

2022–2023–2024

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

---

TREASURY LAWS AMENDMENT BILL 2024: SCAMS PREVENTION  
FRAMEWORK

---

EXPOSURE DRAFT EXPLANATORY MATERIALS

## **Consultation preamble**

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

# Table of Contents

Glossary .....	iii
Scams Prevention Framework.....	5

EXPOSURE DRAFT



---

# Glossary

---

This Explanatory Memorandum uses the following abbreviations and acronyms.

<b>Abbreviation</b>	<b>Definition</b>
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ACMA Act	<i>Australian Communications and Media Authority Act 2005</i>
AFCA	Australian Financial Complaints Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
CCA	<i>Competition and Consumer Act 2010</i>
Corporations Act	<i>Corporations Act 2001</i>
IDR	Internal dispute resolution
EDR	External dispute resolution
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
NASC	National Anti-Scam Centre
PGPA	<i>Public Governance, Performance and Accountability Act 2013</i>
Regulatory Powers Act	<i>Regulatory Powers (Standard Provisions) Act 2014</i>
SPF	Scams Prevention Framework

EXPOSURE DRAFT

---

# ***Scams Prevention Framework***

---

## **Outline of chapter**

- 1.1 Schedule # to the Bill implements a legislative framework to protect Australian consumers against scams. The amendments introduce a framework for protecting against scams with the following features:
  - overarching principles (SPF principles) that apply to regulated entities;
  - sector-specific codes (SPF codes) that apply to regulated sectors;
  - a multi-regulator framework; and
  - dispute resolution mechanisms.
- 1.2 The legislative framework allows for the Treasury Minister to designate sectors of the economy, for an SPF code to be made for that sector and for a regulator to enforce that code.
- 1.3 Legislative references in this Chapter are to the CCA unless otherwise specified.

## **Context of amendments**

- 1.4 The SPF is an economy-wide reform to protect Australian consumers from scams. It requires regulated entities to take actions to combat scammers and establishes a network for reporting intelligence to protect against scams.
- 1.5 The digital economy has revolutionised the way we communicate, conduct business, access services and make payments, bringing significant benefits to both individuals and businesses.
- 1.6 The gains in speed and convenience have been accompanied by an evolution in the risks of conducting business, communication and transacting payments. This includes a rise in sophisticated scams over recent years, which manipulate consumers, result in harm, and undermine trust in digital services.
- 1.7 Scammers stole \$2.7 billion from Australian consumers in 2023. Scams not only have a financial toll on victims, but also cause psychological and emotional harm. Regardless of the value stolen, the impacts on the victim can lead to undue stress, which can have long-term detriment.
- 1.8 The reforms in the SPF aim to halt the unacceptable growth in scams targeting the Australian community.

- 1.9 The consumer protections introduced through the SPF will help safeguard the benefits of the digital economy and provide the community with confidence to embrace the efficiency and convenience of the digital economy without fear of exploitation.
- 1.10 The SPF is being introduced as part of a broader effort to modernise Australia's laws for the digital age, including reforms to Australia's privacy, money laundering and cyber settings, modernisation of the payment systems, introduction of online safety measures, as well as the rollout of Digital ID and eInvoicing infrastructure for businesses.
- 1.11 While the SPF establishes a framework to introduce mandatory requirements to combat scams in all sectors in the economy, the Government has committed to initially designate telecommunication providers, banks and digital platform services relating to social media, paid search engine advertising and direct messaging. Future sectors will be considered as scam methods and trends adapt, and the SPF matures.
- 1.12 Current scam protections are piecemeal and inconsistent across the economy. As a result, Australian consumers face inconsistent protections with differing service providers.
- 1.13 While some sectors have industry codes to address scam activity, other sectors have no formal scam protection requirements. This provides scammers with an avenue to target consumers in these other sectors.
- 1.14 The telecommunications sector has taken action to combat scams, implementing the *Reducing Scam Calls and Scam SMS Code* in 2022, which requires telecommunication providers to take steps to identify, trace and block scam calls and messages. The sector has reported 1.9 billion blocked scam calls and 533 million blocked scam SMS messages to the end of March 2024 under the code. Consumer reports of scam calls to Scamwatch have also decreased by 52 per cent between 2021-22 to 2023-24.
- 1.15 The Government also passed legislation in August 2024 for the SMS Sender ID Register, which will require the telecommunications sector to check whether messages being sent under a brand name match the legitimate registered sender.
- 1.16 The banking sector plays a pivotal role in the scams ecosystem, with banks usually being the terminating point of a scam when a consumer transfers money to the scammer. In 2023, ASIC found the overall approach to scams strategies and governance in Australia's major banks was variable and less mature than expected, with gaps in scam detection, response and victim support.
- 1.17 In late 2023, all banks committed to implement a range of measures to improve scam protections and consumer outcomes through the industry led *Scam-Safe Accord*. Since its introduction, banks have reported a disruption of scams



- through a range of approaches. All banks, credit unions and building societies are deploying confirmation of payee technology through 2024 and 2025.
- 1.18 Digital platforms remain a point of vulnerability in the scams ecosystem and have taken limited action to protect Australian consumers from scams. While economy-wide scam losses decreased in 2023, scam losses originating on social media were up by 17 per cent and scam reports were up by 31 per cent. As part of the 5<sup>th</sup> Interim Report of the Digital Platform Services Inquiry, the ACCC recommended that digital platforms be required to implement processes to prevent and remove scams, including a notice and action mechanism and verification of certain business users, including advertisers of financial services and products.
- 1.19 Some digital platforms have begun moving toward improving scam protections, as outlined in the voluntary *Australian Online Scams Code*, developed and published by the Digital Industry Group Inc. in July 2024. An uplift in protections is welcome, however there needs to be consistency and a common standard adopted by all with binding obligations.
- 1.20 The SPF will address the current disparate arrangements to protect Australian consumers from scams across different sectors by establishing consistent principle-based obligations to apply to all designated sectors.
- 1.21 The SPF will introduce a responsive and adaptable framework that allows the Government and regulators to respond to changes in scam activity in the economy, by allowing for additional sectors or services of the economy to be regulated, and for enforceable sector-specific codes to be made for that sector.

## Summary of new law

- 1.22 The amendments introduce a framework for protecting Australians against scams with the following features:
- overarching principles (SPF principles) that apply to regulated entities;
  - sector-specific codes (SPF codes) that apply to regulated sectors;
  - a multi-regulator framework; and
  - dispute resolution mechanisms.
- 1.23 The SPF principles apply to all regulated entities. These principles are enforced by the ACCC as the SPF general regulator (or an appropriately delegated person or authority) under the CCA. The SPF principles relate to:
- governance arrangements relating to scams;
  - preventing scams;
  - detecting scams;

- reporting scams;
  - disrupting scams; and
  - responding to scams.
- 1.24 SPF codes will provide sector-specific and prescriptive obligations for each sector that are consistent with the SPF principles. SPF codes will not set out an exhaustive list of obligations to satisfy compliance with SPF principles. Rather, the SPF codes will include a set of minimum standards that may be directed at addressing sector-specific harms related to scams.
- 1.25 In some cases, taking reasonable steps to meet one or more of the SPF principles may require a regulated entity to take steps beyond the sector specific obligations set out in an SPF code.
- 1.26 An SPF code applies in relation to a regulated sector. SPF codes will be enforced by a designated regulator for the sector, known as the SPF sector regulator.
- 1.27 The tiered regulatory design of the SPF will be administered and enforced via a multi-regulator model. This will deliver a whole-of-ecosystem approach to enforcement, and leverage existing regulatory relationships, supervision and surveillance frameworks already established by regulators.
- 1.28 This approach is supported by the ability of the SPF general regulator to delegate its functions and powers to an SPF sector regulator to ensure the effective regulation of regulated sectors.
- 1.29 Entities that provide a service that is regulated by the SPF must become a member of the EDR scheme that is authorised by the Treasury Minister for that regulated sector. The Minister’s intention is to authorise AFCA as the single EDR scheme that applies to multiple regulated sectors. A single EDR scheme for the initially designated sectors will offer SPF consumers a holistic experience where multiple regulated entities are involved in complaints. It would also bring consistency in consideration of complaints and be less burdensome for SPF consumers and regulated entities when compared with multi-scheme alternatives.
- 1.30 The SPF contains arrangements for the sharing of information about scams by regulated entities to SPF regulators, between SPF regulators in the multi-regulator model, and by SPF regulators to the EDR scheme.
- 1.31 The commencement of the SPF does not in itself impose an obligation on entities until a designation is made with respect to a regulated sector, and that instrument is in force.
- Regulated entities operating in that sector are then subject to the obligations in the SPF principles, enforced by the ACCC.

- If an SPF code is made for a regulated sector, regulated entities operating in that sector are then also subject to the obligations in those SPF codes, enforced by an SPF sector regulator.

## Detailed explanation of new law

### Division 1 – Preliminary

- 1.32 The amendments introduce Part IVF to the CCA, which establishes an overarching SPF. The object of the SPF is to protect Australian consumers against scams. *[Schedule #, item 1, section 58AA]*
- 1.33 The SPF requires regulated entities in regulated sectors of the economy to take a variety of steps to protect SPF consumers from scams on or relating to the regulated services provided by those entities. The SPF includes SPF principles to guide this objective, which regulated entities must comply with. *[Schedule #, item 1, section 58AB]*
- 1.34 Under the SPF, a Treasury Minister (or an appropriately delegated authority) may make an SPF code for a regulated sector. An SPF code will generally contain detailed but not exhaustive, sector-specific obligations for regulated entities to comply with the principles.
- 1.35 The SPF also provides that a Treasury Minister may authorise an SPF EDR scheme for a regulated sector. This may be an existing scheme (for example, the AFCA scheme that is authorised under Part 7.10A of the Corporations Act) or a new scheme. The authorised SPF EDR scheme is intended to offer an independent, impartial, free and fair mechanism for SPF consumers to escalate their complaints relating to scams that are not resolved at the IDR stage. An SPF EDR scheme will provide pathways for redress (including compensation) where regulated entities have not met their SPF obligations.
- 1.36 The ACCC is the SPF general regulator that regulates and enforces compliance with the SPF principles. A Treasury Minister may also select other Commonwealth entities to be SPF sector regulators to regulate and enforce compliance with SPF codes.

### Regulated sectors, entities and services

- 1.37 The SPF applies to regulated entities for regulated sectors with respect to the regulated services of those entities. In short, a Treasury Minister may designate a sector of the economy to be a regulated sector. A regulated sector covers the businesses or services referred to in the designation instrument. These businesses or services are carried on or provided by persons, which are the regulated entities subject to the SPF. *[Schedule #, item 1, subsection 58AC(1) and section 58AD]*

## Regulated sectors

- 1.38 A Treasury Minister may designate one or more businesses or services to be a regulated sector for the purposes of the SPF. The designation is by legislative instrument, and subject to Parliamentary scrutiny and disallowance. [*Schedule #, item 1, subsection 58AC(1)*]
- 1.39 The Treasury Minister may designate an individual business or service, or designate businesses or services by class (see subsection 13(3) of the *Legislation Act 2003*). This means that the Treasury Minister may in effect designate specific entities or services as a ‘regulated sector’ within a designation instrument. [*Schedule #, item 1, note 1 to subsection 58AC(1)*]
- 1.40 The Treasury Minister may also exclude certain entities or classes of entities from being covered by a designation.
- 1.41 For example, the Treasury Minister may designate the banking sector, leveraging the definition of authorised deposit-taking institution under section 5 of the *Banking Act 1959* to define the sector for the purpose of designation. The Minister may exclude from that designation providers of purchased payment facilities; the SPF code obligations may not be appropriately targeted at this type of business because this service does not operate like a traditional banking business.
- 1.42 Alongside the power to designate a sector, the Treasury Minister may also designate a Commonwealth entity to be an SPF sector regulator for a regulated sector (see Division 5 – regulating the SPF). For example, if the banking sector is a regulated sector the Minister may designate the ASIC to be the SPF sector regulator for that sector in the same or separate instruments.
- 1.43 The Treasury Minister may vary or repeal the designation instrument once made (see subsection 33(3) of the *Acts Interpretation Act 1901*). [*Schedule #, item 1, note 2 to subsection 58AC(1)*]
- 1.44 Without limiting the businesses or services that may be designated, a Treasury Minister may designate the following classes of businesses or services to be a regulated sector (or a subset of those business or services):
- banking businesses, other than State banking (within the meaning of paragraph 51(xiii) of the Constitution) not extending beyond the limits of the State concerned;
  - insurance businesses, other than State insurance (within the meaning of paragraph 51(xiv) of the Constitution) not extending beyond the limits of the State concerned;
  - postal, telegraphic, telephonic or other similar services (within the meaning of paragraph 51(v) of the Constitution), which could include but are not limited to:

- carriage services within the meaning of the *Telecommunications Act 1997*;
- electronic services within the meaning of the *Online Safety Act 2021*, such as social media services within the meaning of that Act;
- broadcasting services within the meaning of the *Broadcasting Services Act 1992*.

***[Schedule #, item 1, subsection 58AC(2)]***

### *Designation of a regulated sector*

1.45 Before designating a sector to be subject to the SPF, the Treasury Minister must consider all the following matters:

- Scam activity in the sector. For example, the Minister may identify that certain businesses or services experience high levels of scam activity. ***[Schedule #, item 1, paragraph 58AE(1)(a)]***
- The effectiveness of existing industry initiatives to address scams. For example, there may be existing initiatives in a sector seeking to protect against scams, which are not appropriately addressing scam activity in that sector. ***[Schedule #, item 1, paragraph 58AE(1)(b)]***
- The interests of persons who would be SPF consumers of regulated services (see below) for that sector if the Minister made the designation. For example, designation may be appropriate if the Minister considers that the public would be better protected against scams arising out of activity in a sector if it is subject to the SPF, rather than relying on existing settings. ***[Schedule #, item 1, paragraph 58AE(1)(c)]***
- The likely consequences (including benefits and risks) of the Minister making the designation. ***[Schedule #, item 1, paragraph 58AE(1)(d)]***
- Any other matters the Minister considers relevant to the decision to designate a sector to be subject to the SPF. For example, this could include the compliance and regulatory cost of designating sectors, the privacy or confidentiality of consumers' information, the regulatory impact of designation, consultation with impacted entities on consumers and scam activity in the relevant sector in another jurisdiction. ***[Schedule #, item 1, paragraph 58AE(1)(e)]***

1.46 A designation instrument may specify an application or transition period before the SPF principles come into effect. If no such period is specified, regulated entities in the regulated sector are subject to the SPF principles for the purpose of the regulated service upon the designation coming into effect, and will be required to uplift their business practices to protect SPF consumers against scams.

- 1.47 The designation mechanism supports a responsive and adaptable approach for the SPF as scams shift and evolve over time. A legislative instrument can be made quickly to bring vulnerable sectors into the SPF and consequently require regulated entities in the regulated sectors to uplift their anti-scam practices.
- 1.48 Failure by the Treasury Minister to consider the above matters in making a designation does not invalidate that designation instrument. This provides certainty on the regulated sectors within the scope of the SPF. The provision reflects the general position in section 19 of the *Legislation Act 2003* that the validity or enforceability of the legislative instrument is not affected by a failure to consult and consider those matters. This approach ensures certainty for regulated entities who may have undertaken investment and preparatory work to comply with the SPF. [*Schedule #, item 1, subsection 58AE(2)*]

### *Delegation of Treasury Minister's designation power*

- 1.49 A Treasury Minister may, in writing, delegate the power to make an instrument designating businesses or services to be a regulated sector to another Minister. This may be appropriate when the sector sits outside of the Treasury Minister's portfolio and another Minister has appropriate oversight, understanding and decision-making on the policies in that sector. For example, the Treasury Minister may delegate this power to the Communications Minister, who may then designate certain businesses or services in the telecommunications sector to be regulated sectors subject to the SPF. [*Schedule #, item 1, section 58AF*]
- 1.50 The provisions relating to delegation in sections 34AA to 34A of the *Acts Interpretation Act 1901* apply to a delegation of the Treasury Minister's power to make a designation instrument. For example, under section 34A of that Act, if the Treasury Minister delegates this power to the Communications Minister, then the matters the Treasury Minister must consider before designating a sector (see above) may be satisfied by the Communications Minister before that Minister makes a designation instrument as a delegate. [*Schedule #, item 1, note to section 58AF*]

### **Regulated entities and their regulated services**

- 1.51 The amendments set out which entities are regulated entities, and the regulated services for those entities, for a regulated sector. A regulated entity for a regulated sector must comply with the obligations of the SPF and any SPF code for the sector. Generally, the obligations are framed by reference to the regulated services of the regulated entity for that sector.

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

- 1.52 To the extent that a regulated sector includes a business or service covering businesses of banking, businesses of insurance, or communication services

(within the meaning of paragraph 51(xiii), (xiv) or (v) of the Constitution respectively – see above), or a subset of such a business or service:

- 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
- that business or service is a regulated service of the regulated entity for the sector.

***[Schedule #, item 1, subsection 58AD(1)]***

- 1.53 For example, if the banking sector were to be designated to be a regulated sector, authorised deposit-taking institutions (generally banks) will be regulated entities for that sector and the banking business component of those institutions will be a regulated service of that entity for the sector. For instance, if a bank offers both insurance and banking services, the bank would only be regulated as part of the banking sector under the SPF for the purposes of its banking business, not its insurance services.
- 1.54 References to ‘person’ in the SPF have the same meaning as in section 2C of the *Acts Interpretation Act 1901*. ‘Person’ is defined in that Act as encompassing individuals, bodies politic and bodies corporate. Division 7 of the SPF (see below) extends this definition to also cover partnerships, unincorporated associations and trusts. ***[Schedule #, item 1, note 2 to subsections 58AD(1) and (2)]***

***Other entities which may be regulated entities***

- 1.55 Beyond those entities already discussed, the following persons will also be a regulated entity for a regulated sector:
- A corporation (as defined in section 4 of the CCA) 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 is a regulated service of the regulated entity for the sector.
  - A person to the extent that the person is both:
    - acting 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
    - using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution), or in the course of, in relation to, trade or commerce between Australia and places outside Australia, trade or commerce between the States, or trade or commerce within a Territory, between a State or Territory, or between two Territories.
- so much of the business or service, as it relates to the actions of the person, is a regulated service of the regulated entity for the sector.

