



Law Council  
OF AUSTRALIA

# Scams Prevention Framework

The Treasury

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## Acknowledgements

The Law Council of Australia thanks the Competition and Consumer Committee (**C&C Committee**) of its Business Law Section and the **Consumer Law Committee** of its Legal Practice Section for their contribution to the preparation of this submission.

## Consultation questions on exposure draft instruments

1. Both the C&C Committee and Consumer Law Committee have considered selected consultation questions on the exposure drafts of the Competition and Consumer (Scams Prevention Framework—Regulated Sectors) Designation 2025 (the **draft Designation**) and Competition and Consumer (Scams Prevention Framework—External Dispute Resolution) Authorisation 2025 (the **draft Authorisation**).
2. There are differing views within the legal profession in response to certain consultation questions. The Law Council has not developed a consensus view among its stakeholders in relation to each consultation question. The Law Council has therefore structured this submission by separately setting out comments from the C&C Committee and/or the Consumer Law Committee in response to each selected consultation question.
3. The responses of each of these Committees are set out below.

### Competition and Consumer (Scams Prevention Framework—Regulated Sectors) Designation 2025

#### *Banking sector*

**Question 1: Is the proposed definition and operational scope of the banking designation aligned with the objectives of the SPF?**

**Question 2: Does the designation capture product or services that should not be caught (noting its interaction with the broader SPF and application to ‘SPF consumers’ only)?**

**Question 3: The designation currently excludes restricted authorised deposit taking institutions. Should any further designation exclusions be considered for the banking sector?**

4. The proposed scope of the banking designation contained at section 11 of the draft Designation is as follows:
  - (2) *Subject to subsection (3), a **covered banking service** is either of the following services:*
    - (a) *a service provided by an ADI in the course of carrying on its banking business;*
    - (b) *to the extent that it is not covered by paragraph (a)—the provision of a purchased payment facility (within the meaning of the Payment Systems (Regulation) Act 1998) by an ADI.*
  - (3) *A service is not a **covered banking service** if the service is provided by a restricted ADI.*

## Comments from the C&C Committee

5. The C&C Committee does not express any view on the appropriate scope of the designation, which it regards as a normative question of policy for Government. However, the C&C Committee makes the following three observations regarding the proposed approach:

- (a) Section 58C of the *Competition and Consumer Act 2010* (Cth) (**CCA**) relevantly indicates that, without limitation, the classes of business and services that may be designated include: “(a) *businesses of banking, other than State banking (within the meaning of paragraph 51(xiii) of the Constitution) not extending beyond the limits of the State concerned*”. The Revised Explanatory Memorandum to the Scams Prevention Framework Bill 2024 states:

*The description of the businesses and services in the preceding paragraph are based on the relevant constitutional heads of power and provide flexibility for the SPF to be expanded to a wide range of sectors over time. It is not intended to provide a roadmap of the exact sectors the Government is proposing to designate. The Government’s intention is to initially designate telecommunications services, banking services and certain digital platform services.<sup>1</sup>*

Without expressing any view, the C&C Committee questions whether Treasury is confident that the proposed scope of the banking designation is within the relevant constitutional heads of power, given potential constitutional limitations have been expressly identified in section 58C of the CCA and the Explanatory Memorandum.

- (b) The granular scope of the proposed banking designation was expressly discussed in the Explanatory Memorandum, indicating Parliament’s intent regarding the phased application of the regime by the Minister. The C&C Committee assumes that Treasury’s comment regarding the need to align the banking designation with the objectives of the Scams Prevention Framework (**SPF**) is partly influenced by the Explanatory Memorandum as a statement of Parliamentary intent. Relevant comments as to the appropriate scope of the banking designation include, for example, the following:

*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.*

*In late 2023, members of the Australian Banking Association and Customer Owned Banking Association 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. As part of the Scam*

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<sup>1</sup> Revised Explanatory Memorandum, Scams Prevention Framework Bill 2024 (Cth), 10.

