

9 January 2025

By email: economics.sen@aph.gov.au

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

Dear Chair

Scams Prevention Framework Bill 2024 – Senate Economics Legislation Committee Submission

Thank you for the opportunity to provide our comments to the Senate Economics Legislation Committee on the *Scams Prevention Framework Bill 2024* (SPF Bill). This is a joint submission made on behalf of:

- Consumer Action Law Centre
- CHOICE
- The Australian Communications Consumer Action Network
- Financial Rights Legal Centre
- Super Consumers Australia
- Financial Counselling Australia
- Westjustice
- Consumer Credit Legal Service WA

Our organisations are pleased to have the opportunity to provide our feedback to the Senate Economics Legislation Committee.

Please contact Policy Officers **Rose Bruce-Smith** at [REDACTED] and **David Hofierka** at [REDACTED] at **Consumer Action Law Centre** or on [REDACTED] if you have any questions about this submission.

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Key Recommendations

We ask the Senate Economics Legislative Committee to make the following recommendations in its final report.

1. **Recommendation:** Insert an amendment to clarify that if a regulated entity does not meet its obligations under the Scams Prevention Framework Bill 2024, Rules or Codes, there is a presumption that the regulated entity will compensate the SPF consumer.
2. **Recommendation:** Strengthen and support Ms Zali Steggall MP's amendment in the House of Representatives, in the SPF Bill, to
 - a. Explicitly place the burden of proof on the regulated entity to prove it met its obligations.
 - b. Explicitly indicate that the Australian Financial Complaints Authority may look behind and verify Statements of Compliance and report any incorrect certification to the SPF regulator/s.
 - c. Require regulated entities to compensate SPF consumers if they cannot provide a Statement of Compliance within the required timeframe, or if they have not met their obligations under the Framework.
 - d. Exempt a regulated entity from providing a Statement of Compliance if the SPF consumer is fully compensated.
3. **Recommendation:** Provide a high-level principle for apportioning liability between regulated entities, including amending Subdivision G Part IVF of the SPF Bill to provide that following a breach of the Framework, at least one regulated entity will be required to compensate the consumer for the related scam losses in their entirety, with contributions from other regulated entities to be handled directly between culpable entities or via a compensation pool.
4. **Recommendation:** Amend the Explanatory Memorandum to confirm that the existing legal rights of scam victims will be preserved, including that 'unauthorised' scam transactions will remain under the ePayments Code. Additionally, all future sector Codes need to have high minimum standards that apply regardless of the size of the entity.
5. **Recommendation:** Provide dedicated funding to specialist consumer law, credit and debt community legal centres and financial counsellors to assist with consumer access, advocacy and implementation of the SPF.
6. **Recommendation:** Pass the Amended SPF Bill in the first parliamentary sitting of 2025.

Other Recommendations

7. **Recommendation:** The Senate move an amendment to define an internal dispute resolution complaint in line with ASIC Regulatory Guide 271 as:
"An internal dispute resolution complaint for the purpose of section 58BZDA is any notification by an SPF consumer or expression of dissatisfaction to a regulated entity after the consumer has experienced loss or damage as a result of a scam that has a connection to that entity – where a response or resolution is explicitly or implicitly expected or legally required."
8. **Recommendation:** Require IDR scam complaints to be registered with the Australian Financial Complaints Authority and automatically escalate to EDR at the Australian Financial Complaints Authority if not resolved within a set timeframe.
9. **Recommendation:** Amend section 58DC(2) to replicate section 1051 of the Corporations Act. At a minimum, clarify in sections 58DC(2)(c) and (f) that general appeals of determinations made by a future scams EDR scheme will not be permitted and will be free for complainants to access.
10. **Recommendation:** Support the amendment moved by Dr Sophie Scamps MP and enshrine a best practice, non-exhaustive definition of 'vulnerable consumer' in the SPF Bill or Explanatory Memorandum and require regulated entities to provide greater assistance to customers identified as vulnerable. It should not require the customer to self-identify as vulnerable.
11. **Recommendation:** Support the Reporting Amendment moved by Ms Allegra Spender MP in the House of Representatives.
12. **Recommendation:** Update the Impact Analysis to account for the larger scale investment and full-time equivalent that will be required by business to effectively implement systems to meet their SPF obligations.