***[Schedule #, item 1, subsections 58AD(2) and (3)]***

### Exceptions

- 1.56 The SPF rules may specify that a person is not a regulated entity to the extent that the specified exception applies. **[Schedule #, item 1, paragraph 58AD(4)(a)]**
- 1.57 Similarly, the SPF rules may specify that a business or service is not a regulated service of a person for a regulated sector, to the extent that the specified exception applies to the business or service. **[Schedule #, item 1, paragraph 58AD(4)(b)]**
- 1.58 The SPF rules may specify a person, business or service by class (see subsection 13(3) of the *Legislation Act 2003*). **[Schedule #, item 1, note to subsection 58AD(4)]**

### Meaning of key terms

- 1.59 The amendments introduce key terms to support the operation of the SPF. These are:
- ‘scam’;
  - ‘SPF consumer’; and
  - ‘actionable scam intelligence’.
- [Schedule #, item 3, subsection 4(1)]**

### Meaning of scam

- 1.60 The meaning of ‘scam’ is defined to provide certainty on the scope of harms intended to be captured by the SPF.
- 1.61 Specifically, under the amendments, a scam is a direct or indirect attempt to engage an SPF consumer of a regulated service that:
- involves deception; and
  - would, if successful, cause loss or harm including the obtaining of personal information of, or a benefit (such as a financial benefit) from, the SPF consumer or the SPF consumer’s associates.
- [Schedule #, item 1, subsection 58AG(1)]**
- 1.62 The concept of ‘benefit’ is broad and includes non-monetary benefits and assets, such as cryptocurrency or loyalty and rewards points. **[Schedule #, item 1, paragraph 58AG(1)(b)]**
- 1.63 An attempt will involve deception if the attempt:
- deceptively represents something to be, or to be related to, the regulated service; or



- deceptively impersonates a regulated entity in connection with the regulated service; or
- is an attempt to deceive the SPF consumer into facilitating an action using the regulated service; or
- is an attempt to deceive the SPF consumer that is made using the regulated service.

***[Schedule #, item 1, subsection 58AG(2)]***

- 1.64 The definition of ‘scam’ is deliberately broad to capture the wide range of activities scammers engage in and their ability to adapt and to adopt evolving behaviours over time. SPF rules may prescribe specific kinds of attempts to engage an SPF consumer of a regulated sector that are not scams for the purposes of the SPF. ***[Schedule #, item 1, subsection 58AG(3)]***
- 1.65 The use of ‘deceptively’ and ‘deceive’ in the definition of scam do not create fault elements requiring the establishment of the state of mind of a scammer.
- 1.66 An ‘associate’ of an SPF consumer has the same meaning as in section 318 of the ITAA 1936. This generally includes the entity’s relative, spouse, child, a partner of a partnership, or a trustee of a trust. ***[Schedule #, item 3, subsection 4(1)]***
- 1.67 The definition captures both scams which have caused loss or harm to an SPF consumer, and scam attempts which have not yet resulted in loss or harm to an SPF consumer. This reflects the inclusion of obligations in the SPF relating to preventing and disrupting scams that have not yet manifested in loss or harm to an SPF consumer.
- 1.68 The definition of scam is separated into four types of conduct reflecting the different types of conduct observed in scam activity. However, these activities are not mutually exclusive, and often end-to-end scam activity involves a number of these types of conduct. If the activity in question is consistent with any one or more of the four types of conduct, and would, if successful, cause loss or harm to a consumer or their associates, the conduct is consistent with the meaning of a scam. ***[Schedule #, item 1, subsection 58AG(2)]***

***Deceptively representing something to be, or to be related to, a regulated service***

- 1.69 The reference to deceptively representing something to be, or to be related to, the regulated service, refers to conduct where a scammer deceives (or attempts to deceive) a consumer by making a representation in relation to a regulated service.
- 1.70 For example, where the banking sector is a regulated sector, this may include an imposter bond scam, where a scammer impersonates a financial advisor and makes a false representation in relation to an investment product or bond offered by a banking service that in fact does not exist. The scammer demonstrates specialised financial knowledge, provides convincing documents,

fake websites, and fake information. This type of scam involves deceptively representing something related to be a regulated service by making false representations about the products offered by that regulated service that in fact do not exist. This is distinct to poor financial advice (which is not covered), as in this case the scammer is making false representations about a product offered by a regulated service that does not exist. Conversely, negligent financial advice refers to where a financial advisor recommends a risky or inappropriate strategy by failing to appropriately assess a consumer's circumstances.

*Deceptively impersonating a regulated entity in connection with its regulated service*

- 1.71 The reference to deceptively impersonating a regulated entity in connection with its regulated service, refers to, for example, impersonation scams where a scammer mirrors the usual communications of the brand of the regulated entity to trick a consumer into providing personal information, transferring money or otherwise providing a benefit to the scammer.
- 1.72 For example, where the banking sector is a regulated sector, this may include an impersonation scam where a consumer receives a text message using the alphanumeric tag from a well-known banking entity appearing in the existing chain of text messages from that entity. The text message notified the consumer that an irregular payment had been detected with a phone number to contact. The consumer was told their account had been compromised and their funds needed to be transferred to a safe account and was told to transfer the money to a specific new account that had been opened. The consumer transferred \$60,000 to the scammer. This type of scam involves deceiving a consumer by impersonating a brand (a banking entity) in related to its regulated service (a banking service).

*Deceiving an SPF consumer into facilitating an action using a regulated service*

- 1.73 The reference to deceiving an SPF consumer into facilitating an action using the regulated service includes circumstances where the SPF consumer is deceived into undertaking an action using the regulated service under false pretences.
- 1.74 For example, where the banking sector is a regulated sector, this would include scenarios where a person sends money from their bank account through their banking app to a bank account nominated by the scammer (such as in the impersonation scam example above). Where carriage service providers are a regulated service, this would also include circumstances where an individual provides personal information or a one-time passcode over the phone.

### *Deceiving an SPF consumer into using a regulated service*

- 1.75 The reference to deceiving an SPF consumer using a regulated service refers to circumstances where a scammer makes a false representation or deceives a consumer using a regulated service.
- 1.76 For example, where paid search advertising services are designated as a regulated sector, this would include false advertisements that trick consumers into providing their personal information or transferring money. Where carriage service providers are a regulated service, this would include circumstances where text messages or phone calls are used to initiate contact between a scammer and an SPF consumer to deceive the consumer.

### *Rules may prescribe attempts that are not scams*

- 1.77 SPF rules may prescribe specific kinds of attempts to engage an SPF consumer of a regulated sector that are not scams for the purposes of the SPF. This empowers a Treasury Minister, by legislative instrument, to exclude specific activities or conduct that are not intended to fall within the scope of the definition of a ‘scam’. This will give regulated entities certainty about the extent and scope of their obligations under the SPF. [*Schedule #, item 1, subsections 58AG(3) and 58GE(1)*]
- 1.78 The SPF rules may be used in this way to exclude:
- certain subsets of fraud that involve dishonestly obtaining a benefit without any action from the consumer (such as credit card fraud);
  - cybercrime (including information obtained as part of a data breach or hack);
  - conduct regulated under anti-money laundering and counter terrorism financing legislation;
  - misleading and deceptive conduct as defined in Schedule 2 of the CCA; and
  - performing a transaction under the threat of imminent violence (such as burglary or mugging).

### *Examples of attempts that may be considered a scam*

- 1.79 Without limiting what may be considered a scam for the purposes of the SPF, some examples of attempts that may be considered a scam and an example that may not be considered a scam for the purposes of the SPF are outlined below. It is assumed that the businesses and services being described in the examples are regulated by the SPF.

#### **Example 1.1 Scam attempt that is not successful**

An SPF consumer is exposed to an online advertisement prompting them to invest in financial products, with the promise

of high returns. The SPF consumer considers this to be ‘too good to be true’ so they do not transfer money from their bank account to the product. Two days later, banks are warning about scams about this particular investment product.

- *Scam:* This is a scam because it is an attempt to deceive the SPF consumer using a regulated service. This is because a scammer uses a fake advertisement to attempt to enter a deceptive arrangement, where the SPF consumer is manipulated into believing that they are obtaining investment products that do not exist. This is also an attempt to deceive the SPF consumer into facilitating an action using a regulated service (by transferring money from their bank account to the scammer). While the attempt in the example was not successful, it still meets the definition of a scam because it would cause harm if successful.

### **Example 1.2 Successful scam involving conduct across multiple sectors**

An SPF consumer receives a message on their social media account from a profile seeking a relationship. The profile, operated by a scammer, fosters a fake relationship with the consumer and takes the communication “offline” to SMS. Over weeks or months, the SPF is deceived to believe they have built a relationship and trust with the scammer who encourages the SPF consumer to invest in fake investments. The scammer then discloses that they have been in an accident and urgently need money, which is paid by the SPF consumer to the scammer via bank transfer. The SPF consumer begins expressing suspicion about the money, after which they never hear from the scammer again.

- *Scam:* This is a scam because it is an attempt to deceive the SPF consumer using a regulated service, including both the social media service as the original communication channel and subsequently via SMS. The scammer creates a fake profile posing as a fictitious person to convince a consumer to send money through a financial transaction. The interaction between SPF consumer and scammer can be more involved and long-term than other scam types, and often forms a chain of interactions that may also involve other scam types (i.e. investment scams) as the relationship develops. This creates several touchpoints to regulated entities across the life of the scam. These are separate attempts to deceive the SPF consumer using a regulated service

(initially social media messaging and then shifting to a telecommunications service), with the consumer also facilitating an action by transferring money via their bank account to the scammer, a regulated service.

- 1.80 The policy intention is that conduct that is already covered by consumer law such as misleading or deceptive conduct is not considered a scam for the purposes of the SPF.

**Example 1.3 Not a scam for SPF – Conduct already regulated by consumer law**

For the purposes of this example, the banking sector is a regulated sector. An SPF consumer is looking to buy a new trailer and comes across an advertisement on the internet for a trailer. The advertisement is from a legitimate business (ABN holder and ASIC registered). The SPF consumer visits the website and calls the dealer to place a deposit and settle the details of the payment. They agree that the SPF consumer will pay using a direct transfer. The SPF consumer makes the payment but does not receive the trailer within the agreed time.

- This does not fall within the definition of a scam as there was no deceptive impersonation of a regulated entity or attempt to deceive the consumer into facilitating an action using the regulated service. The consumer made a payment via bank transfer for the intended purpose and did not engage in the payment on false pretences. The issues in relation to the delay in receiving the trailer may be dealt with in other consumer law provisions.

**Meaning of SPF consumer**

- 1.81 The amendments introduce the concept of an ‘SPF consumer’. The obligations imposed on regulated entities are generally in relation to an SPF consumer. This is intended to clearly set out the scope of obligations under the SPF and who they are designed to protect.

- 1.82 An SPF consumer of a regulated service is:

- a natural person who is either:
  - in Australia,
  - ordinarily resident in Australia,
  - an Australian citizen, or
  - permanent resident; or

- a person who carries on a business having less than 100 employees (generally, a small business) and a principal place of business in Australia; to whom the regulated service is or may be provided or purportedly provided. **[Schedule #, item 1, subsection 58AH(1)]**
- 1.83 Small businesses are not excluded from being SPF consumers based on their corporate structure. The small business may be in the form of a sole trader, company, unincorporated association, partnership or trust. **[Schedule #, item 1, note to subsection 58AH(1)]**
- 1.84 As stated above, an SPF consumer of a regulated service is a particular kind of person to whom the regulated service is or may be provided or purportedly provided. This includes the provision or purported provision of a regulated service:
- provided directly or indirectly to the SPF consumer;
  - whether or not under a contract, arrangement or understanding with the SPF consumer;
  - whether or not the provider of the service knows that the person is an SPF consumer; or
  - that involves the supply of goods.
- [Schedule #, item 1, subsection 58AH(2)]**
- 1.85 A person can be an SPF consumer of a regulated service, even if they do not have a direct customer relationship with the regulated entity providing or carrying on that regulated service for the regulated sector. This is intended to reflect that an individual's experience with a scam is often not limited to entities the individual has a direct customer relationship with. For example:
- where an individual makes a payment to the scammer to a banking service the individual does not have a direct customer relationship with; or
  - where an individual is deceived through an impersonation scam involving a brand or service the individual does not have a direct customer relationship with; or
  - where an individual receives a phone call or text message from a scammer, from a carriage service provider or intermediary the individual does not have a direct customer relationship with.

**Example 1.4 SPF consumer – No direct relationship or contract**

For this example, the banking sector and digital platforms sector are regulated sectors. An individual observes a fraudulent advertisement impersonating a known banking entity selling a banking product on a social media service. The individual is not

a direct customer of the banking entity and does not hold an account with the banking service. The individual holds an account with the social media service provider.

- SPF consumer:
  - The individual is an SPF consumer of both the banking entity being impersonated by the fraudulent advertisement, and the social media provider. This is because while the individual does not have a direct contract with the banking service, that service may be provided to the individual.
  - The individual is an SPF consumer of the social media service provider as they directly hold an account and receive a service from the provider.

**Example 1.5 Indirect relationship involving the supply of goods and services**

For this example, the telecommunication sector is a regulated sector. An individual receives a scam text message impersonating the Australian Taxation Office in relation to outstanding taxes.

- SPF consumer: An individual text message from a scammer to an individual involves one or more carriage services, as it may need to be carried by one or more transit (or intermediary) carriage services. A transit carriers or carriage service providers (C or CSP) may or may not know whether the services it provides are to an SPF consumer through another entity. However, it is assumed that the transit CSP service is being provided indirectly to an SPF consumer (unless otherwise known) and therefore the individual is an SPF consumer of the sending CSP (used by the scammer to send the text message), the receiving CSP (the consumer's telecommunication service provider) and any intermediaries (used to facilitate the message being received by the consumer).

As a result, transit C or CSP that connect other C or CSPs and International Operators to pass call traffic or SMS traffic between them will need to treat the service they are providing as having one or more SPF consumers. This is unless the transit C or CSP knows the transited call or SMS is not being directly provided to or for an SPF consumer.

- 1.86 A person is not an SPF consumer of the regulated service if a condition prescribed by the SPF rules applies to the person in relation to regulated services of that kind. *[Schedule #, item 1, subsection 58AH(3)]*
- 1.87 To avoid doubt, an ‘SPF consumer’ under the SPF is distinct from a ‘consumer’ as defined in section 4B of the CCA. *[Schedule #, item 1, subsection 58AH(4)]*

### **Meaning of actionable scam intelligence**

- 1.88 Several obligations in the SPF relate to a regulated entity for a regulated sector having actionable scam intelligence.
- 1.89 A regulated entity identifies, or has, actionable scam intelligence if and when there are reasonable grounds for the entity to suspect that a communication, transaction or other activity on, or relating to, a regulated service of the entity is a scam. *[Schedule #, item 1, section 58AI]*
- 1.90 A regulated entity may receive or identify actionable scam intelligence from a range of sources, including (but not limited to):
- a report about a scam made to a regulated entity;
  - information provided by SPF regulators; or
  - a regulated entity’s own investigation into suspected scam activity.
- 1.91 A regulated entity will have actionable scam intelligence when there are reasonable grounds to suspect that an activity on or related to a regulated service of the entity is a scam. Whether there are reasonable grounds for such a suspicion is an objective test. Rather than a requirement to have formed a suspicion, the test is whether it is reasonable in the circumstances for the regulated entity to form a suspicion.
- 1.92 Actionable scam intelligence includes any information relevant to disrupting the scam activity (or future scam activity). In most cases, this is expected to be the mechanism or identifier used to scam SPF consumers. Relevant information that may be actionable scam intelligence for this test may include:
- information about the mechanism or identifier being used to scam SPF consumers, such as URLs, email addresses, phone numbers, social media profiles, digital wallet and bank account information;
  - information about the suspected scammer; and
  - information received from other sources including SPF regulators and SPF consumers (including complaints and reports) about the suspected scam activity, and the nature of that information provided by SPF consumers.
- [Schedule #, item 1, note 1 to section 58AI]*



- 1.93 For example, a regulated entity (a bank offering a banking service) receives several consumer reports about a phishing scam tricking consumers into making a payment that is not owed. The consumer reports indicate the phishing scam originates via text message, with a link that sends consumers to a fraudulent website impersonating the brand of the regulated entity. The regulated entity does not communicate with consumers via text message and observes that the website link is fraudulent. In this case, the regulated entity has actionable scam intelligence because there are reasonable grounds to suspect that an activity related to its regulated service is a scam.
- 1.94 In the example above, the regulated entity has actionable scam intelligence in relation to the phone numbers used to send messages to consumers, the website where payments were facilitated, and the bank account consumers were asked to make payments to.
- 1.95 Actionable scam intelligence may include information about how other regulated entities and services are being used to facilitate scam activity, as long as there is a link between the scam and the service of the entity holding the information. This includes information about sectors that are not regulated under the SPF. In the example above, the regulated entity holds information about the digital platform hosting the website, telecommunication providers and other banking services. This information is all actionable scam intelligence, because the information all relates to a scam that also involves the regulated entity.
- 1.96 A regulated entity has several obligations under the SPF in relation to actionable scam intelligence. For example, a regulated entity's policies and procedures required under SPF principle 1 (relating to governance) must include the steps the entity is taking to identify actionable scam intelligence, and a regulated entity under SPF principle 6 (relating to reporting) is required to provide the SPF general regulator reports of actionable scam intelligence. Gathering and reporting this information is intended to minimise the harm to SPF consumers from scams. *[Schedule #, item 1, note 2 to section 58AI, paragraph 58BD(1)(b) and subsection 58BZB(1)]*

## Extension to external territories

- 1.97 SPF provisions extend to every external Territory. SPF provisions are provisions of Part IVF, provisions of legislative instruments made under Part IVF, provisions of the CCA to the extent that they relate to a provision of Part IVF or a legislative instrument made under Part IVF and provisions of the Regulatory Powers Act to the extent they apply in relation to a provision of Part IVF. *[Schedule #, item 1, subsection 58AJ(1)]*
- 1.98 The SPF provisions also extend to acts, omissions, matters and things outside of Australia. *[Schedule #, item 1, subsection 58AJ(2)]*

## Application to acts done by agents of regulated entities

- 1.99 If an element of the SPF provisions is done by or in relation to agents of regulated entities and section 97 of the Regulatory Powers Act is applicable, the conduct must also be attributed to the regulated entities. [*Schedule #, item 1, subsection 58AK(1)*]
- 1.100 If an element of the SPF provisions is done by a person in relation to an agent who is acting on behalf of a regulated entity, and the agent is acting within the scope of their actual or apparent authority, the conduct is also taken as having been done in relation to the regulated entity. [*Schedule #, item 1, subsection 58AK(2)*]

## Division 2 – Overarching principles of the SPF

- 1.101 All regulated entities must comply with the SPF principles in the SPF. The SPF principles are overarching principles that apply to each regulated entity for a regulated sector. Compliance will be monitored and investigated by the ACCC as the SPF general regulator. Regulated entities are expected to:
- develop and implement appropriate governance arrangements for protecting SPF consumers against scams; and
  - take reasonable steps to prevent, detect, disrupt and respond to scams on or related to the entity's regulated service; and
  - share information, including reports about scams and possible scams with the SPF general regulator and a relevant SPF sector regulator in certain circumstances.
- 1.102 Obligations contained in the SPF principles are civil penalty provisions. Division 6 of the SPF sets out further remedies for non-compliance with these provisions. [*Schedule #, item 1, section 58BA*]
- 1.103 The amendments establish six SPF principles that apply to regulated entities. These principles relate to:
- governance arrangements to address scams;
  - preventing scams;
  - detecting scams;
  - reporting scams;
  - disrupting scams; and
  - responding to scams.

