

EXPOSURE DRAFT

EXPOSURE DRAFT

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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.

EXPOSURE DRAFT

1	Contents	
2	Schedule #—Amendments	7
3	Part 1—Main amendments	7
4	<i>Competition and Consumer Act 2010</i>	7
5	1 After Part IVE	7
6	Part IVF—Scams Prevention Framework	7
7	Division 1—Preliminary	7
8	Subdivision A—Object and simplified outline	7
9	58AA Object of this Part.....	7
10	58AB Simplified outline of this Part.....	7
11	Subdivision B—Designating sectors subject to the Scams	
12	Prevention Framework	8
13	58AC <i>Regulated sectors</i> subject to the Scams Prevention	
14	Framework	8
15	58AD <i>Regulated entities</i> for regulated sectors and their <i>regulated</i>	
16	<i>services</i>	9
17	58AE Minister must consider matters before designating a sector	11
18	58AF Delegation	11
19	Subdivision C—Meanings of key terms	11
20	58AG Meaning of <i>scam</i>	11
21	58AH Meaning of <i>SPF consumer</i>	12
22	58AI Meaning of <i>actionable scam intelligence</i>	13
23	Subdivision D—Extension to external Territories and outside of	
24	Australia	13
25	58AJ Extension to external Territories and outside of Australia	13
26	Subdivision E—Application to acts done by or in relation to	
27	agents etc. of regulated entities	14
28	58AK Acts done by or in relation to agents etc. of regulated entities	14
29	Division 2—Overarching principles of the Scams Prevention	
30	Framework	15
31	Subdivision A—Preliminary	15
32	58BA Simplified outline of this Division	15
33	Subdivision B—SPF principle 1: Governance	15
34	58BB Simplified outline of this Subdivision	15
35	58BC Developing and implementing governance policies and	
36	procedures—civil penalty provision.....	16
37	58BD Content of governance policies, procedures, metrics and	
38	targets	16
39	58BE Annual certification about SPF governance policies,	
40	procedures, metrics and targets—civil penalty provision	17

EXPOSURE DRAFT

1	58BF	Publishing information about protecting SPF consumers from scams—civil penalty provision.....	17
2			
3	58BG	Record keeping of compliance with SPF provisions—civil penalty provision.....	18
4			
5	58BH	Reporting about compliance with this Subdivision—civil penalty provision.....	18
6			
7		Subdivision C—SPF principle 2: Prevent	19
8	58BI	Simplified outline of this Subdivision.....	19
9	58BJ	Taking reasonable steps to prevent scams from being committed—civil penalty provision.....	19
10			
11	58BK	Giving resources and warnings to SPF consumers—civil penalty provision.....	19
12			
13	58BL	Further detail about certain concepts.....	20
14		Subdivision D—SPF principle 3: Detect	20
15	58BM	Simplified outline of this Subdivision.....	20
16	58BN	Taking reasonable steps to detect scams—civil penalty provision.....	21
17			
18	58BO	Identifying impacted SPF consumers in a timely way—civil penalty provision.....	21
19			
20	58BP	Sector-specific details can be set out in SPF codes.....	22
21		Subdivision E—SPF principle 4: Report	22
22	58BQ	Simplified outline of this Subdivision.....	22
23	58BR	Reporting information to SPF regulators—civil penalty provisions.....	22
24			
25	58BS	Timing, contents and form of reports to SPF regulators.....	23
26	58BT	Relationship with other duties and obligations.....	24
27	58BU	SPF general regulator may share certain information with relevant persons.....	24
28			
29		Subdivision F—SPF principle 5: Disrupt	25
30	58BV	Simplified outline of this Subdivision.....	25
31	58BW	Taking reasonable steps to disrupt scams—civil penalty provision.....	26
32			
33	58BX	Sharing information about scams—civil penalty provision.....	26
34	58BY	Sector-specific details can be set out in SPF codes.....	28
35	58BZ	Safe harbour for taking actions to disrupt an activity while investigating whether the activity is a scam.....	28
36			
37		Subdivision G—SPF principle 6: Respond	29
38	58BZA	Simplified outline of this Subdivision.....	29
39	58BZB	Enabling SPF consumers to easily report scams—civil penalty provision.....	29
40			
41	58BZC	Having an accessible and transparent internal dispute resolution mechanism—civil penalty provision.....	29
42			
43	58BZD	SPF external dispute resolution schemes—civil penalty provisions.....	30
44			
45	58BZE	Sector-specific details can be set out in SPF codes.....	30

EXPOSURE DRAFT

1	Division 3—Sector-specific codes for the Scams Prevention	
2	Framework	31
3	58CA Simplified outline of this Division	31
4	58CB Sector-specific codes (SPF codes).....	31
5	58CC Content of SPF codes	31
6	58CD Delegation	33
7	Division 4—External dispute resolution for the Scams	
8	Prevention Framework	34
9	58DA Simplified outline of this Division	34
10	58DB Minister may authorise external dispute resolution schemes for a regulated sector	34
12	58DC Content, including requirements, of a scheme that is not already authorised under a Commonwealth law	35
14	58DD Scheme operator to report to SPF regulators	36
15	58DE Disclosing information to the operator of an SPF EDR scheme.....	36
17	Division 5—Regulating the Scams Prevention Framework	37
18	Subdivision A—Preliminary	37
19	58EA Simplified outline of this Division	37
20	Subdivision B—Regulators of the Scams Prevention Framework	37
21	58EB General regulator of the Scams Prevention Framework	37
22	58EC Delegation of the SPF general regulator’s functions and powers	38
24	58ED Regulator of a regulated sector	38
25	58EE Arrangements for regulating the Scams Prevention Framework	39
27	Subdivision C—Information sharing between SPF regulators	39
28	58EF SPF regulators may disclose information to each other.....	39
29	58EG Regard must be had to the object of this Part when considering whether to make such a disclosure	40
31	58EH Notice need not be given of such a disclosure or of the use of information or documents so disclosed.....	40
33	58EI Information that need not be disclosed	40
34	Division 6—Enforcing the Scams Prevention Framework	41
35	Subdivision A—Preliminary	41
36	58FA Simplified outline of this Division	41
37	58FB Appointment of inspectors.....	42
38	58FC Multiple remedies can be sought for a single contravention.....	42
39	Subdivision B—Monitoring or investigating compliance with an	
40	SPF code	42
41	58FD Monitoring compliance with an SPF code—default.....	42
42	58FE Investigating compliance with an SPF code—default	44
43	58FF Monitoring or investigating—Minister may declare that alternative powers apply for an SPF sector regulator	45
44		

EXPOSURE DRAFT

1	Subdivision C—Civil penalty provisions	46
2	58FG Civil penalty provisions.....	46
3	58FH Maximum penalty for tier 1 contraventions.....	47
4	58FI Maximum penalty for tier 2 contraventions.....	47
5	58FJ Civil penalty double jeopardy.....	48
6	Subdivision D—Infringement notices	49
7	58FK Purpose and effect of this Subdivision	49
8	58FL Issuing an SPF infringement notice	49
9	58FM Matters to be included in an SPF infringement notice.....	50
10	58FN Amount of penalty	51
11	58FO Effect of compliance with an SPF infringement notice	51
12	58FP Effect of failure to comply with an SPF infringement notice	51
13	58FQ Infringement notice compliance period for infringement	
14	notice.....	51
15	58FR Withdrawal of an infringement notice	52
16	Subdivision E—Enforceable undertakings	54
17	58FS Enforceable undertakings	54
18	Subdivision F—Injunctions	55
19	58FT Granting injunctions	55
20	58FU Particular kinds of injunctions	55
21	58FV Interim injunctions.....	56
22	58FW Rescinding or varying injunctions	56
23	58FX Applying for injunctions.....	56
24	58FY Other powers of the Court unaffected.....	57
25	Subdivision G—Actions for damages	57
26	58FZ Actions for damages	57
27	Subdivision H—Public warning notices	57
28	58FZA Public warning notices.....	57
29	Subdivision I—Remedial directions	58
30	58FZB Remedial directions.....	58
31	Subdivision J—Adverse publicity orders	60
32	58FZC Adverse publicity orders.....	60
33	Subdivision K—Non-punitive orders	60
34	58FZD Non-punitive orders.....	60
35	Subdivision L—Orders (other than awards of damages) to redress	
36	loss or damage	62
37	58FZE Orders (other than awards of damages) to redress loss or	
38	damage—making such orders.....	62
39	58FZF Orders (other than awards of damages) to redress loss or	
40	damage—kinds of such orders.....	64
41	Division 7—Other provisions	66
42	58GA Treatment of partnerships.....	66
43	58GB Treatment of unincorporated associations	66

EXPOSURE DRAFT

1	58GC	Treatment of trusts.....	66
2	58GD	Compensation for acquisition of property	67
3	58GE	Rules for the purposes of this Part.....	67
4	Part 2—Other amendments		69
5	<i>Australian Communications and Media Authority Act 2005</i>		69
6	2 After section 59DA		69
7	59DB	Disclosure of information that relates to the Scams	
8		Prevention Framework	69
9	<i>Competition and Consumer Act 2010</i>		69
10	3 Subsection 4(1)		69
11	4 At the end of paragraph 155(2)(a)		71
12	5 After subparagraph 155(2)(b)(ib)		71
13	6 After subsection 155(9AB)		72
14	<i>Corporations Act 2001</i>		72
15	7 At the end of subsection 1051(2)		72
16			

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

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

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

10 Subdivision B—Designating sectors subject to the Scams 11 Prevention Framework

12 58AC *Regulated sectors subject to the Scams Prevention Framework*

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

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

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

- 21 (2) Without limiting subsection (1), the following classes of businesses
22 or services could be designated:
- 23 (a) businesses of banking, other than State banking (within the
24 meaning of paragraph 51(xiii) of the Constitution) not
25 extending beyond the limits of the State concerned;
 - 26 (b) businesses of insurance, other than State insurance (within
27 the meaning of paragraph 51(xiv) of the Constitution) not
28 extending beyond the limits of the State concerned;
 - 29 (c) postal, telegraphic, telephonic or other like services (within
30 the meaning of paragraph 51(v) of the Constitution), such as
31 one or more of the following:
 - 32 (i) carriage services (within the meaning of the
33 *Telecommunications Act 1997*);
 - 34 (ii) electronic services (within the meaning of the *Online*
35 *Safety Act 2021*), such as social media services (within
36 the meaning of that Act);

EXPOSURE DRAFT

(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	so much of that business or service as relates to the person acting in that way.