*Safe Accord, banks, credit unions and building societies are deploying confirmation of payee technology in 2024 or 2025.<sup>2</sup>*

*The Government has committed to initially designating telecommunications services, banking services and digital platform services relating to social media, paid search engine advertising and direct messaging, as each of these sectors represent a significant vector of scam activity.<sup>3</sup>*

*The SPF will capture businesses in the banking sector by designating all ADIs overseen by the Australian Prudential Regulation Authority (APRA). As outlined in Table 4, this would capture some businesses that are and are not a member of industry bodies and would potentially be subject to additional obligations. Depending on the size and complexity of these entities, regulatory capture may impose expectations for new activities and associated costs.*

*It is expected that the implementation of SPF obligations and associated costs will differ depending on the size and complexity of the entity. As of June 2024, APRA monitors 126 ADIs. Of the \$1.469 trillion in deposits managed by these ADIs, 73 per cent are held by the major four banks. The remainder of deposit-taking activity in Australia is managed by a range of smaller entities: including medium-sized banks, credit unions, building societies and neobanks, each with a variable customer base, resourcing and presence in the Australian financial system.<sup>4</sup>*

*As indicated above, banks are already required to have appropriate IDR mechanisms in place, and most are a member of AFCA under section 912A of the Corporations Act 2001. The SPF requirement to be a member of AFCA would apply to all ADIs, including those that might not have existing membership with AFCA (such as branches of foreign-owned banks). This is because these entities could also be involved in a scam and their customers are not invulnerable to the threat of a scam.<sup>5</sup>*

As such, without expressing any view on the merits or otherwise of the Government's approach, the C&C Committee notes that the current initial focus on authorised deposit-taking institutions (**ADIs**) appears to be broadly consistent with the Explanatory Memorandum and hence Parliament's intent regarding the initial phased application of the regime. However, the Explanatory Memorandum provides minimal guidance as to the appropriate scope of the services provided by ADIs that should be regulated, namely the words "*in the course of carrying out its banking business*".

- (c) In order to designate a sector, the Minister is required to consider a number of relevant considerations under subsection 58AE(1) of the CCA. These are mandatory relevant considerations, so as to guide the exercise of the Minister's discretion under administrative law principles. The intent of these considerations is partly to ensure that the regulatory obligations are appropriately targeted at entities and services when a sector is designated. As such, the considerations in subsection 58AE(1) are relevant to the Minister's

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<sup>2</sup> Ibid, 5.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid, 154-5.

<sup>5</sup> Ibid, 156.

assessment whether the concept of ‘*in the course of carrying out its banking business*’ is appropriate in scope or not (on which the C&C Committee expresses no opinion). The Explanatory Memorandum relevantly comments, for example:

*In addition, a Treasury Minister may designate a regulated sector, but exclude the application of specified SPF provisions for particular regulated entities or regulated services within the sector. This is appropriate given the SPF is an economy-wide reform and there may be instances where some of the obligations under the SPF are unsuitable for a particular sector or entity. Without this mechanism, these entities and services could not be designated or would be subjected to undue and disproportionate requirements if they were designated, which would limit the effectiveness and benefits of the SPF.<sup>6</sup>*

However, the C&C Committee notes that materials released for public consultation do not seem to include any analysis of these relevant considerations or any explanation as to how they are aligned with the proposed scope of the designation.

### **Comments from the Consumer Law Committee**

6. The Consumer Law Committee does not consider that the proposed definition and operational scope of the banking sector designation is aligned with the objectives of the SPF. The increased obligations of the SPF will apply only to “covered banking services”, which are limited to services provided by an ADI in the course of carrying on a banking business or the provision of a purchased payment facility by an ADI. This means that the same services provided by a different (non-ADI) entity will not be captured by the SPF obligations.
7. In the view of the Consumer Law Committee, the disparity of obligations between ADIs and non-ADIs for the same financial products has the potential to lead to negative consumer outcomes. The Committee has identified products provided by both ADI and non-ADI entities and considers that the government should implement anti-scam reforms consistently across the credit and financial services sector, whether by removing the limitation of “covered banking services” being provided by an ADI (and expand to cover such services provided by any entity) or by implementing explicit anti-scam measures into the existing licensing obligations for Australian Credit Licensees or Australian Financial Services Licensees.
8. For example, the Consumer Law Committee notes that under the proposed measures, a ‘big 4’ bank will be required to take reasonable steps to prevent, detect, disrupt and respond to scam activity on buy now, pay later (**BNPL**) accounts. Conversely, a non-ADI credit licensee will not have to carry out any specific anti-scam legal obligations in relation to an identical BNPL account. Only existing credit / financial services laws will apply, which means no positive duty to prevent, detect or disrupt scam activity. The Consumer Law Committee is concerned that this leads to a situation where the same product attracts vastly different legal obligations.