- 1.104 The SPF principles apply to regulated entities for a regulated sector for the purpose of the regulated service, and are monitored and enforced by the ACCC as the SPF general regulator.
- 1.105 A number of the SPF principles require regulated entities to take reasonable steps. ‘Reasonable’ or ‘reasonable steps’ are not defined terms in the Bill. Whether a regulated entity has taken reasonable steps is an objective assessment. Factors such as the size of the regulated entity, the services of the regulated entity, their consumer base, and the specific types of scam risk they face may be relevant to the steps that are reasonable for a regulated entity to take.
- 1.106 The SPF principles will be supported by SPF codes for regulated sectors, which will set out detailed obligations for regulated entities for those sectors.
- 1.107 SPF codes are expected to include sector-specific obligations in relation to the SPF principles (excluding the reporting principle which is covered in the primary law only). SPF codes are intended to ensure that there is robust and targeted action by each regulated sector, recognising the specific position they have in the scams ecosystem and the differing action that is needed.

## SPF principle 1: Governance

- 1.108 SPF principle 1 relates to a regulated entity’s obligations to have governance arrangements in place in relation to scams. Broadly, each regulated entity in a regulated sector must develop and implement governance policies, procedures, metrics and targets to combat scams. This obligation ensures that regulated entities have documented and dynamic policies and procedures for managing the risk of scams on or relating to a regulated service of the regulated entity. **[Schedule #, item 1, section 58BB]**
- 1.109 A senior officer of the regulated entity must certify annually that the current governance arrangements are appropriate. **[Schedule #, item 1, section 58BB]**
- 1.110 Each regulated entity must publish information about how the entity is protecting its SPF consumers from scams, processes for reporting and making complaints, and the rights of SPF consumers in relation to scams. However, the entity is not required to make all its scams policies and procedures public. The regulated entities must keep records in relation to its anti-scam policies and procedures, and share these with the SPF general regulator or relevant sector regulator upon request. **[Schedule #, item 1, section 58BB]**

## Policies, procedures, metrics and targets

- 1.111 A regulated entity must develop, maintain, and implement governance policies and procedures for managing the risk of scams relating to the entity’s regulated services for the sector by:

- documenting and implementing policies and procedures that set out a regulated entity's approach to scam prevention, detection, disruption, response and reporting; and
- developing performance metrics and targets to measure the effectiveness of its policies and procedures and that comply with any requirements prescribed by SPF rules.

***[Schedule #, item 1, subsection 58BC(1)]***

1.112 This obligation is subject to civil penalties. ***[Schedule #, item 1, subsection 58BC(2)]***

1.113 A regulated entity's governance policies and procedures must include steps the regulated entity is taking to:

- comply with the SPF provisions;
- identify actionable scam intelligence;
- assess and address the risk of scams relating to the entity's regulated services for the sector;
- meet performance metrics and targets developed for these policies and procedures; and
- meet any other requirements for those policies and procedures that are prescribed by the SPF rules.

***[Schedule #, item 1, subsection 58BD(1)]***

1.114 Further, a regulated entity's governance policies and procedures must be developed with reference to factors including:

- the risk of scams faced by the regulated entity based on the size and capability of the entity's regulated services for the sector;
- the kinds of SPF consumers of those regulated services;
- how those regulated services are provided and delivered;
- scams in the regulated entity's sector and the wider economy (including the kind of scams and the volume of those scams);
- shifts in scam activity (for example, the shifts in the kinds of scams, the methodology of scams, or the targets of scams); and
- any other factors for those policies and procedures that are prescribed by the SPF rules.

***[Schedule #, item 1, subsection 58BD(2)]***

1.115 A regulated entity must make information publicly accessible about the measures it is taking to protect SPF consumers from scams, provide consumers with information about the rights of those consumers in relation to scam

activity, and the process for reporting and making complaints. This does not require a regulated entity to make all of its scam policies and procedures public. *[Schedule #, item 1, subsections 58BF(1) and (3)]*

- 1.116 This obligation is subject to civil penalties. *[Schedule #, item 1, subsection 58BF(2)]*

## **Certification**

- 1.117 A regulated entity's governance policies, procedures, metrics and targets must be approved by a senior officer of the entity in writing on an annual basis, within 7 days after the start of each financial year. This approval must state whether those governance policies, procedures, metrics and targets comply with the SPF governance principle for the regulated sector and the financial year. *[Schedule #, item 1, subsection 58BE(1)]*
- 1.118 This obligation is subject to civil penalties. *[Schedule #, item 1, subsection 58BE(2)]*
- 1.119 As the SPF could apply to a range of business types, 'senior officer' is intended to apply broadly and is defined as an 'officer' or 'senior manager' within the meaning of the Corporations Act. *[Schedule #, item 3, subsection 4(1)]*

## **Publishing information about protecting SPF consumers from scams**

- 1.120 A regulated entity must make information publicly accessible about the steps it is taking to protect SPF consumers from scams, the rights of those consumers in relation to scam activity and the process for reporting and making complaints. This does not require a regulated entity to make all of its scam policies, procedures, metrics and targets for the relevant regulated sector public. *[Schedule #, item 1, subsections 58BF(1) and (3)]*
- 1.121 For example, a regulated entity may publish information about:
- how consumers can report a suspected scam or suspicious activity to the regulated entity;
  - how consumers can make a complaint about the regulated entity's conduct in relation to a scam;
  - other steps the entity is taking to protect its consumers, such as information about technology to block suspicious transactions deemed to be at a high-risk of scam activity to allow the entity to contact a consumer to verify the nature of the transaction, information about multi-factor authentication, and how the entity will contact its consumers.
- 1.122 The purpose of this obligation is to ensure that consumers are provided with information to support them in identifying a scam and share accessible information about what a consumer can do if they identify or are affected by

scam activity. For example, if an entity advises its consumers that it will never contact them via text message, this will help consumers quickly identify where there is fraudulent communication that may be associated with scam activity.

- 1.123 This information about protecting consumers must be publicly accessible. Beyond that, each regulated entity is expected to determine what steps it must take to meet its obligation.
- 1.124 This obligation is subject to civil penalties. *[Schedule #, item 1, subsection 58BF(2)]*

## Record keeping

- 1.125 A regulated entity must keep records in relation to activities taken to comply with certain obligations under the SPF for a period of six years. These records include:
- documents relating to the development of performance metrics and/or targets (including the initial development and each redevelopment);
  - documentation relating to the development of or changes to policies and procedures;
  - documentation relating to how policies and procedures have been implemented by the regulated entity and documentation relating to compliance with policies and procedures across the regulated entity (i.e. compliance reviews);
  - reporting to the Board, CEO or appropriate senior management relating to the effectiveness of policies and procedures and proposed updates and relevant meeting minutes; and
  - any other reporting to committees for the purposes of assessing the effectiveness or making updates to policies and procedures.

*[Schedule #, item 1, section 58BG]*

- 1.126 This obligation is subject to civil penalties. *[Schedule #, item 1, subsection 58BG(2)]*

## Reporting governance arrangements

- 1.127 Copies of a regulated entity's policies, procedures, metrics and targets and any other records the entity is required to keep under this SPF principle, must be made available to the SPF general regulator and relevant SPF sector-specific regulators on written request. This is for the purposes of regulating and enforcing the SPF and any SPF codes for the relevant regulated sector. The regulated entity must comply with the request within five business days after the day the entity is given the request. *[Schedule #, item 1, subsection 58BH(1)]*

- 1.128 This obligation is subject to civil penalties. [*Schedule #, item 1, subsection 58BH(2)*]
- 1.129 It is expected that the ACCC will provide guidance on how to comply with these obligations under the SPF principle related to governance for regulated entities in a regulated sector.
- 1.130 Without limiting what an SPF code for a regulated sector may include for the purposes of this SPF principle, if an SPF code is made for a sector, it may include sector-specific details about governance arrangements, including:
- the policies and procedures to be documented;
  - the implementation of policies and procedures;
  - the development of performance metrics and targets;
  - certification of policies, procedures, metrics and targets;
  - the publication of information about protecting SPF consumers from scams;
  - record keeping of compliance with the SPF provisions; and
  - reporting about compliance with the governance requirements.

## SPF principle 2: Prevent

- 1.131 SPF principle 2 relates to a regulated entity's obligations to prevent scams. Broadly, each regulated entity for a regulated sector must take reasonable steps to prevent scams on or relating to its service. This may include (but is not limited to):
- introducing additional identity verification requirements for new accounts;
  - providing direct warnings to consumers about scam activity observed on or related to its service and steps that consumers can take to minimise the risk of harm;
  - proactively seeking out information from other sources on emerging scam activity to identify whether there are any particular vulnerabilities faced on its service; or
  - training staff on emerging scam activity to assist them in identifying and responding to scams.
- 1.132 SPF principle 2 also requires a regulated entity to make relevant resources accessible to consumers to identify scams and minimise the risk of harm, and identifying consumers at a higher risk of being targeted by a scam and providing warnings to those consumers. An SPF code for the sector may include sector-specific provisions in relation to the SPF principle related to preventing scams. [*Schedule #, item 1, section 58BI*]

1.133 Prevention activities are targeted at stopping scam activity from reaching or impacting consumers, rather than stopping or identifying scam activity that is already underway (covered in SPF principles 3 – Detect, and 5 – Disrupt). This means that the steps a regulated entity may take to meet its obligations in relation to scam prevention are likely to be focused on educating the consumer, educating its staff, and introducing robust processes that prevent scammers from accessing or using its platform to perpetuate scam activity.

1.134 Under this SPF principle, a regulated entity must:

- take reasonable steps to prevent another person (provisions in Division 7 of the amendments extend the meaning of ‘person’) from committing a scam on or relating to its service. [*Schedule #, item 1, subsection 58BJ(1)*]
- make relevant resources (including information) accessible to SPF consumers of a regulated service of the entity about steps those consumers can take to identify a scam relating to the regulated service and minimise their risk of becoming a victim of a scam in relation to such scams. For example, a regulated entity may meet this obligation by creating a page on its website providing dynamic information about ‘latest scams and alerts’ to its consumers and steps it has taken to manage the risk of that scam activity to its consumers. Additionally, where a regulated entity identifies a scam impersonating its service that is asking consumers to provide its multi-factor authentication codes, it may provide accessible information warning consumers about this scam and advising that it would not ask consumers for this information. [*Schedule #, item 1, subsection 58BK(1)*]
- take reasonable steps to identify classes of SPF consumers (if any) of a regulated service of the entity that are at a heightened risk of being targeted by a scam relating to the regulated service, and provide warnings to each of those consumers in relation to such a scam. A regulated entity may identify consumers who are at higher risk based on how they use its service, or due to other factors. For example, if a regulated entity observes an increase in scam activity involving its service using cryptocurrency as a form of payment, it may identify consumers that are making large cryptocurrency payments as at a potentially heightened risk of being targeted by a scam. The regulated entity may provide warnings directly to those consumers about scams observed involving cryptocurrency and outline steps a consumer can take to protect themselves against scam activity. A regulated entity may also identify vulnerable cohorts of consumers with reference to information it receives from scam reports or public reports released by the SPF general regulator. Additionally, a regulated entity may identify consumers from a particular geographic location or age cohort are subject to an increase in scam activity on its service, and may look to provide targeted warnings using accessible communication channels to those higher-risk consumers and outline the steps they can take to protect themselves against the scam activity. [*Schedule #, item 1, subsection 58BK(2)*]



- 1.135 These obligations are subject to civil penalties. *[Schedule #, item 1, subsections 58BJ(2) and 58BK(3)]*
- 1.136 In complying with the obligations of this SPF principle, a regulated entity must be proactive in taking steps to prevent scams. A regulated entity should not limit the taking of such steps to instances when they have actionable scam intelligence in the form of information received from another person. This means that regulated entities must take reasonable steps to monitor scam trends, including through active data collection, and take action to prevent scams before they occur. *[Schedule #, item 1, subsection 58BL(1)]*
- 1.137 Without limiting what an SPF code may include for the purposes of this SPF principle, if an SPF code is made for a regulated sector, it may include sector-specific details about:
- what are reasonable steps to prevent scams;
  - what are relevant resources; or
  - identifying the classes of SPF consumers who have a higher risk of being targeted by a scam.
- [Schedule #, item 1, subsection 58BL(2)]*
- 1.138 The obligations included in any SPF code made for a regulated sector are not exhaustive in relation to the reasonable steps the regulated entity for the sector must take. A regulated entity may still be in breach of their obligations under the SPF principles even if they comply with the obligations in an SPF code.

### SPF principle 3: Detect

- 1.139 SPF principle 3 relates to a regulated entity's obligations to detect scams. Broadly, each regulated entity in a regulated sector must take reasonable steps to detect scams, which includes identifying SPF consumers that are or could be impacted by a scam in a timely way. An SPF code for the sector may include sector-specific obligations in relation this SPF principle. *[Schedule #, item 1, section 58BM]*
- 1.140 A regulated entity must take reasonable steps to detect scams related to their regulated service, this may include (but is not limited to):
- detecting scam activity through information received in consumer reports;
  - detecting scam activity through actionable scam intelligence received from the SPF general regulator;
  - detecting scam activity through its own internal mechanism, flagging higher risk transactions or suspicious activity.
- [Schedule #, item 1, subsection 58BN(1)]*
- 1.141 This obligation is subject to civil penalties. *[Schedule #, item 1, subsection 58BN(2)]*

- 1.142 Without limiting the steps a regulated entity must take, taking reasonable steps includes taking steps to detect such scams as they are happening or after they have happened, including both where a consumer has already incurred a loss or before a loss has occurred.
- 1.143 A regulated entity's obligations under this principle are linked to and flow through to other obligations in the SPF principles. For example:
- identifying potential scam activity through detection activities triggers obligation to report actionable scam intelligence to the SPF general regulator under SPF general principle 4 – report;
  - identifying potential scam activity through detection activities triggers an obligation to take reasonable steps to disrupt the scam activity under SPF general principle 5 – disrupt; and
  - where an entity receives actionable scam intelligence from the SPF general regulator, it is required to take reasonable steps to investigate the nature of the activity associated with that intelligence under SPF general principle 3 – detect.
- 1.144 Where a regulated entity identifies a suspected or actual scam, it must take reasonable steps to identify SPF consumers of the regulated service who have been impacted by the suspected or actual scam and the nature of that impact. The nature of the impact may include both financial and non-financial harm or losses, for example, if the SPF consumer transferred funds to a scammer and in that process also provided personal information to a scammer. **[Schedule #, item 1, subsection 58BN(3)]**
- 1.145 If a regulated entity has actionable scam intelligence, the entity must take reasonable steps in a reasonable timeframe to identify each SPF consumer of the entity's regulated service who is or could be impacted by the suspected scam. This obligation is intended to require a regulated entity to identify SPF consumers that it has a direct customer relationship with, however there may be circumstances where it is reasonable for a regulated entity to identify an SPF consumer that it does not have a direct customer relationship with. **[Schedule #, item 1, subsection 58BO(1)]**
- 1.146 This obligation is subject to civil penalties. **[Schedule #, item 1, subsection 58BO(2)]**
- 1.147 Without limiting what an SPF code may include for the purposes of this SPF principle, if an SPF code is made for a regulated sector, it may include sector-specific details about:
- what are reasonable steps to detect scams; or
  - what is a reasonable time for the purpose of identifying SPF consumers.
- [Schedule #, item 1, section 58BP]**

## SPF principle 4: Report

- 1.148 SPF principle 4 relates to a regulated entity's obligations to report to SPF regulators in relation to scams. Broadly, each regulated entity must share the following:
- any reports of actionable scam intelligence (as identified through detection activities in SPF principle 3 or through consumer reports) as soon as practicable with the SPF general regulator; and
  - a full scam report (made by a consumer) about scam activity to an SPF regulator (either the SPF general regulator or relevant SPF sector regulator) on request.
- 1.149 The SPF general regulator must also disclose information about scams to other entities if it believes doing so will assist in achieving the object of the SPF. **[Schedule #, item 1, section 58BQ]**
- 1.150 Efficient and timely sharing of information is critical to support SPF regulators and all regulated entities to effectively protect Australia against scams.
- 1.151 Regulated entities must give the SPF general regulator a report of the actionable scam intelligence the entity has about a suspected scam relating to a regulated service of the entity within the time period prescribed in the SPF rules for the regulated sector, or if no period is prescribed, as soon as is reasonably practicable. **[Schedule #, item 1, paragraph 58BR(1) and subparagraph 58BS(1)(a)(i)]**
- 1.152 Regulated entities must give an SPF regulator a scam report within the period for doing so, which must be at least the time period prescribed in the SPF rules, or if no period is prescribed, as soon as is reasonably practicable. **[Schedule #, item 1, subparagraph 58BS(1)(a)(ii) and subsection 58BR(2)]**
- 1.153 These obligations are subject to civil penalties. **[Schedule #, item 1, subsection 58BR(3)]**
- 1.154 The reports must contain the information and be in the form that is approved by the SPF general regulator by notifiable instrument. An instrument made by the SPF general regulator approving the kinds of information to be included in a report of actionable scam intelligence or a scam report is not a legislative instrument, because of item 6 of the table in section 6 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. **[Schedule #, item 1, subparagraph 58BS(1)(b) and subsection 58BS(2)]**
- 1.155 The SPF general regulator may approve the form of giving the report, via access to a website or portal, or through an approved third party. **[Schedule #, item 1, note 3 to paragraph 58BS(2)(b)]**
- 1.156 The information shared and collected as part of actionable scam intelligence is expected to be limited to the information that is necessary to disrupting scam activity. As a result, actionable scam intelligence entails the sources or

evidence that the entity has for intelligence, and will generally only include information about the mechanism or identifier used to perpetuate scam activity. This includes information such as:

- the bank account a consumer has transferred a payment to (as instructed by the scammer);
- a phone number used by the scammer to contact individuals, or a phone number advertised on a fraudulent scam advertisement;
- details in relation to a fraudulent scam advertisement or social media account used to perpetuate scam activity.

1.157 Approved kinds of information for a scam report could include details or evidence such as de-identified demographic information about the impacted SPF consumer, the date of the scam, a description of the scam by the SPF consumer, details of the method of contact used by the scammer, the kind of scam, and the form of loss or harm caused by the scam.

1.158 The approved information could include personal information, including the personal information of any of the following:

- a person reasonably suspected of committing a scam, or being knowingly involved in the commission of a scam;
- an SPF consumer who was engaged (or was attempted to be engaged) as part of a scam;
- a person who reports a scam on behalf of an SPF consumer;
- a person who a scam deceptively impersonates in connection with a regulated service.

***[Schedule #, item 1, subsection 58BS(3)]***

1.159 Personal information includes, for example, a person's name, email address, phone number, bank account details or credit card details. ***[Schedule #, item 1, note to subsection 58BS(3)]***

1.160 The sharing of personal information is critical in enabling the SPF regulator and other regulated entities to act fast to prevent and disrupt the scam occurring, to mitigate the impact of the scam and/or prevent future scams.

1.161 For example, this would enable a bank that has facilitated the transfer of funds into an account at another bank to report details about both the sending and receiving account holders with the SPF regulator so that prompt action can be taken to recover the funds. In this example, if the scam originated through a fraudulent advertisement on a social media platform, a bank promptly sharing this intelligence through the SPF general regulator will also enable a social media service provider to quickly remove an advertisement or suspend an account suspected to be associated with scam activity and prevent further consumers from being impacted.

