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

By submission:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/ScamsPrevention
[on](#)

RE: Scams Prevention Framework Bill 2024

INTRODUCTION

The Internet Association of Australia Ltd (**IAA**) thanks the Senate Standing Committees on Economics (**Committee**) for the opportunity to respond to its inquiry into the proposed Scams Prevention Framework Bill 2024 (**Bill**).

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet service providers (**ISPs**), many of whom also provide other telephony services, and are therefore already subject to anti-scam regulation that applies to the telecommunications sector. This response to the consultation is primarily in representation of those members, as well as generally for the public good of the telecommunications sector. Further, as a not-for-profit association, we are also deeply interested in the impact of the Bill for the Australian economy and public.

IAA and our members are deeply concerned about increasing scam activity in Australia and its devastating impact on Australians and our broader economy. We therefore support legislative action that will help prevent scams, and believe that all Australians, including the telecommunications sector should take steps to protect consumers and businesses from scam activity. However, we equally believe that in order for such legislative efforts to be effective, the legislation itself must be practicable, proportionate and measured. In particular, it is important that legislators and regulators keep in mind the disproportionate burden placed on smaller entities by legislative obligations that at times impede genuine compliance. Thus, we believe that clear and flexible legislation is in the best interest of both entities who seek to comply with their obligations, as well as consumers who struggle in understanding their legal rights and the remedies available to them.

To that end, we are concerned that the Scam Prevention Framework (**SPF**) that would be introduced under the Bill and its principles based rules are too prescriptive and is not suited to be in the overarching framework. We are also concerned about the privacy implications of the Bill which we

believe should be clearer in setting out limitations on disclosure of consumers' personal information.

OUR RESPONSE

INTERNET SERVICE PROVIDERS

Firstly, we are concerned about the broad definition of 'carriage services' that may be designated in accordance with the Bill. Given the definition under the Telecommunications Act, this is likely to include ISPs, many of which may only be in the business of Internet service provision, as distinct from other telephony services like calls and SMS. Given the limited control and visibility ISPs have into the nature of the data facilitated via their services, we take this opportunity to request that the Committee recommends that ISPs be sufficiently carved out from the overarching SPF to prevent unnecessary regulatory burden on these entities.

DUAL REGULATORY FRAMEWORK

Furthermore, although we support the overall policy objectives of the SPF, we are also concerned that it is too prescriptive and will be difficult to comply with. We reiterate our belief that in order for legislation to be effective, it needs to be practicable.

'Reasonable Steps'

As expressed in our response to the Treasury's consultation on the Exposure Draft of the Bill in late 2024, we are particularly concerned it will be difficult for entities to comply with the principles-based obligations under the overarching SPF. Many of the provisions provide that entities must take "reasonable steps", despite the subordinate SPF Codes being yet to be drafted. We understand that it will be the SPF Code which will clarify what may be considered reasonable for each sector, and therefore such broad provisions under the overarching Bill are not practicable for entities to comply with. Moreover, given the application of the overarching Bill across all sectors, not all of the overarching SPF obligations are suitable for certain sectors. However, simultaneously, there are heavy penalties that may apply for potential non-compliance with an unclear obligation, thereby creating an unfairly onerous situation for entities.

This dual-regulatory framework causes undue burden on industry, and especially on smaller entities. For example, proposed section 58BD requires regulated entities to develop and implement procedures and policies regarding its scam prevention activities. However, we assume that what 'reasonable steps' an entity must take to prevent scams under proposed Subdivision C of Division 2 will most likely expand as further obligations are introduced under the SPF Codes, meaning that entities will also then have to update their policies and procedures. Indeed, proposed section 58BH sets out that an SPF Code may prescribe further matters that an entity must include in its policies and procedures. This creates further work for entities as opposed to if this requirement to document its policies and procedures was introduced alongside the sector specific SPF Codes to prevent entities from having to duplicate efforts in revising documents shortly after they are introduced. We especially note the disproportionate burden this places on smaller entities, many of which lack resources to have personnel dedicated to regulatory affairs to keep track of rapidly changing regulation. Often, smaller entities must engage lawyers to develop governance policies. In which case, such an entity will face duplicative costs for initially introducing new governance documents, and then updating the same following the introduction of the SPF Codes.