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<sup>6</sup> Ibid, 14.

## Digital platforms sector

**Question 4: Are the proposed definition and operational scope of the designated digital platforms services accurate to search, social media and instant messaging services that should be captured by the SPF and aligned with the objectives of the SPF?**

### Comments from the C&C Committee

9. The C&C Committee provides responses to the specific digital platforms sector consultation questions below. The C&C Committee also provides separate comments on the definition of ‘instant messaging services’ as follows:
- (a) ‘*Instant messaging service*’ is currently defined by reference to ‘*including*’ non-text material, but it does not positively state that other types of messages are also included. It is also not sufficiently distinguished from the definition of a ‘*message service*’, which expressly excludes messages carried wholly over the internet. The C&C Committee’s view is that the definition could be clarified by reference to the positive content in the Explanatory Memorandum. Treasury should consider amending the definition along the following lines:
- Instant messaging service means a service that enables messages to be sent or received in real-time and is carried wholly over the internet, and includes real-time communication of non-text-based material.*
- (b) Separately, the C&C Committee notes that emails are intended to be excluded from the definition of ‘*instant messaging service*’. This may not be evident based on the above definition, as reasonable minds may differ on the instant or ‘*real-time*’ nature of email communication. Treasury should consider making this exclusion express in the legislation.

**Question 4.1: Would it be preferable to define social media services by using or referring to the existing definition of ‘age-restricted social media platform’ in section 63C of the Online Safety Act 2021, rather than the approach proposed in the exposure draft designation instrument of relying on an ordinary meaning?**

**Question 4.2: The policy is intended to ensure that video-based social media services such as YouTube and TikTok are included in the designation instrument’s definition of social media service. Do the proposed definitions achieve this?**

### Comments from the C&C Committee

10. The C&C Committee’s view is that ‘*social media service*’ should be defined by reference to the existing definition of ‘social media service’ under section 13 of the *Online Safety Act 2021* (Cth) (**OSA**). This approach is preferable to relying on an ordinary meaning, or using the definition of ‘age-restricted social media platform’ in section 63C of the OSA, for the following reasons:

11. First, as far as possible, it is preferable that the draft Designation adopts a definition that is consistent with existing definitions in the OSA to promote certainty and reduce the burden on businesses navigating multiple regulatory regimes.
12. Second, defining ‘*social media service*’ by reference to its ordinary meaning creates scope for interpretation and uncertainty for business. For example, it is not clear whether video-sharing platforms would necessarily be captured by the ordinary meaning of the term social media service and the draft Designation does not make it clear that those services are intended to be captured.
13. Third, the definition in section 13 of the OSA aligns with the expressed legislative intent of the draft Designation as articulated in the draft Explanatory Statement. The draft Explanatory Statement notes that social media service includes “online social networks that facilitate online social interaction by allowing end-users to upload, post or otherwise share information, material or other kinds of content”.<sup>7</sup> Similarly, section 13 of the OSA captures electronic services that meet the following conditions:
  - (a) the sole or primary purpose of the service is to enable online social interaction between 2 or more end–users;<sup>8</sup>
  - (b) the service allows end-users to link to, or interact with, some or all of the other end–users; and
  - (c) the service allows end-users to post material on the service.
14. Fourth, the definition of ‘*social media service*’ in section 13 of the OSA would capture most widely used online video streaming services, particularly because subsection 13(2) provides that “online social interaction includes online interaction that enables end-users to share material for social purposes”. Nonetheless, for further clarity, it may be helpful to include a ‘Note’ or ‘Example’ in the instrument confirming that the definition includes online video streaming services or professional networking services if such a service allows end-users to post content (as opposed to just browsing content), consistent with the draft Explanatory Statement.
15. Fifth, the definition of ‘*social media service*’ in section 13 of the OSA should be preferred over the definition of ‘*age-restricted social media platform*’ in section 63C for the following reasons:
  - (a) **Scope creep:** OSA section 63C covers electronic services where a sole or significant (rather than primary) purpose is to enable online social interaction between two or more end-users. This risks capturing a range of services for which online social interaction between end-users is a ‘*significant*’ but not ‘*primary*’ purpose of the service, including online gaming, education, news, health, dating, ride sharing, or marketplace services. This outcome does not align with the expressed intent of the draft Designation that social media

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<sup>7</sup> Draft Explanatory Statement, Competition and Consumer (Scams Prevention Framework—Regulated Sectors) Designation 2025, 14.