- 1.162 If a regulated entity has already provided a scam report to an SPF regulator, and another SPF regulator later requests a scam report about the same matter, then the entity only needs to provide to the second SPF regulator a report setting out that an earlier scam report about these matters was given to the first SPF regulator on a specified date and time. The SPF regulators can share scam report information with each other. **[Schedule #, item 1, subsection 58BS(4)]**
- 1.163 A duty of confidence, a legally enforceable obligation to maintain confidence, owed under an agreement or arrangement has no effect to the extent that it would otherwise prevent information from being reported to the SPF general regulator under subsection 58BZD(1) or (2). Duties of confidence are overridden to ensure all required and relevant information is reported to the SPF general regulator. The significant financial and emotional harm caused by scams warrants prioritising information sharing to combat scams over a duty of confidence. It is expected that in most cases the party owed the duty of confidence will directly benefit from the sharing of information to disrupt scam activity. **[Schedule #, item 1, section 58BT]**
- 1.164 The requirements for a regulated entity to give reports of actionable scam intelligence and scam reports is a requirement by law to disclose the information that is required to be contained in those reports. Therefore, a regulated entity's compliance can be a defence to a secrecy provision, such as section 276 of the *Telecommunications Act 1997* (see paragraph 280(1)(b) of the Act). **[Schedule #, item 1, note to section 58BT]**
- 1.165 The SPF general regulator may disclose information about an action which is a 'scam' (as defined in the Bill or within the ordinary meaning of that expression) to another person if the SPF general regulator reasonably believes that doing so will assist in achieving the object of the SPF. In this context, actions which constitute a scam are referred to as a 'scamming action'. **[Schedule #, item 1, subsection 58BU(1)]**
- 1.166 A disclosure to another person includes:
- disclosing information from a report of actionable scam intelligence given by a regulated entity; or
  - disclosing to an SPF sector regulator information about a scamming action; or
  - disclosing information about a scamming action to agencies of the Commonwealth involved in developing or administering Government policy relating to the SPF; or
  - disclosing information about a scamming action to a law enforcement agency of the Commonwealth, or of a State or Territory to assist that agency to respond to that scamming action; or
  - disclosing to another person information about a scamming action to assist that other person to disrupt similar actions.

**[Schedule #, item 1, subsection 58BU(2)]**

- 1.167 The power for the SPF general regulator to disclose information to other entities is broad. This is intended to support a coordinated response to addressing scam activity across the ecosystem. This includes:
- ensuring businesses across the scams ecosystem (including regulated entities and businesses in other sectors that are not designated under the framework) have the information they need to take disruptive and preventative action in response to scam activity;
  - ensuring regulators have relevant information about scam activity occurring in their regulated sectors so inadequate action taken by entities or potential breaches can be quickly identified and enforcement action taken, where appropriate;
  - ensuring agencies of the Commonwealth have information to support the development of regulatory and policy agendas in relation to scam activity; and
  - ensuring law enforcement agencies have information to support criminal proceedings and action being taken in response to scam activity, against scammers.
- 1.168 The SPF general regulator may share information about a scam as defined in the law or within the ordinary meaning of that expression. The intent of enabling the sharing of information relating to a scam in both these ways is to ensure the SPF general regulator is not unnecessarily restricted by the definition of scam in the SPF in its ability to share information, when sharing would support a coordinated response to scam activity and support the objectives of the SPF.

**Example 1.6 The SPF general regulator disclosing a scam in the banking sector**

For this example, the banking sector and digital platforms sector are regulated sectors. The SPF general regulator (ACCC) receives several consumer reports about a banking impersonation scam on a social media service.

- **Disclosure:** The SPF general regulator may disclose relevant information about this scam activity to the banking entity. This information will assist the banking entity in taking preventative and disruptive action by issuing public warnings that the advertisement is not associated with their service. The SPF general regulator may also disclose information about these reports to the social media service, to support the service in undertaking disruptive action to remove the

advertisement and suspend any associated accounts (if appropriate).

**Example 1.7 The SPF general regulator disclosing a scam in the telecommunications sector and digital platform sectors**

For this example, the telecommunication sector is a regulated sector under the SPF, but cryptocurrency trading platform providers are not regulated entities. The SPF general regulator (ACCC) receives increased reports about scams originating on telecommunication services and resulting in payments made through cryptocurrency.

- Disclosure: The SPF general regulator may disclose specific information to carriage service providers identified in scam reports to assist them in taking disruptive action such as suspending the accounts associated with suspected scam activity. The SPF general regulator may also disclose information to identified cryptocurrency trading platform providers to support disruptive action (although cryptocurrency trading platform providers will not be compelled to act on that information until they are designated as regulated entities in the SPF).
- Subject to the whether the SPF general regulator determines that the consumer reports point to an emerging trend, the SPF general regulator may share information about this activity more broadly across both sectors (beyond those entities directly identified in reports received) to support longer term preventative action across both sectors.

1.169 The SPF general regulator must not make a disclosure if it reasonably believes that:

- the disclosure risks prejudicing or compromising an ongoing investigation by a law enforcement agency; or
- the disclosure would be a disclosure of personal information to another person where that person is not a regulated entity.

*[Schedule #, item 1, subsection 58BU(3)]*

## SPF principle 5: Disrupt

1.170 SPF principle 5 relates to a regulated entity's obligations to disrupt scams. Broadly, each regulated entity for a regulated sector must take reasonable steps to disrupt scam activity on or related to its service. A regulated entity must also

share actionable scam intelligence with consumers to enable those consumers to act in relation to the suspected scam, and with the SPF general regulator. A regulated entity will not be liable for damages when taking certain actions to disrupt a suspected scam. An SPF code for the sector may include sector-specific obligations in relation this SPF principle. *[Schedule #, item 1, section 58BV]*

- 1.171 A regulated entity must take reasonable steps to disrupt scams or suspected scams relating to actionable scam intelligence the entity has and prevent loss or harm (including further loss or harm) arising from such scams or suspected scams. The steps taken by a regulated entity to disrupt scams or suspected scams should be proportionate to the actionable scam intelligence that the entity has. *[Schedule #, item 1, subsections 58BW(1) and (3)]*
- 1.172 This obligation is subject to civil penalties. *[Schedule #, item 1, subsection 58BW(2)]*
- 1.173 Disruption activities can include activities to stop a payment from successfully being made and preventing any loss to the consumer (such as confirmation of payee for banking services) or preventing further losses where a scam has already been successful, such as removing a fraudulent advertisement associated with scam activity.
- 1.174 Taking reasonable steps to disrupt scam activity refers to taking steps to stop a scam or suspected scam that is already underway from continuing or further impacting consumers. It may include actions such as:
- removal of content associated with scam activity (i.e. scam advertisements or fraudulent accounts);
  - blocking phone numbers, accounts, or content associated with scam activity;
  - introducing holds to payments to enable the regulated entity to contact the consumer and provide them with information that the account they are making a payment to has been identified as associated with scam activity; and
  - confirmation of payee (for banking services).

## Safe harbour

- 1.175 A safe harbour provision applies for any proportionate temporary disruptive action taken by a business whilst it is investigating actionable scam intelligence it has received. A regulated entity will not be liable in relation to a civil action or proceeding against the entity where they have taken action to disrupt scams (including suspected scams) while investigative action is being taken into actionable scam intelligence about a suspected scam relating to a regulated service of the entity. This protection will only apply if:



- the regulated entity is acting in good faith and in compliance with the SPF provisions;
- the disruptive action is reasonable and proportionate to the suspected scam;
- the action is taken during the period starting on the day that the information becomes actionable scam intelligence for the entity, and ending when the entity identifies whether or not the activity is a scam, or after 28 days, whichever is the earlier; and
- the action is promptly reversed if the entity identifies the activity is not a scam and it is reasonably practicable to reserve the action.

***[Schedule #, item 1, paragraph 58BZ(1), paragraph 58BZ (2)]***

- 1.176 In order to benefit from the safe harbour provision, the action a regulated entity takes in disrupting activity that may be associated with actionable scam intelligence received should be proportionate to the actionable scam intelligence that the entity has. A range of factors may be relevant to whether the action is proportionate, such as the volume of information received and/or available, the source of that information, and the apparent likelihood that the activity is associated with a scam. ***[Schedule #, item 1, paragraph 58BW(3), section 58BZ]***
- 1.177 For example, where a regulated entity has received a significant number of reports with respect to a specific advertisement on its regulated service and the pattern of conduct is consistent with a well-known scam, that entity may be expected to take relatively comprehensive disruptive steps such as taking down the advertisement and contacting SPF consumers that have interacted with the advertisement.
- 1.178 However, where a regulated entity has received a smaller volume of consumer reports relating to the loss of personal information on a regulated entity's regulated service that do not appear to be clearly related to scam conduct (and may be related to a data breach), it may be appropriate for more targeted action or no immediate disruptive action to be taken before an investigation is completed or more information comes to light.
- 1.179 The policy intention of the safe harbour provision is to protect third parties from disruption activities where they are not involved in scam activity. For example, a regulated entity may take down a legitimate business's website based on actionable scam intelligence while the regulated entity investigated whether the conduct or activity was associated with a scam. Once the regulated entity concludes that the website has not been used for scam activities, the regulated entity must reverse its actions promptly to minimise disruption to the business. It is not intended to cover action taken in relation to consumers that are at risk of being impacted but have not yet been victim of a scam or scam attempt, for example, if a bank adds friction to a high-risk payment.
- 1.180 The regulated entity is protected from liability from civil action brought by the consumer when the regulated entity was acting appropriately.

- 1.181 A regulated entity who wishes to rely on this protection from liability bears an evidential burden. This is appropriate as that regulated entity would have the knowledge and access to the necessary evidence to demonstrate whether they have met the requirements.

## Sharing information about scams

- 1.182 If a regulated entity has actionable scam intelligence about a suspected scam, it must:
- take reasonable steps within a reasonable time to share sufficient information about the suspected scam with SPF consumers of the regulated service that would allow those consumers to act in relation to the suspected scam. This is intended to enable those consumers to take action to limit the impact of the scam or stop the scam altogether. *[Schedule #, item 1, subsection 58BX(1)]*
  - share a report about the outcome of an investigation relating to that actionable scam intelligence with the SPF general regulator within 24 hours after the entity identifies whether the activity is a scam, or after 28 days, whichever is earlier. *[Schedule #, item 1, subsection 58BS(2) and paragraph 58BX(3)(a)]*
- 1.183 These obligations are subject to civil penalties. *[Schedule #, item 1, subsection 58BX(6)]*
- 1.184 The report must contain the information and be in the form approved by the SPF general regulator. The SPF general regulator may, by notifiable instrument, approve the kinds of information to be included in a report and the form in which such a report is to be given. This instrument is not a legislative instrument because of section 6 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The kind of information approved could include personal information. *[Schedule #, item 1, paragraph 58BX(3)(b) and subsection 58BX(4)]*
- 1.185 The report must advise whether the regulated entity reasonably believes that the activity that is subject of the actionable scam intelligence is a scam or not. If the entity reasonably believes it is a scam, the entity must set out what loss or harm has resulted from the scam, what disruptive action the entity took and whether those actions have been reversed. If, after investigation, the entity reasonably believes the activity was not a scam, the report must include what disruptive actions were taken and whether those actions have been reversed. *[Schedule #, item 1, subsection 58BX(5)]*
- 1.186 Without limiting what an SPF code for a regulated sector may include for the purposes of this SPF principle, if an SPF code is made for a sector, it may include sector-specific details about:
- what are reasonable steps to disrupt scams; and

- what is a reasonable time.

*[Schedule #, item 1, section 58BY]*

1.187 For example, SPF codes may provide detail on obligations to:

- quickly respond to information that identifies scams, such as through requirements to block or suspend an account or a transaction;
- disclose information to impacted SPF consumers in a specified timeframe which may include steps for those consumers on how to prevent further harm or losses; and
- functionality that regulated entities must have to enable SPF consumers to take action to stop scams (for example, technology that allows an SPF consumer to stop a transaction or freeze their own accounts).

## SPF principle 6: Respond

1.188 SPF principle 6 relates to a regulated entity's obligations to respond to scams. Broadly, each regulated entity must have accessible mechanisms for their SPF consumers to report scams and an accessible and transparent IDR mechanism for those consumers to complain about scams (including the entity's conduct relating to scams). Further, a regulated entity must not provide a regulated service if they are not a member of an EDR scheme authorised by a Treasury Minister for their regulated sector (SPF EDR scheme). *[Schedule #, item 1, section 58BZA]*

1.189 An SPF code for a regulated sector may set out additional conditions related to the reporting, IDR and EDR requirements. *[Schedule #, item 1, section 58BZ]*

## Reporting mechanism

1.190 Regulated entities must have an accessible mechanism for SPF consumers to report scams relating to the entities' regulated services. *[Schedule #, item 1, subsection 58BZB(1)]*

1.191 This obligation is subject to civil penalties. *[Schedule #, item 1, subsection 58BZB(2)]*

1.192 The relevant form of the reporting mechanism may be different for each regulated entity, depending on its regulated services and SPF customer base. For example, an entity may provide an ability for SPF consumers to report scams in-person, via phone, or online on a website or a digital application. A combination of methods may be available. Regardless of the approach, the entity must ensure that the reporting mechanism is easily accessible to SPF consumers. The regulated entity may also enable an authorised person or organisation to assist with or make a report on behalf of the SPF consumer.

1.193 The reporting mechanism is a critical element of the SPF. It will provide regulated entities with necessary information to fulfil their other obligations

under the SPF regarding the prevention, detection, disruption and reporting of scams.

1.194 Without limiting what an SPF code may include for the purposes of this SPF principle an SPF code for a regulated sector may set out additional conditions related to the reporting mechanism. *[Schedule #, item 1, paragraph 58BZ(a)]*

1.195 For example, the SPF codes may contain requirements on the type of information that the regulated entity must include in its reporting form (such as contact details used by the scammer, type of scam or outcome of the scam). These requirements are more suitable to be included in SPF codes as they may vary depending on the regulated sector and to allow for flexibility to update requirements in response to changes in scam trends prevalent in certain sectors.

### **Internal Dispute Resolution (IDR)**

1.196 Regulated entities must have an accessible and transparent IDR mechanism for SPF consumers to complain. SPF consumers will be able to bring complaints about scams relating to an entity's regulated services, and about the entity's conduct relating to such scams.

1.197 An effective IDR mechanism will benefit both SPF consumers and regulated entities. IDR will provide regulated entities an opportunity to assess its conduct and resolve the SPF consumer's complaints in a timely and efficient manner. The IDR obligation is intended to encourage the early resolution of complaints, including for compensation or other remedies to be provided to SPF consumers where there has been a breach of an SPF principle or SPF code obligation. *[Schedule #, item 1, subsection 58BZC(1)]*

1.198 This obligation is subject to civil penalties. *[Schedule #, item 1, subsection 58BZC(2)]*

1.199 The relevant IDR mechanism must be accessible for SPF consumers, and may include making a complaint in-person, via phone or online. A combination of these methods may also be used. The regulated entity may enable an authorised person or organisation to assist to make or progress a complaint on behalf of the SPF consumer. To ensure the IDR mechanism is accessible for SPF consumers, the regulated entity should consider setting out its complaints handling process in writing, and making it available on the entity's website.

1.200 Without limiting what an SPF code may include for the purposes of this SPF principle, an SPF code for a regulated sector may set out additional conditions related to the IDR mechanism. For example, the SPF code may set out the types of complaints that the IDR mechanism must apply to, timeframes for response, requirements for regulated entities to engage with other relevant parties (including other regulated entities) during the IDR process, record-keeping obligations and obligations related to the process to escalate a complaint to an SPF EDR scheme. *[Schedule #, item 1, paragraph 58BZE(b)]*

## External Dispute Resolution (EDR)

- 1.201 A regulated entity must not provide a regulated service if they are not a member of an SPF EDR scheme. *[Schedule #, item 1, subsection 58BZD(1)]*
- 1.202 A Treasury Minister may authorise an SPF EDR scheme for the purposes of the SPF and one or more regulated sectors. This may include an existing scheme (for example the AFCA scheme that is authorised under Part 7.10A of the Corporations Act), or a new scheme. More than one SPF EDR scheme may be authorised for the purposes of the SPF (for example, a different SPF EDR scheme for each regulated sector). *[Schedule #, item 1, section 58DB]*
- 1.203 An EDR mechanism is intended to provide a pathway for redress (including compensation) to an SPF consumer for a regulated service where a regulated entity has not complied with their obligations under the SPF. The authorised SPF EDR scheme is intended to offer an independent, impartial and fair mechanism for SPF consumers to escalate their complaints where they are not resolved at the IDR stage or if the IDR outcome is unsatisfactory. It is not intended for SPF consumers to be charged any fee for escalating their complaints to an SPF EDR scheme.
- 1.204 Although more than one SPF EDR scheme may be authorised, the intention is that a single SPF EDR scheme will be authorised that applies to multiple regulated sectors. This will provide SPF consumers with a straightforward path to EDR where multiple regulated entities are involved in a single complaint, and therefore lower the administrative burden for both SPF consumers and regulated entities compared to if multiple SPF EDR schemes were available for a particular complaint. This is also intended to ensure consistency in experience and in the consideration of complaints.
- 1.205 An SPF code for a regulated sector may include sector-specific details about obligations that must be met in relation an SPF EDR scheme for the sector by a regulated entity that is a member of the scheme. *[Schedule #, item 1, paragraph 58BZE(c)]*
- 1.206 A regulated entity must comply with any obligations in the SPF code for the regulated sector, if made, that relates to the SPF EDR scheme for that sector. *[Schedule #, item 1, subsection 58BZD(2)]*
- 1.207 Without limiting what an SPF code may include for the purposes of this SPF principle, an SPF code for a regulated sector may include sector-specific details about obligations that must be met in relation an SPF EDR scheme for the sector by a regulated entity that is a member of the scheme. *[Schedule #, item 1, paragraph 58BZE(c)]*
- 1.208 For example, the SPF code may further provide that:
- a regulated entity must give reasonable assistance to and cooperate with the operator of the SPF EDR scheme in the resolution of a complaint;

- a regulated entity must comply with the determinations made by the operator of the SPF EDR scheme of which the regulated entity is a member in relation to a complaint; or
  - a regulated entity must identify and provide any document or information that the operator of the SPF EDR scheme reasonably requires for the purposes of resolving the complaint under the SPF.
- 1.209 As the Treasury Minister may authorise more than one EDR scheme for the purposes of the SPF (i.e. different SPF EDR schemes for different sectors), it is necessary for relevant requirements related to relevant EDR scheme to be contained in the SPF codes for the regulated sector.
- 1.210 These obligations are subject to civil penalties. [*Schedule #, item 1, subsection 58BZD(3)*]

## Application of the SPF principles

### **Example 1.8 A scam in the banking sector**

ABC Bank is a regulated entity under the banking sector, and it has been targeted by spoofing scams where scammers' messages are appearing on the same SMS message chain as the legitimate SMS message chain from the bank. The scammer impersonates the bank in order to deceive the consumer to authorise a transfer of money from the consumer's account to another account by asking the consumer to provide their one-time passcode to authorise that transfer. For the purposes of the example, there is not yet an SPF code made for the sector.

