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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment Bill 2024: Scams Prevention Framework

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. |  |  |
| 2. Schedule # | The day after this Act receives the Royal Assent. |  |
| 3. |  |  |

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Schedule #—Amendments

Part 1—Main amendments

Competition and Consumer Act 2010

1 After Part IVE

Insert:

Part IVF—Scams Prevention Framework

Division 1—Preliminary

Subdivision A—Object and simplified outline

58AA Object of this Part

The object of this Part is to establish a framework to protect against scams.

58AB Simplified outline of this Part

The Scams Prevention Framework is a multifaceted approach for protecting Australian consumers from scams. The Framework requires service providers in selected sectors of the economy to take a variety of actions to combat scams relating to their services.

These service providers must comply with the overarching principles of the Framework. These principles are about:

(a) governance arrangements relating to scams; and

(b) preventing, detecting, reporting, disrupting and responding to scams.

Under the Framework, the Minister may make a code (an ***SPF code***) setting out sector‑specific obligations for the service providers in a selected sector of the economy relating to:

(a) governance arrangements relating to scams; and

(b) preventing, detecting, disrupting and responding to scams.

Under the Framework, the Minister may authorise external dispute resolution schemes for participation by these service providers. The operator of such a scheme will be able to determine complaints by consumers about how these service providers respond to scams.

The Commission is to regulate and enforce compliance with the overarching principles of the Framework. Other Commonwealth entities will be selected by the Minister to regulate and enforce compliance with SPF codes.

Subdivision B—Designating sectors subject to the Scams Prevention Framework

58AC *Regulated sectors* subject to the Scams Prevention Framework

(1) The Minister may, by legislative instrument, designate one or more businesses or services to be a ***regulated sector*** of the Australian economy.

Note 1: An individual business or service could be designated, or businesses or services could be designated by class (see subsection 13(3) of the *Legislation Act 2003*).

Note 2: For variation and repeal, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) Without limiting subsection (1), the following classes of businesses or services could be designated:

(a) businesses of banking, other than State banking (within the meaning of paragraph 51(xiii) of the Constitution) not extending beyond the limits of the State concerned;

(b) businesses of insurance, other than State insurance (within the meaning of paragraph 51(xiv) of the Constitution) not extending beyond the limits of the State concerned;

(c) postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution), such as one or more of the following:

(i) carriage services (within the meaning of the *Telecommunications Act 1997*);

(ii) electronic services (within the meaning of the *Online Safety Act 2021*), such as social media services (within the meaning of that Act);

(iii) broadcasting services (within the meaning of the *Broadcasting Services Act 1992*).

Note: This is not an exhaustive list. Similarly, a subset of paragraph (a), (b) or (c) could be designated.

58AD *Regulated entities* for regulated sectors and their *regulated services*

Entities with businesses or services within the banking, insurance or communications constitutional powers

(1) To the extent that a regulated sector includes a business or service covered by paragraph 58AC(2)(a), (b) or (c):

(a) the person who acts in the course of, or in relation to, the carrying on or provision of that business or service is a ***regulated entity*** for the sector; and

(b) that business or service is a ***regulated service*** of the regulated entity for the sector.

Note 1: This subsection extends to a regulated sector consisting of businesses or services that are a subset of paragraph 58AC(2)(a), (b) or (c).

Note 2: Sections 58GA to 58GC extend the meaning of ***person*** for partnerships, unincorporated associations and trusts.

Other entities who may be regulated entities

(2) Otherwise:

(a) the ***regulated entities*** for a regulated sector; and

(b) the ***regulated services*** of each of those regulated entities;

are as set out in the following table:

| Other regulated entities, and their regulated services, for the regulated sector | | |
| --- | --- | --- |
| Item | This person is a *regulated entity*: | for this *regulated service*: |
| 1 | a corporation that acts in the course of, or in relation to, the carrying on or provision of a business or service that is part of the regulated sector | that business or service. |
| 2 | a person to the extent that the person is acting both:  (a) in the course of, or in relation to, the carrying on or provision of a business or service that is part of the regulated sector; and  (b) using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution) | so much of that business or service as relates to the person acting in that way. |
| 3 | a person to the extent that the person is acting both:  (a) in the course of, or in relation to, the carrying on or provision of a business or service that is part of the regulated sector; and  (b) in the course of, or in relation to, a kind of trade or commerce mentioned in subsection (3) | so much of that business or service as relates to the person acting in that way. |

Note 1: For the meaning of ***corporation***, see section 4.

Note 2: Sections 58GA to 58GC extend the meaning of ***person*** for partnerships, unincorporated associations and trusts.

(3) For the purposes of item 3 of the table in subsection (2), the kinds of trade or commerce are as follows:

(a) trade or commerce between Australia and places outside Australia;

(b) trade or commerce among the States;

(c) trade or commerce within a Territory, between a State or Territory or between 2 Territories.

Exceptions

(4) However:

(a) a person is not a ***regulated entity*** for a regulated sector to the extent that an exception prescribed by the SPF rules applies to the person; and

(b) a business or service is not a ***regulated service*** of a person for a regulated sector to the extent that an exception prescribed by the SPF rules applies to the business or service.

Note: A person, business or service may be specified by class (see subsection 13(3) of the *Legislation Act 2003*).

58AE Minister must consider matters before designating a sector

(1) Before making an instrument under subsection 58AC(1) about a sector of the economy, the Minister must consider all of the following:

(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.

Note: For the meaning of ***SPF consumer***, see section 58AH.

(2) A failure to comply with subsection (1) does not invalidate an instrument made under subsection 58AC(1).

58AF Delegation

The Minister may, in writing, delegate the Minister’s power to make an instrument under subsection 58AC(1) to another Minister.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations. For example, section 34A of that Act means that section 58AE of this Act can be satisfied by the delegate.

Subdivision C—Meanings of key terms

58AG Meaning of *scam*

(1) A ***scam*** is a direct or indirect attempt to engage an SPF consumer of a regulated service that:

(a) involves deception (see subsection (2)); and

(b) would, if successful, cause loss or harm including obtaining personal information of, or a benefit (such as a financial benefit) from, the SPF consumer or the SPF consumer’s associates.

(2) The attempt involves deception if the attempt:

(a) deceptively represents something to be (or to be related to) the regulated service; or

(b) deceptively impersonates a regulated entity in connection with the regulated service; or

(c) is an attempt to deceive the SPF consumer into facilitating an action using the regulated service; or

(d) is an attempt to deceive the SPF consumer that is made using the regulated service.

(3) However, the attempt is not a ***scam*** if the attempt is of a kind prescribed by the SPF rules.

58AH Meaning of *SPF consumer*

(1) An ***SPF consumer***, of a regulated service, is:

(a) a natural person who:

(i) is in Australia; or

(ii) is ordinarily resident in Australia; or

(iii) is an Australian citizen or permanent resident; or

(b) a person who carries on a business having:

(i) less than 100 employees; and

(ii) a principal place of business in Australia;

who is a person to whom the regulated service is or may be provided or purportedly provided.

Note: For paragraph (b), sections 58GA to 58GC extend the meaning of ***person*** for partnerships, unincorporated associations and trusts.

(2) Without limiting subsection (1), subsection (1) includes the provision or purported provision of a regulated service:

(a) directly or indirectly to the person; or

(b) whether or not under a contract, arrangement or understanding with the person; or

(c) whether or not the provider of the service knows that the person is covered by paragraph (1)(a) or (b); or

(d) that involves the supply of goods.

(3) However, the person is not an ***SPF consumer*** of the regulated service if a condition prescribed by the SPF rules applies to the person in relation to regulated services of that kind.

(4) Section 4B (about consumers) does not apply to this Part.

58AI Meaning of *actionable scam intelligence*

A regulated entity identifies, or has, ***actionable scam intelligence*** if (and when) there are reasonable grounds for the entity to suspect that a communication, transaction or other activity on, or relating to, a regulated service of the entity is a scam.

Note 1: Whether there are reasonable grounds for such a suspicion is an objective test. Relevant information for this test may include:

(a) information about the mechanism or identifier being used to scam SPF consumers, such as URLs, email addresses, phone numbers, social media profiles, digital wallets and bank account information of the scam promotors; and

(b) information about the suspected scammer; and

(c) information (including complaints) provided by SPF consumers.

Note 2: Gathering and reporting this information will minimise the harm from scams.

Subdivision D—Extension to external Territories and outside of Australia

58AJ Extension to external Territories and outside of Australia

(1) Each of the following provisions (the ***SPF provisions***) extends to every external Territory:

(a) a provision of this Part;

(b) a provision of a legislative instrument made under this Part;

(c) another provision of this Act to the extent that it relates to a provision covered by paragraph (a) or (b);

(d) a provision of the Regulatory Powers Act to the extent that it applies in relation to a provision covered by paragraph (a) or (b).

(2) The SPF provisions extend to acts, omissions, matters and things outside Australia.

Subdivision E—Application to acts done by or in relation to agents etc. of regulated entities

58AK Acts done by or in relation to agents etc. of regulated entities

Conduct of agents etc. of a regulated entity is attributable to the regulated entity

(1) For the purposes of the SPF provisions, section 97 of the Regulatory Powers Act (to the extent that it applies in relation to the SPF provisions) applies to a regulated entity who is not a body corporate in a corresponding way to the way that provision applies to a regulated entity who is a body corporate.

Acts done in relation to an agent of a regulated entity taken to be done in relation to the regulated entity

(2) For the purposes of SPF provisions, if an act is done by a person in relation to another person (the ***agent***) who:

(a) is acting on behalf of a regulated entity; and

(b) is so acting within the scope of the agent’s actual or apparent authority;

the act is taken to have also been done in relation to the regulated entity.

Division 2—Overarching principles of the Scams Prevention Framework

Subdivision A—Preliminary

58BA Simplified outline of this Division

Each regulated entity must comply with the overarching principles of the Scams Prevention Framework.