EXPOSURE DRAFT

Other regulated entities, and their regulated services, for the regulated sector

Item	This person is a <i>regulated entity</i> :	for this <i>regulated service</i> :
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(b) using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution)

- | | | |
|---|--|--|
| 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*).

EXPOSURE DRAFT

1 58AE Minister must consider matters before designating a sector

- 2 (1) Before making an instrument under subsection 58AC(1) about a
3 sector of the economy, the Minister must consider all of the
4 following:
- 5 (a) scam activity in the sector;
 - 6 (b) the effectiveness of existing industry initiatives to address
7 scams in the sector;
 - 8 (c) the interests of persons who would be SPF consumers of
9 regulated services for the sector if the instrument were made;
 - 10 (d) the likely consequences (including benefits and risks)
11 resulting from making the instrument;
 - 12 (e) any other matters the Minister considers relevant.

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

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

16 58AF Delegation

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

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

23 Subdivision C—Meanings of key terms

24 58AG Meaning of *scam*

- 25 (1) A *scam* is a direct or indirect attempt to engage an SPF consumer
26 of a regulated service that:
- 27 (a) involves deception (see subsection (2)); and
 - 28 (b) would, if successful, cause loss or harm including obtaining
29 personal information of, or a benefit (such as a financial
30 benefit) from, the SPF consumer or the SPF consumer's
31 associates.
- 32 (2) The attempt involves deception if the attempt:
- 33 (a) deceptively represents something to be (or to be related to)
34 the regulated service; or

EXPOSURE DRAFT

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- 1 (b) deceptively impersonates a regulated entity in connection
2 with the regulated service; or
3 (c) is an attempt to deceive the SPF consumer into facilitating an
4 action using the regulated service; or
5 (d) is an attempt to deceive the SPF consumer that is made using
6 the regulated service.
- 7 (3) However, the attempt is not a *scam* if the attempt is of a kind
8 prescribed by the SPF rules.

9 **58AH Meaning of *SPF consumer***

- 10 (1) An *SPF consumer*, of a regulated service, is:
11 (a) a natural person who:
12 (i) is in Australia; or
13 (ii) is ordinarily resident in Australia; or
14 (iii) is an Australian citizen or permanent resident; or
15 (b) a person who carries on a business having:
16 (i) less than 100 employees; and
17 (ii) a principal place of business in Australia;
18 who is a person to whom the regulated service is or may be
19 provided or purportedly provided.
- 20 Note: For paragraph (b), sections 58GA to 58GC extend the meaning of
21 *person* for partnerships, unincorporated associations and trusts.
- 22 (2) Without limiting subsection (1), subsection (1) includes the
23 provision or purported provision of a regulated service:
24 (a) directly or indirectly to the person; or
25 (b) whether or not under a contract, arrangement or
26 understanding with the person; or
27 (c) whether or not the provider of the service knows that the
28 person is covered by paragraph (1)(a) or (b); or
29 (d) that involves the supply of goods.
- 30 (3) However, the person is not an *SPF consumer* of the regulated
31 service if a condition prescribed by the SPF rules applies to the
32 person in relation to regulated services of that kind.
- 33 (4) Section 4B (about consumers) does not apply to this Part.

EXPOSURE DRAFT

1 58AI Meaning of *actionable scam intelligence*

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

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

- 8 (a) information about the mechanism or identifier being used to
9 scam SPF consumers, such as URLs, email addresses, phone
10 numbers, social media profiles, digital wallets and bank account
11 information of the scam promoters; and
- 12 (b) information about the suspected scammer; and
- 13 (c) information (including complaints) provided by SPF consumers.

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

16 Subdivision D—Extension to external Territories and outside of 17 Australia

18 58AJ Extension to external Territories and outside of Australia

- 19 (1) Each of the following provisions (the *SPF provisions*) extends to
20 every external Territory:
 - 21 (a) a provision of this Part;
 - 22 (b) a provision of a legislative instrument made under this Part;
 - 23 (c) another provision of this Act to the extent that it relates to a
24 provision covered by paragraph (a) or (b);
 - 25 (d) a provision of the Regulatory Powers Act to the extent that it
26 applies in relation to a provision covered by paragraph (a) or
27 (b).
- 28 (2) The SPF provisions extend to acts, omissions, matters and things
29 outside Australia.

EXPOSURE DRAFT

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

3 **58AK Acts done by or in relation to agents etc. of regulated entities**

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

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

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

- 13 (2) For the purposes of SPF provisions, if an act is done by a person in
14 relation to another person (the *agent*) who:
15 (a) is acting on behalf of a regulated entity; and
16 (b) is so acting within the scope of the agent's actual or apparent
17 authority;
18 the act is taken to have also been done in relation to the regulated
19 entity.

EXPOSURE DRAFT

1 **Division 2—Overarching principles of the Scams**
2 **Prevention Framework**

3 **Subdivision A—Preliminary**

4 **58BA Simplified outline of this Division**

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

7 These principles require each regulated entity to:

- 8 (a) have appropriate governance arrangements; and
9 (b) have appropriate strategies for preventing, detecting,
10 reporting, disrupting and responding to scams.

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

16 **Subdivision B—SPF principle 1: Governance**

17 **58BB Simplified outline of this Subdivision**

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

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

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

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

27 The SPF code for the sector may include sector-specific provisions
28 for this principle.

EXPOSURE DRAFT

1 58BC Developing and implementing governance policies and 2 procedures—civil penalty provision

- 3 (1) A regulated entity for a regulated sector contravenes this
4 subsection if the entity fails to do one or more of the following:
5 (a) document policies and procedures that comply with section
6 58BD and are about:
7 (i) preventing, detecting and disrupting scams; and
8 (ii) responding to scams; and
9 (iii) reports relating to scams;
10 relating to the entity’s regulated services for the sector;
11 (b) implement those policies and procedures;
12 (c) develop and implement performance metrics and targets that:
13 (i) are for measuring the effectiveness of those policies and
14 procedures; and
15 (ii) comply with any requirements for those metrics and
16 targets that are prescribed by the SPF rules.

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

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

20 58BD Content of governance policies, procedures, metrics and 21 targets

- 22 (1) The entity’s policies and procedures required under paragraph
23 58BC(1)(a) for the sector must include the steps the entity is taking
24 to:
25 (a) comply with the SPF provisions; and
26 (b) identify actionable scam intelligence; and
27 (c) assess and address the risk of scams relating to the entity’s
28 regulated services for the sector; and
29 (d) meet performance metrics and targets developed for these
30 policies and procedures; and
31 (e) meet any other requirements for those policies and
32 procedures that are prescribed by the SPF rules.
- 33 (2) The entity’s policies and procedures required under paragraph
34 58BC(1)(a) must be developed by reference to factors including:
35 (a) the risk of scams faced by the entity for the sector based on
36 the size and capability of the entity’s regulated services for
37 the sector; and

EXPOSURE DRAFT

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- 1 (b) the kinds of SPF consumers of those regulated services; and
2 (c) how those regulated services are provided and delivered; and
3 (d) scams in the sector and in the wider Australian economy; and
4 (e) shifts in scams; and
5 (f) any other factors for those policies and procedures that are
6 prescribed by the SPF rules.

7 **58BE Annual certification about SPF governance policies,**
8 **procedures, metrics and targets—civil penalty provision**

- 9 (1) A regulated entity for a regulated sector contravenes this
10 subsection if no senior officer of the entity certifies in writing,
11 within 7 days after the start of each financial year, whether the
12 entity's SPF governance policies, procedures, metrics and targets:
13 (a) for the sector; and
14 (b) for the financial year;
15 comply with this Subdivision.
- 16 (2) Subsection (1) is a civil penalty provision.

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

19 **58BF Publishing information about protecting SPF consumers from**
20 **scams—civil penalty provision**

- 21 (1) A regulated entity contravenes this subsection if the entity fails to
22 ensure that information about the following is publicly accessible:
23 (a) the measures the entity has in place to protect SPF consumers
24 of the entity's regulated services from scams;
25 (b) the rights of those consumers in relation to such scams,
26 including about making complaints.
- 27 (2) Subsection (1) is a civil penalty provision.

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

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

EXPOSURE DRAFT

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).

EXPOSURE DRAFT

1 Subdivision C—SPF principle 2: Prevent

2 58BI Simplified outline of this Subdivision

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

- 5 (a) making resources accessible to its consumers to assist
6 these consumers to identify scams and to minimise the
7 risk of harm from scams; and
8 (b) identifying its consumers that have a higher risk of being
9 targeted by a scam, and providing warnings to those
10 consumers.