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About Consumer Action

Consumer Action Law Centre (CALC) is an independent, not-for-profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

About CHOICE

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

About the Australian Communications Consumer Action Network

The Australian Communications Consumer Action Network (ACCAN) is the peak national consumer advocacy organisation for communications working to achieve trusted, accessible, inclusive, affordable and available communications and digital services for all Australians.

About Financial Counselling Australia

Financial counsellors assist people experiencing financial difficulty by providing information, advice, support and advocacy. Working in not-for-profit community organisations, financial counselling services are free, independent and confidential.

Financial Counselling Australia (FCA) is the national voice of the financial counselling profession in Australia. We are a not-for-profit organisation that: Provides resources and support for financial counsellors; Advocates to increase access to financial counselling; Works to raise the profile of financial counsellors; Advocates for a fairer marketplace; and Works to improve hardship processes for people in financial difficulty. FCA also co-ordinates the National Debt Helpline (NDH) and runs The Small Business Debt Helpline (SBDH).

About Financial Rights Legal Centre

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Finally we operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies.

About WEstjustice

WEstjustice provides free legal services and financial counselling to people who live, work, or studying in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray, as well as youth legal branch in Sunshine, and outreach across the west. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, and law reform and advocacy.

About Consumer Credit Legal Service WA

CCLS champions the financial rights of Western Australians on credit, debt and consumer law issues.

- We ensure people in Western Australia are treated fairly in the financial marketplace by providing free, confidential legal advice through our Telephone Advice Line.
- We provide legal representation to people experiencing vulnerability and disadvantage so that they can access justice.
- Our community legal education programs empower West Australians experiencing vulnerability and disadvantage to understand their rights and avoid financial pitfalls.
- We help other service providers, including financial counsellors and community support workers, to understand and support their clients' financial rights.
- We are a voice for change so that financial systems and consumer laws are improved for all.

About Super Consumers Australia

Super Consumers Australia is the people's advocate in the superannuation sector.

Super Consumers Australia advances and protects the interests of people on low and middle incomes in Australia's superannuation system. It was founded in 2013 and received funding for the first time in 2018.

Executive Summary

We support the urgent passage of the Scams Prevention Framework Bill 2024 (**SPF Bill**) but with a key amendment to give effect to the Assistant Treasurer's stated intention that regulated entities will compensate victims if they fail to meet their SPF obligations. Without this amendment we are deeply concerned that the SPF Bill will introduce a burdensome regime that fails to ensure fair outcomes for scam victims.

Consumer advocates and scam victims have long campaigned for an effective scams prevention and response framework modelled on the United Kingdom's scam reimbursement rules. Australia could introduce a world-leading, modified reimbursement approach that apportions liability for scam losses across the banking, telco and digital platform sectors. Based on our extensive experience supporting scam victims, this would be international best practice to protect consumers from devastating losses and drive industry investment in preventing scams.

However, we find ourselves in a difficult position. We are asked to take a leap of faith that consumers will be protected by the SPF Bill, Rules and sector Codes (together, **the Framework**) when the SPF Bill contains only high-level provisions. Yet we also see the real potential that passing an amended SPF Bill could have to improve industry's investment in scam prevention measures. The ACCC continues to report billions in losses to scams each year and victims bear 96% of losses.¹ This equation isn't changing for Australians in the absence of laws mandating industry action on scam prevention—we need substantial change, and urgently.

It is in this context that we support the passage of the SPF Bill, with the key amendment, to provide some level of protection to consumers in the first instance, even if we feel it falls well short of the best solution. We have documented our concerns in this submission and we will continue to advocate for the strongest consumer protections and simplest access to redress when engaging in the development of sector Codes and Rules (**Codes and Rules**) and the 3-year review of the SPF.²

Treasury's 2025 planning has indicated that in the best-case scenario, the Framework will come into force at the start of 2026.³ Australia is well behind other jurisdictions to bring scams laws into force and this will mean another 12 months of international scammers targeting our savings. With the Federal election looming there is a real risk that the status quo of no scam laws or consumer protections – and continued scam losses for Australian's in the billions – will remain for even longer.

Compensation for breaches of the Framework

In our view and extensive experience representing scam victims, the SPF legislation shouldn't pass without clearly articulating that if a regulated entity fails to meet an obligation under the Framework, the consequence is a presumption of compensation for the victim's loss.

The Assistant Treasurer has repeatedly stated that businesses will compensate complainants when they fail to meet their 'high bar' obligations under the Framework.⁴ This compensation should flow automatically through presumption, rather than a victim needing to step over additional hurdles to establish a business did not follow its own internal processes. This intention must be inserted into the SPF Bill and Explanatory Memorandum (**EM**) to guide internal and external dispute resolution (**IDR** and **EDR**) and the development of the Rules and Codes of Practice.