These principles require each regulated entity to:

(a) have appropriate governance arrangements; and

(b) have appropriate strategies for preventing, detecting, reporting, disrupting and responding to scams.

These requirements are civil penalty provisions. The Commission (in its capacity as the SPF general regulator) will monitor, investigate and enforce compliance with these provisions. Division 6 sets out remedies for non‑compliance with these provisions.

Subdivision B—SPF principle 1: Governance

58BB Simplified outline of this Subdivision

Each regulated entity must develop and implement governance policies, procedures, metrics and targets for combatting scams.

These must be reviewed, and certified by a senior officer of the entity, at least annually.

The entity must publish information about how the entity is protecting its consumers from scams, and about the rights of its consumers in relation to scams.

The entity must keep records and give reports about its compliance with this principle.

The SPF code for the sector may include sector‑specific provisions for this principle.

58BC Developing and implementing governance policies and procedures—civil penalty provision

(1) A regulated entity for a regulated sector contravenes this subsection if the entity fails to do one or more of the following:

(a) document policies and procedures that comply with section 58BD and are about:

(i) preventing, detecting and disrupting scams; and

(ii) responding to scams; and

(iii) reports relating to scams;

relating to the entity’s regulated services for the sector;

(b) implement those policies and procedures;

(c) develop and implement performance metrics and targets that:

(i) are for measuring the effectiveness of those policies and procedures; and

(ii) comply with any requirements for those metrics and targets that are prescribed by the SPF rules.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BD Content of governance policies, procedures, metrics and targets

(1) The entity’s policies and procedures required under paragraph 58BC(1)(a) for the sector must include the steps the entity is taking to:

(a) comply with the SPF provisions; and

(b) identify actionable scam intelligence; and

(c) assess and address the risk of scams relating to the entity’s regulated services for the sector; and

(d) meet performance metrics and targets developed for these policies and procedures; and

(e) meet any other requirements for those policies and procedures that are prescribed by the SPF rules.

(2) The entity’s policies and procedures required under paragraph 58BC(1)(a) must be developed by reference to factors including:

(a) the risk of scams faced by the entity for the sector based on the size and capability of the entity’s regulated services for the sector; and

(b) the kinds of SPF consumers of those regulated services; and

(c) how those regulated services are provided and delivered; and

(d) scams in the sector and in the wider Australian economy; and

(e) shifts in scams; and

(f) any other factors for those policies and procedures that are prescribed by the SPF rules.

58BE Annual certification about SPF governance policies, procedures, metrics and targets—civil penalty provision

(1) A regulated entity for a regulated sector contravenes this subsection if no senior officer of the entity certifies in writing, within 7 days after the start of each financial year, whether the entity’s SPF governance policies, procedures, metrics and targets:

(a) for the sector; and

(b) for the financial year;

comply with this Subdivision.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BF Publishing information about protecting SPF consumers from scams—civil penalty provision

(1) A regulated entity contravenes this subsection if the entity fails to ensure that information about the following is publicly accessible:

(a) the measures the entity has in place to protect SPF consumers of the entity’s regulated services from scams;

(b) the rights of those consumers in relation to such scams, including about making complaints.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

(3) Subsection (1) does not require the regulated entity to make publicly accessible all of the entity’s SPF governance policies, procedures, metrics and targets for the relevant regulated sector.

58BG Record keeping of compliance with SPF provisions—civil penalty provision

(1) A regulated entity for a regulated sector contravenes this subsection if the entity fails to keep records relating to each of the following activities for at least 6 years after that activity happens:

(a) the initial development, and each redevelopment, of the entity’s SPF governance policies, procedures, metrics and targets for the sector;

(b) the initial implementation, and each reimplementation, of those SPF governance policies, procedures, metrics and targets;

(c) each consideration (including certification) by one of the entity’s senior officers of those SPF governance policies, procedures, metrics and targets, including in relation to their development, implementation and review;

(d) each risk assessment the entity conducts, or other step the entity takes, that is of a kind referred to in paragraph 58BD(1)(c) (about steps to assess and address the risk of scams);

(e) any other activities that are prescribed by the SPF rules.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BH Reporting about compliance with this Subdivision—civil penalty provision

(1) A regulated entity for a regulated sector contravenes this subsection if:

(a) the SPF general regulator, or the SPF sector regulator for the sector, gives the entity a written request for a copy of:

(i) the entity’s SPF governance policies, procedures, metrics and targets for the sector; or

(ii) specified kinds of other records required by this Subdivision to be kept for the sector by the entity; and

(b) the entity fails to comply with the request within 5 business days after the day the entity is given the request.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

Subdivision C—SPF principle 2: Prevent

58BI Simplified outline of this Subdivision

Each regulated entity for a regulated sector must take reasonable steps to prevent scams. This includes:

(a) making resources accessible to its consumers to assist these consumers to identify scams and to minimise the risk of harm from scams; and

(b) identifying its consumers that have a higher risk of being targeted by a scam, and providing warnings to those consumers.

The SPF code for the sector may include sector‑specific provisions for this principle.

58BJ Taking reasonable steps to prevent scams from being committed—civil penalty provision

(1) A regulated entity contravenes this subsection if the entity fails to take reasonable steps to prevent another person from committing a scam relating to a regulated service of the entity.

Note: Sections 58GA to 58GC extend the meaning of ***person*** for partnerships, unincorporated associations and trusts.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BK Giving resources and warnings to SPF consumers—civil penalty provision

Making resources about scams accessible to SPF consumers

(1) A regulated entity contravenes this subsection if the entity fails to make relevant resources (including information) accessible to the SPF consumers of a regulated service of the entity in order to assist those consumers to:

(a) identify scams relating to the regulated service; and

(b) minimise the risk of those consumers becoming victims of such scams.

Identifying and warning higher‑risk SPF consumers

(2) A regulated entity contravenes this subsection if the entity fails to take reasonable steps to:

(a) identify the classes of SPF consumers (if any) of a regulated service of the entity who have a higher risk of being targeted by a scam relating to the regulated service; or

(b) provide warnings about such a scam to each SPF consumer belonging to such a class.

Civil penalty provisions

(3) Subsections (1) and (2) are civil penalty provisions.

Note: This means subsections (1) and (2) are ***civil penalty provisions of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BL Further detail about certain concepts

(1) Taking reasonable steps for the purposes of subsection 58BJ(1) or 58BK(2) requires more than merely acting on actionable scam intelligence in the form of information provided to the regulated entity by another person.

Further sector‑specific details can be set out in SPF codes

(2) For the purposes of (but without limiting) subsection 58CC(1), the SPF code for a regulated sector may include sector‑specific details about:

(a) what are reasonable steps; or

(b) what are relevant resources; or

(c) identifying the classes of SPF consumers who have a higher risk of being targeted by a scam;

for the purposes of this Subdivision.

Subdivision D—SPF principle 3: Detect

58BM Simplified outline of this Subdivision

Each regulated entity for a regulated sector must take reasonable steps to detect scams. This includes identifying, in a timely way, its consumers that are or could be impacted by a scam.

The SPF code for the sector may include sector‑specific provisions for this principle.

58BN Taking reasonable steps to detect scams—civil penalty provision

(1) A regulated entity contravenes this subsection if the entity fails to take reasonable steps to detect a scam relating to a regulated service of the entity.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

(3) Without limiting subsection (1), the regulated entity fails to take reasonable steps to detect a scam relating to a regulated service of the entity if the entity fails to take reasonable steps to:

(a) detect such a scam as it happens; or

(b) detect such a scam after it happens; or

(c) identify:

(i) SPF consumers of the regulated service who have been impacted by such a scam; and

(ii) the nature of that impact.

Note: For further details about the meaning of reasonable steps, see section 58BP.

58BO Identifying impacted SPF consumers in a timely way—civil penalty provision

(1) A regulated entity contravenes this subsection if the entity:

(a) has actionable scam intelligence about a suspected scam relating to a regulated service of the entity; and

(b) fails to take reasonable steps within a reasonable time to identify each SPF consumer of that service who is or could be impacted by the suspected scam.

Note: For details about the meaning of reasonable steps and a reasonable time, see section 58BP.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BP Sector‑specific details can be set out in SPF codes

For the purposes of (but without limiting) subsection 58CC(1), the SPF code for a regulated sector may include sector‑specific details about:

(a) what are reasonable steps; or

(b) what is a reasonable time;

for the purposes of this Subdivision.

Subdivision E—SPF principle 4: Report

58BQ Simplified outline of this Subdivision

Each regulated entity must give the SPF general regulator reports of any actionable intelligence the entity has about suspected scams relating to the entity’s regulated services.

A regulated entity must give an SPF regulator a report about a scam if the SPF regulator requests.

The SPF general regulator may disclose information about scams to other entities if the SPF general regulator believes that doing so will assist in achieving the object of this Part.

58BR Reporting information to SPF regulators—civil penalty provisions

Reports of actionable scam intelligence

(1) A regulated entity contravenes this subsection if the entity fails to give the SPF general regulator, in accordance with subsection 58BS(1), a report of actionable scam intelligence the entity has about a suspected scam relating to a regulated service of the entity.

Scam reports

(2) A regulated entity for a regulated sector contravenes this subsection if the entity fails to give a scam report for the sector to an SPF regulator in accordance with:

(a) a written request from that regulator; and

(b) subsection 58BS(1).

Civil penalty provisions

(3) Subsections (1) and (2) are civil penalty provisions.

Note: This means these subsections are ***civil penalty provisions of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BS Timing, contents and form of reports to SPF regulators

(1) For the purposes of subsection 58BR(1) or (2), a report:

(a) is to be so given:

(i) within the period prescribed by the SPF rules for reports of that kind; or

(ii) if no such period is prescribed—as soon as reasonably practicable; and

(b) is to contain the information, and be in the form, approved under subsection (2) of this section for reports of that kind.