11 The SPF code for the sector may include sector-specific provisions
12 for this principle.

13 58BJ Taking reasonable steps to prevent scams from being 14 committed—civil penalty provision

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

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

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

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

23 58BK Giving resources and warnings to SPF consumers—civil 24 penalty provision

25 *Making resources about scams accessible to SPF consumers*

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

- 30 (a) identify scams relating to the regulated service; and
31 (b) minimise the risk of those consumers becoming victims of
32 such scams.

EXPOSURE DRAFT

Identifying and warning higher-risk SPF consumers

- 1
- 2 (2) A regulated entity contravenes this subsection if the entity fails to
- 3 take reasonable steps to:
- 4 (a) identify the classes of SPF consumers (if any) of a regulated
- 5 service of the entity who have a higher risk of being targeted
- 6 by a scam relating to the regulated service; or
- 7 (b) provide warnings about such a scam to each SPF consumer
- 8 belonging to such a class.

Civil penalty provisions

- 9
- 10 (3) Subsections (1) and (2) are civil penalty provisions.

11 Note: This means subsections (1) and (2) are *civil penalty provisions of an*

12 *SPF principle* for the purposes of section 58FG (about civil

13 penalties).

58BL Further detail about certain concepts

- 14
- 15 (1) Taking reasonable steps for the purposes of subsection 58BJ(1) or
- 16 58BK(2) requires more than merely acting on actionable scam
- 17 intelligence in the form of information provided to the regulated
- 18 entity by another person.

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

- 19
- 20 (2) For the purposes of (but without limiting) subsection 58CC(1), the
- 21 SPF code for a regulated sector may include sector-specific details
- 22 about:
- 23 (a) what are reasonable steps; or
- 24 (b) what are relevant resources; or
- 25 (c) identifying the classes of SPF consumers who have a higher
- 26 risk of being targeted by a scam;
- 27 for the purposes of this Subdivision.

Subdivision D—SPF principle 3: Detect

58BM Simplified outline of this Subdivision

30 Each regulated entity for a regulated sector must take reasonable

31 steps to detect scams. This includes identifying, in a timely way, its

32 consumers that are or could be impacted by a scam.

EXPOSURE DRAFT

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).

EXPOSURE DRAFT

1 58BP Sector-specific details can be set out in SPF codes

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

- 5 (a) what are reasonable steps; or
6 (b) what is a reasonable time;
7 for the purposes of this Subdivision.

8 Subdivision E—SPF principle 4: Report

9 58BQ Simplified outline of this Subdivision

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

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

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

18 58BR Reporting information to SPF regulators—civil penalty 19 provisions

20 *Reports of actionable scam intelligence*

- 21 (1) A regulated entity contravenes this subsection if the entity fails to
22 give the SPF general regulator, in accordance with subsection
23 58BS(1), a report of actionable scam intelligence the entity has
24 about a suspected scam relating to a regulated service of the entity.

25 *Scam reports*

- 26 (2) A regulated entity for a regulated sector contravenes this
27 subsection if the entity fails to give a scam report for the sector to
28 an SPF regulator in accordance with:
29 (a) a written request from that regulator; and
30 (b) subsection 58BS(1).

EXPOSURE DRAFT

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;

EXPOSURE DRAFT

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- 1 (c) a person who reports a scam on behalf of an SPF consumer;
2 (d) a person who a scam deceptively impersonates in connection
3 with a regulated service.

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

- 6 (4) If:
7 (a) a regulated entity gives a scam report to an SPF regulator in
8 accordance with subsection 58BR(2); and
9 (b) another SPF regulator later requests a scam report from the
10 regulated entity about the same matters;
11 then, despite paragraph (1)(b) of this section, the later scam report
12 need only state that an earlier scam report about those matters was
13 given to the first-mentioned SPF regulator on a specified date and
14 time.

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

17 **58BT Relationship with other duties and obligations**

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

21 Note: Each of subsections 58BR(1) and (2) is also a requirement by law to
22 disclose the information contained in the report referred to in that
23 subsection. So, complying with that subsection can be a defence to a
24 secrecy provision such as section 276 of the *Telecommunications Act*
25 *1997* (see paragraph 280(1)(b) of that Act).

26 **58BU SPF general regulator may share certain information with** 27 **relevant persons**

- 28 (1) The SPF general regulator may disclose information about either of
29 the following actions (a *scamming action*):
30 (a) a scam (as defined in section 58AG);
31 (b) a scam (within the ordinary meaning of that expression);
32 to another person if the SPF general regulator reasonably believes
33 that doing so will assist in achieving the object of this Part.

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

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

EXPOSURE DRAFT

-
- 1 (a) disclosing information from a report of actionable scam
2 intelligence given by a regulated entity; or
3 (b) disclosing to an SPF sector regulator information about a
4 scamming action; or
5 (c) disclosing information about a scamming action to agencies
6 of the Commonwealth involved in developing or
7 administering Government policy relating to this Part; or
8 (d) disclosing information about a scamming action to a law
9 enforcement agency of the Commonwealth, or of a State or
10 Territory to assist that agency to respond to that scamming
11 action; or
12 (e) disclosing to another person information about a scamming
13 action to assist that other person to disrupt similar actions.

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

- 19 (3) Despite subsection (1), the SPF general regulator must not make a
20 disclosure under that subsection if it reasonably believes that:
21 (a) the disclosure risks prejudicing or compromising an ongoing
22 investigation by a law enforcement agency; or
23 (b) the disclosure:
24 (i) is of a kind described in paragraph (2)(e) where the
25 other person is not a regulated entity; and
26 (ii) is of personal information.

27 **Subdivision F—SPF principle 5: Disrupt**

28 **58BV Simplified outline of this Subdivision**

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

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

33 (a) disclose sufficient information to its consumers to
34 enable them to act in relation to the suspected scam; and
35 (b) share that intelligence with the SPF general regulator.

EXPOSURE DRAFT

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:

EXPOSURE DRAFT

-
- 1 (a) has actionable scam intelligence about a suspected scam
2 relating to a regulated service of the entity; and
3 (b) fails to give the SPF general regulator a report that:
4 (i) complies with subsection (3); and
5 (ii) deals with the matters set out in subsection (5).

6 *Sharing with the SPF general regulator—timing and form*

- 7 (3) A report complies with this subsection if the report:
8 (a) is given to the SPF general regulator within 24 hours after the
9 end of the period referred to in paragraph 58BZ(2)(d) for that
10 intelligence; and
11 (b) contains the information, and is in the form, approved under
12 subsection (4) of this section.
- 13 (4) The SPF general regulator may, by notifiable instrument, approve:
14 (a) the kinds of information to be included in a report of a kind
15 referred to in paragraph (2)(b); and
16 (b) the form in which such a report is to be given under
17 subsection (2).

18 *Sharing with the SPF general regulator—content of report*

- 19 (5) For the purposes of subparagraph (2)(b)(ii), a report must:
20 (a) advise whether the entity reasonably believes that the activity
21 that is the subject of the intelligence referred to in
22 paragraph (2)(a) is a scam; and
23 (b) if the entity reasonably believes that the activity is a scam—
24 set out:
25 (i) what loss or harm may have resulted from the scam,
26 what disruptive actions the entity has taken and whether
27 any of those actions have been reversed; and
28 (ii) what steps the entity is taking to disrupt similar scams,
29 and to prevent loss or harm resulting from similar
30 scams; and
31 (c) if the entity reasonably believes that the activity is not a
32 scam—set out what disruptive actions the entity has taken
33 and whether any of those actions have been reversed.

34 *Civil penalty provisions*

- 35 (6) Subsections (1) and (2) are civil penalty provisions.
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EXPOSURE DRAFT

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

4 **58BY Sector-specific details can be set out in SPF codes**

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

- 8 (a) what are reasonable steps; or
9 (b) what is a reasonable time;
10 for the purposes of this Subdivision.

11 **58BZ Safe harbour for taking actions to disrupt an activity while** 12 **investigating whether the activity is a scam**

- 13 (1) This section applies to a regulated entity if the entity has actionable
14 scam intelligence about a suspected scam relating to a regulated
15 service of the entity.
- 16 (2) The regulated entity is not liable in a civil action or civil
17 proceeding for taking action to disrupt an activity that is the subject
18 of that intelligence if the action:
- 19 (a) is taken in good faith; and
20 (b) is taken in compliance with the SPF provisions; and
21 (c) is reasonably proportionate to the suspected scam, and to
22 information that would reasonably be expected to be
23 available to the entity about the suspected scam; and
24 (d) is taken during the period:
25 (i) starting on the day that the intelligence becomes
26 actionable scam intelligence for the entity; and
27 (ii) ending when the entity identifies whether or not the
28 activity is a scam, or after 28 days, whichever is the
29 earlier; and
30 (e) is promptly reversed if:
31 (i) the entity identifies that the activity is not a scam; and
32 (ii) it is reasonably practicable to reverse the action.

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

EXPOSURE DRAFT

1 Subdivision G—SPF principle 6: Respond

2 58BZA Simplified outline of this Subdivision

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

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

- 8 (a) scams; or
9 (b) the entity's conduct relating to scams.

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

14 The SPF code for the sector may include sector-specific provisions
15 for this principle.

16 58BZB Enabling SPF consumers to easily report scams—civil 17 penalty provision

- 18 (1) A regulated entity contravenes this subsection if the entity does not
19 have an accessible mechanism for SPF consumers of the entity's
20 regulated services to report scams relating to those services to the
21 entity.
- 22 (2) Subsection (1) is a civil penalty provision.