¹ ASIC REP 761 Scam Prevention, detection and response by the four major banks (April 2023) found that the banks paid between 2-5% of losses in compensation with customers suffering 96% of losses overall. The follow up ASIC REP 790 Anti-scam practices of banks outside the four majors (August 2024) found the same figure again for the non-majors, and the majors rising to 7% solely driven by one major's bank short-lived policy to provide compensation at the first instance.

² Scams Prevention Framework Bill, section 58GF.

³ Treasury Regulatory Initiatives Grid 2025, <https://treasury.gov.au/sites/default/files/2024-12/rig-report-2024.pdf>.

⁴ [Albanese Government introduces landmark Scams Prevention Framework | Treasury Ministers](#)

The SPF Bill is premised on leveraging a civil penalty regime to achieve industry compliance and scam disruption, rather than incentivising businesses to prevent and disrupt scams by making them liable to SPF consumers for scam losses. Beyond the civil penalties enforced by regulators, it is unclear from the SPF Bill if and when a scam victim will be compensated. We are asked to take a leap of faith that future Codes of Practice will be consumer-centred and establish an efficient and effective process for scam victims to seek redress.

The limited provisions of the SPF Bill clearly place the burden on consumers to navigate the dispute resolution system and prove their entitlement to redress under the new laws, as outlined in Appendix A to our submission to the Exposure Draft Legislation – Hypothetical Consumer Journey Map (**Exposure Draft Submission**).⁵ The intention of the Framework – to drive industry to prevent scams – could foreseeably fail if this remains uncorrected.

Additional amendments

To provide effective and fair redress to scam victims, our other recommendations, including those pertaining to the following should be supported by the Committee:

- Further amendments to be made and passed to the amendment moved by Ms Zali Stegall MP to uplift the SPF Bill's efficiency and incentivise compensation (detailed in part 2 of this submission).
- That the SPF Bill clarify that regardless of whether just one or multiple regulated entities have breached their obligations under the Framework, the victim should be compensated 100% or 'made whole'.
- That the SPF Bill specify that no existing rights or protections, including those accessible and articulated through recent AFCA determinations and under the ePayments Code, will be scaled back.
- The amendments moved by Dr Sophie Scamps MP and Ms Allegra Spender MP be supported and passed.
- The SPF Bill be amended and passed in the first sitting week of 2025.

We note improvements have been made to the SPF Bill from the initial and exposure draft consultation versions. These reforms will better assist consumers impacted by scams:

- Information/certification may be provided at IDR to help address the information asymmetries between consumers and regulated entities, as per EM 1.264 (though this needs to go further, as outlined in part 2 of this submission).
- Specifying that the Rules will deal with apportionment of liability for scam losses between regulated entities.
- Empowering the Australian Competition and Consumer Commission (**ACCC**) to take action on behalf of victims against a regulated entity.
- A review of the SPF 3 years from commencement.

⁵ See: [Joint Submission, Scams Prevention Framework – Exposure Draft Legislation](#), p 46-49.

1. Scams continue to cause immense harm

The SPF must put the needs of consumers front and centre. As introduced to Parliament, the Framework is heavily weighted towards industry's experience of scams and lessening the impact on businesses. The lived experience of scam victims cannot be minimised and must be a primary consideration to ensure the SPF will work for them. The ACCC's submission to this inquiry is unequivocal on this point – consumers should be at the heart of a legislative scams framework in recognition of the harm inflicted on ordinary people, going about their ordinary lives.⁶

Over the last few years, our organisations have been contacted by more and more people from across the country who have suffered life-changing losses. Often, victims have nowhere else to turn for support, care, or advice, and they recount terrible experiences of seeking redress when a bank's system has failed to protect them from a scam. Consumer advocates, including specialist community legal centres (CLCs) and financial counsellors are shouldering a serious burden of addressing the scams problem in Australia, but we can only help a fraction of scam victims – the majority receive no support.

Our case workers frequently hear from scam victims that they feel ashamed and guilty. We also hear that asking their bank for help and compensation is sometimes more stressful and hurtful than the initial scam.

