critical before any obligations are imposed.

Supportive guidance and resources

Any obligations proposed would need to be supported with educative materials on 'how' businesses are expected to comply. This collateral should be readily available from regulators already established in this space.

⁶ Pg.12.

⁷ Pg.13.

ACCI notes that the ACCC, as well as through the NASC and in collaboration with the Australian Securities and Investments Commission (ASIC), the Australian Communications and Media Authority (ACMA) and others, are well placed to formulate these materials for businesses and relevant sectors to use and disseminate to their staff and customers. Given that the ACCC already delivers education and awareness raising campaigns and the NASC was established to build its information sharing capabilities, we strongly believe that the responsibility for creating, for example, a strategy and disseminating information should fall primarily on the government and not just on businesses, especially when it comes to small businesses. Additional resourcing should be allocated to provide for the development of such collateral.

It will also be important to provide financial support for businesses that will fall under the framework. This will be particularly important should there not be a small business exemption, noting their lack of capacity and resourcing in comparison to other larger businesses.

Approach to oversight, enforcement and compliance

The consultation paper details an intricate system for enforcing the framework, a situation that ACCI is concerned could result in confusion and hinder the success of the framework if implemented, as well as be a significant administrative burden for small businesses in particular.

Victims of scams, whether financial or personal in nature, suffer significant distress following the event as they undertake to protect their information and recoup any losses where possible. ACCI is concerned that creating additional layers of bureaucracy for victims to navigate during this stressful time will be counterproductive and will not assist them in finding a resolution where possible.

Having multiple regulators across the different industries under the framework will be complicated and confusing for consumers, particularly for businesses who would be required to report scam activity.

While recognising the expertise within the ACMA and ASIC in dealing with matters related to telecommunications and financial institutions respectively, we are concerned that making these bodies regulators under the framework will increase complexity and confusion for those trying to comply with it.

Further, creating additional steps for consumers to navigate will likely discourage them from reporting scam activity, particularly when they suffer no adverse outcome. Any framework established should make reporting scam activity as straightforward and quick as possible to support such reporting, to enable greater awareness to be raised and future scams prevented.

The NASC was established to coordinate government, law enforcement and the private sector to combat scams.⁸ The NASC also has a key awareness-raising role and collects and shares information regarding scam activity. It is run virtually within the ACCC and consults with the ACMA and ASIC through a Regulator Steering Group, as well as with ASIC through a fusion cell, to support their work. ACCI believes that this work could continue to enable the NASC to remain informed of relevant sector-specific themes and intricacies whilst avoiding additional bureaucracy and complexity for consumers to navigate.

We submit that maintaining the ACCC as the primary anti-scam regulatory body, supported by the expertise of the NASC, will be imperative to the success of any framework imposed. Ensuring there are simple, easy to follow processes for consumers to use should they fall victim to a scam – or to bring attention to a scam – will be crucial.

⁸ Australian Competition and Consumer Commission (n.d.), [National Anti-Scam Centre](#).

External dispute resolution

The ACCC, with assistance from the NASC, could also be the central point of call for complaints handling and external dispute resolution (EDR) to ensure consistency of enforcement of this aspect of the framework.

While we note that there may be merit to having the Australian Financial Complaints Authority (AFCA) and the Telecommunications Industry Ombudsman (TIO) oversee initial EDR stage for complaints – once dealt with through any internal dispute resolution (IDR) mechanism – ACCI proposes that the final oversight of this process by one regulatory body will better support EDR at the earlier stage and provide practical, real-life guidance for IDR processes as well.

Review and further rollout

Following the implementation of any framework, there should be a review of its effectiveness, as well as any issues that have arisen through oversight and enforcement mechanisms. The review should consider whether the framework should be extended to other industries in addition to banking, digital platforms and telecommunications as currently proposed.

It would be appropriate to conduct such a review within 18-24 months of the framework coming into force. Such a review should consult with a broad range of stakeholders, not just those operating within the framework.

About ACCI

The Australian Chamber of Commerce and Industry represents hundreds of thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people.

ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth, and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education, and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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