Enforcement

We are also concerned that this structural framework will give rise to duplicative enforcement penalties. While we appreciate that section 58FM is set out to prevent civil penalty double jeopardy, we are concerned that an entity will still be penalised or face other enforcement actions via other multiple means for the same conduct. Importantly, section 58DB(5) explicitly states that multiple external dispute resolution schemes (**EDR Schemes**) may be authorised. While the Explanatory Memorandum states the intention is to streamline the EDR Schemes singly via the Australian Financial Complaints Authority, this is not reflected in the proposed legislation itself. Rather, the legislation may indeed result in a scenario where entities and SPF consumers are forced to engage through multiple EDR schemes about one issue where there are multiple layers to a complaint, causing undue administrative burden for all involved.

Therefore, we request that the Committee recommends amendment of the Bill so that the SPF only sets out what the overarching principles are, and that the SPF Codes shall prescribe the specific requirements under each of the overarching principles. Alternatively, the Bill should not come into effect until the SPF Codes are in place and guidance material has been developed so entities have a better understanding what “reasonable steps” are expected of them.

In addition, we would urge government to adopt and request the Committee to recommend the adoption of a compliance and enforcement approach that was taken by the Department of Home Affairs in enforcing the reforms to the Security of Critical Infrastructure Act 2018 (**SOCI Act**) from 2022. Following the expansion of the SOCI Act to include new sectors, the government took an educative and awareness raising approach for the first 12 months after the legislation came into effect. Importantly, government did not enforce compliance and enforcement provisions, unless in very serious or egregious circumstances of an entity’s disregard for its obligations. During this period, the Department of Home Affairs also heavily engaged with industry to consult on the reform, including conducting sector-specific forums as part of its educative approach. We believe this has been a very helpful approach that has fostered greater trust between industry and government, and assisted entities with their compliance efforts.

We would strongly urge the Treasury to similarly work with the SPF General Regulator, the ACCC, and the SPF Sector Regulators to engage with industry, and only use enforcement measures in select circumstances for a 12-month period, given the SPF is a significant regulatory reform that will impose many new and complex obligations. Furthermore, as expressed above, we again reiterate that due to the broad and unclear nature of “reasonable steps” that an entity must take under the SPF Principles, at the least, entities should not face penalties for failure to comply with the SPF Principles until the SPF Codes come into effect.

Furthermore, given the disproportionate burdens placed on smaller entities as set out thus far, we request that Committee recommends adopting a phased approach that would allow smaller entities a longer timeframe to comply with the SPF and any applicable SPF Code. For the telecommunications sector, we recommend entities with less than 20,000 services in operation be the threshold, noting this is the threshold used in other regulation affecting the telecommunications sector.

PERSONAL INFORMATION

We are also concerned the privacy implications of the SPF. The current framework is broad in giving the SPF regulators powers to disclose information, including personal information between each other, as well as to the operators of an EDR Scheme (sections 58DE and 58EG). However, the legislation is almost silent on the oversight laws that relate to each recipient's use, secondary disclosure, retention, and destruction of such personal information. We appreciate subsection 58DE(3) attempts to provide certain privacy protections by requiring the SPF regulator to de-identify any personal information with respect to its disclosures to the operator of an EDR Scheme, but this is not sufficient. We believe that the SPF should be clearer and more prescriptive in setting out privacy obligations of each EDR Scheme operator, as well as each SPF regulator. The absence of stringent privacy protections in such a framework is antithetical to the objectives of the legislation, given that much harmful scam activity results from misuse of individual's personal information. It is important that EDR Scheme operators and SPF regulators do not become honeypots of information that could be used to propagate scam activity.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the proposed *Scams Prevention Framework Bill 2024*. We appreciate the work of the Committee in reviewing the Bill, as well as the efforts of the Treasury in developing the Bill thus far. Recognising the importance of having a robust anti-scam framework in Australia, we sincerely look forward to working with the Committee, Treasury, regulators, industry, consumer advocates and other relevant stakeholders to ensure the development of a practical, efficient and effective scam prevention framework in Australia.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Internet Association of Australia