"The banks like to make you feel like it's your fault, and that's really hard when you are already feeling so dumb. It's actually more traumatic – dealing with the banks and getting nowhere – than the actual scam itself." Jo, quoted from Consumer Action's Impact Report.⁷

The 96% of losses that are borne by ordinary people result in devastating realities. We have heard from people who have had to return to work from parental leave, delay essential surgery, or borrow money from their adult children to buy food. They have defaulted on their mortgage and struggled to pay their children's school fees.

Recent coverage of the proceedings against HSBC have reflected the emotional damage for scam victims:

*Aaron said he was saddled with shame and fear over the saga and had to mend damaged personal relationships. "Getting me the money back was a relief, but I'm probably always going to be mentally scarred," he said.*⁸

Consumer Action was recently contacted by Furkan, who had \$58,292 stolen by scammers in August 2024. His bank has offered him a goodwill payment of just \$4,000.

"As a result of the financial loss, I acquired and was diagnosed with severe and complicated anxiety, as well as PTSD. To earn and save this amount of money, I had to work long hours and get up very early. I am currently taking hefty antidepressants to keep myself calm & prevent extreme suicide thoughts."

Our previous submissions to the SPF consultations have thoroughly established the deep harm to consumers in Australia.

*Nadia says that she doesn't feel secure anymore after her experience. She says that she enters 'panic mode' when she receives a call from an unknown number. Nadia doesn't feel safe with her bank, but she can't change banks because of her joint mortgage. She constantly checks her banking apps to ensure that her money is safe. At times throughout this experience she and her husband had virtually no access to cash.*⁹

⁶ Australian Consumer and Competition Commission, submission to the Senate Economics Committee Inquiry in the Scams Prevention Framework Bill, p 3.

⁷ Consumer Action Law Centre 2022-2023 Impact Report, [CALC_Impact-Report_2022-23_FA5_WEB.pdf](#) p 9.

⁸ [HSBC scam: ASIC sues banking giant over alleged scam protection failures](#)

⁹ Joint Submission, Scams Prevention Framework – Exposure Draft Legislation, p 36.

When Renate first realised that she had been scammed she tried to call her bank but was told an interpreter could not be provided to help her make herself be understood. Despite only losing \$4,000.00, the impact on Renate's family included food and school fee stress, and the inability to repair her vehicle for transport. The matter took 18 months to resolve.¹⁰

Jill is a student who had only just commenced working part time work and lost her entire savings of just under \$5,000 to the scam. She is now behind on her share house rent and has no money to pay the gas bill in her name.¹¹

Growing scam sophistication

We are seeing more distressing cases where technological advances are being used to perpetrate scams. The need to interact digitally for almost every aspect of our lives makes our online footprint almost impossible to monitor, and more susceptible to scammers. The SPF and EM remain silent on how the principles and the Codes will be applied in practice to protect the growing number of people who are being scammed of their life savings through remote access, impersonation and other complex technological scams. Increasingly, victims have no idea how their money was stolen.

SPF Impact Analysis

The SPF Impact Analysis that has been provided alongside the SPF Bill and EM only provides the cost benefit analysis of implementing the SPF versus maintaining the status quo of having no scam laws in Australia. It has not provided costings for reimbursement model (or at least one has not been made public). We are disappointed that Government chose not to analyse the cost or impact of the reimbursement model – the approach unanimously called for by consumer advocates and victims from across the country. We believe this is a significant missed opportunity as it would have shown the effectiveness and simplicity of that approach, and in all likelihood the superiority of a reimbursement framework.

The cost benefit analysis for the UK mandatory reimbursement model recognises and accommodates for the human cost of being scammed.¹² It recognises that providing certainty and a timely remedy to scam victims, many who have lost their life savings, results in a reduction of psychological harm and stress. As the SPF is primarily a prevention framework, the Impact Analysis provides little detail on how it will sufficiently address the overall cost where scams do occur, including non-financial harms to scam victims.

¹⁰ Ibid, p 38.

¹¹ Ibid, p42.

¹² Research by Which? shows that three in five UK fraud victims say their mental health was negatively affected by the experience, while a separate, not-yet-published survey by Lloyds found 69% of fraud victims experienced a decline in their mental health. See: <https://www.theguardian.com/society/2024/oct/23/secret-health-hell-being-scammed-felt-mind-disintegrating>

2. Further amendments to the Scams Prevention Framework

Function of effective dispute resolution in the overall regulatory framework

Effective dispute resolution is essential to the proper functioning of the SPF – it empowers consumers to take their own steps to challenge failed systems and demand compensation. Without a functioning dispute resolution system that regularly awards appropriate compensation and reports systemic and all other failures to the regulator, the SPF will have a very limited impact on uplifting business conduct. It is simply impossible for the SPF regulator/s to have oversight over the vast majority of breaches of the SPF. They can't investigate every regulated entity's non-compliance, or detect all misconduct. Like the broader financial services framework, the scams regulatory framework, for the most part, will rely on scam victims seeking redress through dispute resolution. This needs to be simple and fast to navigate to achieve appropriate outcomes.