(2) The SPF general regulator may, by notifiable instrument, approve:

(a) the kinds of information to be included in a report of a kind referred to in subsection 58BR(1) or (2); and

(b) the form in which such a report is to be given under that subsection.

Note 1: For paragraph (a), approved kinds of information for a report of actionable scam intelligence could include the sources or evidence that the entity has for that intelligence (see section 58AI).

Note 2: For paragraph (a), approved kinds of information for a scam report could include details (including evidence) of the following:

(a) de‑identified demographical information about the impacted SPF consumer;

(b) the date of the scam;

(c) the SPF consumer’s description of the scam;

(d) the details of the method of contact used by the scam;

(e) the kind of scam;

(f) the form of loss or harm caused by the scam.

Note 3: For paragraph (b), the SPF general regulator could approve giving the report via access to a website or portal, or through an approved third party.

(3) A kind of information approved under paragraph (2)(a) could include the personal information of any of the following:

(a) a person reasonably suspected of committing a scam, or being knowingly involved in the commission of a scam;

(b) an SPF consumer who was engaged (or was attempted to be engaged) as part of a scam;

(c) a person who reports a scam on behalf of an SPF consumer;

(d) a person who a scam deceptively impersonates in connection with a regulated service.

Note: Personal information includes, for example, a person’s name, email address, phone number, bank account details or credit card details.

(4) If:

(a) a regulated entity gives a scam report to an SPF regulator in accordance with subsection 58BR(2); and

(b) another SPF regulator later requests a scam report from the regulated entity about the same matters;

then, despite paragraph (1)(b) of this section, the later scam report need only state that an earlier scam report about those matters was given to the first‑mentioned SPF regulator on a specified date and time.

Note: The SPF regulators can share the earlier scam report under Subdivision C of Division 5.

58BT Relationship with other duties and obligations

A duty of confidence owed under an agreement or arrangement is of no effect to the extent that it is contrary to subsection 58BR(1) or (2).

Note: Each of subsections 58BR(1) and (2) is also a requirement by law to disclose the information contained in the report referred to in that subsection. So, complying with that subsection can be a defence to a secrecy provision such as section 276 of the *Telecommunications Act 1997* (see paragraph 280(1)(b) of that Act).

58BU SPF general regulator may share certain information with relevant persons

(1) The SPF general regulator may disclose information about either of the following actions (a ***scamming action***):

(a) a scam (as defined in section 58AG);

(b) a scam (within the ordinary meaning of that expression);

to another person if the SPF general regulator reasonably believes that doing so will assist in achieving the object of this Part.

Note: Sections 58GA to 58GC extend the meaning of ***person*** for partnerships, unincorporated associations and trusts.

(2) Without limiting subsection (1), a disclosure to another person includes:

(a) disclosing information from a report of actionable scam intelligence given by a regulated entity; or

(b) disclosing to an SPF sector regulator information about a scamming action; or

(c) disclosing information about a scamming action to agencies of the Commonwealth involved in developing or administering Government policy relating to this Part; or

(d) disclosing information about a scamming action to a law enforcement agency of the Commonwealth, or of a State or Territory to assist that agency to respond to that scamming action; or

(e) disclosing to another person information about a scamming action to assist that other person to disrupt similar actions.

Note: Assume a telecommunications provider hosts a telephone number used to commit a scamming action via a text message. Paragraph (e) confirms that the SPF general regulator could disclose intelligence about the scamming action to the telecommunications provider to enable the provider to disrupt scamming actions using that number.

(3) Despite subsection (1), the SPF general regulator must not make a disclosure under that subsection if it reasonably believes that:

(a) the disclosure risks prejudicing or compromising an ongoing investigation by a law enforcement agency; or

(b) the disclosure:

(i) is of a kind described in paragraph (2)(e) where the other person is not a regulated entity; and

(ii) is of personal information.

Subdivision F—SPF principle 5: Disrupt

58BV Simplified outline of this Subdivision

Each regulated entity for a regulated sector must take reasonable steps to disrupt scams and prevent losses from scams.

If the entity has actionable intelligence about a suspected scam, the entity must:

(a) disclose sufficient information to its consumers to enable them to act in relation to the suspected scam; and

(b) share that intelligence with the SPF general regulator.

The entity is not liable for damages etc. in taking certain actions to disrupt a suspected scam.

The SPF code for the sector may include sector‑specific provisions for this principle.

58BW Taking reasonable steps to disrupt scams—civil penalty provision

(1) A regulated entity contravenes this subsection if the entity fails to take reasonable steps within a reasonable time to:

(a) disrupt a scam, or suspected scam, relating to actionable scam intelligence that the entity has; or

(b) prevent loss or harm (including further loss or harm) arising from such a scam or suspected scam.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

(3) For the purposes of subsection (1), the steps taken should be proportionate to the actionable scam intelligence that the entity has.

Note 1: For example, if a bank has received a substantial number of similar reports of suspected scams, it may be appropriate to pause or delay authorised push payments while the bank investigates the suspected scams.

Note 2: For further details about the meaning of reasonable steps, see section 58BY.

58BX Sharing information about scams—civil penalty provision

Sharing with impacted SPF consumers

(1) A regulated entity contravenes this subsection if the entity:

(a) has actionable scam intelligence about a suspected scam relating to a regulated service of the entity; and

(b) fails to take reasonable steps within a reasonable time to disclose to SPF consumers of the regulated service sufficient information to enable those consumers to act in relation to the suspected scam.

Sharing with the SPF general regulator—obligation

(2) A regulated entity contravenes this subsection if the entity:

(a) has actionable scam intelligence about a suspected scam relating to a regulated service of the entity; and

(b) fails to give the SPF general regulator a report that:

(i) complies with subsection (3); and

(ii) deals with the matters set out in subsection (5).

Sharing with the SPF general regulator—timing and form

(3) A report complies with this subsection if the report:

(a) is given to the SPF general regulator within 24 hours after the end of the period referred to in paragraph 58BZ(2)(d) for that intelligence; and

(b) contains the information, and is in the form, approved under subsection (4) of this section.

(4) The SPF general regulator may, by notifiable instrument, approve:

(a) the kinds of information to be included in a report of a kind referred to in paragraph (2)(b); and

(b) the form in which such a report is to be given under subsection (2).

Sharing with the SPF general regulator—content of report

(5) For the purposes of subparagraph (2)(b)(ii), a report must:

(a) advise whether the entity reasonably believes that the activity that is the subject of the intelligence referred to in paragraph (2)(a) is a scam; and

(b) if the entity reasonably believes that the activity is a scam—set out:

(i) what loss or harm may have resulted from the scam, what disruptive actions the entity has taken and whether any of those actions have been reversed; and

(ii) what steps the entity is taking to disrupt similar scams, and to prevent loss or harm resulting from similar scams; and

(c) if the entity reasonably believes that the activity is not a scam—set out what disruptive actions the entity has taken and whether any of those actions have been reversed.

Civil penalty provisions

(6) Subsections (1) and (2) are civil penalty provisions.

Note: This means subsections (1) and (2) are ***civil penalty provisions of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BY Sector‑specific details can be set out in SPF codes

For the purposes of (but without limiting) subsection 58CC(1), the SPF code for a regulated sector may include sector‑specific details about:

(a) what are reasonable steps; or

(b) what is a reasonable time;

for the purposes of this Subdivision.

58BZ Safe harbour for taking actions to disrupt an activity while investigating whether the activity is a scam

(1) This section applies to a regulated entity if the entity has actionable scam intelligence about a suspected scam relating to a regulated service of the entity.

(2) The regulated entity is not liable in a civil action or civil proceeding for taking action to disrupt an activity that is the subject of that intelligence if the action:

(a) is taken in good faith; and

(b) is taken in compliance with the SPF provisions; and

(c) is reasonably proportionate to the suspected scam, and to information that would reasonably be expected to be available to the entity about the suspected scam; and

(d) is taken during the period:

(i) starting on the day that the intelligence becomes actionable scam intelligence for the entity; and

(ii) ending when the entity identifies whether or not the activity is a scam, or after 28 days, whichever is the earlier; and

(e) is promptly reversed if:

(i) the entity identifies that the activity is not a scam; and

(ii) it is reasonably practicable to reverse the action.

Note: Assume the regulated entity temporarily blocks an SPF consumer’s website while investigating whether an activity relating to the website is a scam. This subsection protects the regulated entity from civil actions brought by the consumer when the regulated entity is acting appropriately.

Subdivision G—SPF principle 6: Respond

58BZA Simplified outline of this Subdivision

Each regulated entity for a regulated sector must have an accessible mechanism for its consumers to report scams.

Each regulated entity for a regulated sector must have an accessible and transparent internal dispute resolution mechanism for its consumers to complain about:

(a) scams; or

(b) the entity’s conduct relating to scams.

The entity must become a member of an authorised external dispute resolution scheme for dealing with complaints about scams, if the entity provides services regulated by the Scams Prevention Framework.

The SPF code for the sector may include sector‑specific provisions for this principle.

58BZB Enabling SPF consumers to easily report scams—civil penalty provision

(1) A regulated entity contravenes this subsection if the entity does not have an accessible mechanism for SPF consumers of the entity’s regulated services to report scams relating to those services to the entity.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BZC Having an accessible and transparent internal dispute resolution mechanism—civil penalty provision

(1) A regulated entity contravenes this subsection if the entity does not have an accessible and transparent internal dispute resolution mechanism for SPF consumers of the entity’s regulated services to complain about:

(a) scams relating to those services; and

(b) the entity’s conduct relating to such scams.

(2) Subsection (1) is a civil penalty provision.