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

25 58BZC Having an accessible and transparent internal dispute 26 resolution mechanism—civil penalty provision

- 27 (1) A regulated entity contravenes this subsection if the entity does not
28 have an accessible and transparent internal dispute resolution
29 mechanism for SPF consumers of the entity's regulated services to
30 complain about:
- 31 (a) scams relating to those services; and
32 (b) the entity's conduct relating to such scams.

EXPOSURE DRAFT

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

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

4 **58BZD SPF external dispute resolution schemes—civil penalty** 5 **provisions**

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

- 8 (1) A regulated entity for a regulated sector contravenes this
9 subsection if the entity:
10 (a) provides a regulated service for the sector that has one or
11 more SPF consumers; and
12 (b) is not a member of an SPF EDR scheme for the sector.

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

- 15 (2) A regulated entity for a regulated sector contravenes this
16 subsection if the entity:
17 (a) is a member of an SPF EDR scheme for the sector; and
18 (b) fails to comply with an obligation in the SPF code for the
19 sector that relates to the scheme.

20 *Civil penalty provisions*

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

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

24 **58BZE Sector-specific details can be set out in SPF codes**

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

- 28 (a) conditions that must be met for a reporting mechanism for
29 the purposes of this Subdivision; or
30 (b) conditions that must be met for an internal dispute resolution
31 mechanism for the purposes of this Subdivision; or
32 (c) obligations that must be met in relation to an SPF EDR
33 scheme for the sector by a regulated entity for the sector that
34 is a member of the scheme.

EXPOSURE DRAFT

1 **Division 3—Sector-specific codes for the Scams Prevention** 2 **Framework**

3 **58CA Simplified outline of this Division**

4 The Minister may make a code for each regulated sector.

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

- 8 (a) SPF principle 1—governance;
- 9 (b) SPF principle 2—prevent;
- 10 (c) SPF principle 3—detect;
- 11 (d) SPF principle 5—disrupt;
- 12 (e) SPF principle 6—respond.

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

17 **58CB Sector-specific codes (SPF codes)**

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

20 **58CC Content of SPF codes**

21 *Main rule about the content of SPF codes*

- 22 (1) An SPF code must:
 - 23 (a) be consistent with the SPF principles; and
 - 24 (b) deal with only:
 - 25 (i) the themes or matters covered by Subdivisions B, C, D,
26 F and G of Division 2; and
 - 27 (ii) ancillary or incidental matters; and
 - 28 (c) subject to paragraphs (a) and (b), include provisions about
29 matters of a kind (if any) prescribed by the SPF rules.

EXPOSURE DRAFT

Ancillary or incidental matters in SPF codes

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- (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.

EXPOSURE DRAFT

Civil penalty provisions of the SPF code

- 1
2 (3) An SPF code may provide that specified provisions of the SPF
3 code are civil penalty provisions (within the meaning of the
4 Regulatory Powers Act).

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

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

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

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

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

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

15 **58CD Delegation**

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

18 (a) another Minister; or

19 (b) the Commission; or

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

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

EXPOSURE DRAFT

1 **Division 4—External dispute resolution for the Scams**
2 **Prevention Framework**

3 **58DA Simplified outline of this Division**

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

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

9 **58DB Minister may authorise external dispute resolution schemes**
10 **for a regulated sector**

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

- 14 (a) the scheme is already authorised under a Commonwealth law
15 for another purpose; or
16 (b) the Minister is satisfied that the requirements prescribed by
17 the SPF rules for the purposes of subsection 58DC(1) are met
18 for the scheme.

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

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

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

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

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

EXPOSURE DRAFT

1 **58DC Content, including requirements, of a scheme that is not**
2 **already authorised under a Commonwealth law**

- 3 (1) The SPF rules may prescribe the following requirements for a
4 scheme for which paragraph 58DB(1)(b) applies:
5 (a) organisational requirements for membership of the scheme;
6 (b) requirements for the operator (the *operator*) of the scheme;
7 (c) requirements for how the scheme is to operate;
8 (d) requirements to be complied with by members of the scheme;
9 (e) requirements for making changes to the scheme.
- 10 (2) A scheme for which paragraph 58DB(1)(b) applies may also
11 include provisions dealing with the following:
12 (a) powers of one or more of the following under the scheme:
13 (i) the Minister;
14 (ii) an SPF regulator;
15 (iii) a Commonwealth entity (within the meaning of the
16 *Public Governance, Performance and Accountability*
17 *Act 2013*);
18 (b) powers of the operator under the scheme, including powers
19 to:
20 (i) seek information; and
21 (ii) make determinations of complaints; and
22 (ii) make determinations imposing financial and
23 non-financial remedies; and
24 (c) appeals to the Federal Court from such determinations by the
25 operator;
26 (d) information sharing and reporting;
27 (e) a provision that depends on the operator or another person
28 being satisfied of one or more specified matters;
29 (f) provisions about the following matters:
30 (i) the manner in which the operator may charge (or cause
31 to be charged) a fee under the scheme;
32 (ii) the time for paying such a fee;
33 (iii) giving notice of, or publicising, such a fee or matters
34 about such a fee;
35 (g) provisions about any other matters that the provisions of this
36 Part provide may be specified, or otherwise dealt with, in the
37 scheme.

EXPOSURE DRAFT

1 58DD Scheme operator to report to SPF regulators

2 *Referring contraventions, failures and systemic issues*

- 3 (1) If the operator of an SPF EDR scheme for a regulated sector
4 becomes aware that:
- 5 (a) a serious contravention of any law may have occurred in
6 connection with a complaint under the scheme; or
 - 7 (b) a party to a complaint under the scheme may have failed to
8 give effect to a determination by the operator relating to the
9 complaint; or
 - 10 (c) there is a systemic issue arising from the consideration of
11 complaints under the scheme;
- 12 the operator must give particulars of the contravention, failure or
13 issue to the SPF general regulator and to the SPF sector regulator
14 for the sector.

15 *Referring settled complaints*

- 16 (2) If:
- 17 (a) the parties to a complaint made under an SPF EDR scheme
18 for a regulated sector agree to a settlement of the complaint;
19 and
 - 20 (b) the operator of the scheme thinks the settlement may require
21 investigation;
- 22 the operator may give particulars of the settlement to the SPF
23 general regulator and to the SPF sector regulator for the sector.

24 58DE Disclosing information to the operator of an SPF EDR scheme

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

EXPOSURE DRAFT

1 Division 5—Regulating the Scams Prevention Framework

2 Subdivision A—Preliminary

3 58EA Simplified outline of this Division

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

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

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

13 Subdivision B—Regulators of the Scams Prevention 14 Framework

15 58EB General regulator of the Scams Prevention Framework

- 16 (1) The Commission is the *SPF general regulator* for all SPF
17 provisions apart from the provisions of SPF codes.
- 18 (2) The functions and powers of the SPF general regulator include:
19 (a) the function of reviewing, and advising the Minister about,
20 the operation of the SPF provisions; and
21 (b) the Commission's functions and powers under section 155 to
22 the extent that section 155 relates to:
23 (i) the SPF provisions; or
24 (ii) a designated scams prevention framework matter
25 (within the meaning of that section); and
26 (c) the functions and powers of the SPF general regulator
27 conferred by any other SPF provisions.

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

EXPOSURE DRAFT

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

- 1
2
- 3 (1) The Commission may, by resolution, delegate any of:
- 4 (a) the Commission's functions and powers (as the SPF general
- 5 regulator) under an SPF provision; or
- 6 (b) the Commission's functions and powers under section 155 as
- 7 described in paragraph 58EB(2)(b);
- 8 to an SPF sector regulator, or to a member, SES employee or
- 9 acting SES employee of an SPF sector regulator.
- 10 (2) A member of the Commission may, by writing, delegate any of the
- 11 member's functions and powers under section 155 to the extent
- 12 that section 155 relates to:
- 13 (a) the SPF provisions; or
- 14 (b) a designated scams prevention framework matter (within the
- 15 meaning of that section);
- 16 to an SPF sector regulator, or to a member, SES employee or
- 17 acting SES employee of an SPF sector regulator.
- 18 (3) A delegation must not be made under subsection (1) or (2) unless
- 19 the SPF sector regulator has agreed to the delegation in writing.

58ED Regulator of a regulated sector

- 20
- 21 (1) The Minister may, by legislative instrument, designate a
- 22 Commonwealth entity (within the meaning of the *Public*
- 23 *Governance, Performance and Accountability Act 2013*) to be the
- 24 **SPF sector regulator** for a regulated sector.
- 25 (2) The Commission is the **SPF sector regulator** for a regulated sector
- 26 if (and while) no instrument under subsection (1) is in force for the
- 27 sector.
- 28 (3) The functions and powers of the SPF sector regulator for a
- 29 regulated sector include those conferred:
- 30 (a) by the SPF code for the sector; or
- 31 (b) by any other SPF provisions.
- 32 (4) The Minister may, in writing, delegate the Minister's power under
- 33 subsection (1) to another Minister.

34 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain

35 provisions relating to delegations.