- **Governance:** ABC Bank reviews relevant actions within its existing anti-scam policies and procedures and assess whether these are adequate to manage the emerging scam activity observed on its service, and update these as appropriate to ensure they are effective. While the obligation for governance is ongoing and not triggered by the new scam risk, given the awareness of this new risk, ABC Bank may need to take further steps to ensure that it continues to meet the obligation to take reasonable steps in the circumstances.
- **Prevent:** ABC Bank publishes a warning on its website in relation to this scam and the steps it is taking to protect consumers. This warning clearly communicates that ABC Bank will never ask a consumer for their one-time passcode so consumers can easily identify scam

activity. ABC Bank works with its telecommunication provider to better protect its SMS Alphanumeric Tag so that scammers are unable to impersonate it.

- **Detect:** ABC Bank takes steps to investigate consumer reports and trace actionable scam intelligence received.
- **Report:** ABC Bank shares actionable scam intelligence in relation to the SMS and bank accounts used by the scammer, identified through consumer reports received with the SPF general regulator.
- **Disrupt:** ABC Bank also temporarily adds friction to high value transfers, including introducing a 24-hour hold of funds and a visible warning in apps and online banking to consumers before they finalise payment to disrupt the scam attempt.
- **Respond:** ABC Bank has an internal dispute resolution mechanism and reporting mechanism available to their consumers to make a complaint or report about the scam activity.

### **Example 1.9 A scam in the telecommunications sector**

XYZ Mobile is a regulated entity under the telecommunications sector. It receives information from the SPF general regulator that consumer reports indicate that a significant number of impersonation scams are originating using spoofed phone calls on its service.

- **Governance:** XYZ Mobile reviews its anti-scam strategy in light of this information, particularly in relation to its approach to spoofing and suggests a change to procedures to strengthen protections to prevent the use of Australian numbers for scam activity. These changes do not need to be board approved as they occur outside of the annual review period. While the obligation for governance is ongoing and not triggered by the new scam risk, given the awareness of this new risk, XYZ Mobile may need to take further steps to ensure that it meet the obligation to take reasonable steps in the circumstances.
- **Prevent:** XYZ Mobile makes information available on its website about an increase in scam activity observed and provides updated information on what steps it is taking to manage scam activity. XYZ mobile also

strengthens mechanisms to prevent Australian phone numbers being used to perpetrate a scam.

- Detect: XYZ Mobile strengthens mechanisms to detect recent abnormally high volumes of traffic from a service provider and traces the originating point of spoofed phone calls.
- Report: XYZ Mobile shares information about any consumer reports received in relation to scam activity to the SPF general regulator.
- Disrupt: Where XYZ Mobile has formed a reasonable view that it has detected a number being used for scam calls, it blocks those numbers.
- Respond: XYZ Mobile is a member of a prescribed external dispute resolution scheme and has an internal dispute resolution mechanism available for consumers to make a complaint.

### **Example 1.10 A scam in the digital platforms sector**

FriendZone is a regulated social media service provided by FriendZone Ltd as the regulated entity under the SPF. FriendZone receives an increase in consumer reports in relation to fraudulent advertisements for cryptocurrency investment schemes. Upon examination, the cryptocurrency is non-existent, and it involves deceiving victims to enter their personal details on a fake exchange platform.

- Governance: FriendZone reviews its anti-scam strategy in relation to preventing fraudulent accounts and advertisements. It identifies an opportunity to strengthen procedures to prevent fraudulent accounts and advertisements being established and makes relevant updates with supporting training to staff. While the obligation for governance is ongoing and not triggered by the new scam risk, given the awareness of this new risk, FriendZone may need to take further steps to ensure that it continues to meet the obligation to take reasonable steps in the circumstances.
- Prevent: FriendZone introduces biometric checks and additional identity verification for accounts looking to post advertisements on its service, which provides additional checks over and above what is required in the SPF codes.



- Detect: FriendZone has algorithms in place to identify suspicious businesses and account holders.
- Report: FriendZone should provide the number of scam accounts taken down over a specific reporting period by a reasonable time to the SPF general regulator.
- Disrupt: FriendZone suspends reported fraudulent advertisements and associated accounts for a period of 28 days whilst undertaking investigative action to verify the nature of those advertisements. Any verified scam advertisements are removed and disruptive action is unwound for any legitimate advertisements and accounts identified within the 28 day period.
- Respond: FriendZone should have an accessible mechanism for consumers to report suspected scam posts.

## Division 3 – Sector-specific SPF codes

- 1.211 A Treasury Minister may make a code (SPF code) for each regulated sector. A code imposes obligations which are civil penalty provisions. Compliance with these provisions is monitored, investigated and enforced by the relevant SPF sector regulator. *[Schedule #, item 1, section 58CA]*
- 1.212 These SPF sector-specific codes (SPF codes) are legislative instruments made by a Treasury Minister for each regulated sector. In some circumstances, it may be appropriate for certain specific obligations in the SPF code to apply only to certain parts of a regulated sector. For example, where different regulated entities within the regulated sector have roles in different parts of the supply chain for that industry and have access to different information. *[Schedule #, item 1, section 58CB]*
- 1.213 These SPF codes are intended to support the SPF principles that underpin the framework to protect against scams. SPF codes must:
- be consistent with the SPF principles; and
  - only cover topics covered by the following SPF principles:
    - governance
    - prevent;
    - detect;
    - disrupt; and
    - respond.
  - if applicable, include provisions about matters prescribed by the SPF rules.

**[Schedule #, item 1, subsection 58CC(1)]**

- 1.214 An SPF code will set out detailed obligations for each sector and consistent minimum standards for what each regulated entity in a sector must do to address scam activity on their regulated service and protect consumers. However, an SPF code is not expected to set out an exhaustive list of obligations that will satisfy compliance with the SPF principles. A regulated entity must meet each SPF principle, taking into account their specific service and scams risk profile.
- 1.215 An SPF code may also deal with ancillary or incidental matters, including:
- provisions that deal with only certain types of regulated services in the sector;
  - circumstances where persons are relieved from compliance with SPF requirements that would otherwise apply to them;
  - provisions that confer powers on the SPF sector regulator or on another person;
  - provisions that depend on the SPF sector regulator being satisfied of one or more specified matters;
  - the internal review processes that persons acting under the SPF code must establish and have in place or for making applications to the Administrative Review Tribunal;
  - the manner in which persons or bodies may exercise powers or must meet the requirements under the SPF code. For example, requiring the use of a form approved by the SPF sector regulator or SPF general regulator;
  - whether a regulated entity for the regulated sector may charge a fee, the manner in which the fee may be charged, the time in which a fee can be paid and how the fee needs to be communicated (including how notice may be given to the person that is required to pay the fee);
  - provisions that require an agent of a regulated entity to do or not do specific things when acting on behalf of the regulated entity and within the scope of the agent's actual or apparent authority;
  - provisions about other matters contained in the SPF code.

**[Schedule #, item 1, subsection 58CC(2)]**

- 1.216 Within the meaning of the Regulatory Powers Act, some provisions of the SPF code may be civil penalty provisions. **[Schedule #, item 1, subsection 58CC(3)]**
- 1.217 An SPF code may make provisions that apply, adopt, or incorporate other instruments or writing in force at a particular time or from time to time. This power is necessary to ensure that where there are existing scam prevention frameworks already in place for a particular sector, they can be brought into

the SPF to ensure that the new obligations under the SPF applies in respect to those existing frameworks. This incorporation by reference for the updates to apply from time to time is explicitly provided for in the primary law, to ensure section 14(2) of the *Legislation Act 2003* does not prevent this effect.

**[Schedule #, item 1, subsections 58CC(4) and (5)]**

- 1.218 For example, it may be necessary for certain obligations specified in a sector code to refer to another document.
- 1.219 A Treasury Minister’s power to make an SPF code may be delegated (in writing) to another Minister, the ACCC, or the entity that is, or is to be, the SPF sector regulator. This delegation may be exercised where the Treasury Minister considers that another Minister, or another regulator has the necessary industry knowledge, understanding and information to best address scams in that sector and to make an appropriate SPF code. For example, the telecommunications industry is already regulated by the ACMA and it may be appropriate for the delegation to be made to the ACMA with respect to the telecommunications sector for the purposes of the SPF. **[Schedule #, item 1, section 58CD]**
- 1.220 The below diagram provides the policy intention regarding the contents of the SPF codes in relation to the SPF principles.

**Diagram 1.1 SPF principles and example SPF codes**

<b>Principle-based obligation</b>	<b>Non-exhaustive example obligations in SPF Code (varies across sectors).</b> This table assumes banking, telecommunications, and paid search engine advertising and social media are regulated sectors
Governance	All: Policies and procedures must be informed by consideration of (among other factors): <ul style="list-style-type: none"> <li>• the scams risk faced by the regulated entity, including the volume and kinds of scams on or relating to the regulated entity’s regulated services and any emerging scams threat</li> <li>• the vulnerability and susceptibility of the regulated entity’s SPF consumers of those regulated services; and</li> <li>• the effectiveness of existing policies and procedures already implemented by the regulated entity to address the scams risk and residual risk.</li> </ul>
Prevent	All: Regularly train staff to identify and respond to scams.

	<p>Banking: Implement at least one biometric check for all individual consumers opening a new bank account.</p> <p>Telecommunications: Implement specific steps (set out in code) to prevent the use of Australian numbers for scam calls.</p> <p>Paid search engine advertising and social media: Authenticate and verify the identity of business users and advertisers to prevent scam advertisements and accounts on their platform.</p>
Detect	<p>Banking: Develop processes to flag, slow down or pause higher risk transactions that appear out of character for a particular consumer, such as large amounts of money being transferred to a new payee or into a crypto asset.</p> <p>Telecommunications: implement robust processes to trace the origin of suspected scam calls and cooperate with other telecommunication service providers in the investigation of suspected scam activity.</p> <p>Paid search engine advertising and social media: take steps to investigate all reported scam advertisements within 48 hours</p>
Disrupt	<p>All: Disclose scam reports to impacted consumers in 48 hours with information on steps for the consumer on how to prevent further losses.</p> <p>Banking: Verify payee details before transferring funds.</p> <p>Telecommunications: Suspend and block phone numbers associated with verified scam activity within 24 hours of confirming the nature of the activity.</p> <p>Paid search engine advertising and social media: Remove reported scam content within 24 hours</p>
Respond	<p>All: User friendly and accessible method for consumers to make a complaint about a scam relating to entity’s service and about entity’s conduct to such scams, including the availability of a phone number or online mechanism that can be reached easily.</p>

	All: Become members of the authorised EDR scheme for their sector, if they are providing a service regulated by the SPF in Australia.
--	---------------------------------------------------------------------------------------------------------------------------------------

## Division 4 – External dispute resolution

- 1.221 A key component of the SPF is the availability of EDR to resolve disputes relating to scams, and to provide pathways for redress where regulated entities have not met their SPF obligations.
- 1.222 The amendments provide that a Treasury Minister may, by legislative instrument, authorise an EDR scheme (SPF EDR scheme) for the purposes of the SPF and for one or more regulated sectors. This may include an existing scheme or a new scheme. *[Schedule #, item 1, section 58DA]*
- 1.223 More than one EDR scheme may be authorised under the SPF. However, the intention is that a single SPF EDR scheme will be authorised that applies to multiple regulated sectors, to provide SPF consumers with a straightforward path to EDR where multiple regulated entities across different sectors are involved in a single complaint. This will lower the administrative burden for SPF consumers and regulated entities because multiple SPF EDR schemes will not be required to be involved in a single complaint. This is also intended to ensure consistency in experience for EDR under the SPF and in the consideration of complaints.
- 1.224 A regulated entity must not provide a regulated service if they are not a member of an SPF EDR scheme authorised by the Treasury Minister for their regulated sector. *[Schedule #, item 1, subsection 58BY(1)]*

### Authorisation of an EDR scheme

- 1.225 A Treasury Minister may, by legislative instrument, authorise an SPF EDR scheme for the purposes of the SPF and one or more regulated sectors if:
- the scheme is already authorised under a Commonwealth law for another purpose; or
  - the Minister is satisfied that the requirements prescribed by the SPF rules are met by the scheme.

*[Schedule #, item 1, subsection 58DB(1)]*

- 1.226 If the Treasury Minister chooses to authorise an existing scheme to be an SPF EDR scheme, this authorisation may be subject to specified conditions set out in the legislative instrument used to authorise the scheme. In accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, the Minister may also

vary, revoke or amend any such conditions. **[Schedule #, item 1, subsection 58DB(2)]**

- 1.227 If the Treasury Minister chooses to authorise a new SPF EDR scheme, the Minister must set out the details of the scheme in the legislative instrument which authorises that scheme. This may include the name of the scheme, requirements of the scheme etc. **[Schedule #, item 1, subsection 58DB(3)]**
- 1.228 More than one SPF EDR scheme may be authorised under the SPF. The Treasury Minister may also authorise one SPF EDR scheme that applies to one or more regulated sectors. **[Schedule #, item 1, subsection 58DB(4)]**
- 1.229 For example, the Treasury Minister may authorise the AFCA scheme (within the meaning of the Corporations Act) as the SPF EDR scheme under the SPF. The AFCA scheme is authorised under Part 7.10A of the Corporations Act and is overseen by ASIC. If the Minister chooses to authorise the AFCA scheme as the SPF EDR scheme for a one or more regulated sectors, all of ASIC's existing functions and powers to oversee the AFCA scheme under Part 7.10A of that Act (for example, section 1052A) will apply to regulate the scheme for the purposes of the SPF and those sectors. **[Schedule #, item 1, notes 1 and 2 to subsection 58DB(1)]**
- 1.230 The Treasury Minister may authorise a new SPF EDR scheme for the purposes of the SPF and one or more regulated sectors if he or she is satisfied that the requirements prescribed by the SPF rules are met by the scheme. **[Schedule #, item 1, paragraph 58DB(1)(b)]**
- 1.231 The SPF rules may prescribe the following requirements for a new SPF EDR scheme:
- organisational requirements for membership of the scheme;
  - requirements for the operator of the scheme;
  - requirements for how the scheme is to operate;
  - requirements to be complied with by members of the scheme; and
  - requirements for making changes to the scheme.

**[Schedule #, item 1, subsection 58DC(1)]**

- 1.232 A new SPF EDR scheme may provide for the following:
- powers of one or more of the Treasury Minister, an SPF regulator, or a Commonwealth entity within the meaning of the PGPA under the scheme;
  - powers of the scheme's operator under the scheme, including powers to seek information, make determination of complaints and make determinations imposing financial and non-financial remedies;
  - appeals to the Federal Court of Australia from determination by the scheme's operator;

- information sharing and reporting;
- a provision that depends on the scheme's operator or another person being satisfied of one or more specified matters; and
- provisions about any other matters that provisions of the SPF provide may be specified, or otherwise dealt with, in the scheme.

**[Schedule #, item 1, paragraphs 58DC(2)(a) to (e) and (g)]**

- 1.233 Such a scheme may also include provisions about the manner in which the scheme's operator may charge (or cause to be charged) a fee under the scheme, the time for paying a fee and giving notice of, or publicising, a fee or matters about a fee. For example, the scheme may require that operations of an SPF EDR scheme be financed through fees charged to members of the scheme. It is not intended that such a scheme would ever require SPF consumers to be charged a fee to submit a complaint to the scheme. **[Schedule #, item 1, paragraph 58DC(2)(f)]**
- 1.234 Allowing the SPF rules to prescribe matters that a new SPF EDR scheme may deal with is necessary as the relevant SPF EDR scheme may vary depending on the regulated sector.

## Reporting obligations

- 1.235 Under the SPF, the operator of an SPF EDR scheme has certain obligations to report to SPF regulators. These reporting obligations apply to all SPF EDR schemes, including any SPF EDR scheme that is already authorised under a Commonwealth law for another purpose.
- 1.236 If the operator of an SPF EDR scheme for a regulated sector becomes aware that:
- a serious contravention of any law may have occurred in connection with a complaint under the scheme;
  - a party to a complaint under the scheme may have failed to give effect to a determination by the operator of the scheme relating to the complaint (including a refusal to give effect to that determination); or
  - there is a systemic issue arising from the consideration of complaints under the scheme;

the operator must give particulars of the matter to the SPF general regulator and to the SPF sector regulator for the sector. This includes providing particulars of the matter to multiple SPF sector regulators if the matter relates to multiple entities in different sectors. **[Schedule #, item 1, subsection 58DD(1)]**

- 1.237 In relation to serious contraventions of law, it is intended that this will generally relate to laws relevant to the subject matter and circumstances of a complaint made to the operator of an SPF EDR scheme and the complaint

handling processes, rather than necessarily to a contravention of any law. As a minimum, the operator of the SPF EDR scheme must report serious contraventions of SPF provisions (including SPF codes). However, other laws may also be relevant to the subject matter and circumstances of the complaint. The operator of the SPF EDR scheme should consult with the SPF general regulator and the SPF sector regulator for the sector (as appropriate) if it is unsure about whether or not to refer a particular matter.

- 1.238 Where the parties to a complaint under an SPF EDR scheme for a regulated sector agree to a settlement of a complaint, and the operator of the scheme thinks the settlement may require investigation, the operator may give particulars of the settlement to the SPF general regulator and to the SPF sector regulator for the sector. This may include providing particulars to multiple SPF sector regulators if the settlement relates to multiple entities in more than one sector. *[Schedule #, item 1, subsection 58DD(2)]*
- 1.239 Various factors may be relevant for the operator of the SPF EDR scheme in deciding whether a settlement requires regulatory investigation. For example, where the settlement precludes a consumer referring a complaint to a regulator, lodging further action or taking other action in relation to matters that are not subject to the complaint, where the settlement was offered on onerous or unjust terms or entered into as a result of duress or misrepresentation.

## Information sharing

- 1.240 The amendments also provide for information sharing from SPF regulators to the operator of an SPF EDR scheme, to ensure the scheme can operate efficiently and effectively.
- 1.241 Specifically, the SPF general regulator, or the SPF sector regulator for a regulated sector, may disclose information to the operator of an SPF EDR scheme for the sector for the purposes of enabling or assisting the operator to perform any of the operator's functions or powers. *[Schedule #, item 1, section 58DE]*

## Division 5 – Regulating the SPF

- 1.242 The SPF will be administered and enforced through a multi-regulator framework comprising of an SPF general regulator and SPF sector regulators. *[Schedule #, item 1, section 58EA]*
- 1.243 The multi-regulator model is intended to deliver a whole-of-ecosystem approach to the administration and enforcement of the SPF. This approach will support and harness each regulator's mandate and leverage existing supervision, surveillance and enforcement frameworks already established by regulators.



- 1.244 The multi-regulator model recognises existing regulatory relationships and the existing roles and expertise various regulators have across the ecosystem. This approach will also ensure that a single regulator will not be spread too thin as the SPF continues to expand to additional sectors as scam activity shifts.
- 1.245 The ACCC is the SPF general regulator, responsible for monitoring compliance and administering the SPF, in particular, the SPF principles.
- 1.246 Commonwealth entities may be selected to be an SPF sector regulator for an SPF code. If no other entity is selected, the ACCC will be the SPF sector regulator for the SPF code. SPF sector regulators are responsible for administering and taking enforcement action for breaches of an SPF code.
- 1.247 To support the multi-regulator framework, the amendments provide for:
- delegation of the SPF general regulator's functions and powers to SPF sector regulators;
  - arrangements between SPF regulators concerning the regulation and enforcement of the SPF;
  - information sharing between SPF regulators, where relevant to the operation (including enforcement) of the SPF;
  - a suite of investigation, monitoring and enforcement powers available to SPF regulators; and
  - the power for a Treasury Minister to declare alternative powers apply for an SPF sector regulator.