Note: This means subsection (1) is a ***civil penalty provision of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BZD SPF external dispute resolution schemes—civil penalty provisions

Regulated entity should not provide a regulated service if the entity is not a member of an SPF EDR scheme

(1) A regulated entity for a regulated sector contravenes this subsection if the entity:

(a) provides a regulated service for the sector that has one or more SPF consumers; and

(b) is not a member of an SPF EDR scheme for the sector.

Regulated entity that is a member of an SPF EDR scheme must comply with related obligations in an SPF code

(2) A regulated entity for a regulated sector contravenes this subsection if the entity:

(a) is a member of an SPF EDR scheme for the sector; and

(b) fails to comply with an obligation in the SPF code for the sector that relates to the scheme.

Civil penalty provisions

(3) Subsections (1) and (2) are civil penalty provisions.

Note: This means these subsections are ***civil penalty provisions of an SPF principle*** for the purposes of section 58FG (about civil penalties).

58BZE Sector‑specific details can be set out in SPF codes

For the purposes of (but without limiting) subsection 58CC(1), the SPF code for a regulated sector may include sector‑specific details about:

(a) conditions that must be met for a reporting mechanism for the purposes of this Subdivision; or

(b) conditions that must be met for an internal dispute resolution mechanism for the purposes of this Subdivision; or

(c) obligations that must be met in relation to an SPF EDR scheme for the sector by a regulated entity for the sector that is a member of the scheme.

Division 3—Sector‑specific codes for the Scams Prevention Framework

58CA Simplified outline of this Division

The Minister may make a code for each regulated sector.

Each code is to include sector‑specific provisions for the following overarching principles of the Scams Prevention Framework (see Subdivisions B, C, D, F and G of Division 2):

(a) SPF principle 1—governance;

(b) SPF principle 2—prevent;

(c) SPF principle 3—detect;

(d) SPF principle 5—disrupt;

(e) SPF principle 6—respond.

Obligations in a code are civil penalty provisions. The relevant SPF sector regulator will monitor, investigate and enforce compliance with these provisions. Division 6 sets out remedies for non‑compliance with these provisions.

58CB Sector‑specific codes (SPF codes)

The Minister may, by legislative instrument, make a code (an ***SPF code***) for a regulated sector.

58CC Content of SPF codes

Main rule about the content of SPF codes

(1) An SPF code must:

(a) be consistent with the SPF principles; and

(b) deal with only:

(i) the themes or matters covered by Subdivisions B, C, D, F and G of Division 2; and

(ii) ancillary or incidental matters; and

(c) subject to paragraphs (a) and (b), include provisions about matters of a kind (if any) prescribed by the SPF rules.

Ancillary or incidental matters in SPF codes

(2) Without limiting subparagraph (1)(b)(ii), an SPF code for a regulated sector may include the following:

(a) provisions dealing with only certain kinds of regulated services included in the sector;

(b) provisions dealing with the circumstances in which entities are, or may be, relieved from complying with requirements in the SPF code that would otherwise apply to them;

(c) a provision that:

(i) confers powers on the SPF sector regulator for the sector or on another person; or

(ii) depends on the SPF sector regulator for the sector, or another person, being satisfied of one or more specified matters;

(d) provisions for the making of applications for internal review, or of applications to the Administrative Review Tribunal for review, of decisions of a person under the SPF code;

(e) provisions about the manner or form in which persons or bodies:

(i) may exercise powers under the SPF code; or

(ii) must comply with requirements imposed by the SPF code;

which could include requiring the use of a form approved by the SPF sector regulator for the sector or by the SPF general regulator;

(f) provisions about the following matters:

(i) whether a regulated entity for the regulated sector may charge (or cause to be charged) a fee for a matter covered by the SPF code;

(ii) the manner in which such a fee may be charged;

(iii) the time for paying such a fee;

(iv) giving notice of, or publicising, such a fee or matters about such a fee;

(g) provisions requiring agents of a regulated entity for a regulated sector to do or not to do specified things when acting on behalf of the regulated entity and within the scope of the agent’s actual or apparent authority;

(h) provisions about any other matters that the provisions of this Part provide may be specified, or otherwise dealt with, in the SPF code.

Civil penalty provisions of the SPF code

(3) An SPF code may provide that specified provisions of the SPF code are civil penalty provisions (within the meaning of the Regulatory Powers Act).

Note: Division 6 of this Part deals with enforcing the civil penalty provisions.

Adopting matters in instruments as in force from time to time etc.

(4) An SPF code may make provision in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in any other instrument or writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(5) Subsection (4) has effect despite subsection 14(2) of the *Legislation Act 2003*.

58CD Delegation

The Minister may, in writing, delegate the Minister’s power under section 58CB to make a code for a regulated sector to:

(a) another Minister; or

(b) the Commission; or

(c) the entity that is, or is to be, the SPF sector regulator for the sector.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

Division 4—External dispute resolution for the Scams Prevention Framework

58DA Simplified outline of this Division

One or more external dispute resolution schemes may be authorised for dealing with consumer complaints about scams relating to regulated services.

An existing scheme like the AFCA scheme could be authorised for this purpose, or new schemes could be developed and authorised.

58DB Minister may authorise external dispute resolution schemes for a regulated sector

(1) The Minister may, by legislative instrument, authorise an external dispute resolution scheme (an ***SPF EDR scheme***) for the purposes of this Part and one or more regulated sectors if:

(a) the scheme is already authorised under a Commonwealth law for another purpose; or

(b) the Minister is satisfied that the requirements prescribed by the SPF rules for the purposes of subsection 58DC(1) are met for the scheme.

Note 1: For paragraph (a), the Minister could, for example, authorise the AFCA scheme (within the meaning of the *Corporations Act 2001*) to apply for the purposes of this Part and a regulated sector.

Note 2: If that happens, ASIC’s functions and powers under the AFCA scheme (for example, under section 1052A of that Act) will also apply for the purposes of this Part and the regulated sector.

(2) The instrument may, if paragraph (1)(a) applies, make the authorisation of the scheme subject to specified conditions.

(3) The instrument must set out the scheme if paragraph (1)(b) applies to the scheme.

(4) More than one scheme may be authorised under subsection (1).

58DC Content, including requirements, of a scheme that is not already authorised under a Commonwealth law

(1) The SPF rules may prescribe the following requirements for a scheme for which paragraph 58DB(1)(b) applies:

(a) organisational requirements for membership of the scheme;

(b) requirements for the operator (the ***operator***) of the scheme;

(c) requirements for how the scheme is to operate;

(d) requirements to be complied with by members of the scheme;

(e) requirements for making changes to the scheme.

(2) A scheme for which paragraph 58DB(1)(b) applies may also include provisions dealing with the following:

(a) powers of one or more of the following under the scheme:

(i) the Minister;

(ii) an SPF regulator;

(iii) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);

(b) powers of the operator under the scheme, including powers to:

(i) seek information; and

(ii) make determinations of complaints; and

(ii) make determinations imposing financial and non‑financial remedies; and

(c) appeals to the Federal Court from such determinations by the operator;

(d) information sharing and reporting;

(e) a provision that depends on the operator or another person being satisfied of one or more specified matters;

(f) provisions about the following matters:

(i) the manner in which the operator may charge (or cause to be charged) a fee under the scheme;

(ii) the time for paying such a fee;

(iii) giving notice of, or publicising, such a fee or matters about such a fee;

(g) provisions about any other matters that the provisions of this Part provide may be specified, or otherwise dealt with, in the scheme.

58DD Scheme operator to report to SPF regulators

Referring contraventions, failures and systemic issues

(1) If the operator of an SPF EDR scheme for a regulated sector becomes aware that:

(a) a serious contravention of any law may have occurred in connection with a complaint under the scheme; or

(b) a party to a complaint under the scheme may have failed to give effect to a determination by the operator relating to the complaint; or

(c) there is a systemic issue arising from the consideration of complaints under the scheme;

the operator must give particulars of the contravention, failure or issue to the SPF general regulator and to the SPF sector regulator for the sector.

Referring settled complaints

(2) If:

(a) the parties to a complaint made under an SPF EDR scheme for a regulated sector agree to a settlement of the complaint; and

(b) the operator of the scheme thinks the settlement may require investigation;

the operator may give particulars of the settlement to the SPF general regulator and to the SPF sector regulator for the sector.

58DE Disclosing information to the operator of an SPF EDR scheme

The SPF general regulator, or the SPF sector regulator for a regulated sector, may disclose information to the operator of an SPF EDR scheme for the sector for the purposes of enabling or assisting the operator to perform any of the operator’s functions or powers.

Division 5—Regulating the Scams Prevention Framework

Subdivision A—Preliminary

58EA Simplified outline of this Division

The Commission is the regulator (the ***SPF general regulator***) of most aspects of the Scams Prevention Framework, in particular of the overarching principles of the Framework.

Other Commonwealth entities may be selected to be regulators (***SPF sector regulators***) of each of the SPF codes.

The SPF general regulator must enter into arrangements with the SPF sector regulators about the regulation and enforcement of the Framework. These regulators may disclose relevant information and documents to each other for this purpose.

Subdivision B—Regulators of the Scams Prevention Framework

58EB General regulator of the Scams Prevention Framework

(1) The Commission is the ***SPF general regulator*** for all SPF provisions apart from the provisions of SPF codes.

(2) The functions and powers of the SPF general regulator include:

(a) the function of reviewing, and advising the Minister about, the operation of the SPF provisions; and

(b) the Commission’s functions and powers under section 155 to the extent that section 155 relates to:

(i) the SPF provisions; or

(ii) a designated scams prevention framework matter (within the meaning of that section); and

(c) the functions and powers of the SPF general regulator conferred by any other SPF provisions.

Note: Paragraph (c) includes the SPF general regulator’s powers under the Regulatory Powers Act that are referred to in Division 6.