EXPOSURE DRAFT

1 **58EE Arrangements for regulating the Scams Prevention** 2 **Framework**

- 3 (1) The SPF general regulator, and each SPF sector regulator, must
4 enter into an arrangement relating to the regulation and
5 enforcement of the SPF provisions.
- 6 (2) The SPF general regulator may choose to comply with
7 subsection (1) by entering into:
8 (a) a single arrangement with all, or 2 or more, SPF sector
9 regulators; or
10 (b) a separate arrangement with each SPF sector regulator.
11 However, subsection (1) does not apply to the extent that the
12 Commission is an SPF sector regulator.
- 13 (3) The arrangement must include provisions relating to the matters (if
14 any) prescribed by the SPF rules.
- 15 Note: For example, the SPF rules could require an SPF regulator that
16 requests a scam report under subsection 58BS(2) to:
17 (a) notify each other SPF regulator of the request; and
18 (b) give a copy of the scam report to any of those other SPF
19 regulators that asks for one.
- 20 (4) Each SPF regulator that is a party to such an arrangement must
21 publish the arrangement on its website.
- 22 (5) A failure to comply with this section does not invalidate the
23 performance or exercise of a function or power by an SPF
24 regulator.

25 **Subdivision C—Information sharing between SPF regulators**

26 **58EF SPF regulators may disclose information to each other**

- 27 (1) An SPF regulator may disclose to another SPF regulator:
28 (a) particular information or documents; or
29 (b) information or documents of a particular kind;
30 that are in the first-mentioned SPF regulator's possession and are
31 relevant to the operation (including enforcement) of the SPF
32 provisions.
- 33 (2) An SPF regulator may make a disclosure under subsection (1) on
34 request or on its own initiative.

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

EXPOSURE DRAFT

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- 1 (a) paragraph 155AAA(1)(b); and
2 (b) section 59DB of the *Australian Communications and Media*
3 *Authority Act 2005*; and
4 (c) subsection 127(2) of the *Australian Securities and Investments*
5 *Commission Act 2001*.

6 **58EG Regard must be had to the object of this Part when**
7 **considering whether to make such a disclosure**

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

11 Note: Arrangements made under section 58EE between SPF regulators
12 could deal with when disclosures should be made (see subsection
13 58EE(3) in particular).

14 **58EH Notice need not be given of such a disclosure or of the use of**
15 **information or documents so disclosed**

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

- 18 (a) plans to make a disclosure under this Subdivision; or
19 (b) has made such a disclosure; or
20 (c) plans to use information or documents disclosed under this
21 Subdivision; or
22 (d) has used information or documents so disclosed.

23 **58EI Information that need not be disclosed**

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

- 26 (a) concern the internal administrative functioning of that
27 regulator; or
28 (b) disclose a matter in respect of which that regulator or any
29 other person has claimed legal professional privilege; or
30 (c) are of a kind prescribed by the SPF rules.

EXPOSURE DRAFT

1 **Division 6—Enforcing the Scams Prevention Framework**

2 **Subdivision A—Preliminary**

3 **58FA Simplified outline of this Division**

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

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

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

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

- 15 (a) infringement notices; and
16 (b) enforceable undertakings; and
17 (c) injunctions; and
18 (d) actions for damages; and
19 (e) public warning notices; and
20 (f) remedial directions; and
21 (g) adverse publicity orders; and
22 (h) other punitive and non-punitive orders.

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

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

EXPOSURE DRAFT

1 58FB Appointment of inspectors

- 2 (1) An SPF regulator may, in writing, appoint a person who is one of
3 the following to be an *inspector* of that regulator for the purposes
4 of this Division:
5 (a) a person who is an SES employee or acting SES employee of
6 that regulator;
7 (b) a person who is an APS employee of that regulator who
8 holds or performs the duties of an Executive Level 1 or 2
9 position or an equivalent position;
10 (c) a member or special member of the Australian Federal
11 Police.
- 12 (2) That regulator must not appoint a person as an inspector unless that
13 regulator is satisfied that the person has the knowledge or
14 experience necessary to properly exercise the powers of an
15 inspector.
- 16 (3) An inspector must, in exercising powers as such, comply with any
17 directions of that regulator of an administrative character.

18 58FC Multiple remedies can be sought for a single contravention

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

22 Subdivision B—Monitoring or investigating compliance with an 23 SPF code

24 58FD Monitoring compliance with an SPF code—default

25 *No alternative monitoring powers declaration in force*

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

31 *Provisions subject to monitoring*

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

EXPOSURE DRAFT

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

4 *Information subject to monitoring*

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

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

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

- 13 (4) For the purposes of Part 2 of the Regulatory Powers Act, as that
14 Part applies in relation to the provisions mentioned in
15 subsection (2) and the information mentioned in subsection (3):
16 (a) there are no related provisions; and
17 (b) an inspector of the SPF sector regulator is an authorised
18 applicant; and
19 (c) an inspector of the SPF sector regulator is an authorised
20 person; and
21 (d) a magistrate is an issuing officer; and
22 (e) the SPF sector regulator is the relevant chief executive; and
23 (f) each of the following courts is a relevant court:
24 (i) the Federal Court;
25 (ii) the Federal Circuit and Family Court of Australia
26 (Division 2);
27 (iii) a court of a State or Territory that has jurisdiction in
28 relation to the matter.
- 29 (5) The relevant chief executive may, in writing, delegate the powers
30 and functions mentioned in subsection (6) to an SES employee, or
31 acting SES employee, of the SPF sector regulator.
- 32 (6) The powers and functions that may be delegated are:
33 (a) powers and functions under Part 2 of the Regulatory Powers
34 Act in relation to the provisions mentioned in subsection (2)
35 and the information mentioned in subsection (3); and
36 (b) powers and functions under the Regulatory Powers Act that
37 are incidental to a power or function mentioned in
38 paragraph (a) of this subsection.

EXPOSURE DRAFT

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

4 *Person assisting*

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

9 **58FE Investigating compliance with an SPF code—default**

10 *No alternative investigation powers declaration in force*

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

16 *Provisions subject to investigation*

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

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

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

- 24 (3) For the purposes of Part 3 of the Regulatory Powers Act, as that
25 Part applies in relation to evidential material that relates to a
26 provision mentioned in subsection (2):
27 (a) there are no related provisions; and
28 (b) an inspector of the SPF sector regulator is an authorised
29 applicant; and
30 (c) an inspector of the SPF sector regulator is an authorised
31 person; and
32 (d) a magistrate is an issuing officer; and
33 (e) the SPF sector regulator is the relevant chief executive; and
34 (f) each of the following courts is a relevant court:
35 (i) the Federal Court;
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EXPOSURE DRAFT

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- 1 (ii) the Federal Circuit and Family Court of Australia
2 (Division 2);
3 (iii) a court of a State or Territory that has jurisdiction in
4 relation to the matter.
- 5 (4) The relevant chief executive may, in writing, delegate the powers
6 and functions mentioned in subsection (5) to an SES employee, or
7 acting SES employee, of the SPF sector regulator.
- 8 (5) The powers and functions that may be delegated are:
9 (a) powers and functions under Part 3 of the Regulatory Powers
10 Act in relation to evidential material that relates to a
11 provision mentioned in subsection (2); and
12 (b) powers and functions under the Regulatory Powers Act that
13 are incidental to a power or function mentioned in
14 paragraph (a).
- 15 (6) A person exercising powers or performing functions under a
16 delegation under subsection (4) must comply with any directions of
17 the relevant chief executive.

18 *Person assisting*

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

23 **58FF Monitoring or investigating—Minister may declare that**
24 **alternative powers apply for an SPF sector regulator**

- 25 (1) This section applies if provisions of another law (the *alternative*
26 *power provisions*):
27 (a) provide an entity with powers to:
28 (i) monitor compliance or purported compliance with
29 provisions of a law (the *alternative regulatory*
30 *provisions*); or
31 (ii) investigate provisions of a law (also the *alternative*
32 *regulatory provisions*); or
33 (b) enable the effective operation and enforcement of such
34 powers.

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

EXPOSURE DRAFT

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- 1 (2) The Minister may, by legislative instrument, declare that specified
2 alternative power provisions (that relate to a specified entity and
3 specified alternative regulatory provisions) also apply:
4 (a) to the entity in the entity's capacity as the SPF sector
5 regulator for a regulated sector; and
6 (b) in relation to specified provisions of the SPF code for the
7 sector in a corresponding way to the way the alternative
8 power provisions apply in relation to the alternative
9 regulatory provisions.
- 10 (3) An instrument made under subsection (2) has effect accordingly.

11 Subdivision C—Civil penalty provisions

12 58FG Civil penalty provisions

13 *Enforcing civil penalty provisions*

- 14 (1) Each of the following is enforceable under Part 4 of the Regulatory
15 Powers Act:
16 (a) a civil penalty provision of an SPF principle;
17 (b) a civil penalty provision of an SPF code.

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

21 *Authorised applicant*

- 22 (2) For the purposes of Part 4 of the Regulatory Powers Act:
23 (a) the SPF general regulator is an authorised applicant in
24 relation to each civil penalty provision of an SPF principle;
25 and
26 (b) the SPF sector regulator for a regulated sector is an
27 authorised applicant in relation to each civil penalty
28 provision of the SPF code for the sector.

29 *Relevant court*

- 30 (3) For the purposes of Part 4 of the Regulatory Powers Act, each of
31 the following courts is a relevant court in relation to each provision
32 referred to in subsection (1):
33 (a) the Federal Court;

EXPOSURE DRAFT

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- 1 (b) the Federal Circuit and Family Court of Australia
2 (Division 2);
3 (c) a court of a State or Territory that has jurisdiction in relation
4 to the matter.