## Regulators of the SPF

### SPF general regulator

- 1.248 The ACCC is the SPF general regulator. *[Schedule #, item 1, subsection 58EB(1)]*
- 1.249 The role of the SPF general regulator in overseeing SPF provisions across all regulated sectors will support an ecosystem wide approach to the administration and enforcement of the SPF. This is particularly important, given the cross-sectoral nature of scam activity. This approach also enables a sector to be brought within the SPF before there is an SPF code or SPF sector regulator designated for the sector.
- 1.250 The ACCC, in its capacity as the SPF general regulator, has the following functions and powers:
- the function of reviewing, and advising the Treasury Minister about, the operation of the SPF provisions;
  - the ACCC's functions and powers under section 155 of the CCA (which concerns the power to obtain information, documents and evidence) to the

extent that section 155 relates to SPF provisions or a designated Scams Prevention Framework matter (within the meaning of that section); and

- the functions and powers of the SPF general regulator conferred by any other SPF provisions (for example, powers under the Regulatory Powers Act conferred by an SPF provision).

**[Schedule #, item 1, subsection 58EB(2)]**

- 1.251 It is intended that the SPF general regulator may also monitor and supervise compliance with the SPF provisions through undertaking activities such as thematic reviews, and undertake investigation and enforcement of breaches of the SPF in the following circumstances:
- where there has not been a breach of an SPF code but a regulated entity has breached an obligation in the overarching SPF provisions (such as the SPF principles);
  - where an SPF sector regulator refers a matter to the SPF general regulator to take action;
  - where the SPF general regulator considers enforcement action under the CCA is appropriate (such as in cases of suspected cross-sectoral breaches).
- 1.252 A ‘designated Scams Prevention Framework matter’ in section 155 of the CCA is a reference to the performance of a function, or the exercise of power, conferred on the ACCC as the SPF general regulator by or under Part IVF of the CCA (introduced by the Bill), regulations made under the CCA for the purposes of Part IVF, an SPF code or the Regulatory Powers Act to the extent that it applies in relation to provisions of Part IVF. **[Schedule #, item 6, subsection 155(9AC)]**

**Delegation by the ACCC (the SPF general regulator)**

- 1.253 To ensure the effective regulation of regulated sectors, the amendments permit the ACCC, or a member of the ACCC, to delegate their respective functions and powers to an SPF sector regulator. This will enable one regulator to take forward enforcement action against a regulated entity, where appropriate, rather than multiple regulators. **[Schedule #, item 1, subsection 58EC]**
- 1.254 The delegation mechanism supports a flexible approach to the operation of the multi-regulator model and recognises that in certain circumstances it may be more appropriate for an SPF sector regulator to take forward enforcement action for a breach of the overarching SPF principles. This may occur, for example, where an SPF sector regulator is taking forward enforcement action for related misconduct and breaches across other areas of law, and it is more efficient to pursue all breaches for related misconduct collectively. It may also occur where it is determined that there are separate breaches of both the SPF principles and SPF code provisions. This will enable one regulator to take forward enforcement action against a regulated entity, where appropriate, rather than multiple regulators.

- 1.255 Specifically, the ACCC may, by resolution, delegate to an SPF sector regulator, or to a member, SES employee or acting SES employee of an SPF sector regulator:
- any of the ACCC's functions and powers (as the SPF general regulator) under an SPF provision; or
  - the ACCC's functions and powers under section 155 of the CCA (which concerns the power to obtain information, documents or evidence), to the extent that section relates to SPF provisions or a designated Scams Prevention Framework matter (within the meaning of that section).

*[Schedule #, item 1, subsection 58EC(1)]*

- 1.256 Additionally, a member of the ACCC may, by writing, delegate any of the member's functions and powers under section 155 of the CCA, to the extent that section relates to SPF provisions or a designated Scams Prevention Framework matter (within the meaning of that section), to an SPF sector regulator, or to a member, SES employee or acting SES employee of an SPF sector regulator. *[Schedule #, item 1, subsection 58EC(2)]*
- 1.257 Delegation by the ACCC as the SPF general regulator, or by a member of the ACCC, must not be made unless the SPF sector regulator has agreed to the delegation in writing. *[Schedule #, item 1, subsection 58EC(3)]*

## **SPF sector regulators**

- 1.258 The amendments provide for the designation of a Commonwealth entity to be an SPF sector regulator for an SPF code for a regulated sector. This recognises existing regulatory relationships, and the roles and expertise regulators have across the ecosystem.
- 1.259 SPF sector regulators will be responsible for monitoring compliance with SPF codes and pursuing enforcement actions for suspected breaches. SPF regulators will be required to share information on their regulatory activities in relation to the administration of SPF codes with the SPF general regulator, and in some cases, other SPF sector regulators.
- 1.260 A Treasury Minister may, by legislative instrument, designate a Commonwealth entity (within the meaning of the PGPA) to be the SPF sector regulator for a regulated sector. Designation of an SPF sector regulator for a regulated sector may be included in the same document as the instrument designating the regulated sector, or the SPF code for the regulated sector, or both. *[Schedule #, item 1, subsection 58ED(1)]*
- 1.261 For example, a Treasury Minister may designate carriage services to be a regulated sector under the SPF, and designate the ACMA to be the SPF sector regulator for that sector, in either the same or separate instruments. Consequently, any SPF code made for the carriage service sector will be regulated and enforced by the ACMA. The ACCC will continue to regulate the carriage service sector in relation to the SPF principles, and any other SPF

provisions not in SPF codes, that apply to the sector. Similarly, the Minister may designate banking services to be a regulated sector under the SPF and designate the ASIC to be the sector regulator for that sector.

- 1.262 The ACCC is the SPF sector regulator for a regulated sector if, and while, there is no Commonwealth entity designated as the SPF sector regulator for the sector. [*Schedule #, item 1, subsection 58ED(2)*]
- 1.263 The functions and powers of the SPF sector regulator for a regulated sector include those conferred by the SPF code for the sector or any other SPF provisions (for example, powers under the Regulatory Powers Act as conferred by an SPF provision). [*Schedule #, item 1, subsection 58ED(3)*]
- 1.264 A Treasury Minister may, in writing, delegate the power to designate a Commonwealth entity to be an SPF sector regulator for a regulated sector to another Minister. (Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.) [*Schedule #, item 1, subsection 58ED(4)*]

## Arrangements between SPF regulators

- 1.265 The ACCC, as SPF general regulator, and each SPF sector regulator must enter into an arrangement relating to the regulation and enforcement of the SPF provisions. [*Schedule #, item 1, subsection 58EE(1)*]
- 1.266 Arrangements between the SPF general regulator and SPF sector regulators are intended to support the efficient operation of the multi-regulator model.
- 1.267 These arrangements are required to manage the risks associated with a multi-regulator model, including unclear roles and responsibilities, an inconsistent regulatory and enforcement approach and duplication in regulatory or enforcement action. It is expected that these arrangements will establish clear roles and responsibilities and mechanisms to facilitate effective cooperation between regulators. These arrangements may also set out agreed priorities for the administration and enforcement of the SPF to support coordinated and targeted action.
- 1.268 The ACCC may choose to enter into a single arrangement with all, or two or more, SPF sector regulators, or a separate arrangement with each SPF sector regulator. This requirement does not apply to the extent the ACCC is also the SPF sector regulator for a regulated sector. [*Schedule #, item 1, subsection 58EE(2)*]
- 1.269 To provide flexibility to the SPF regulators, the amendments do not specify what kind of arrangement the SPF general regulator must enter into with each SPF sector regulator. However, it is intended that a memorandum of understanding will be a suitable arrangement for the purposes of this provision.
- 1.270 The arrangement must include provisions relating to the matters prescribed by the SPF rules, if any. This is intended to ensure that the arrangement deals with

all matters relevant to the regulation of the SPF, to ensure effective and efficient regulation. However, it is not intended that the SPF rules will prescribe how the SPF regulators are to agree on those matters. For example, the SPF rules could require an SPF regulator to notify other SPF regulators of any requests for scam reports made to a regulated entity, and require the requesting regulator to share a copy of the scam report to other regulators on request. The details on how the SPF regulators will carry out this requirement may be agreed between the regulators. *[Schedule #, item 1, subsection 58EE(3)]*

- 1.271 Each SPF sector regulator that is a party to such an arrangement must publish the arrangement on its website to promote public transparency. *[Schedule #, item 1, subsection 58EE(4)]*
- 1.272 A failure to comply with these arrangement requirements does not invalidate the performance of a function or exercise of a power by the SPF general regulator or an SPF sector regulator. This is to ensure any administrative failings do not invalidate the general operation and enforcement of the SPF. It also provides certainty to regulated entities regarding the performance of functions or exercise of powers by an SPF regulator, to ensure that enforcement of the SPF is not compromised. *[Schedule #, item 1, subsection 58EE(5)]*

## Information sharing between SPF regulators

- 1.273 The amendments provide for disclosure between the SPF regulators of information or documents relevant to the operation of the SPF. This is intended to support the effective administration and enforcement of the SPF and the practical operation of the multi-regulator model.
- 1.274 It is expected that where information is shared, it will be either for the purposes of notifying another SPF regulator that action is being taken to avoid dual action, or where the information will be acted upon or used in some way to support the relevant regulator's role in administering and enforcing the SPF.

## Authorised disclosure

- 1.275 An SPF regulator may disclose to another SPF regulator particular information or documents, or information or documents of a particular kind, that are in the first mentioned SPF regulator's possession and are relevant to the operation (including enforcement) of the SPF provisions. An SPF regulator may make such a disclosure on request or on its own initiative. *[Schedule #, item 1, subsections 58EF(1) and (2)]*
- 1.276 These subsections have the effect of authorising disclosure between the SPF regulators, for the purposes of secrecy provisions in the CCA or other Commonwealth laws that otherwise restrain or limit information sharing. For

example, disclosure made under this provision is disclosure authorised by law for the purposes of:

- paragraph 155AAA(1)(b) of the CCA in relation to protected information;
- section 59DB of the ACMA Act;
- subsection 127(2) of the ASIC Act; and
- Australian Privacy Principle 6 (see paragraph 6.2(b) of Schedule 1 to the *Privacy Act 1988*).

***[Schedule #, item 1, note to subsection 58EF(2)]***

- 1.277 An SPF regulator must have regard to the objects of Part IVF of the CCA, as set out in section 58AA, when deciding whether to make a disclosure under these powers. Arrangements between SPF regulators may also deal with when disclosures should be made. ***[Schedule #, item 1, section 58EG]***
- 1.278 An SPF regulator does not have to notify any person that the SPF regulator plans to make a disclosure, has made a disclosure, plans to use information or documents disclosed or has used information or documents so disclosed. This has the effect of removing procedural fairness requirements for the use and disclosure of the information and documents that may be disclosed between SPF regulators. ***[Schedule #, item 1, section 58EH]***
- 1.279 The removal of procedural fairness requirements is necessary to enable the quick flow of information between regulators and drive efficient and expedient enforcement action. This will ensure that any inadequate action by regulated entities in complying with the SPF is promptly addressed. Given the fast-moving nature of scam activity, timely enforcement action in response to potential breaches of the SPF is critical to protect the Australian community from scam activity.
- 1.280 An SPF regulator is not required to disclose information or documents that:
- concern the internal administrative functioning of the regulator;
  - disclose a matter in respect of which the regulator or any other person has claimed legal professional privilege; or
  - are of a kind prescribed in the SPF rules.

***[Schedule #, item 1, section 58EI]***

## Division 6 – Enforcing the SPF

- 1.281 The amendments provide SPF regulators powers to monitor, investigate and enforce compliance with the SPF. Broadly, the powers of the SPF regulators under Division 6 align with existing powers of the ACCC under the CCA or otherwise incorporate by reference Parts of the Regulatory Powers Act.

- 1.282 The ACCC, as SPF general regulator, may obtain information, documents, and evidence relating to possible contraventions of the SPF. Further, SPF sector regulators have powers to monitor and investigate compliance with an SPF code. A Treasury Minister may also permit the SPF sector regulator to do this by using powers in its own legislation. *[Schedule #, item 1, section 58FA]*
- 1.283 The amendments set out the maximum penalties for contraventions of the civil penalty provisions of the SPF by a regulated entity. The amendments create two tiers of contraventions, with a tier 1 contravention attracting a higher maximum penalty than a tier 2 contravention.
- 1.284 The tiered approach is intended to reflect that higher penalties would be imposed on obligations where breaches would be the most egregious and have the most significant impact on consumers. Higher penalties for those breaches will incentivise compliance and provide a deterrent where higher possible gains could be made by regulated entities by breaching the SPF.
- 1.285 The civil penalty regime will be supported by other administrative enforcement tools as an alternative to litigation. These are set out in the amendments, and include:
- infringement notices;
  - enforceable undertakings;
  - injunctions;
  - actions for damages;
  - public warning notices;
  - remedial directions;
  - adversely publicity orders; and
  - other punitive and non-punitive orders.
- 1.286 Some of these remedies may also be available against a person involved in a contravention of the SPF by a regulated entity, such as a senior officer of the regulated entity. The amendments in Division 7 extend the meaning of person for partnerships, unincorporated associations and trusts.

## Civil penalty provisions

- 1.287 A civil penalty provision of an SPF principle means:
- a provision of Division 2 of Part IVF (about the SPF) of the CCA that is a civil penalty provision (within the meaning of the Regulatory Powers Act); or
  - subsection 58FZB(3) of the CCA in relation to compliance with a remedial direction given under subsection 58FZB(1).

***[Schedule #, item 3, subsection 4(1)]***

- 1.288 A civil penalty provision of an SPF principle or of an SPF code is enforceable under Part 4 of the Regulatory Powers Act. Part 4 of that Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for contravention of the provision. This is known as an SPF civil penalty order. ***[Schedule #, items 1 and 3, subsections 4(1) and 58FG(1)]***
- 1.289 For the purposes of Part 4 of the Regulatory Powers Act:
- the SPF general regulator is an authorised applicant in relation to each civil penalty provision of an SPF principle; and
  - the SPF sector regulator for a regulated sector is an authorised applicant in relation to each civil penalty provision of the SPF code for the sector.

***[Schedule #, item 1, subsection 58FG(2)]***

- 1.290 In relation to a civil penalty provision of an SPF principle or SPF code, the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) and a court of a State or Territory that has jurisdiction in relation to the matter are each a relevant court for the purposes of Part 4 of the Regulatory Powers Act. ***[Schedule #, item 1, subsection 58FG(3)]***

**Maximum penalty: tier 1 contravention**

- 1.291 A tier 1 contravention is a contravention of a civil penalty provision of an SPF principle in any Subdivision C to F of Division 2 of Part IVF, being:
- SPF principle 2: Prevent;
  - SPF principle 4: Detect;
  - SPF principle 5: Disrupt; and
  - SPF principle 6: Respond.

***[Schedule #, item 1, paragraph 58FH(1)(b)]***

- 1.292 The maximum penalty amount for a tier 1 contravention by a body corporate is the greater of the following:
- 159,745 penalty units (which is currently \$50,000,185);
  - if the relevant court can determine the total value of the benefit that the body corporate and any body corporate related to that body corporate have obtained directly or indirectly and is reasonably attributable to the contravention – three times that total value;
  - if the court cannot determine that total value – 30 per cent of the adjusted turnover of the body corporate during the breach turnover period for the contravention.

***[Schedule #, item 1, subsection 58FH(2)]***



- 1.293 The maximum penalty amount for a tier 1 contravention by a person other than a body corporate is 7,990 penalty units (which is currently \$2,500,870).  
*[Schedule #, item 1, subsection 58FH(3)]*
- 1.294 Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty payable under an SPF civil penalty order and for a tier 1 contravention must not be more than the maximum penalty worked out as outlined above for such a contravention by the person. Subsection 82(5) of that Act would otherwise limit the pecuniary penalty for civil penalty orders. *[Schedule #, item 1, subsection 58FH(1)]*

### **Maximum penalty: tier 2 contravention**

- 1.295 A tier 2 contravention is a contravention of a civil penalty provision of:
- an SPF code; or
  - an SPF principle in Subdivision B (SPF principle 1: Governance) or Subdivision D (SPF principle 3: Report).
- [Schedule #, item 1, subparagraph 58FI(1)(b)(ii)]*
- 1.296 The maximum penalty amount for a tier 2 contravention by a body corporate is the greater of the following:
- 31,950 penalty units (which is currently \$10,000,350);
  - if the relevant court can determine the total value of the benefit that the body corporate and any body corporate related to that body corporate have obtained directly or indirectly and is reasonably attributable to the contravention – three times that total value;
  - if the court cannot determine that total value – 10 per cent of the adjusted turnover of the body corporate during the breach turnover period for the contravention.
- [Schedule #, item 1, subsection 58FI(2)]*
- 1.297 The maximum penalty amount for a tier 2 contravention by a person other than a body corporate is 1,600 penalty units (which is currently \$500,800).  
*[Schedule #, item 1, subsection 58FI(3)]*
- 1.298 Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty payable under an SPF civil penalty order and for a tier 2 contravention must not be more than the maximum penalty as outlined above for such a contravention by the person. Subsection 82(5) of that Act would otherwise limit the pecuniary penalty for civil penalty orders. *[Schedule #, item 1, subsection 58FI(1)]*

## **Multiple remedies can be sought for a single contravention and civil penalty double jeopardy**

- 1.299 A provision of Division 6 does not limit a court's power under any other provision of Division 6 or the Regulatory Powers Act. This means that an SPF regulator may seek multiple remedies for a single contravention. *[Schedule #, item 1, section 58FC]*
- 1.300 The caveat to seeking multiple remedies is that if a person is ordered under an SPF civil penalty order to pay a pecuniary civil penalty in respect of particular conduct, the person is not liable to a pecuniary penalty for contravening another civil penalty provision of an SPF principle or of an SPF code, or under some other provision of a law of the Commonwealth, in respect of that conduct. This operates to prevent civil penalty double jeopardy. *[Schedule #, item 1, sections 58FC and 58FJ]*
- 1.301 Consequently, if a regulated entity is ordered under an SPF civil penalty order to pay a pecuniary civil penalty in respect of particular conduct that amounts to a contravention of a civil penalty provision of an SPF code, the regulated entity is not liable to a pecuniary penalty for contravening an SPF principle in respect of that conduct.
- 1.302 However, a court may make other kinds of orders under Division 6 – for example, an order under an action for damages – in relation to particular conduct even if the court has made an SPF civil penalty order in relation to that conduct. *[Schedule #, item 1, note to section 58FJ]*