58EC Delegation of the SPF general regulator’s functions and powers

(1) The Commission may, by resolution, delegate any of:

(a) the Commission’s functions and powers (as the SPF general regulator) under an SPF provision; or

(b) the Commission’s functions and powers under section 155 as described in paragraph 58EB(2)(b);

to an SPF sector regulator, or to a member, SES employee or acting SES employee of an SPF sector regulator.

(2) A member of the Commission may, by writing, delegate any of the member’s functions and powers under section 155 to the extent that section 155 relates to:

(a) the SPF provisions; or

(b) a designated scams prevention framework matter (within the meaning of that section);

to an SPF sector regulator, or to a member, SES employee or acting SES employee of an SPF sector regulator.

(3) A delegation must not be made under subsection (1) or (2) unless the SPF sector regulator has agreed to the delegation in writing.

58ED Regulator of a regulated sector

(1) The Minister may, by legislative instrument, designate a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) to be the ***SPF sector regulator*** for a regulated sector.

(2) The Commission is the ***SPF sector regulator*** for a regulated sector if (and while) no instrument under subsection (1) is in force for the sector.

(3) The functions and powers of the SPF sector regulator for a regulated sector include those conferred:

(a) by the SPF code for the sector; or

(b) by any other SPF provisions.

(4) The Minister may, in writing, delegate the Minister’s power under subsection (1) to another Minister.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

58EE Arrangements for regulating the Scams Prevention Framework

(1) The SPF general regulator, and each SPF sector regulator, must enter into an arrangement relating to the regulation and enforcement of the SPF provisions.

(2) The SPF general regulator may choose to comply with subsection (1) by entering into:

(a) a single arrangement with all, or 2 or more, SPF sector regulators; or

(b) a separate arrangement with each SPF sector regulator.

However, subsection (1) does not apply to the extent that the Commission is an SPF sector regulator.

(3) The arrangement must include provisions relating to the matters (if any) prescribed by the SPF rules.

Note: For example, the SPF rules could require an SPF regulator that requests a scam report under subsection 58BS(2) to:

(a) notify each other SPF regulator of the request; and

(b) give a copy of the scam report to any of those other SPF regulators that asks for one.

(4) Each SPF regulator that is a party to such an arrangement must publish the arrangement on its website.

(5) A failure to comply with this section does not invalidate the performance or exercise of a function or power by an SPF regulator.

Subdivision C—Information sharing between SPF regulators

58EF SPF regulators may disclose information to each other

(1) An SPF regulator may disclose to another SPF regulator:

(a) particular information or documents; or

(b) information or documents of a particular kind;

that are in the first‑mentioned SPF regulator’s possession and are relevant to the operation (including enforcement) of the SPF provisions.

(2) An SPF regulator may make a disclosure under subsection (1) on request or on its own initiative.

Note: This section means such a disclosure is permitted by provisions like:

(a) paragraph 155AAA(1)(b); and

(b) section 59DB of the *Australian Communications and Media Authority Act 2005*; and

(c) subsection 127(2) of the *Australian Securities and Investments Commission Act 2001*.

58EG Regard must be had to the object of this Part when considering whether to make such a disclosure

An SPF regulator must have regard to the object of this Part (see section 58AA) when deciding whether to make a disclosure under this Subdivision.

Note: Arrangements made under section 58EE between SPF regulators could deal with when disclosures should be made (see subsection 58EE(3) in particular).

58EH Notice need not be given of such a disclosure or of the use of information or documents so disclosed

An SPF regulator need not notify any person that the SPF regulator:

(a) plans to make a disclosure under this Subdivision; or

(b) has made such a disclosure; or

(c) plans to use information or documents disclosed under this Subdivision; or

(d) has used information or documents so disclosed.

58EI Information that need not be disclosed

Nothing in this Division requires an SPF regulator to disclose information or documents that:

(a) concern the internal administrative functioning of that regulator; or

(b) disclose a matter in respect of which that regulator or any other person has claimed legal professional privilege; or

(c) are of a kind prescribed by the SPF rules.

Division 6—Enforcing the Scams Prevention Framework

Subdivision A—Preliminary

58FA Simplified outline of this Division

The SPF general regulator may obtain information, documents, and evidence relating to possible contraventions of the Scams Prevention Framework (see section 155).

An SPF sector regulator may monitor and investigate compliance with an SPF code either using the powers in Subdivision B or, with the Minister’s permission, powers in its own legislation.

The maximum penalties for contraventions of the civil penalty provisions of the Scams Prevention Framework are set out in Subdivision C.

Other remedies for contraventions of the Framework are set out in later Subdivisions of this Division, and include:

(a) infringement notices; and

(b) enforceable undertakings; and

(c) injunctions; and

(d) actions for damages; and

(e) public warning notices; and

(f) remedial directions; and

(g) adverse publicity orders; and

(h) other punitive and non‑punitive orders.

Some of these remedies may also be available against a person involved in a contravention of the Framework by a regulated entity, such as a senior officer of the regulated entity (for example, see subsections 58FT(1) and 58FZ(1)).

Note: Sections 58GA to 58GC extend the meaning of ***person*** for partnerships, unincorporated associations and trusts.

58FB Appointment of inspectors

(1) An SPF regulator may, in writing, appoint a person who is one of the following to be an ***inspector*** of that regulator for the purposes of this Division:

(a) a person who is an SES employee or acting SES employee of that regulator;

(b) a person who is an APS employee of that regulator who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position;

(c) a member or special member of the Australian Federal Police.

(2) That regulator must not appoint a person as an inspector unless that regulator is satisfied that the person has the knowledge or experience necessary to properly exercise the powers of an inspector.

(3) An inspector must, in exercising powers as such, comply with any directions of that regulator of an administrative character.

58FC Multiple remedies can be sought for a single contravention

Subject to section 58FJ (about civil penalties), a provision of this Division does not limit a court’s powers under any other provision of this Division or the Regulatory Powers Act.

Subdivision B—Monitoring or investigating compliance with an SPF code

58FD Monitoring compliance with an SPF code—default

No alternative monitoring powers declaration in force

(1) This section applies for the SPF code for a regulated sector unless a declaration is in force under subsection 58FF(2) declaring that provisions of a law that includes monitoring powers of the kind mentioned in subparagraph 58FF(1)(a)(i) apply in relation to provisions of the SPF code.

Provisions subject to monitoring

(2) Each civil penalty provision of the SPF code is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether these provisions have been complied with. That Part includes powers of entry and inspection.

Information subject to monitoring

(3) Information given in compliance or purported compliance with the SPF code is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(4) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (2) and the information mentioned in subsection (3):

(a) there are no related provisions; and

(b) an inspector of the SPF sector regulator is an authorised applicant; and

(c) an inspector of the SPF sector regulator is an authorised person; and

(d) a magistrate is an issuing officer; and

(e) the SPF sector regulator is the relevant chief executive; and

(f) each of the following courts is a relevant court:

(i) the Federal Court;

(ii) the Federal Circuit and Family Court of Australia (Division 2);

(iii) a court of a State or Territory that has jurisdiction in relation to the matter.

(5) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (6) to an SES employee, or acting SES employee, of the SPF sector regulator.

(6) The powers and functions that may be delegated are:

(a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (2) and the information mentioned in subsection (3); and

(b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a) of this subsection.

(7) A person exercising powers or performing functions under a delegation under subsection (5) must comply with any directions of the relevant chief executive.

Person assisting

(8) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (2) and the information mentioned in subsection (3).

58FE Investigating compliance with an SPF code—default

No alternative investigation powers declaration in force

(1) This section applies for the SPF code for a regulated sector unless a declaration is in force under subsection 58FF(2) declaring that provisions of a law that includes investigation powers of the kind mentioned in subparagraph 58FF(1)(a)(ii) apply in relation to provisions of the SPF code.

Provisions subject to investigation

(2) Each civil penalty provision of the SPF code is subject to investigation under Part 3 of the Regulatory Powers Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(3) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (2):

(a) there are no related provisions; and

(b) an inspector of the SPF sector regulator is an authorised applicant; and

(c) an inspector of the SPF sector regulator is an authorised person; and

(d) a magistrate is an issuing officer; and

(e) the SPF sector regulator is the relevant chief executive; and

(f) each of the following courts is a relevant court:

(i) the Federal Court;

(ii) the Federal Circuit and Family Court of Australia (Division 2);

(iii) a court of a State or Territory that has jurisdiction in relation to the matter.

(4) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (5) to an SES employee, or acting SES employee, of the SPF sector regulator.

(5) The powers and functions that may be delegated are:

(a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (2); and

(b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

(6) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

Person assisting

(7) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (2).

58FF Monitoring or investigating—Minister may declare that alternative powers apply for an SPF sector regulator

(1) This section applies if provisions of another law (the ***alternative power provisions***):

(a) provide an entity with powers to:

(i) monitor compliance or purported compliance with provisions of a law (the ***alternative regulatory provisions***); or

(ii) investigate provisions of a law (also the ***alternative regulatory provisions***); or

(b) enable the effective operation and enforcement of such powers.

Note: Paragraph (b) covers, for example, a provision making it an offence to fail to appear to answer questions in relation to an investigation.

(2) The Minister may, by legislative instrument, declare that specified alternative power provisions (that relate to a specified entity and specified alternative regulatory provisions) also apply:

(a) to the entity in the entity’s capacity as the SPF sector regulator for a regulated sector; and

(b) in relation to specified provisions of the SPF code for the sector in a corresponding way to the way the alternative power provisions apply in relation to the alternative regulatory provisions.

(3) An instrument made under subsection (2) has effect accordingly.