58FH Maximum penalty for tier 1 contraventions

- 6 (1) Despite subsection 82(5) of the Regulatory Powers Act, the
7 pecuniary penalty payable by a person:
8 (a) under an SPF civil penalty order; and
9 (b) for a contravention of a civil penalty provision of an SPF
10 principle in any of Subdivisions C, D, F or G of Division 2 of
11 this Part;

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

Maximum amount of civil penalty for bodies corporate

- 14
15 (2) For the purposes of subsection (1), the maximum penalty amount
16 for such a contravention by a body corporate is the greater of the
17 following:
18 (a) 159,745 penalty units;
19 (b) if the relevant court (see subsection 58FG(3)) can determine
20 the total value of the benefit that:
21 (i) the body corporate; and
22 (ii) any body corporate related to the body corporate;
23 have obtained directly or indirectly and that is reasonably
24 attributable to the contravention—3 times that total value;
25 (c) if that court cannot determine that total value—30% of the
26 adjusted turnover of the body corporate during the breach
27 turnover period for the contravention.

Maximum amount of civil penalty for other persons

- 28
29 (3) For the purposes of subsection (1), the maximum penalty amount
30 for such a contravention by a person other than a body corporate is
31 7,990 penalty units.

58FI Maximum penalty for tier 2 contraventions

- 32
33 (1) Despite subsection 82(5) of the Regulatory Powers Act, the
34 pecuniary penalty payable by a person:
35 (a) under an SPF civil penalty order; and
-

EXPOSURE DRAFT

-
- 1 (b) for a contravention of:
2 (i) a civil penalty provision of an SPF principle in
3 Subdivision B or E of Division 2 of this Part; or
4 (ii) a civil penalty provision of an SPF code;
5 must not be more than the maximum penalty amount worked out
6 under this section for such a contravention by the person.

7 *Maximum amount of civil penalty for bodies corporate*

- 8 (2) For the purposes of subsection (1), the maximum penalty amount
9 for such a contravention by a body corporate is the greater of the
10 following:
11 (a) 31,950 penalty units;
12 (b) if the relevant court (see subsection 58FG(3)) can determine
13 the total value of the benefit that:
14 (i) the body corporate; and
15 (ii) any body corporate related to the body corporate;
16 have obtained directly or indirectly and that is reasonably
17 attributable to the contravention—3 times that total value;
18 (c) if that court cannot determine that total value—10% of the
19 adjusted turnover of the body corporate during the breach
20 turnover period for the contravention.

21 *Maximum amount of civil penalty for other persons*

- 22 (3) For the purposes of subsection (1), the maximum penalty amount
23 for such a contravention by a person other than a body corporate is
24 1,600 penalty units.

25 **58FJ Civil penalty double jeopardy**

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

- 29 (a) a pecuniary penalty for contravening another civil penalty
30 provision of an SPF principle or of an SPF code; or
31 (b) a pecuniary penalty under some other provision of a law of
32 the Commonwealth;
33 in respect of that conduct.

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

EXPOSURE DRAFT

1 Subdivision D—Infringement notices

2 58FK Purpose and effect of this Subdivision

- 3 (1) The purpose of this Subdivision is to provide for the issue of an
4 infringement notice to a person for an alleged contravention of:
5 (a) a civil penalty provision of an SPF principle in Subdivision B
6 or E of Division 2 of this Part; or
7 (b) a civil penalty provision of an SPF code;
8 as an alternative to proceedings for an SPF civil penalty order.
- 9 (2) This Subdivision does not:
10 (a) require an SPF infringement notice to be issued for an
11 alleged contravention of such a civil penalty provision; or
12 (b) affect a person's liability to proceedings for an SPF civil
13 penalty order in relation to an alleged contravention of a civil
14 penalty provision if:
15 (i) an SPF infringement notice is not issued to the person
16 for the contravention; or
17 (ii) an SPF infringement notice issued to the person for the
18 contravention is withdrawn under section 58FR; or
19 (c) prevent a court from imposing a higher penalty than the
20 penalty specified in the SPF infringement notice if the person
21 does not comply with the notice.

22 58FL Issuing an SPF infringement notice

23 *Notices for contraventions of certain SPF principles*

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

29 *Notices for contraventions of SPF codes*

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

EXPOSURE DRAFT

Only one notice for each contravention

- 1
2 (3) Inspectors for an SPF regulator must not issue more than one SPF
3 infringement notice to the person for the same alleged
4 contravention of a civil penalty provision.

5 *When notices do not have any effect*

- 6 (4) An SPF infringement notice does not have any effect if the notice:
7 (a) is issued more than 12 months after the day that the relevant
8 contravention is alleged to have occurred; or
9 (b) relates to more than one alleged contravention of a civil
10 penalty provision by the person.

11 **58FM Matters to be included in an SPF infringement notice**

12 An SPF infringement notice must:

- 13 (a) be identified by a unique number; and
14 (b) state the day on which it is issued; and
15 (c) state the name of the person to whom it is issued; and
16 (d) state the name of the inspector who issued the notice, that the
17 inspector is an inspector of the applicable SPF regulator, and
18 how that SPF regulator may be contacted; and
19 (e) give details of the alleged contravention, including:
20 (i) the day of the alleged contravention; and
21 (ii) the civil penalty provision that was allegedly
22 contravened; and
23 (f) state the maximum pecuniary penalty that a court could order
24 the person to pay if the court were to make an SPF civil
25 penalty order for the alleged contravention; and
26 (g) specify the penalty that is payable in relation to the alleged
27 contravention; and
28 (h) state that the penalty is payable within the infringement
29 notice compliance period for the notice; and
30 (i) state that the penalty is payable to the SPF regulator on
31 behalf of the Commonwealth; and
32 (j) explain how payment of the penalty is to be made; and
33 (k) explain the effect of sections 58FO to 58FR.

EXPOSURE DRAFT

1 **58FN Amount of penalty**

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

- 4 (a) if the person is a body corporate—60 penalty units;
5 (b) otherwise—12 penalty units.

6 **58FO Effect of compliance with an SPF infringement notice**

7 (1) This section applies if:

- 8 (a) an SPF infringement notice for an alleged contravention of a
9 civil penalty provision is issued to a person; and
10 (b) the person pays the penalty specified in the notice within the
11 infringement notice compliance period and in accordance
12 with the notice; and
13 (c) the notice is not withdrawn under section 58FR.

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

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

20 **58FP Effect of failure to comply with an SPF infringement notice**

21 If:

- 22 (a) an SPF infringement notice for an alleged contravention of a
23 civil penalty provision is issued to a person; and
24 (b) the person fails to pay the penalty specified in the notice
25 within the infringement notice compliance period and in
26 accordance with the notice; and
27 (c) the notice is not withdrawn under section 58FR;

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

30 **58FQ Infringement notice compliance period for infringement** 31 **notice**

32 (1) Subject to this section, the *infringement notice compliance period*,
33 for an SPF infringement notice issued to a person, is the period of

EXPOSURE DRAFT

1 28 days beginning on the day after the day that the notice is so
2 issued by an inspector of an SPF regulator.

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

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

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

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

14 *Delegation*

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

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

21 **58FR Withdrawal of an infringement notice**

22 *Representations to the SPF regulator*

23 (1) A person to whom an SPF infringement notice has been issued:
24 (a) by an inspector of an SPF regulator; and
25 (b) for an alleged contravention of a civil penalty provision;
26 may make written representations to the SPF regulator seeking the
27 withdrawal of the notice.

28 (2) Evidence or information that:
29 (a) the person; or
30 (b) a representative of the person;
31 gives to the SPF regulator in the course of making representations
32 under subsection (1) is not admissible in evidence against the
33 person or representative in any proceedings (other than

EXPOSURE DRAFT

1 proceedings for an offence based on the evidence or information
2 given being false or misleading).

3 *Withdrawal by the SPF regulator*

- 4 (3) If an inspector of an SPF regulator issues an SPF infringement
5 notice to a person, the SPF regulator may, by giving written notice
6 (a ***withdrawal notice***) to the person, withdraw the SPF
7 infringement notice if the SPF regulator is satisfied that it is
8 appropriate to do so.
- 9 (4) Subsection (3) applies whether or not the person has made
10 representations seeking the withdrawal.

11 *Content of withdrawal notices*

- 12 (5) The withdrawal notice must state:
- 13 (a) the name and address of the person; and
 - 14 (b) the day on which the SPF infringement notice was issued to
15 the person; and
 - 16 (c) that the SPF infringement notice is withdrawn; and
 - 17 (d) that proceedings for an SPF civil penalty order may be
18 started or continued against the person in relation to the
19 alleged contravention of the civil penalty provision.

20 *Time limit for giving withdrawal notices*

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

24 *Refunds*

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

29 *Delegation*

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

EXPOSURE DRAFT

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

4 **Subdivision E—Enforceable undertakings**

5 **58FS Enforceable undertakings**

6 *Accepting an undertaking*

- 7 (1) The SPF general regulator may accept a written undertaking given
8 by a person for the purposes of this section in connection with
9 compliance with a provision of the SPF principles.
- 10 (2) The SPF sector regulator for a regulated sector may accept a
11 written undertaking given by a person for the purposes of this
12 section in connection with compliance with a provision of the SPF
13 code for the sector.

14 *Withdrawing or varying the undertaking*

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

18 *Orders for enforcing the undertaking*

- 19 (4) If an SPF regulator considers that the person who gave the SPF
20 regulator an undertaking has breached any of its terms, the SPF
21 regulator may apply to the Court for an order under subsection (5).
- 22 (5) If the Court is satisfied that the person has breached a term of the
23 undertaking, the Court may make all or any of the following
24 orders:
- 25 (a) an order directing the person to comply with that term of the
26 undertaking;
 - 27 (b) an order directing the person to pay to the Commonwealth an
28 amount up to the amount of any financial benefit that the
29 person has obtained directly or indirectly and that is
30 reasonably attributable to the breach;
 - 31 (c) any order that the Court considers appropriate directing the
32 person to compensate any other person who has suffered loss
33 or damage as a result of the breach;
 - 34 (d) any other order that the Court considers appropriate.