<sup>8</sup> Online social interaction includes online interaction that enables end-users to share material for social purposes: see OSA section 13(2). Social purposes do not include (for example) business purposes (e.g. online feedback facilities established by businesses for the purposes of dealing with their customers: See Explanatory Memorandum to the OSA, p 72.

services that are ancillary or incidental to the provision of other electronic services should be excluded from the definition of ‘*designated social media services*’ (section 7(b) of the Designation).

- (b) **Unintended narrowing:** Section 63C of the OSA contains carve outs and exceptions that could unintentionally narrow the definition of ‘social media service’ in the draft Designation. For example, section 63C does not apply to ‘*services that have the sole or primary purpose of enabling end-users to engage in professional networking or professional development*’ (see *Online Safety (Age-Restricted Social Media Platforms) Rules 2025* s 5). This outcome would be contrary to the expressed intention of the draft Explanatory Statement.

16. For completeness, if section 13 of the OSA is adopted in the draft Designation, the C&C Committee submits that the definition of ‘*exempt service*’ in subsection 13(4) should be excluded. The Committee’s view is that the Active Australian user test and Revenue test in the draft Designation are more appropriate to limit the scope of the draft Designation than subsection 13(4) of the OSA.

**Question 4.3: The policy is not intended to capture dating apps as part of the designation instrument’s definition of instant messaging services. Do the proposed definitions achieve this?**

#### **Comments from the C&C Committee**

17. The C&C Committee notes that the draft Designation in its current form does not make it sufficiently clear that dating apps do not fall within the definition of ‘*designated social media service*’ including because it relies on the ordinary meaning of ‘*social media service*’ which is open to interpretation and because reasonable minds may differ on whether any social media services are core elements of dating apps or are ancillary or incidental to the provision of other electronic services.
18. Regardless of whether Treasury decides to adopt the OSA section 13 definition of social media services, the C&C Committee recommends including a ‘Note’ or ‘Example’ in the draft Designation confirming that the definition does not include dating apps to provide further clarity.

**Question 6: Should any designation exceptions be considered for the digital platforms sector? In your response, please provide supporting evidence.**

#### **Comments from the C&C Committee**

19. The Law Council’s Business Law Section has previously expressed the view that an ecosystem-wide approach to preventing, detecting, and disrupting scams is needed to minimise opportunities for scammers to exploit loopholes.<sup>9</sup>

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<sup>9</sup> Law Council of Australia, *Submission to the Treasury Scams Taskforce*, 2 February 2024, 2.

20. While not expressing a view on any specific exceptions, the C&C Committee considers that the carve outs and exclusions should be kept to a minimum.

**Question 7: As outlined in the accompanying Position Paper, while the draft designation applies to search engines generally, the digital platforms code is only intended to apply obligations to paid advertising on search engines and not to unpaid or ‘organic’ search results. This includes obligations under all SPF principles. Would this approach have any implications for consumer protection?**

***Comments from the C&C Committee***

21. Whether SPF obligations in relation to designated search engine services should be expanded to cover organic search results (as well as paid advertising) is ultimately a policy question for the Government. However, in the C&C Committee’s view, it is clear that it will not be feasible to have a single set of code requirements that apply to both paid advertising and organic search results.
22. By way of example only, many of the proposed obligations set out in Table D to the Position Paper, including verification, authentication, content removal, and identification of affected users, could not be readily applied to organic search results drawn from the public internet.