## **Appointment of inspectors**

- 1.303 An inspector of an SPF regulator is a person appointed by that regulator to be an inspector. An inspector has certain powers with respect to monitoring and investigating compliance with the SPF as well as the power to issue infringement notices to enforce compliance with the SPF. *[Schedule #, item 3, subsection 4(1)]*
- 1.304 An SPF regulator may, in writing, appoint a person who is one of the following to be an inspector of that regulator for the purposes of this Division:
- a person who is an SES employee or acting SES employee of that regulator;
  - a person who is an APS employee of that regulator who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position;
  - a member or special member of the Australian Federal Police.
- [Schedule #, item 1, subsection 58FB(1)]*
- 1.305 The SPF regulator must not appoint a person as an inspector unless that regulator is satisfied that the person has the knowledge or experience necessary

to properly exercise the powers of an inspector. **[Schedule #, item 1, subsection 58FB(2)]**

- 1.306 An inspector must, in exercising these powers as such, comply with any directions of the SPF regulator that appointed the inspector of an administrative character. **[Schedule #, item 1, subsection 58FB(3)]**

## General regulator's powers to obtain information, documents and evidence

- 1.307 The amendments provide for the ACCC as SPF general regulator to exercise its existing powers under section 155 of the CCA in relation to obtaining information, documents and evidence, for the purposes of the SPF.
- 1.308 Specifically, the SPF general regulator may exercise its powers under section 155 to the extent a matter constitutes, or may constitute, a contravention of an SPF code or is relevant to a designated Scams Prevention Framework matter, as defined by subsection 155(9AC) of the CCA. **[Schedule #, items 4 and 5, subparagraph 155(2)(b)(ib) and paragraph 155(2)(a)]**
- 1.309 A designated Scams Prevention Framework matter in section 155 is a reference to the performance of a function, or the exercise of power, conferred on the ACCC, as the SPF general regulator, by or under Part IVF (being the SPF), a legislative instrument made under that Part or the Regulatory Powers Act to the extent that it applies in relation to a provision of that Part. **[Schedule #, item 6, subsection 155(9AC)]**

## Monitoring or investigating compliance with an SPF Code

- 1.310 The SPF is designed to respond and adapt to evolving areas of scam activity. The legislation allows for the ongoing designation of any number of SPF sector regulators, each with unique powers available under their own legislation.
- 1.311 The amendments provide a baseline set of powers to any future SPF sector regulator in relation to monitoring, investigating, and enforcing the SPF. This will ensure that any SPF sector regulator has access to appropriate and adequate investigative and enforcement powers for the purpose of administering the relevant SPF code. This approach supports a flexible and future-proof SPF, and the expansion of the multi-regulator model, if needed, as scam activity shifts.
- 1.312 Where appropriate, a Treasury Minister may declare that alternative monitoring and investigation powers apply to an SPF sector regulator in relation to specified provision (or provisions) of the SPF code. The default powers apply unless such a declaration is in force. **[Schedule #, item 1, sections 58FD and 58FF]**

1.313 It is anticipated that this type of declaration would be made to enable an SPF sector regulator, where appropriate, to exercise powers under their own legislation for investigative and monitoring purposes. This will allow SPF sector regulators to continue to use established procedures and processes and support the efficient monitoring and investigating of compliance of the SPF code enforced by that regulator. Similarly, regulated entities would also likely be familiar with the sector regulator's existing powers and have established procedures to responding to those. Accordingly, it is expected that the availability of alternative powers would facilitate the efficient response by regulated entities to the sector regulator's monitoring and investigation activities.

### **When alternative powers apply**

1.314 Provisions of another law may provide an entity with powers to monitor compliance or purported compliance with provisions of a law or investigate the provisions of a law (collectively known as 'alternative regulatory provisions'), or enable the effective operation and enforcement of these powers (this covers, for example, a provision making it an offence to fail to appear to answer questions in relation an investigation). *[Schedule #, item 1, subsection 58FF(1)]*

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

- to the entity in the entity's capacity as the SPF sector regulator for a regulated sector; and
- in relation to specified provisions of the SPF code for the sector in a way that corresponds to the way the alternative power provisions apply in relation to the alternative regulatory provisions.

*[Schedule #, item 1, subsections 58FF(2)]*

1.316 For example, if banking was a regulated sector and the ASIC is the designated SPF sector regulator for that sector, it may be appropriate for the Treasury Minister to exercise this power in relation to investigation powers under section 30 of the ASIC Act, which empowers the ASIC in accordance with certain regulatory provisions contained in the ASIC Act to give a written notice to produce books about affairs of a body corporate. Further, sections 19 (notice requiring appearance for examination) and 33 (notice to produce documents in person's possession) of the ASIC Act may also be relevant powers for the ASIC in their capacity as an SPF sector regulator.

1.317 A legislative instrument declaring alternative powers apply has effect accordingly. *[Schedule #, item 1, subsection 58FF(3)]*

## Default monitoring powers

1.318 Default monitoring powers apply for the SPF code for a regulated sector unless a declaration is in force under subsection 58FF(2) declaring that provisions of another law that includes powers to monitor compliance or purported compliance with provisions of a law apply in relation to provisions of the SPF code. *[Schedule #, item 1, subsection 58FD(1)]*

1.319 Each civil penalty provision of the SPF code is subject to monitoring under Part 2 of the Regulatory Powers Act. Part 2 of that Act creates a framework for monitoring whether these provisions have been complied with, and includes powers of entry and inspection. *[Schedule #, item 1, subsection 58FD(2)]*

1.320 Information given in compliance or purported compliance with the SPF code is subject to monitoring under Part 2 of the Regulatory Powers Act, which creates a framework for monitoring whether the information is correct. *[Schedule # item 1, subsection 58FD(3)]*

1.321 For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to civil penalty provisions of an SPF code and the information given in compliance or purported compliance with the SPF code:

- there are no related provisions;
- the inspector of the SPF sector regulator is an authorised applicant and is an authorised person;
- a magistrate is an issuing officer;
- the SPF sector regulator is the relevant chief executive; and
- the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) and a court of a State or Territory that has jurisdiction in relation to the matter are each a relevant court.

*[Schedule #, item 1, subsection 58FD(4)]*

1.322 The relevant chief executive (being the SPF sector regulator) may, in writing, delegate the following powers and functions to an SES employee, or acting SES employee, of the SPF sector regulator:

- powers and functions under Part 2 of the Regulatory Powers Act in relation to civil penalty provisions in the SPF code for the relevant regulated sector and the information given in compliance or purported compliance with that SPF code; and
- powers and functions under the Regulatory Powers Act that are incidental to those powers or functions.

*[Schedule #, item 1, subsections 58FD(5) and (6)]*

- 1.323 A person exercising powers or performing functions under such a delegation must comply with any directions of the relevant chief executive (being the SPF sector regulator). *[Schedule #, item 1, subsection 58FD(7)]*
- 1.324 An authorised person (being the inspector appointed by the SPF sector regulator) may be assisted by other persons in exercising those powers or performing those functions or duties as set out above. *[Schedule #, item 1, subsection 58FD(8)]*

### **Default investigation powers**

- 1.325 Default investigation powers apply for the SPF code for a regulated sector unless a declaration is in force under subsection 58FF(2) declaring that provisions of a law that includes investigative powers apply in relation to provisions of the SPF code. *[Schedule #, item 1, subsection 58FE(1)]*
- 1.326 Each civil penalty provision of the SPF code is subject to investigation under Part 3 of the Regulatory Powers Act. Part 3 of that Act creates a framework for investigating whether a provision has been contravened, and includes powers of entry, search and seizure. *[Schedule #, item 1, subsection 58FE(2)]*
- 1.327 For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a civil penalty provision of an SPF code:
- there are no related provisions;
  - the inspector of the SPF sector regulator is an authorised applicant and is an authorised person;
  - a magistrate is an issuing officer;
  - the SPF sector regulator is the relevant chief executive; and
  - the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) and a court of a State or Territory that has jurisdiction in relation to the matter are each a relevant court.
- [Schedule #, item 1, subsection 58FE(3)]*
- 1.328 The relevant chief executive (being the SPF sector regulator) may, in writing, delegate the following powers and functions to an SES employee, or acting SES employee, of the SPF sector regulator:
- powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a civil penalty provision of an SPF code; and
  - powers and functions under the Regulatory Powers Act that are incidental to those powers or functions.

*[Schedule #, item 1, subsections 58FE(4) and (5)]*

- 1.329 A person exercising powers or performing functions under such a delegation must comply with any directions of the relevant chief executive (being the SPF sector regulator). *[Schedule #, item 1, subsection 58FE(6)]*
- 1.330 An authorised person (being the inspector appointed by the SPF sector regulator) may be assisted by other persons in exercising those powers or performing those functions or duties as set out above. *[Schedule #, item 1, subsection 58FE(7)]*

## Infringement notices

- 1.331 The inspector of the SPF regulator may issue an infringement notice to a person for an alleged contravention of a civil penalty provision of an SPF principle or a civil penalty provision of an SPF code. This power can be used as an alternative to proceedings for an SPF civil penalty order. *[Schedule #, item 1, subsection 58FK(1)]*
- 1.332 The amendments do not require an SPF regulator to issue an SPF infringement notice for an alleged contravention of a civil penalty provision. Nor does the subdivision affect a person's liability to proceedings for an SPF civil penalty order in relation to an alleged contravention of a civil penalty provision if an SPF infringement notice is not issued to the person for the contravention or if an SPF infringement notice issued to the person for the contravention is withdrawn. Further to this, the amendments do not prevent a court from imposing a higher penalty than specified in the SPF infringement notice if the person does not comply with the notice. *[Schedule #, item 1, subsection 58FK(2)]*
- 1.333 The inspector may issue an SPF infringement notice to a person that the inspector reasonably believes has contravened a civil penalty provision of an SPF principle or a civil penalty provision of the SPF code for a sector. *[Schedule #, item 1, subsections 58FL(1) and (2)]*
- 1.334 Inspectors of an SPF regulator must not issue more than one SPF infringement notice to the person for the same alleged contravention of a civil penalty provision *[Schedule #, item 1, subsection 58FL(3)]*
- 1.335 An infringement notice will not have effect if the notice is issued more than 12 months after the day the relevant contravention is alleged to have occurred or relates to more than one alleged contravention of a civil penalty provision by a person. *[Schedule #, item, 1, subsection 58FL(4)]*
- 1.336 An SPF infringement notice must include certain information to ensure traceability and accuracy. This information includes the following:
- a unique number;
  - the date on which it was issued;
  - the name of the person to which it was issued;

- the name of the inspector issuing the notice with confirmation that the inspector is an inspector of the applicable SPF regulator and how that SPF regulator may be contacted;
- details of the alleged contravention including the day it occurred and the civil penalty provision that was contravened;
- the maximum pecuniary penalty a court could order the person to pay if the court were to make an SPF civil penalty order for the alleged contravention;
- specify the penalty that is payable in relation to the alleged contravention;
- that the penalty is payable within the compliance period;
- that the penalty is payable to the SPF regulator on behalf of the Commonwealth;
- how the payment of the penalty is to be made;
- explain the effects of compliance with the SPF infringement notice, the effects of failure to comply, the compliance period for the infringement notice and withdrawal of the infringement notice.

***[Schedule #, item 1, subsection 58FM(1)]***

- 1.337 The penalty to be specified in an SPF infringement notice to be issued to a person must be a penalty equal to 60 penalty units for a body corporate or 12 penalty units otherwise. ***[Schedule #, item 1, section 58FN]***
- 1.338 A person will not be regarded as having contravened the civil penalty provision just because they have paid a penalty specified in the notice. This applies if an SPF infringement notice for an alleged contravention of a civil penalty is issued to a person, the person pays the penalty specified in the notice within the infringement notice compliance period and in accordance with the notice and the notice is not withdrawn. The person is not, merely because of the payment, regarded as having contravened the civil penalty provision. ***[Schedule #, item 1, subsections 58FO(1) and (2)]***
- 1.339 No proceedings can be started or continued against the person, by or on behalf of the Commonwealth in relation to the alleged contravention of the civil penalty provision where there has been compliance with the infringement notice. ***[Schedule #, item 1, subsection 58FO(3)]***
- 1.340 However, a person is liable to proceedings for an SPF civil penalty order in relation to the alleged contravention of the civil penalty provision if the SPF infringement notice for an alleged contravention of a civil penalty provision is issued to a person, the person fails to pay the penalty specified in the notice within the infringement notice compliance period and in accordance with the notice, and the notice has not been withdrawn. ***[Schedule #, item 1, section 58FP]***



- 1.341 The infringement notice compliance period for an SPF infringement notice issued to a person is the period of 28 days beginning on the day after the day that the notice is so issued by an inspector of an SPF regulator. **[Schedule #, item 1, subsection 58FQ(1)]**
- 1.342 The SPF regulator may, by giving written notice to the person, extend the infringement notice compliance period for an infringement notice issued to a person if the SPF regulator is satisfied that it is appropriate to do so. Only one extension may be given, which must not be for longer than 28 days. **[Schedule #, item 1, subsections 58FQ(2) and (3)]**
- 1.343 Failure to give the person notice of an extension to the infringement notice compliance period does not affect the validity of that extension, **[Schedule #, item 1, subsection 58FQ(4)]**
- 1.344 If an infringement notice compliance period for an SPF infringement notice is extended under this section, a reference in this Subdivision to the infringement notice compliance period is taken to be a reference to that period as so extended. **[Schedule #, item 1, subsection 58FQ(5)]**
- 1.345 The power to extend the infringement notice compliance period may be delegated by an SPF regulator to an SES employee, or acting SES employee of the SPF sector regulator. A person exercising this power under a delegation must comply with any directions of the SPF regulator. **[Schedule #, item 1, subsections 58FQ(6) and (7)]**
- 1.346 A person to whom an SPF infringement notice has been issued for an alleged contravention of a civil penalty provisions by an inspector of an SPF regulator may make representations to the SPF regulator seeking withdrawal of the notice. **[Schedule #, item 1, subsection 58FR(1)]**
- 1.347 Evidence or information that the person or a representative of the person gives to the SPF regulator in the course of making representations is not admissible in evidence against the person or representative in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading). **[Schedule #, item 1, subsection 58FR(2)]**
- 1.348 An SPF regulator may, by giving written notice to the person, withdraw the infringement notice issued by the inspector if the SPF regulator is satisfied it is appropriate to do so. This withdrawal can be made even if no representations are made by the person seeking withdrawal. **[Schedule #, item 1, subsections 58FR(3) and (4)]**
- 1.349 The withdrawal notice must state:
- the name and address of the person; and
  - the day on which the SPF infringement notice was issued to the person; and
  - that the SPF infringement notice is withdrawn; and

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

***[Schedule #, item 1, subsection 58FR(5)]***

1.350 The withdrawal must also be given to the person within the infringement notice compliance period for the SPF infringement notice.

***[Schedule #, item 1, subsection 58FR(6)]***

1.351 If an SPF regulator withdraws an SPF infringement notice given to a person after the person has paid the penalty specified in the SPF infringement notice, the SPF regulator must refund to the person an amount equal to the amount paid. ***[Schedule #, item 1, subsection 58FR(7)]***

1.352 The power to withdraw the infringement notice may be delegated by an SPF regulator to an SES employee, or acting SES employee of the SPF regulator. A person exercising this power under a delegation must comply with any directions of the SPF regulator. ***[Schedule #, item 1, subsections 58FR(8) and (9)]***

## Enforceable undertakings

1.353 The ACCC, as the SPF general regulator, may accept written enforceable undertakings from a person to comply with an obligation under the SPF principles. ***[Schedule #, item 1, subsection 58FS(1)]***

1.354 Similarly, an SPF sector regulator may accept written enforceable undertakings from a person to comply with an obligation under an SPF code for the sector. ***[Schedule #, item 1, subsection 58FS(2)]***

1.355 An undertaking by a person may be withdrawn or varied at any time with the consent of the SPF regulator who accepted it. ***[Schedule #, item 1, subsection 58FS(3)]***

1.356 If an SPF regulator considers that a person who gave them an undertaking has breached any of its terms, the SPF regulator may apply to a court, having jurisdiction, for an order:

- directing the person to comply with that term of the undertaking;
- directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- the court considers appropriate.

***[Schedule #, item 1, subsections 58FS(4) and (5)]***

## Injunctions

1.357 An application for an injunction may be made by an SPF regulator or any other person. *[Schedule #, item 1, subsection 58FX(1)]*

1.358 The intention is that an SPF regulator will apply to a court, having jurisdiction, for an injunction for a breach of an obligation under the overarching principle. Similarly, it is intended that an SPF sector regulator may apply to a court, having jurisdiction, for an injunction for a breach of an obligation under a sector-specific code.

1.359 A court may grant that injunction in such terms as it considers appropriate if it is satisfied that the person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

- a contravention of a civil penalty provision of the SPF principles or a civil penalty provision of an SPF code; or
- attempting to contravene such a provision; or
- aiding, abetting, counselling or procuring a person to contravene such a provision; or
- inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or
- being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- conspiring with others to contravene such a provision.

*[Schedule #, item 1, subsection 58FT]*

1.360 A court may grant an injunction restraining a person from engaging in conduct:

- 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;
- whether or not the person has previously engaged in conduct of that kind; and
- whether or not there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

*[Schedule #, item 1, subsection 58FU(1)]*

1.361 A court may grant an injunction requiring a person to do an act or thing:

- whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
- whether or not the person has previously refused or failed to do that act or thing; and

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

**[Schedule #, item 1, subsection 58FU(2)]**

1.362 A court may grant an injunction by consent of all the parties to the proceedings, whether or not the court is satisfied that a person has engaged or is proposing to engage in conduct described at section 58FT (see above).

**[Schedule #, item 1, subsection 58FU(3)]**

1.363 A court may grant an interim injunction pending determination of an application for an injunction. **[Schedule #, item 1, section 58FV]**

1.364 A court may rescind or vary an injunction granted in relation to the SPF. **[Schedule #, item 1, section 58FW]**

1.365 If an SPF regulator applies for an injunction, the court must not require the application or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages. **[Schedule #, item 1, subsection 58FX(2)]**

1.366 If a person other than an SPF regulator applies for an injunction and would normally be required to give an undertaking as to damages or costs, and an SPF regulator gives the undertaking, the court must accept the undertaking by the SPF regulator and must not require a further undertaking from any other person. **[Schedule #, item 1, subsection 58FX(3)]**

1.367 The powers given to a court to grant an injunction by Subdivision F of Division 6 do not affect any powers of the court, whether conferred by the CCA or otherwise. **[Schedule #, item 1, section 58FY]**

## Actions for damages

1.368 A person who suffers loss or damage by conduct of another person that was done in contravention of a civil penalty provision of an SPF principle or SPF code may recover the amount of the loss or damage by actions against that other person or any person involved in the contravention. **[Schedule #, item 1, subsection 58FZ(1)]**

1.369 Such an action may only be commenced within 6 years after the day the cause of action that relates to the conduct accrued. **[Schedule #, item 1, subsection 58FZ(2)]**

## Public warning notices

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

- reasonably suspects that the person's conduct may constitute a contravention of a specified provision of the SPF principles; and

- is satisfied that one or more persons has suffered, or is likely to suffer, detriment as a result of the conduct; and
- is satisfied that it is in the public interest to issue the notice.

