



4 October 2024

Scams Taskforce
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: scampolicy@treasury.gov.au

Dear Sir/Madam

Scams Prevention Framework – exposure draft legislation

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to provide a submission to Treasury on the 'Scams Prevention Framework – exposure draft legislation' ('the SPF').¹

The Insurance Council is the representative body for the general insurance industry of 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 Sender ID Register being established to block fake SMS duping.⁴

The insurance industry is aware that customers can be targeted by scam activity which is outside the control of the insurer. Such as, 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 their trusted insurer.⁵

In May 2024, the Insurance Council established a new counter fraud and scams function.⁶ This has a focus on industry-wide capability for detecting organised fraud networks and identifying emerging fraud-related trends or criminal scams.

¹ [Treasury \(September 2024\), Scams Prevention Framework – exposure draft legislation.](#)

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 An example of this could be if an overseas scammer creates a fake website mirroring an insurers website in an attempt to scam third parties.

⁶ [Insurance Council of Australia, Media Release \(21 May 2024\), 'Insurance industry boosts fight against fraud and scams'.](#)

Designated sectors

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

The intention of the SPF 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 and if the scope of the framework concerns scams which are facilitated through the sector in the day-to-day provision of services.

We note that the exposure draft legislation includes 'businesses of insurance' 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 and the distinction between scams and other types of fraud. As mentioned above, the role of scams within insurance for example differs from other identified sector and scam activity.

The exposure draft 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 SPF consumers of regulated services for the sector if the instrument were made;
- d) the likely consequences (including benefits and risks) resulting from making the instrument;
- 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 requires to be executive accountability.¹⁰

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

⁷ [Treasury \(November 2024\), 'Scams – Mandatory Industry Codes Consultation paper'](#), page 8.

⁸ [Exposure draft - Treasury Laws Amendment Bill 2024: Scams Prevention Framework](#), Section 51 (xiv).

⁹ Exposure draft (n 8), Section 58AE.

¹⁰ [ASIC Regulatory Guide \(RG\) \(279\), Financial Accountability Regime: Information for accountable entities'](#).

Specific Consultation Questions

Does the draft legislation effectively achieve the policy objectives set out in this document?

As noted in the consultation summary, the proposed SPF, depending on the nature of the regulated sector, would represent a significant uplift and change, requiring it to be introduced in a phased and proportionate manner.¹¹

The insurance industry's existing system and controls will differ to the identified regulated sectors given the nature of insurance business and existing regulatory requirements, such as the regulation of scam activities under the FAR mentioned above.

The requirements underlying Principle 3, which requires regulated entities to detect scams, Principle 4 requiring scam reports, and Principle 5 on disrupting scams could require more significant uplift, dependent on the nature of the sector, such as within administrative processes, data collection, technology and resources.

In relation to Principle 5, further detail and guidance will be required on the extent of 'actionable scam intelligence' that can be shared with consumers and any implications this may have on privacy requirements.¹²

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.

Does the draft legislation include an appropriate level of detail, noting subordinate legislation can provide more prescriptive obligations?

The proposed SPF should be flexible and responsive to future changes in the scams ecosystem. It is appropriate for the draft legislation to be principles based and scalable to allow the sector-specific Codes to provide further detail and prescription which is 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'. This is not defined in the 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 customer base, and the specific types of scam risk they faced may be relevant to the steps that are reasonable for a regulated entity to take.'¹³

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'.¹⁴

Regulated entities will require further guidance on the 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.

¹¹ [Treasury, September 2024, 'Scams Prevention Framework – Summary of reforms'](#), page 4.

¹² [Explanatory materials - Treasury Laws Amendment Bill 2024: Scams Prevention Framework](#), pages 36-38, Section 1.170-1.171.

¹³ Explanatory materials (n 12), Section 1.105.

¹⁴ Explanatory materials (n 12), page 8, Section 1.25.

While it is appropriate that the proposed sector-specific Codes outline in more detail and provide guidance around reasonable steps, any standardisation and defined terms within sector-specific Codes, where possible, will be helpful to enhance coordination and information sharing.

Will you face any practical challenges in implementing the obligations in the draft legislation?

It will be important to ensure that the sector-specific Codes do not duplicate regulatory requirements, such as reporting obligations or the FAR noted above, and aligns 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 provisions and has 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 58BZ(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.

What would be an appropriate transition period to enable you to implement these changes?

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. Additionally, as identified by Treasury, it is appropriate to consider phased transition arrangements for the penalty provisions across the framework.¹⁶

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 on an appropriate transitional timeframe.

Conclusion

Thank you for the opportunity to provide a submission. If you have any questions or comments in relation to our submission, please contact Leisha Watson, Director Regulatory Policy, at lwatson@insurancecouncil.com.au.

Yours sincerely,



Kylie Macfarlane
Chief Operating Officer

¹⁵ Exposure draft (n 8), Section 58BZ.

¹⁶ Summary of reforms (n 11), page 8.