**Competition and Consumer (Scams Prevention Framework—  
External Dispute Resolution) Authorisation 2025**

**Question 11: The draft Instrument authorising AFCA to be the SPF EDR scheme does not include any special conditions on AFCA because no necessary conditions have been identified. Is there a need to place a special condition on AFCA’s authorisation for the purposes of the SPF? If so, what would the condition be and why is it required?**

***Comments from the C&C Committee***

23. While there are advantages to the designation of the AFCA scheme as the SPF External Dispute Resolution (**EDR**) scheme, the AFCA scheme has to date operated solely in relation to the financial services sector. This is only one of the sectors that will be involved in the SPF EDR scheme. The current AFCA Rules are not specifically adapted to this purpose.
24. For that reason, the C&C Committee recommends that consideration be given to including a special condition on the authorisation of the AFCA scheme requiring consultation with scheme participants and relevant sector regulators in developing specific rules for the resolution of SPF related disputes by AFCA.

**Question 12: Under the draft authorisation, AFCA will start accepting complaints from 1 January 2027. This would mean that IDR will be available for consumers prior to EDR. How can this gap between commencement of IDR and EDR be managed to ensure good outcomes for consumers and regulated entities as they transition to the new SPF regime?**

***Comments from the C&C Committee***

25. The C&C Committee considers that any time limits for the institution of an EDR complaint that are predicated on the conclusion of the internal dispute resolution (IDR) process from shutting out complainants should be suspended until the EDR regime is available. For example, under the current AFCA Rules, there are time limits for the submission of a complaint to AFCA that are based on when the complainant received an IDR Response.<sup>10</sup> Any equivalent time limits in specific rules developed for AFCA's administration of the SPF EDR scheme should be suspended until EDR is available (that is, complainants should not have their opportunity to institute an EDR process diminished by the passage of time in circumstances where they are not able to institute such a process).
26. In addition, the C&C Committee considers that it would be preferable for any SPF EDR specific rules to be developed as soon as possible, and well prior to the commencement of the EDR scheme. This will allow potential scheme participants (complainants, industry participants, and others) to consider likely EDR approaches and outcomes in resolving complaints at an IDR stage, thereby facilitating better outcomes for consumers and regulated entities during the transition period.

***Comments from the Consumer Law Committee***

27. The Consumer Law Committee considers that the current proposed IDR model is not the optimal way to manage multi-party complaints. While no consumers want protracted complaints processes, the Committee is concerned that creating an environment where consumers are pressured into accepting low commercial offers at the IDR stage is not going to achieve the aims of the SPF.
28. The Consumer Law Committee is of the view that it would be preferable to remove the 'gap' and bring forward EDR access to 30 June 2026 to facilitate fair resolution of multi-party scam complaints. This will of course be contingent on the ability for appropriate processes to be established within this timeframe.

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<sup>10</sup> See rule B.4.3.1(b) of the AFCA Rules

# Advancing Australia’s Scams Prevention Framework through Codes and Rules: Position Paper

29. Both the C&C Committee and Consumer Law Committee have considered the consultation questions at Annexure B of the position paper *Advancing Australia’s Scams Prevention Framework through Codes and Rules (Position Paper)*. Responses attributed to each of these Committees are set out below.

## **General comments from the Consumer Law Committee**

30. As a general comment, the Consumer Law Committee welcomes and supports the potential code obligations proposed with reference to the ‘Prevent, Detect and Disrupt’ principles.
31. In that Committee’s experience, what amounts to “reasonable steps” often gives rise to disputes,<sup>11</sup> and clear prescriptive steps in the SPF Codes are necessary to enable consumers to successfully recover scam losses. Given the focus is on business misconduct, and not consumer loss, consumer recovery is predicated on evidence of the business’s failure to adhere to the SPF framework and SPF codes. This means that the expectations for business must be very clear, for decision makers to then assess whether those expectations have been met. Consumers are already at a disadvantage due to the information asymmetry that exists between them and the regulated entity business and thus they need clear standards that businesses can be held accountable to.
32. As a general comment on proposed code obligations, the Consumer Law Committee submits that clear prescriptions of required conduct in connection with these principles will facilitate compliance with and, where necessary, enforcement of the obligations on businesses.

### **Question 3. Should consumers be able to opt out of scam prevention measures?**

## **Comments from the Consumer Law Committee**

33. The Consumer Law Committee is of the view that the SPF should not allow for any consumer to opt out of scam prevention protections, noting that this has the potential to undermine the scheme’s intent in preventing and disrupting scams and would provide scammers an opportunity to circumvent protections.
34. The Consumer Law Committee notes that, in general, consumers have limited understanding of scams and the sophisticated processes behind some scams. Experience shows that consumers frequently have misplaced confidence in their ability to manage their own risk. Experience also shows that that doubt, confusion and misinformation are readily circulated via digital media.