Subdivision C—Civil penalty provisions

58FG Civil penalty provisions

Enforcing civil penalty provisions

(1) Each of the following is enforceable under Part 4 of the Regulatory Powers Act:

(a) a civil penalty provision of an SPF principle;

(b) a civil penalty provision of an SPF code.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act:

(a) the SPF general regulator is an authorised applicant in relation to each civil penalty provision of an SPF principle; and

(b) the SPF sector regulator for a regulated sector is an authorised applicant in relation to each civil penalty provision of the SPF code for the sector.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to each provision referred to in subsection (1):

(a) the Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2);

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

58FH Maximum penalty for tier 1 contraventions

(1) Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty payable by a person:

(a) under an SPF civil penalty order; and

(b) for a contravention of a civil penalty provision of an SPF principle in any of Subdivisions C, D, F or G of Division 2 of this Part;

must not be more than the maximum penalty amount worked out under this section for such a contravention by the person.

Maximum amount of civil penalty for bodies corporate

(2) For the purposes of subsection (1), the maximum penalty amount for such a contravention by a body corporate is the greater of the following:

(a) 159,745 penalty units;

(b) if the relevant court (see subsection 58FG(3)) can determine the total value of the benefit that:

(i) the body corporate; and

(ii) any body corporate related to the body corporate;

have obtained directly or indirectly and that is reasonably attributable to the contravention—3 times that total value;

(c) if that court cannot determine that total value—30% of the adjusted turnover of the body corporate during the breach turnover period for the contravention.

Maximum amount of civil penalty for other persons

(3) For the purposes of subsection (1), the maximum penalty amount for such a contravention by a person other than a body corporate is 7,990 penalty units.

58FI Maximum penalty for tier 2 contraventions

(1) Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty payable by a person:

(a) under an SPF civil penalty order; and

(b) for a contravention of:

(i) a civil penalty provision of an SPF principle in Subdivision B or E of Division 2 of this Part; or

(ii) a civil penalty provision of an SPF code;

must not be more than the maximum penalty amount worked out under this section for such a contravention by the person.

Maximum amount of civil penalty for bodies corporate

(2) For the purposes of subsection (1), the maximum penalty amount for such a contravention by a body corporate is the greater of the following:

(a) 31,950 penalty units;

(b) if the relevant court (see subsection 58FG(3)) can determine the total value of the benefit that:

(i) the body corporate; and

(ii) any body corporate related to the body corporate;

have obtained directly or indirectly and that is reasonably attributable to the contravention—3 times that total value;

(c) if that court cannot determine that total value—10% of the adjusted turnover of the body corporate during the breach turnover period for the contravention.

Maximum amount of civil penalty for other persons

(3) For the purposes of subsection (1), the maximum penalty amount for such a contravention by a person other than a body corporate is 1,600 penalty units.

58FJ Civil penalty double jeopardy

If a person is ordered under an SPF civil penalty order to pay a pecuniary penalty in respect of particular conduct, the person is not liable to:

(a) a pecuniary penalty for contravening another civil penalty provision of an SPF principle or of an SPF code; or

(b) a pecuniary penalty under some other provision of a law of the Commonwealth;

in respect of that conduct.

Note: A court may make other kinds of orders under this Division, for example under section 58FZ (actions for damages), in relation to particular conduct even if the court has made an SPF civil penalty order in relation to that conduct.

Subdivision D—Infringement notices

58FK Purpose and effect of this Subdivision

(1) The purpose of this Subdivision is to provide for the issue of an infringement notice to a person for an alleged contravention of:

(a) a civil penalty provision of an SPF principle in Subdivision B or E of Division 2 of this Part; or

(b) a civil penalty provision of an SPF code;

as an alternative to proceedings for an SPF civil penalty order.

(2) This Subdivision does not:

(a) require an SPF infringement notice to be issued for an alleged contravention of such a civil penalty provision; or

(b) affect a person’s liability to proceedings for an SPF civil penalty order in relation to an alleged contravention of a civil penalty provision if:

(i) an SPF infringement notice is not issued to the person for the contravention; or

(ii) an SPF infringement notice issued to the person for the contravention is withdrawn under section 58FR; or

(c) prevent a court from imposing a higher penalty than the penalty specified in the SPF infringement notice if the person does not comply with the notice.

58FL Issuing an SPF infringement notice

Notices for contraventions of certain SPF principles

(1) If an inspector of the SPF general regulator reasonably believes that a person has contravened a civil penalty provision of an SPF principle in Subdivision B or E of Division 2 of this Part, the inspector may issue a notice (an ***SPF infringement notice***) to the person.

Notices for contraventions of SPF codes

(2) If an inspector of the SPF sector regulator for a regulated sector reasonably believes that a person has contravened a civil penalty provision of the SPF code for the sector, the inspector may issue a notice (an ***SPF infringement notice***) to the person.

Only one notice for each contravention

(3) Inspectors for an SPF regulator must not issue more than one SPF infringement notice to the person for the same alleged contravention of a civil penalty provision.

When notices do not have any effect

(4) An SPF infringement notice does not have any effect if the notice:

(a) is issued more than 12 months after the day that the relevant contravention is alleged to have occurred; or

(b) relates to more than one alleged contravention of a civil penalty provision by the person.

58FM Matters to be included in an SPF infringement notice

An SPF infringement notice must:

(a) be identified by a unique number; and

(b) state the day on which it is issued; and

(c) state the name of the person to whom it is issued; and

(d) state the name of the inspector who issued the notice, that the inspector is an inspector of the applicable SPF regulator, and how that SPF regulator may be contacted; and

(e) give details of the alleged contravention, including:

(i) the day of the alleged contravention; and

(ii) the civil penalty provision that was allegedly contravened; and

(f) state the maximum pecuniary penalty that a court could order the person to pay if the court were to make an SPF civil penalty order for the alleged contravention; and

(g) specify the penalty that is payable in relation to the alleged contravention; and

(h) state that the penalty is payable within the infringement notice compliance period for the notice; and

(i) state that the penalty is payable to the SPF regulator on behalf of the Commonwealth; and

(j) explain how payment of the penalty is to be made; and

(k) explain the effect of sections 58FO to 58FR.

58FN Amount of penalty

The penalty to be specified in an SPF infringement notice that is to be issued to a person must be equal to the following amount:

(a) if the person is a body corporate—60 penalty units;

(b) otherwise—12 penalty units.

58FO Effect of compliance with an SPF infringement notice

(1) This section applies if:

(a) an SPF infringement notice for an alleged contravention of a civil penalty provision is issued to a person; and

(b) the person pays the penalty specified in the notice within the infringement notice compliance period and in accordance with the notice; and

(c) the notice is not withdrawn under section 58FR.

(2) The person is not, merely because of the payment, regarded as having contravened the civil penalty provision.

(3) No proceedings (whether criminal or civil) may be started or continued against the person, by or on behalf of the Commonwealth, in relation to the alleged contravention of the civil penalty provision.

58FP Effect of failure to comply with an SPF infringement notice

If:

(a) an SPF infringement notice for an alleged contravention of a civil penalty provision is issued to a person; and

(b) the person fails to pay the penalty specified in the notice within the infringement notice compliance period and in accordance with the notice; and

(c) the notice is not withdrawn under section 58FR;

the person is liable to proceedings for an SPF civil penalty order in relation to the alleged contravention of the civil penalty provision.

58FQ Infringement notice compliance period for infringement notice

(1) Subject to this section, the ***infringement notice compliance period***, for an SPF infringement notice issued to a person, is the period of 28 days beginning on the day after the day that the notice is so issued by an inspector of an SPF regulator.

(2) The SPF regulator may, by giving written notice to the person, extend that infringement notice compliance period if the SPF regulator is satisfied that it is appropriate to do so.

(3) Only one extension may be given and the extension must not be for longer than 28 days.

(4) A failure to give the person written notice of the extension does not affect the validity of the extension.

(5) If an infringement notice compliance period for an SPF infringement notice is extended under this section, a reference in this Subdivision to the infringement notice compliance period is taken to be a reference to that period as so extended.

Delegation

(6) The SPF regulator may, in writing, delegate the power mentioned in subsection (2) to an SES employee, or acting SES employee, of the SPF sector regulator.

(7) A person exercising a power under a delegation under subsection (6) must comply with any directions of the SPF regulator.

58FR Withdrawal of an infringement notice

Representations to the SPF regulator

(1) A person to whom an SPF infringement notice has been issued:

(a) by an inspector of an SPF regulator; and

(b) for an alleged contravention of a civil penalty provision;

may make written representations to the SPF regulator seeking the withdrawal of the notice.

(2) Evidence or information that:

(a) the person; or

(b) a representative of the person;

gives to the SPF regulator in the course of making representations under subsection (1) is not admissible in evidence against the person or representative in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

Withdrawal by the SPF regulator

(3) If an inspector of an SPF regulator issues an SPF infringement notice to a person, the SPF regulator may, by giving written notice (a ***withdrawal notice***) to the person, withdraw the SPF infringement notice if the SPF regulator is satisfied that it is appropriate to do so.

(4) Subsection (3) applies whether or not the person has made representations seeking the withdrawal.

Content of withdrawal notices

(5) The withdrawal notice must state:

(a) the name and address of the person; and

(b) the day on which the SPF infringement notice was issued to the person; and

(c) that the SPF infringement notice is withdrawn; and

(d) that proceedings for an SPF civil penalty order may be started or continued against the person in relation to the alleged contravention of the civil penalty provision.

Time limit for giving withdrawal notices

(6) To be effective, the withdrawal notice must be given to the person within the infringement notice compliance period for the SPF infringement notice.

Refunds

(7) If an SPF regulator withdraws an SPF infringement notice given to a person after the person has paid the penalty specified in the SPF infringement notice, the SPF regulator must refund to the person an amount equal to the amount paid.

Delegation

(8) An SPF regulator may, in writing, delegate the power mentioned in subsection (3) to an SES employee, or acting SES employee, of the SPF sector regulator.

(9) A person exercising a power under a delegation under subsection (8) must comply with any directions of the SPF regulator.

Subdivision E—Enforceable undertakings

58FS Enforceable undertakings

Accepting an undertaking

(1) The SPF general regulator may accept a written undertaking given by a person for the purposes of this section in connection with compliance with a provision of the SPF principles.