***[Schedule #, item 1, subsection 58FZA(1)]***

- 1.371 An SPF sector regulator may issue an equivalent notice, under the same conditions stated above, in relation to conduct related to a sector code for which they are an SPF sector regulator. ***[Schedule #, item 1, subsection 58FZA(2)]***
- 1.372 An SPF regulator that issues a public warning notice as outlined above must publish the notice on the SPF regulator’s website. The notice is not a legislative instrument. This notice is merely declaratory, and is covered by item 19 of the table in section 6 of the *Legislation (Exemptions and Other Matters) Regulations 2015*. ***[Schedule #, item 1, subsection 58FZA(3), subsection 58FZA(4)]***
- 1.373 Public warning notices allow SPF regulators to inform the public about persons engaged in business practices that may amount to a contravention of the SPF. Such notices are intended to stop or reduce the detriment caused by regulated entities engaging in conduct that may be in breach of the SPF. They provide SPF regulators with an enforcement tool that can be used in a preventative manner to avoid persons being adversely affected by conduct that may breach the SPF.

## Remedial directions

- 1.374 If the SPF general regulator reasonably suspects that a regulated entity is failing, or will fail, to comply with an SPF principle, it may, by written notice given to the entity, direct the entity to take specified action to comply with that SPF principle. ***[Schedule #, item 1, subsection 58FZB(1)]***
- 1.375 If an SPF sector regulator reasonably suspects that a regulated entity for the regulated sector is failing, or will fail, to comply with a provision of the SPF code it is the SPF sector regulator for, the regulator may, by written notice given to the entity, direct the entity to take specified action to comply with that provision of the SPF code. The direction may relate to one or more failures. ***[Schedule #, item 1, subsection 58FZB(2)]***
- 1.376 A regulated entity must take action to comply with the direction in the time specified in the direction. This time must be reasonable. If the direction does not specify a reasonable time, the entity must take action to comply with the direction within a reasonable time. The SPF regulator may also extend the time for complying with the direction by written notice given to the entity. ***[Schedule #, item 1, subsections 58FZB(3) and (5)]***
- 1.377 Failure to comply with these directions is subject to civil penalties. (See the definitions of ‘civil penalty provision of an SPF principle’, and ‘civil penalty

provision of an SPF code' in subsection 4(1) of the CCA). **[Schedule #, item 1, subsection 58FZB(4)]**

- 1.378 It is appropriate for an SPF regulator to specify a time for the regulated entity to take action with reference to the potential severity of negative impact on SPF consumers of a regulated entity failing to act quickly when engaging in conduct that may breach the SPF.
- 1.379 Prior to giving a regulated entity a direction, an SPF regulator must give the entity an opportunity to make submissions to the SPF regulator on the matter. **[Schedule #, item 1, subsection 58FZB(6)]**
- 1.380 An SPF regulator may vary or revoke a direction in like manner and subject to like conditions (see subsection 33(3) of the *Acts Interpretation Act 1901*). **[Schedule #, item 1, subsection 58FZB(7)]**
- 1.381 An SPF regulator must, as soon as practicable after a direction is given, varied or revoked, publish a notice of its action on its website. **[Schedule #, item 1, subsection 58FZB(8)]**

## Adverse publicity orders

- 1.382 A court, having jurisdiction, may, on application by an SPF regulator, make an adverse publicity order against a person who has been ordered to pay a pecuniary penalty under an SPF civil penalty order. **[Schedule #, item 1, subsection 58FZC(1)]**
- 1.383 Such an order may require the person to:
- disclose, in the way and to the persons specified in the order, specified information that the person has possession of or access to; and
  - publish, at the person's expense and in a specified way, an advertisement in the terms specified in, or determined in accordance with, the order.
- [Schedule #, item 1, subsection 58FZC(2)]**
- 1.384 An application for such an order may only be made by the SPF general regulator if the SPF civil penalty order was for a contravention of a civil penalty provision of an SPF principle. **[Schedule #, item 1, paragraph 58FZC(3)(a)]**
- 1.385 An application for such an order may only be made by an SPF sector regulator if the SPF civil penalty order was for a contravention of a civil penalty provision of an SPF code for the relevant regulated sector. **[Schedule #, item 1, paragraph 58FZC(3)(b)]**

## Non punitive orders

- 1.386 A court, having jurisdiction, may on application make one or more of the following orders in relation to a person who has engaged in conduct contravening an SPF principle or a provision of an SPF code:
- a community service order;
  - a probation order for a period of no longer than 3 years;
  - an order requiring the person to disclose, in the way and to the persons specified in the order, specified information that the person has possession of or access to;
  - an order requiring the person to publish, at the person’s expense and in a specified way, an advertisement in the terms specified in, or determined in accordance with, the order.

*[Schedule #, item 1, subsection 58FZD(1)]*

- 1.387 An application for such an order may only be made by the SPF general regulator in relation to conduct contravening an SPF principle. *[Schedule #, item 1, paragraph 58FZD(2)(a)]*
- 1.388 An application for such an order may only be made by an SPF sector regulator in relation to conduct contravening an SPF code. *[Schedule #, item 1, paragraph 58FZD(2)(b)]*
- 1.389 The following definitions are applied for the purpose of non-punitive orders of the SPF.
- 1.390 A ‘probation order’ is an order made to ensure that a person does not engage in the conduct that resulted in the order, or similar conduct or related conduct during the period of the order. It includes an order directing a person to establish a compliance program, or an education and training program that is for employees or other persons involved in the person’s business, and is designed to ensure awareness of responsibility and obligation relating to conduct covered by the probation order. It also includes an order directing a person to revise the internal operations of the person’s business that lead to conduct covered by paragraph (3)(a) or (b). *[Schedule #, item 1, subsections 58FZD(3) and (4)]*
- 1.391 ‘Community service orders’ means an order directing a person perform a service that is specified in the order or relates to the conduct that resulted in the order for the benefit of the community or a section of the community. *[Schedule #, item 1, subsection 58FZD(5)]*
- 1.392 Conduct ‘contravening’ an SPF principle or a provision of an SPF code includes conduct that constitutes being involved in such a contravention. For the meaning of ‘involved’, see subsection 4(1) of the CCA. *[Schedule #, item 1, subsection 58FZD(5)]*

## Orders (other than damages) to redress loss or damage

- 1.393 A court, having jurisdiction may, on application, make such orders as the court thinks appropriate against a person who engaged in conduct contravening a civil penalty provision of an SPF principle or a civil penalty provision of an SPF code or is involved in that contravening conduct if that conduct caused, or is likely to cause, a class of persons (the victims) to suffer loss or damage. This power does not include an order to make an award of damages. The orders that the court may make include all or any of the orders set out in section 58FZF. **[Schedule #, item 1, subsection 58FZE(1)]**
- 1.394 This power applies whether or not the victims include persons who are not, or have not been, parties to an enforcement proceeding instituted under another power in relation to enforcement of the SPF in relation to the contravening conduct. **[Schedule #, item 1, subsection 58FZE(2)]**
- 1.395 When making such orders as the court thinks appropriate, the court must not make such an order unless it consider that the order will:
- redress, in whole or in part, the loss or damage suffered by the victims in relation to the contravening conduct; or
  - prevent or reduce the loss or damage suffered, or likely to be suffered, by the victims in relation to the contravening conduct.
- [Schedule #, item 1, subsection 58FZE(3)]**
- 1.396 An application for such an order may only be made by the SPF general regulator in relation to conduct contravening an SPF principle, or by an SPF sector regulator in relation to conduct contravening an SPF code. The application may be made even if an enforcement proceeding in relation to the contravening conduct has not been instituted and at any time within 6 years after the day on which the cause of action that relates to the contravening conduct accrues. **[Schedule #, item 1, subsection 58FZE(4)]**
- 1.397 In working out whether to make such orders against the person as the court considers appropriate, the court may have regard to the conduct of the person and the victims in relation to the contravening conduct since the contravention occurred. However the court need not making a finding about which persons are victims in relation the contravening conduct or the nature of the loss or damage suffered, or likely to be suffered by such persons. **[Schedule #, item 1, subsections 58FZE(5) and (6)]**
- 1.398 If such an order as the court thinks appropriate is made against a person, the loss or damage suffered, or likely to be suffered, by a victim that is not a party to the preceding (non-party victim) in relation to the contravening conduct has been redressed, prevented or reduced in accordance with the order and that has been accepted by the non-party victim, then:
- the non-party victim is bound by the order; and



- any other order made by the court as it considered appropriate, in relation to that loss or damage, has no effect in relation to the non-party victim; and
- despite any other provision of the CCA or any other law of the Commonwealth, or a State or Territory, no claim, action or demand may be made or taken against the person by the non-party victim in relation to that loss or damage.

***[Schedule #, item 1, subsection 58FZE(7)]***

1.399 The kinds of orders that a court may make against a person include all or any of the following (but are not limited to the following):

- an order declaring the whole or any part of a contract made between the person and a victim (including a non-party victim), or a collateral arrangement relating to such a contract to be void, including to have been void ab initio or void at all times on and after such date as is specified in the order. This may be a date before the date on which the order is made;
- an order varying a contract or arrangement in such manner as is specified in the order, and if the court thinks fit—declaring the contract or arrangement to have had effect as varied on and after a date specified in the order. This may be a date before the date on which the order is made;
- an order refusing to enforce any or all of the provisions of a contract or arrangement;
- an order directing the respondent to refund money or return property to a victim (including a non-party victim);
- an order directing a respondent, at the respondent's own expense, to repair, or provide parts for, goods that have been supplied under the contract or arrangement to a victim (including a non-party victim);
- an order directing the respondent, at the respondent's own expense, to supply specified services to a victim (including a non-party victim);
- an order, in relation to an instrument creating or transferring an interest in land, directing a person to execute an instrument that varies or terminates or otherwise affects the relevant instrument, or that has the effect of varying, terminating or otherwise affecting, the operation or effect of the relevant instrument.

***[Schedule #, item 1, subsection 58FZF(1)]***

1.400 An interest in land, as described above, means:

- a legal or equitable estate or interest in the land; or
- a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or

- a right, power or privilege over, or in connection with, the land.

**[Schedule #, item 1, subsection 58FZF(2)]**

- 1.401 These powers are mirrored, in part, on existing provisions in the CCA (for example in Part IVB). They are intended to give scope for a court with jurisdiction to make an order compensating a victim (which can also include a non-party victim that was not, for example, an SPF consumer in relation to some other proceeding under Part IVF) for a loss or harm suffered as a result of contravening conduct. This ensures there is some form of remedial power in relation to persons who may not have recourse available to them through, for example, the EDR mechanisms in the SPF.
- 1.402 There may be circumstances when a SPF regulator initiates proceedings against a regulated entity, and the court considers it appropriate, in making certain orders against the regulated entity, to also make orders in favour of a non-party victim (who may or may not be an SPF consumer). This allows for the remediation of loss or damage to be streamlined and save victims the time and cost of pursuing a matter in court or through a dispute resolution process. For example, if a court finds in a proceeding between an SPF regulator and a regulated entity that the entity's contravening conduct resulted in a non-party victim suffering financial loss, the court may consider it appropriate to order the regulated entity to provide a remedy.

## Division 7 – Other provisions

- 1.403 The amendments include a number of mechanical provisions that ensure a consistent treatment for the purposes of the SPF obligations across different types of entities. These specific provisions clearly provide for the application of the SPF obligations where the entity is a partnership, unincorporated association, or a trust. **[Schedule #, item 1, sections 58GA, 58GB and 58GC]**
- 1.404 The SPF provisions apply to a partnership as if it were a person but with the changes set out prescribing the treatment of partnerships. An obligation that would otherwise be imposed on the partnership by an SPF provision is imposed on each partner and may be discharged by any of the partners. Permitted activities may be done by one or more of the partners on behalf of the partnership. Despite each partner being accountable to obligations and being permitted to act on behalf of the entity, a change in the composition of a partnership does not affect the continuity of the partnership. This ensures minimum disruption of applying the provisions to the partnership. **[Schedule #, item 1, section 58GA]**
- 1.405 The SPF provisions apply to unincorporated associations as if they are persons but in a way that reflects their status as unincorporated associations. An obligation otherwise imposed on the association by an SPF provision is imposed on each member of the association's committee of management

instead but may be discharged by any of the members. If an SPF provision would otherwise permit something to be done by the unincorporated association, the thing may be done by one or more of the members of the association's committee of management on behalf of the association.

**[Schedule #, item 1, section 58GB]**

- 1.406 The SPF provisions apply to a trust as if it were a person with applicable changes. If the trust has a single trustee, an obligation otherwise imposed on the trust by an SPF provision is imposed on the trustee, and if an SPF provision would otherwise permit something to be done by the trust, the thing may be done by the trustee. **[Schedule #, item 1, subsections 58GC(1) and (2)]**
- 1.407 If the trust has more than one trustee, an obligation otherwise imposed on the trust by an SPF provision is imposed on each trustee instead, but may be discharged by any of the trustees, and if an SPF provision would otherwise permit something to be done by the trust, the thing may be done by any of the trustees. **[Schedule #, item 1, subsection 58GC(3)]**
- 1.408 Where the operation of the SPF results in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution), a person who acquires the property from a person otherwise than on just terms is liable to pay the first person compensation. If there is a dispute as to the compensation, the person to whom compensation is payable may institute proceedings for the recovery of the reasonable amount of compensation from the other person, as determined in the Federal Court or the Supreme Court of a State or Territory. **[Schedule #, item 1, section 58GD]**
- 1.409 A Treasury Minister may make SPF rules by a legislative instrument where another provision provides a power to make these rules. To avoid doubt, the SPF rules may not create an offence or civil penalty, provide powers of arrest or detention or entry, search or seizure, impose a tax, set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in the CCA or directly amend the text of the CCA. **[Schedule #, item 1, section 58GE]**

## Consequential amendments

- 1.410 Part 2 of Schedule # makes consequential amendments to various Acts to accommodate the SPF and related changes.
- 1.411 To facilitate the multi-regulator model and allow for effective information sharing between regulators, a new section is inserted into the ACMA Act to allow an authorised ACMA official to make authorised disclosures to an SPF regulator or an operator of an SPF EDR scheme for the purpose of the operation of the SPF provisions. The primary law amendments provide for a framework of regulated sectors and their sector regulator. It is the intention that the ACMA would be designated as the sector regulator for the

telecommunications sector when that sector is designated as a regulated sector.  
[Schedule #, item 2, section 59DB of the ACMA Act]

1.412 The amendments also introduce a number of definitions into subsection 4(1) of the CCA:

- ‘actionable scam intelligence’ has the same meaning given by section 58AI;
- ‘associate’ of an SPF consumer means an associate within the meaning of section 318 of the ITAA 1936 of an SPF consumer, who is a person who carries on a business having a principal place of business in Australia or is a natural person who:
  - is in Australia; or
  - is ordinarily a resident in Australia; or
  - is an Australian citizen or permanent resident.
- ‘civil penalty provision of an SPF code’ refers to the provisions that create civil penalties in the SPF under an SPF code.
- ‘civil penalty provision of an SPF principle’ refers to the provisions that create civil penalties in the SPF under an SPF principle.
- ‘infringement notice compliance period’ refers to this period under section 58FQ.
- ‘inspector’ of an SPF regulator means a person appointed by that regulator under subsection 58FB(1).
- ‘involved’ in a contravention of a civil penalty provision (whether of an SPF code or SPF principle) means:
  - aiding, abetting, counselling or procuring a contravention of the provision;
  - inducing, whether by threats or promises or otherwise, such a contravention;
  - being in any way, directly or indirectly, knowingly concerned in, or party to, such a contravention; or
  - conspiring with others to effect such a contravention.
- ‘permanent resident’ has the same meaning as in the *Australian Citizenship Act 2007*.
- ‘regulated entity’ refers to an entity to which the SPF applies. These entities (unless excluded) carry out a business or provide a service under a regulated sector. See section 58AD.

- ‘regulated sector’ refers to a sector that has been designated for the SPF to apply. This designation is made by legislative instrument. See subsection 58AC(1).
- ‘regulated service’ has the meaning given by section 58AD.
- ‘scam’ has the meaning given by section 58AG.
- ‘SPF civil penalty order’ means a civil penalty under Part 4 of the Regulatory Powers Act (as that Part applies because of section 58FG).
- ‘SPF code’ refers to sector-specific codes that apply to regulated entities of a regulated sector. SPF codes are legislative instruments. See section 58CB.
- ‘SPF consumer’ has the meaning given by section 58AH. They are generally those who may be provided the regulated services of a regulated entity, and thus, be exposed to scams in that sector. An SPF consumer must also be a natural person, or small business in Australia.
- ‘SPF EDR scheme’ for a regulated sector means an EDR scheme authorised under subsection 58DB(1) for that sector.
- ‘SPF general regulator’ has the meaning given by section 58EB. By default the ACCC is the SPF general regulator with oversight of the SPF.
- ‘SPF governance policies, procedures, metrics and targets’ refer to a regulated entity’s policies and procedures required under paragraph 58BC(1)(a) for the regulated sector and the performance metrics and targets required under paragraph 58BC(1)(c) for those policies and procedures.
- ‘SPF infringement notice’ means an infringement notice issued under subsection 58FL(1) or (2).
- ‘SPF principles’ means the provisions in Subdivisions B to G of Division 2 of Part IVF. These refer to the overarching principles under the SPF of governance, prevent, detect, report, disrupt, and respond.
- ‘SPF provisions’ means a provision of Part IVF, a provision of a legislative instrument made under that Part (such as any SPF codes), another provision of the CCA that relates to a provision of Part IVF or a legislative instrument made under that Part and a provision of the Regulatory Powers Act to the extent that it applies in relation to a provision of Part IVF or a legislative instrument made under that Part. See section 58AJ.
- ‘SPF regulator’ means either the SPF general regulator (by default, the ACCC) or the SPF sector regulator for a regulated sector.
- ‘SPF rules’ means the rules made under section 58GE. The SPF rules are a legislative instrument.

- ‘SPF sector regulator’ refers to the sector regulator that has been designated for a regulated sector. See section 58ED. It is intended that for the banking and telecommunication sectors (once designated as regulated sectors):
  - ASIC would be the SPF sector regulator for the banking sector; and
  - the ACMA would be the SPF sector regulator for the telecommunications sector.
- ‘senior officer’ of a regulated entity means an officer or a senior manager of the entity, within the meaning of the Corporations Act.

***[Schedule #, item 3, subsection 4(1)]***

- 1.413 Consequential amendments are made to section 155 of the CCA, which relates to the ACCC’s information gathering powers, to ensure these powers can be used for the purposes and operation of the SPF. ***[Schedule #, items 4, 5 and 6, section 155]***
- 1.414 Consequential amendments are made to subsection 1051(2) of the Corporations Act to insert a legislative note which clarifies that a Treasury Minister may authorise the AFCA scheme as the SPF EDR scheme for any regulated sector subject to the SPF. ***[Schedule #, item 7, section 1051 of the Corporations Act]***

## Commencement, application, and transitional provisions

- 1.415 Schedule # to the Bill commences the day after Royal Assent.
- 1.416 The amendments apply from commencement.

---

EXPOSURE DRAFT