EXPOSURE DRAFT

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

EXPOSURE DRAFT

-
- 1 (c) whether or not there is an imminent danger of substantial
2 damage to any person if the first-mentioned person engages
3 in conduct of that kind.
- 4 (2) The Court may grant an injunction under section 58FT requiring a
5 person to do an act or thing:
- 6 (a) whether or not it appears to the Court that the person intends
7 to refuse or fail again, or to continue to refuse or fail, to do
8 that act or thing; and
- 9 (b) whether or not the person has previously refused or failed to
10 do that act or thing; and
- 11 (c) whether or not there is an imminent danger of substantial
12 damage to any person if the first-mentioned person refuses or
13 fails to do that act or thing.
- 14 (3) The Court may grant an injunction under section 58FT by consent
15 of all the parties to the proceedings whether or not the Court is
16 satisfied that a person has engaged, or is proposing to engage, in
17 conduct of a kind mentioned in that section.

18 **58FV Interim injunctions**

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

22 **58FW Rescinding or varying injunctions**

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

25 **58FX Applying for injunctions**

- 26 (1) An application for an injunction under this Subdivision may be
27 made by an SPF regulator or any other person.
- 28 (2) If an SPF regulator applies for such an injunction, the Court must
29 not require the applicant or any other person, as a condition of
30 granting an interim injunction, to give any undertakings as to
31 damages.
- 32 (3) If:
- 33 (a) a person other than an SPF regulator:
- 34 (i) applies for such an injunction; and
-

EXPOSURE DRAFT

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- 1 (ii) apart from this subsection, would be required by the
2 Court to give an undertaking as to damages or costs; and
3 (b) an SPF regulator gives the undertaking;
4 the Court must accept the undertaking by the SPF regulator and
5 must not require a further undertaking from any other person.

6 **58FY Other powers of the Court unaffected**

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

10 **Subdivision G—Actions for damages**

11 **58FZ Actions for damages**

- 12 (1) A person who suffers loss or damage by conduct of another person
13 that was done in contravention of:
14 (a) a civil penalty provision of an SPF principle; or
15 (b) a civil penalty provision of an SPF code;
16 may recover the amount of the loss or damage by action against
17 that other person or against any person involved in the
18 contravention.
- 19 (2) Such an action may be commenced at any time within 6 years after
20 the day the cause of action that relates to the conduct accrued.

21 **Subdivision H—Public warning notices**

22 **58FZA Public warning notices**

23 *Suspected contraventions of a provision of the SPF principles*

- 24 (1) The SPF general regulator may issue to the public a written notice
25 containing a warning about the conduct of a person if the SPF
26 general regulator:
27 (a) reasonably suspects that the person's conduct may constitute
28 a contravention of a specified provision of the SPF
29 principles; and
30 (b) is satisfied that one or more persons has suffered, or is likely
31 to suffer, detriment as a result of the conduct; and
32 (c) is satisfied that it is in the public interest to issue the notice.

EXPOSURE DRAFT

Suspected contraventions of a provision of an SPF code

- 1
- 2 (2) The SPF sector regulator for a regulated sector may issue to the
3 public a written notice containing a warning about the conduct of a
4 person if the SPF sector regulator:
- 5 (a) reasonably suspects that the person’s conduct may constitute
6 a contravention of a specified provision of the SPF code for
7 the sector; and
- 8 (b) is satisfied that one or more persons has suffered, or is likely
9 to suffer, detriment as a result of the conduct; and
- 10 (c) is satisfied that it is in the public interest to issue the notice.

11 *Related matters*

- 12 (3) An SPF regulator that issues a notice under subsection (1) or (2)
13 must publish the notice on the SPF regulator’s website.
- 14 (4) A notice under subsection (1) or (2) is not a legislative instrument.

Subdivision I—Remedial directions

58FZB Remedial directions

17 *Giving directions—to comply with an SPF principle*

- 18 (1) If the SPF general regulator reasonably suspects that a regulated
19 entity:
- 20 (a) is failing to comply with an SPF principle; or
21 (b) will fail to comply with an SPF principle;
- 22 the SPF general regulator may, by written notice given to the
23 entity, direct the entity to take specified action to comply with that
24 SPF principle.

25 *Giving directions—to comply with an SPF code*

- 26 (2) If the SPF sector regulator for a regulated sector reasonably
27 suspects that a regulated entity for the sector:
- 28 (a) is failing to comply with a provision of the SPF code for the
29 sector; or
30 (b) will fail to comply with such a provision;
- 31 the SPF sector regulator may, by written notice given to the entity,
32 direct the entity to take specified action to comply with that
33 provision of the SPF code.

EXPOSURE DRAFT

Complying with a direction

- 1
- 2 (3) A regulated entity given a direction under subsection (1) or (2)
- 3 must comply with the direction.
- 4 (a) within the time specified in the direction, which must be a
- 5 reasonable time; or
- 6 (b) if the direction does not specify a reasonable time—within a
- 7 reasonable time.
- 8 (4) Subsection (3) is a civil penalty provision.

9 Note: To work out how sections 58FG to 58FI (about civil penalties) apply

10 to subsection (3), see the definitions of *civil penalty provision of an*

11 *SPF principle*, and *civil penalty provision of an SPF code* in

12 subsection 4(1).

Extending the time for complying with a direction

- 13
- 14 (5) The SPF regulator who gives a direction under subsection (1) or
- 15 (2) to an entity may extend the time for complying with the
- 16 direction by written notice given to the entity.

Before giving a direction

- 17
- 18 (6) Before an SPF regulator gives an entity a direction under
- 19 subsection (1) or (2), the SPF regulator must give the entity an
- 20 opportunity to make submissions to the SPF regulator on the
- 21 matter.

Varying and revoking directions

- 22
- 23 (7) An SPF regulator may vary or revoke a direction given by the SPF
- 24 regulator under subsection (1) or (2) in like manner and subject to
- 25 like conditions.

Publishing directions

- 26
- 27 (8) As soon as practicable after an SPF regulator gives, varies or
- 28 revokes a direction under subsection (1) or (2), the SPF regulator
- 29 must publish a notice of its action on its website.

EXPOSURE DRAFT

1 Subdivision J—Adverse publicity orders

2 58FZC Adverse publicity orders

3 *Making adverse publicity orders*

- 4 (1) The Court may, on application, make an adverse publicity order
5 against a person who has been ordered to pay a pecuniary penalty
6 under an SPF civil penalty order.
- 7 (2) Such an order may require the person to:
- 8 (a) disclose, in the way and to the persons specified in the order,
9 specified information that the person has possession of or
10 access to; and
 - 11 (b) publish, at the person's expense and in in a specified way, an
12 advertisement in the terms specified in, or determined in
13 accordance with, the order.

14 *Applying for adverse publicity orders*

- 15 (3) An application for such an order may be made by:
- 16 (a) if the SPF civil penalty order was for a contravention of a
17 civil penalty provision of an SPF principle—the SPF general
18 regulator; or
 - 19 (b) if the SPF civil penalty order was for a contravention of a
20 civil penalty provision of an SPF code for a regulated
21 sector—the SPF sector regulator for the sector.

22 *Definitions*

- 23 (4) In this section:

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

26 Subdivision K—Non-punitive orders

27 58FZD Non-punitive orders

28 *Making non-punitive orders*

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

EXPOSURE DRAFT

-
- 1 (a) a community service order;
2 (b) a probation order for a period of no longer than 3 years;
3 (c) an order requiring the person to disclose, in the way and to
4 the persons specified in the order, specified information that
5 the person has possession of or access to;
6 (d) an order requiring the person to publish, at the person's
7 expense and in a specified way, an advertisement in the terms
8 specified in, or determined in accordance with, the order.

9 *Applying for non-punitive orders*

- 10 (2) An application for such an order may be made by:
11 (a) for conduct contravening an SPF principle—the SPF general
12 regulator; or
13 (b) for conduct contravening a provision of the SPF code for a
14 regulated sector—the SPF sector regulator for the sector.

15 *Definitions*

- 16 (3) For the purposes of this section, a **probation order** is an order
17 made to ensure that a person does not engage in:
18 (a) the conduct that resulted in the order; or
19 (b) similar conduct or related conduct;
20 during the period of the order.
- 21 (4) Without limiting subsection (3), a **probation order** includes:
22 (a) an order directing a person to establish a compliance
23 program, or an education and training program, that:
24 (i) is for employees or other persons involved in the
25 person's business; and
26 (ii) is designed to ensure awareness of responsibilities and
27 obligations relating to conduct covered by
28 paragraph (3)(a) or (b); and
29 (b) an order directing a person to revise the internal operations of
30 the person's business that lead to conduct covered by
31 paragraph (3)(a) or (b).
- 32 (5) In this section:
33 **community service order** means an order directing a person to
34 perform a service that:
35 (a) is specified in the order; and
36 (b) is or relates to the conduct that resulted in the order;
-

EXPOSURE DRAFT

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

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

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

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

8 **Subdivision L—Orders (other than awards of damages) to** 9 **redress loss or damage**

10 **58FZE Orders (other than awards of damages) to redress loss or** 11 **damage—making such orders**

12 *Making orders*

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

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

19 (b) is involved in the contravening conduct;

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

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

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

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

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

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

EXPOSURE DRAFT

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

4 *Applying for orders*

- 5 (4) An application for such an order may be made:
6 (a) by the following:
7 (i) if the contravening conduct contravened a civil penalty
8 provision of an SPF principle—the SPF general
9 regulator;
10 (ii) if the contravening conduct contravened a civil penalty
11 provision of an SPF code for a regulated sector—the
12 SPF sector regulator for the sector; and
13 (b) may be made even if an enforcement proceeding in relation
14 to the contravening conduct has not been instituted; and
15 (c) at any time within 6 years after the day on which the cause of
16 action that relates to the contravening conduct accrues.