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<sup>11</sup> See for example, the interpretation of “reasonable steps” in connection with assessing loan suitability under the *National Consumer Credit Protection Act 2009* (Cth) considered in *Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial)* [2019] FCA 1244 and *Australian Securities and Investments Commission v Westpac Banking Corporation* [2020] FCAFC 111.

35. Allowing opting out would inevitably create unnecessarily complex disputes, including about the effectiveness of opt out notifications. Consumers convinced to opt out of protections by scammers, would necessarily need to raise more complex disputes over the failure (or exploitation) of opt out processes. This would lead to more drawn out and inefficient complaint handling.
36. Further, the Consumer Law Committee is of the view that enabling opting out would create unnecessary complexity for businesses to have two-tiered systems for those who chose to opt out and those who did not. The focus should be on the creation of a single, fair and robust scam free system.
37. If, contrary to the views of the Consumer Law Committee, a decision is made to permit consumers to opt out of the friction that verification processes might introduce, the Committee suggests that consideration be given to the following:
  - (a) the Code should place the onus on the business to establish that the consumer was provided specific information about the risks involved, made a voluntary, informed choice to opt out and was not offered incentives or inducements by the business to opt out; and
  - (b) the redress available to a consumer must not be impacted, otherwise it will incentivise businesses to convince consumers to opt out of the protection and the right to redress. The only restriction on redress where a consumer has opted out should be the consideration of the opt out in the apportionment of liability.

**Question 4: What safeguards, if any, should be in place to protect consumers with a higher risk of being scammed?**

**Question 10: What additional protections should be in place for consumers who may be at higher risk of being scammed, in a way that is proportionate, effective and non-exclusionary?**

#### ***Comments from the Consumer Law Committee***

38. The Consumer Law Committee notes that the issue of providing protection for vulnerable consumers, without becoming discriminatory is a complex one. In the existing ABA Banking Code of Practice, increased obligations on banks can be triggered by the 'extra care' provisions, once a bank is on notice of a customer's vulnerability. Additionally, many safety features can be activated on accounts, but often these are opt-in (rather than opt-out) and customers may only become aware of and implement these limits or restrictions after an initial scam event.
39. Vulnerability to scams is additionally complex because while traditional vulnerabilities (low financial literacy, cultural and linguistic diversity, age, intellectual disability) will certainly render a consumer more vulnerable, we all exhibit circumstantial vulnerability to scams.

40. In response to Questions 4 and 10, the Consumer Law Committee states that there should be an increased focus on requiring business to incorporate principles of 'safety by design'. This would look different across the different designated sectors, however in the area of banking, products could be designed with different 'levels' of anti-scam features such as read-only internet banking access (with no payment functionality) that allow access to review transactions, but do not expose customers to any scam risks. Other levels / features could include the ability to only make BPAY payments (no 'Pay Anyone' access), all payments greater than a designated amount subject to mandatory 48 hr hold periods, only payments to Australian banks and / or no payment to digital payment platforms. Access to additional access levels (opt-in) could come after customer requests and scam education / financial literacy training.
41. The Consumer Law Committee also asserts that consideration should be given to Code requirements for vulnerable classes of consumers to be given a prima facie right to redress even when the business was unaware of the vulnerability and had no reason to suspect that the consumer was vulnerable.

**Question 15: How can SPF rules and codes encourage cooperation and timeliness in multi-party disputes?**

**Question 16: How should the SPF rules and codes relating to IDR manage or reflect disparate industry standards?**

**Question 20: Should the proposed SPF rules and code obligations better facilitate industry developing innovative approaches to fast-track resolution of high-volume, low-value scam losses?**