(2) The SPF sector regulator for a regulated sector may accept a written undertaking given by a person for the purposes of this section in connection with compliance with a provision of the SPF code for the sector.

Withdrawing or varying the undertaking

(3) The person who gave the undertaking may withdraw or vary it at any time, but only with the consent of the SPF regulator who accepted it.

Orders for enforcing the undertaking

(4) If an SPF regulator considers that the person who gave the SPF regulator an undertaking has breached any of its terms, the SPF regulator may apply to the Court for an order under subsection (5).

(5) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

Definitions

(6) In this section:

***Court***, in relation to a matter, means any court having jurisdiction in the matter.

Subdivision F—Injunctions

58FT Granting injunctions

(1) The Court may, on application, grant an injunction in such terms as the Court considers appropriate if the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

(a) a contravention of:

(i) a civil penalty provision of an SPF principle; or

(ii) a civil penalty provision of an SPF code; or

(b) attempting to contravene such a provision; or

(c) aiding, abetting, counselling or procuring a person to contravene such a provision; or

(d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or

(f) conspiring with others to contravene such a provision.

(2) In this Subdivision:

***Court***, in relation to a matter, means any court having jurisdiction in the matter.

58FU Particular kinds of injunctions

(1) The Court may grant an injunction under section 58FT restraining a person from engaging in conduct:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first‑mentioned person engages in conduct of that kind.

(2) The Court may grant an injunction under section 58FT requiring a person to do an act or thing:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first‑mentioned person refuses or fails to do that act or thing.

(3) The Court may grant an injunction under section 58FT by consent of all the parties to the proceedings whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in that section.

58FV Interim injunctions

The Court may, if in the opinion of the Court it is desirable to do so, grant an interim injunction pending determination of an application for an injunction under section 58FT.

58FW Rescinding or varying injunctions

The Court may rescind or vary an injunction granted under this Subdivision.

58FX Applying for injunctions

(1) An application for an injunction under this Subdivision may be made by an SPF regulator or any other person.

(2) If an SPF regulator applies for such an injunction, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(3) If:

(a) a person other than an SPF regulator:

(i) applies for such an injunction; and

(ii) apart from this subsection, would be required by the Court to give an undertaking as to damages or costs; and

(b) an SPF regulator gives the undertaking;

the Court must accept the undertaking by the SPF regulator and must not require a further undertaking from any other person.

58FY Other powers of the Court unaffected

The powers conferred on the Court by this Subdivision are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

Subdivision G—Actions for damages

58FZ Actions for damages

(1) A person who suffers loss or damage by conduct of another person that was done in contravention of:

(a) a civil penalty provision of an SPF principle; or

(b) a civil penalty provision of an SPF code;

may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

(2) Such an action may be commenced at any time within 6 years after the day the cause of action that relates to the conduct accrued.

Subdivision H—Public warning notices

58FZA Public warning notices

Suspected contraventions of a provision of the SPF principles

(1) The SPF general regulator may issue to the public a written notice containing a warning about the conduct of a person if the SPF general regulator:

(a) reasonably suspects that the person’s conduct may constitute a contravention of a specified provision of the SPF principles; and

(b) is satisfied that one or more persons has suffered, or is likely to suffer, detriment as a result of the conduct; and

(c) is satisfied that it is in the public interest to issue the notice.

Suspected contraventions of a provision of an SPF code

(2) The SPF sector regulator for a regulated sector may issue to the public a written notice containing a warning about the conduct of a person if the SPF sector regulator:

(a) reasonably suspects that the person’s conduct may constitute a contravention of a specified provision of the SPF code for the sector; and

(b) is satisfied that one or more persons has suffered, or is likely to suffer, detriment as a result of the conduct; and

(c) is satisfied that it is in the public interest to issue the notice.

Related matters

(3) An SPF regulator that issues a notice under subsection (1) or (2) must publish the notice on the SPF regulator’s website.

(4) A notice under subsection (1) or (2) is not a legislative instrument.

Subdivision I—Remedial directions

58FZB Remedial directions

Giving directions—to comply with an SPF principle

(1) If the SPF general regulator reasonably suspects that a regulated entity:

(a) is failing to comply with an SPF principle; or

(b) will fail to comply with an SPF principle;

the SPF general regulator may, by written notice given to the entity, direct the entity to take specified action to comply with that SPF principle.

Giving directions—to comply with an SPF code

(2) If the SPF sector regulator for a regulated sector reasonably suspects that a regulated entity for the sector:

(a) is failing to comply with a provision of the SPF code for the sector; or

(b) will fail to comply with such a provision;

the SPF sector regulator may, by written notice given to the entity, direct the entity to take specified action to comply with that provision of the SPF code.

Complying with a direction

(3) A regulated entity given a direction under subsection (1) or (2) must comply with the direction.

(a) within the time specified in the direction, which must be a reasonable time; or

(b) if the direction does not specify a reasonable time—within a reasonable time.

(4) Subsection (3) is a civil penalty provision.

Note: To work out how sections 58FG to 58FI (about civil penalties) apply to subsection (3), see the definitions of ***civil penalty provision of an SPF principle***, and ***civil penalty provision of an SPF code*** in subsection 4(1).

Extending the time for complying with a direction

(5) The SPF regulator who gives a direction under subsection (1) or (2) to an entity may extend the time for complying with the direction by written notice given to the entity.

Before giving a direction

(6) Before an SPF regulator gives an entity a direction under subsection (1) or (2), the SPF regulator must give the entity an opportunity to make submissions to the SPF regulator on the matter.

Varying and revoking directions

(7) An SPF regulator may vary or revoke a direction given by the SPF regulator under subsection (1) or (2) in like manner and subject to like conditions.

Publishing directions

(8) As soon as practicable after an SPF regulator gives, varies or revokes a direction under subsection (1) or (2), the SPF regulator must publish a notice of its action on its website.

Subdivision J—Adverse publicity orders

58FZC Adverse publicity orders

Making adverse publicity orders

(1) The Court may, on application, make an adverse publicity order against a person who has been ordered to pay a pecuniary penalty under an SPF civil penalty order.

(2) Such an order may require the person to:

(a) disclose, in the way and to the persons specified in the order, specified information that the person has possession of or access to; and

(b) publish, at the person’s expense and in in a specified way, an advertisement in the terms specified in, or determined in accordance with, the order.

Applying for adverse publicity orders

(3) An application for such an order may be made by:

(a) if the SPF civil penalty order was for a contravention of a civil penalty provision of an SPF principle—the SPF general regulator; or

(b) if the SPF civil penalty order was for a contravention of a civil penalty provision of an SPF code for a regulated sector—the SPF sector regulator for the sector.

Definitions

(4) In this section:

***Court***, in relation to a matter, means any court having jurisdiction in the matter.

Subdivision K—Non‑punitive orders

58FZD Non‑punitive orders

Making non‑punitive orders

(1) The Court may, on application, make one or more of the following orders in relation to a person who has engaged in conduct contravening an SPF principle or a provision of an SPF code:

(a) a community service order;

(b) a probation order for a period of no longer than 3 years;

(c) an order requiring the person to disclose, in the way and to the persons specified in the order, specified information that the person has possession of or access to;

(d) an order requiring the person to publish, at the person’s expense and in a specified way, an advertisement in the terms specified in, or determined in accordance with, the order.

Applying for non‑punitive orders

(2) An application for such an order may be made by:

(a) for conduct contravening an SPF principle—the SPF general regulator; or

(b) for conduct contravening a provision of the SPF code for a regulated sector—the SPF sector regulator for the sector.

Definitions

(3) For the purposes of this section, a ***probation order*** is an order made to ensure that a person does not engage in:

(a) the conduct that resulted in the order; or

(b) similar conduct or related conduct;

during the period of the order.

(4) Without limiting subsection (3), a ***probation order*** includes:

(a) an order directing a person to establish a compliance program, or an education and training program, that:

(i) is for employees or other persons involved in the person’s business; and

(ii) is designed to ensure awareness of responsibilities and obligations relating to conduct covered by paragraph (3)(a) or (b); and

(b) an order directing a person to revise the internal operations of the person’s business that lead to conduct covered by paragraph (3)(a) or (b).

(5) In this section:

***community service order*** means an order directing a person to perform a service that:

(a) is specified in the order; and

(b) is or relates to the conduct that resulted in the order;

for the benefit of the community or a section of the community.

***contravening***: conduct ***contravening*** an SPF principle or a provision of an SPF code includes conduct that constitutes being involved in such a contravention.

Note: For the meaning of ***involved***, see subsection 4(1).

***Court***, in relation to a matter, means any court having jurisdiction in the matter.

Subdivision L—Orders (other than awards of damages) to redress loss or damage

58FZE Orders (other than awards of damages) to redress loss or damage—making such orders

Making orders

(1) The Court may, on application, make such orders (other than an award of damages) as the Court thinks appropriate against a person who:

(a) engaged in conduct (the ***contravening conduct***) contravening a civil penalty provision of an SPF principle or a civil penalty provision of an SPF code; or

(b) is involved in the contravening conduct;

if the contravening conduct caused, or is likely to cause, a class of persons (the ***victims***) to suffer loss or damage.

Note 1: The orders that the court may make include all or any of the orders set out in section 58FZF.

Note 2: For the meaning of ***involved***, see subsection 4(1).

(2) Subsection (1) applies whether or not the victims include persons (***non‑parties***) who are not, or have not been, parties to a proceeding (an ***enforcement proceeding***) instituted under another provision in or referred to in this Division in relation to the contravening conduct.

(3) The Court must not make such an order unless the Court considers that the order will:

(a) redress, in whole or in part, the loss or damage suffered by the victims in relation to the contravening conduct; or

(b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the victims in relation to the contravening conduct.