17 *Working out whether to make an order*

- 18 (5) In working out whether to make such an order against a person
19 referred to in paragraph (1)(a) or (b), the Court may have regard to
20 the conduct of:
21 (a) the person; and
22 (b) the victims;
23 in relation to the contravening conduct since the contravention
24 occurred.
- 25 (6) However, the Court need not make a finding about either of the
26 following matters:
27 (a) which persons are victims in relation to the contravening
28 conduct;
29 (b) the nature of the loss or damage suffered, or likely to be
30 suffered, by such persons.

31 *When a non-party victim is bound by an order etc.*

- 32 (7) If all of the following happen:
33 (a) such an order is made against a person;
34 (b) the loss or damage suffered, or likely to be suffered, by a
35 non-party victim in relation to the contravening conduct has

EXPOSURE DRAFT

-
- 1 been redressed, prevented or reduced in accordance with the
2 order;
- 3 (c) the non-party victim has accepted the redress, prevention or
4 reduction;
- 5 then:
- 6 (d) the non-party victim is bound by the order; and
- 7 (e) any other order made under subsection (1) relating to that
8 loss or damage has no effect in relation to the non-party
9 victim; and
- 10 (f) despite any other provision of this Act or any other law of the
11 Commonwealth, or a State or Territory, no claim, action or
12 demand may be made or taken against the person by the
13 non-party victim in relation to that loss or damage.

14 *Definitions*

- 15 (8) In this section:

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

18 **58FZF Orders (other than awards of damages) to redress loss or** 19 **damage—kinds of such orders**

- 20 (1) Without limiting subsection 58FZE(1), the orders that the Court
21 may make under that subsection against a person (the ***respondent***)
22 include all or any of the following:
- 23 (a) an order declaring the whole or any part of a contract made
24 between the respondent and a victim referred to in that
25 subsection, or a collateral arrangement relating to such a
26 contract:
- 27 (i) to be void; and
- 28 (ii) if the Court thinks fit—to have been void ab initio or
29 void at all times on and after such date as is specified in
30 the order (which may be a date that is before the date on
31 which the order is made);
- 32 (b) an order:
- 33 (i) varying such a contract or arrangement in such manner
34 as is specified in the order; and
- 35 (ii) if the Court thinks fit—declaring the contract or
36 arrangement to have had effect as so varied on and after

EXPOSURE DRAFT

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- 1 such date as is specified in the order (which may be a
2 date that is before the date on which the order is made);
- 3 (c) an order refusing to enforce any or all of the provisions of
4 such a contract or arrangement;
- 5 (d) an order directing the respondent to refund money or return
6 property to a victim referred to in that subsection;
- 7 (e) an order directing the respondent, at the respondent's own
8 expense, to repair, or provide parts for, goods that have been
9 supplied under the contract or arrangement to a victim
10 referred to in that subsection;
- 11 (f) an order directing the respondent, at the respondent's own
12 expense, to supply specified services to a victim referred to
13 in that subsection;
- 14 (g) an order, in relation to an instrument creating or transferring
15 an interest in land, directing the respondent to execute an
16 instrument that:
- 17 (i) varies, or has the effect of varying, the first-mentioned
18 instrument; or
- 19 (ii) terminates or otherwise affects, or has the effect of
20 terminating or otherwise affecting, the operation or
21 effect of the first-mentioned instrument.

22 (2) In this section:

23 *interest*, in land, means:

- 24 (a) a legal or equitable estate or interest in the land; or
- 25 (b) a right of occupancy of the land, or of a building or part of a
26 building erected on the land, arising by virtue of the holding
27 of shares, or by virtue of a contract to purchase shares, in an
28 incorporated company that owns the land or building; or
- 29 (c) a right, power or privilege over, or in connection with, the
30 land.

EXPOSURE DRAFT

1 **Division 7—Other provisions**

2 **58GA Treatment of partnerships**

- 3 (1) The SPF provisions apply to a partnership as if it were a person,
4 but with the changes set out in this section.
- 5 (2) An obligation that would otherwise be imposed on the partnership
6 by an SPF provision is imposed on each partner instead, but may
7 be discharged by any of the partners.
- 8 (3) If an SPF provision would otherwise permit something to be done
9 by the partnership, the thing may be done by one or more of the
10 partners on behalf of the partnership.
- 11 (4) For the purposes of the SPF provisions, a change in the
12 composition of a partnership does not affect the continuity of the
13 partnership.

14 **58GB Treatment of unincorporated associations**

- 15 (1) The SPF provisions apply to an unincorporated association as if it
16 were a person, but with the changes set out in this section.
- 17 (2) An obligation that would otherwise be imposed on the association
18 by an SPF provision is imposed on each member of the
19 association's committee of management instead, but may be
20 discharged by any of the members.
- 21 (3) If an SPF provision would otherwise permit something to be done
22 by the unincorporated association, the thing may be done by one or
23 more of the members of the association's committee of
24 management on behalf of the association.

25 **58GC Treatment of trusts**

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

28 *Trusts with a single trustee*

- 29 (2) If the trust has a single trustee:
30 (a) an obligation that would otherwise be imposed on the trust by
31 an SPF provision is imposed on the trustee instead; and

EXPOSURE DRAFT

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

3 *Trusts with multiple trustees*

- 4 (3) If the trust has 2 or more trustees:
- 5 (a) an obligation that would otherwise be imposed on the trust by
6 an SPF provision is imposed on each trustee instead, but may
7 be discharged by any of the trustees; and
- 8 (b) if an SPF provision would otherwise permit something to be
9 done by the trust, the thing may be done by any of the
10 trustees.

11 **58GD Compensation for acquisition of property**

- 12 (1) This section applies if the operation of the SPF provisions would
13 result in an acquisition of property (within the meaning of
14 paragraph 51(xxxi) of the Constitution) from a person otherwise
15 than on just terms (within the meaning of that paragraph).
- 16 (2) The person who acquires the property is liable to pay a reasonable
17 amount of compensation to the first-mentioned person.
- 18 (3) If the 2 persons do not agree on the amount of the compensation,
19 the person to whom compensation is payable may institute
20 proceedings in:
- 21 (a) the Federal Court; or
22 (b) the Supreme Court of a State or Territory;
- 23 for the recovery from the other person of such reasonable amount
24 of compensation as the Court determines.

25 **58GE Rules for the purposes of this Part**

- 26 (1) The Minister may, by legislative instrument, make rules (the *SPF*
27 *rules*) prescribing matters:
- 28 (a) required or permitted by this Part to be prescribed by the SPF
29 rules; or
- 30 (b) necessary or convenient to be prescribed for carrying out or
31 giving effect to this Part.
- 32 (2) To avoid doubt, the SPF rules may not do the following:
- 33 (a) create an offence or civil penalty;
34 (b) provide powers of:

EXPOSURE DRAFT

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- 1 (i) arrest or detention; or
 - 2 (ii) entry, search or seizure;
 - 3 (c) impose a tax;
 - 4 (d) set an amount to be appropriated from the Consolidated
 - 5 Revenue Fund under an appropriation in this Act;
 - 6 (e) directly amend the text of this Act.

EXPOSURE DRAFT

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:

EXPOSURE DRAFT

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- 1 (a) a provision of an SPF code (see Division 3 of Part IVF) that
2 is a civil penalty provision (within the meaning of the
3 Regulatory Powers Act); or
4 (b) subsection 58FZB(3) in relation to compliance with a
5 direction given under subsection 58FZB(2).

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

- 7 (a) a provision of Division 2 of Part IVF (about the Scams
8 Prevention Framework) that is a civil penalty provision
9 (within the meaning of the Regulatory Powers Act); or
10 (b) subsection 58FZB(3) in relation to compliance with a
11 direction given under subsection 58FZB(1).

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

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

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

- 18 (a) aiding, abetting, counselling or procuring a contravention of
19 the provision; or
20 (b) inducing, whether by threats or promises or otherwise, such a
21 contravention; or
22 (c) being in any way, directly or indirectly, knowingly concerned
23 in, or party to, such a contravention; or
24 (d) conspiring with others to effect such a contravention.

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

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

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

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

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

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

- 32 (a) an officer (within the meaning of the *Corporations Act 2001*)
33 of the entity; or
34 (b) a senior manager (within the meaning of that Act) of the
35 entity.

EXPOSURE DRAFT

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

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

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

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

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

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

- 12 (a) policies and procedures required under paragraph 58BC(1)(a)
13 for the sector; and
14 (b) performance metrics and targets required under paragraph
15 58BC(1)(c) for those policies and procedures.

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

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

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

21 *SPF regulator* means:

- 22 (a) the SPF general regulator; or
23 (b) the SPF sector regulator for a regulated sector.

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

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

26 **4 At the end of paragraph 155(2)(a)**

27 Add:

- 28 (v) an SPF code; or

29 **5 After subparagraph 155(2)(b)(ib)**

30 Insert:

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

EXPOSURE DRAFT

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.