### ***Comments from the Consumer Law Committee***

42. The Consumer Law Committee considers that the proposed 'respond' obligations contained in the Position Paper (in Table A: Proposed obligations for all regulated sectors, and Table B: Proposed obligations for the banking sector) are insufficient to negate the inherent complications for consumers when seeking redress for a multi-party scam complaint.
43. Concern has been raised by the Consumer Law Committee that the 'Guidance in rules for businesses working together and apportioning compensation' merely indicates that "businesses assisting the same customer with the same scam complaint should work together to resolve the complaint in a manner than minimises the burden of the complaints process on the consumer (for example, by facilitating a single front door for complaints)". This guidance appears optimistic about the likelihood of businesses working collaboratively to deliver outcomes to consumers seeking redress.
44. The Consumer Law Committee considers that rather than expect businesses to collaboratively develop a 'single front door' for IDR across regulated sectors, that consumers would be better served in accessing EDR earlier for genuine multi-party disputes. AFCA would have the power to request all relevant information and

possess the expertise to oversee proposed resolutions to ensure customers are not being disadvantaged or pressured into accepting low commercial offers.

45. The proposed 'respond' obligations also refer to a 'no wrong door' approach to complaints, however the Consumer Law Committee has queried how this will interact with other obligations (such as a business having to provide a Statement of Compliance within 30 days of receiving a complaint, or the exception to that obligation if a complaint is closed in five business days). Reference to 'no wrong door' approach would suggest that a customer can lodge a single IDR complaint with one entity and that somehow, any other entities involved in the complaint will become notified, however there is no such actual notification obligation suggested (there is only the general statement highlighted above that businesses should work together).
46. A further issue identified by the Consumer Law Committee is the impact on the EDR stage of a consumer accepting a complaint resolution offer from one entity, but seeking scam recovery from another entity. For example, if Entity A offers a 25 percent scam loss reimbursement in an attempt to close a complaint and the customer accepts, does this prevent AFCA from requesting information and engagement and/or a Statement of Compliance from Entity A if the customer proceeds to EDR against Entity B, in an attempt to recover the remaining 75 percent of losses? If entities can still be involved in EDR processes, despite having the consumer accepting an offer to resolve the complaint, this will be a significant disincentive for regulated entities to offer early resolution and undermine the purpose of the IDR stage.
47. Without clear rules and requirements for the IDR stage of the complaints process, the Consumer Law Committee argues that this step could be a significant waste of a customer's time, while still being a significant burden on businesses. The Committee considers that an EDR process is a more suitable vehicle to distribute liability between multiple parties.
48. Further, without clear, prescriptive requirements, the Consumer Law Committee is concerned that consumers may receive significantly disparate responses from regulated entities. These issues will be further exacerbated by the fact that the EDR jurisdiction is not scheduled to commence until 1 January 2027, so individual IDR departments will be left to try and interpret their own compliance with the new, untested legislation.

**Question 23. What other exceptions to the definition of a scam would be appropriate to consider? In your response, please provide supporting evidence.**

***Comments from the C&C Committee***

49. Where possible, the SPF Rules should provide safeguards to exclude conduct that is more appropriately captured by other regulatory regimes. This would reduce the regulatory burden on businesses in complying with multiple regimes in relation to the same conduct.
50. In the C&C Committee's view, the exceptions suggested in the position paper (and in the Revised Explanatory Memorandum to the Scams Prevention Framework Bill 2024 at paragraph 1.70) would, in principle, appropriately exclude activities that are not intended to be captured under the SPF, and are captured in other regulatory regimes.
51. In giving effect to the drafting of these exclusions, Treasury should consider whether related conduct that is already governed by the Australian Consumer Law (**ACL**), such as false or misleading representations under section 29, or under common law, such as passing off, should be expressly excluded from the definition of a scam. This would be consistent with Example 1.5 in the Revised Explanatory Memorandum, which describes conduct that is already regulated by consumer law and is not a scam.

**Question 24. What other exceptions to the definition of a SPF consumer should be considered? In your response, please provide supporting evidence.**

***Comments from the C&C Committee***

52. The C&C Committee does not have views on any specific exceptions required to the definition of SPF consumer. However, it submits that the Treasury should consider whether the regime is intended to capture, as an SPF consumer, government agencies and authorities beyond those that carry on a 'business' for the purposes of subsection 58AH(5) of the CCA.
53. Conversely, if the intention is to exclude government entities that carry on a business, it may be appropriate to consider an exception to clarify this.

## About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Ms Jennifer Ball, Executive Member
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

The Law Council's Secretariat is based in Canberra. Its website is [www.lawcouncil.au](http://www.lawcouncil.au).