Applying for orders

(4) An application for such an order may be made:

(a) by the following:

(i) if the contravening conduct contravened a civil penalty provision of an SPF principle—the SPF general regulator;

(ii) if the contravening conduct contravened a civil penalty provision of an SPF code for a regulated sector—the SPF sector regulator for the sector; and

(b) may be made even if an enforcement proceeding in relation to the contravening conduct has not been instituted; and

(c) at any time within 6 years after the day on which the cause of action that relates to the contravening conduct accrues.

Working out whether to make an order

(5) In working out whether to make such an order against a person referred to in paragraph (1)(a) or (b), the Court may have regard to the conduct of:

(a) the person; and

(b) the victims;

in relation to the contravening conduct since the contravention occurred.

(6) However, the Court need not make a finding about either of the following matters:

(a) which persons are victims in relation to the contravening conduct;

(b) the nature of the loss or damage suffered, or likely to be suffered, by such persons.

When a non‑party victim is bound by an order etc.

(7) If all of the following happen:

(a) such an order is made against a person;

(b) the loss or damage suffered, or likely to be suffered, by a non‑party victim in relation to the contravening conduct has been redressed, prevented or reduced in accordance with the order;

(c) the non‑party victim has accepted the redress, prevention or reduction;

then:

(d) the non‑party victim is bound by the order; and

(e) any other order made under subsection (1) relating to that loss or damage has no effect in relation to the non‑party victim; and

(f) despite any other provision of this Act or any other law of the Commonwealth, or a State or Territory, no claim, action or demand may be made or taken against the person by the non‑party victim in relation to that loss or damage.

Definitions

(8) In this section:

***Court***, in relation to a matter, means any court having jurisdiction in the matter.

58FZF Orders (other than awards of damages) to redress loss or damage—kinds of such orders

(1) Without limiting subsection 58FZE(1), the orders that the Court may make under that subsection against a person (the ***respondent***) include all or any of the following:

(a) an order declaring the whole or any part of a contract made between the respondent and a victim referred to in that subsection, or a collateral arrangement relating to such a contract:

(i) to be void; and

(ii) if the Court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);

(b) an order:

(i) varying such a contract or arrangement in such manner as is specified in the order; and

(ii) if the Court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);

(c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;

(d) an order directing the respondent to refund money or return property to a victim referred to in that subsection;

(e) an order directing the respondent, at the respondent’s own expense, to repair, or provide parts for, goods that have been supplied under the contract or arrangement to a victim referred to in that subsection;

(f) an order directing the respondent, at the respondent’s own expense, to supply specified services to a victim referred to in that subsection;

(g) an order, in relation to an instrument creating or transferring an interest in land, directing the respondent to execute an instrument that:

(i) varies, or has the effect of varying, the first‑mentioned instrument; or

(ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first‑mentioned instrument.

(2) In this section:

***interest***, in land, means:

(a) a legal or equitable estate or interest in the land; or

(b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or

(c) a right, power or privilege over, or in connection with, the land.

Division 7—Other provisions

58GA Treatment of partnerships

(1) The SPF provisions apply to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by an SPF provision is imposed on each partner instead, but may be discharged by any of the partners.

(3) If an SPF provision would otherwise permit something to be done by the partnership, the thing may be done by one or more of the partners on behalf of the partnership.

(4) For the purposes of the SPF provisions, a change in the composition of a partnership does not affect the continuity of the partnership.

58GB Treatment of unincorporated associations

(1) The SPF provisions apply to an unincorporated association as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the association by an SPF provision is imposed on each member of the association’s committee of management instead, but may be discharged by any of the members.

(3) If an SPF provision would otherwise permit something to be done by the unincorporated association, the thing may be done by one or more of the members of the association’s committee of management on behalf of the association.

58GC Treatment of trusts

(1) The SPF provisions apply to a trust as if it were a person, but with the changes set out in this section.

Trusts with a single trustee

(2) If the trust has a single trustee:

(a) an obligation that would otherwise be imposed on the trust by an SPF provision is imposed on the trustee instead; and

(b) if an SPF provision would otherwise permit something to be done by the trust, the thing may be done by the trustee.

Trusts with multiple trustees

(3) If the trust has 2 or more trustees:

(a) an obligation that would otherwise be imposed on the trust by an SPF provision is imposed on each trustee instead, but may be discharged by any of the trustees; and

(b) if an SPF provision would otherwise permit something to be done by the trust, the thing may be done by any of the trustees.

58GD Compensation for acquisition of property

(1) This section applies if the operation of the SPF provisions would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

(2) The person who acquires the property is liable to pay a reasonable amount of compensation to the first‑mentioned person.

(3) If the 2 persons do not agree on the amount of the compensation, the person to whom compensation is payable may institute proceedings in:

(a) the Federal Court; or

(b) the Supreme Court of a State or Territory;

for the recovery from the other person of such reasonable amount of compensation as the Court determines.

58GE Rules for the purposes of this Part

(1) The Minister may, by legislative instrument, make rules (the ***SPF rules***) prescribing matters:

(a) required or permitted by this Part to be prescribed by the SPF rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) To avoid doubt, the SPF rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

Part 2—Other amendments

Australian Communications and Media Authority Act 2005

2 After section 59DA

Insert:

59DB Disclosure of information that relates to the Scams Prevention Framework

An ACMA official authorised by the Chair, in writing, for the purposes of this section may disclose authorised disclosure information if the disclosure:

(a) is to:

(i) an SPF regulator (within the meaning of the *Competition and Consumer Act 2010*); or

(ii) the operator of an SPF EDR scheme (within the meaning of that Act); and

(b) is for the purposes of the operation (including enforcement) of the SPF provisions (within the meaning of that Act).

Competition and Consumer Act 2010

3 Subsection 4(1)

Insert:

***actionable scam intelligence*** has the meaning given by section 58AI.

***associate***, of an SPF consumer, means an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the SPF consumer who is:

(a) a natural person who:

(i) is in Australia; or

(ii) is ordinarily resident in Australia; or

(iii) is an Australian citizen or permanent resident; or

(b) a person who carries on a business having a principal place of business in Australia;

***civil penalty provision of an SPF code*** means:

(a) a provision of an SPF code (see Division 3 of Part IVF) that is a civil penalty provision (within the meaning of the Regulatory Powers Act); or

(b) subsection 58FZB(3) in relation to compliance with a direction given under subsection 58FZB(2).

***civil penalty provision of an SPF principle*** means:

(a) a provision of Division 2 of Part IVF (about the Scams Prevention Framework) that is a civil penalty provision (within the meaning of the Regulatory Powers Act); or

(b) subsection 58FZB(3) in relation to compliance with a direction given under subsection 58FZB(1).

***infringement notice compliance period*** for an SPF infringement notice: see section 58FQ.

***inspector***, of an SPF regulator, means a person appointed by that regulator under subsection 58FB(1).

***involved***, in a contravention of a civil penalty provision of an SPF principle or of a civil penalty provision of an SPF code, means:

(a) aiding, abetting, counselling or procuring a contravention of the provision; or

(b) inducing, whether by threats or promises or otherwise, such a contravention; or

(c) being in any way, directly or indirectly, knowingly concerned in, or party to, such a contravention; or

(d) conspiring with others to effect such a contravention.

***permanent resident*** has the same meaning as in the *Australian Citizenship Act 2007*.

***regulated entity*** has the meaning given by section 58AD.

***regulated sector*** has the meaning given by subsection 58AC(1).

***regulated service*** has the meaning given by section 58AD.

***scam*** has the meaning given by section 58AG.

***senior officer***, of a regulated entity, means:

(a) an officer (within the meaning of the *Corporations Act 2001*) of the entity; or

(b) a senior manager (within the meaning of that Act) of the entity.

***SPF civil penalty order*** means a civil penalty order under Part 4 of Regulatory Powers Act (as that Part applies because of section 58FG of this Act).

***SPF code*** has the meaning given by section 58CB.

***SPF consumer*** has the meaning given by section 58AH.

***SPF EDR scheme***, for a regulated sector, means an external dispute resolution scheme authorised under subsection 58DB(1) for the sector.

***SPF general regulator*** has the meaning given by section 58EB.

***SPF governance policies, procedures, metrics and targets***, for a regulated entity for a regulated sector, means the entity’s:

(a) policies and procedures required under paragraph 58BC(1)(a) for the sector; and

(b) performance metrics and targets required under paragraph 58BC(1)(c) for those policies and procedures.

***SPF infringement notice*** means an infringement notice issued under subsection 58FL(1) or (2).

***SPF principles*** means the provisions in Subdivisions B to G of Division 2 of Part IVF (about the scam code framework).

***SPF provisions*** has the meaning given by section 58AJ.

***SPF regulator*** means:

(a) the SPF general regulator; or

(b) the SPF sector regulator for a regulated sector.

***SPF rules*** means rules made under section 58GE.

***SPF sector regulator*** has the meaning given by section 58ED.

4 At the end of paragraph 155(2)(a)

Add:

(v) an SPF code; or

5 After subparagraph 155(2)(b)(ib)

Insert:

(ic) a designated scams prevention framework matter (as defined by subsection (9AC) of this section); or

6 After subsection 155(9AB)

Insert:

(9AC) A reference in this section to a ***designated scams prevention framework matter*** is a reference to the performance of a function, or the exercise of a power, conferred on the Commission (as the SPF general regulator) by or under:

(a) Part IVF; or

(b) a legislative instrument (such as an SPF code) made under that Part; or

(c) the Regulatory Powers Act to the extent that it applies in relation to a provision of that Part.

Corporations Act 2001

7 At the end of subsection 1051(2)

Add:

Note: A law, instrument or condition referred to in paragraph (a) that requires entities to be members of the scheme need not be a law, instrument or condition regulating providers of financial products or services. The constitutional basis for that law, instrument or condition would need to support the scheme’s application to such entities.