Our experience tells us that we can't rely on businesses to meet their obligations, identify their failings and appropriately remediate victims without transparency, oversight and serious penalties for non-compliance. Consequently, we have little faith that the SPF, as written, will result in businesses coming to the table and remediating consumers.¹³

The current dispute resolution framework incentivises businesses to take an adversarial approach towards their customers. We frequently see businesses use unfair tactics like low-ball goodwill payments (commonly in full and final settlement and without admission of liability) to pressure scam victims into a quick settlement. They are also often contingent on the complainant signing a non-disclosure agreement, as detailed in our Exposure Draft Submission.¹⁴ This conduct leads to poor outcomes where consumers continue to carry the overwhelming majority of losses and are prevented from speaking out to help others. We believe that much of the sanctionable misconduct goes unseen and underreported as a result.

Scam complaints are likely to involve multiple regulated businesses, and in some circumstances even five or six. Extending the current financial services dispute resolution system to these factually complex complaints without introducing presumptions and efficiencies will have significantly poorer outcomes for consumers. We anticipate that a scam victim will almost always have to resort to AFCA to obtain a fair outcome. This means complainants will be waiting months out of pocket, and will be required to have the knowledge, expertise and stamina pursue their dispute. Only a small minority of scam victims will make it there.

The funding earmarked for AFCA to take on scams cases is welcome but should be accompanied with clearer direction in the SPF Bill and EM about presumptions of compensation to ensure the dispute resolution system drives better scam prevention and conduct from businesses.

The following key amendments to the SPF will ensure that it functions properly, delivers consumers fair and efficient outcomes at IDR and drive implementation of scams prevention measures across regulated entities.

Compensation

The key amendment needed is a presumption of compensation if the regulated entity cannot prove they met their obligations under the Framework. The presumption is essential to address the significant information and power asymmetry in the proposed Framework, as outlined in our Exposure Draft Submission.¹⁵ This would be consistent with the well-accepted policy justification for reversing the onus of proof in the ePayments Code. Government should be placing this commitment front and centre in the SPF Bill and EM to clarify the evidentiary onus and presumption of compensation, and to frame the development of the future sector Codes.

¹³ See the various examples provided in our Joint Submission, Scams Prevention Framework – Exposure Draft Legislation.

¹⁴ Joint Submission, Scams Prevention Framework – Exposure Draft Legislation, p 29.

¹⁵ Joint Submission, Scams Prevention Framework – Exposure Draft Legislation, p 21.

We ask that the Committee support the insertion of a new provision into subdivision G of Division 2 of Part IVF of the SPF Bill (SPF principle 6: Respond) that states the following, or gives legal effect to the presumption through alternative drafting in the Framework:

1. *A regulated entity shall compensate the SPF consumer's scam losses.*
2. *Subsection (1) does not apply if the regulated entity can prove that it complied with each of its obligations under the SPF principles, SPF Rules and SPF Code(s).*

Key Recommendation

Insert an amendment that clarifies that if a regulated entity does not meet its obligations under the Scams Prevention Framework Bill 2024, Rules or Codes of Practice, there is a presumption that the regulated entity will compensate the SPF consumer.

Certification and consumer redress

We welcome (with amendment) the Government's intention to create an information/certification process at IDR as indicated in paragraph 1.264 of the EM. This will help deal with the large information asymmetry between scam victims and businesses. We also support (with amendment) the proposed amendment to incorporate this process into the SPF Bill introduced into Parliament by Ms Zali Stegall MP via a new subsection 58BZDA – 'Giving a statement of compliance' (**Certification Amendment**).¹⁶

Amendment moved by Ms Zali Stegall MP

58BZDA GIVING A STATEMENT OF COMPLIANCE—CIVIL PENALTY PROVISION

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

- (a) is undertaking internal dispute resolution in dealing with a person's complaint of a kind described in paragraph 58bzd(1)(a) or (b); and
- (b) does not give the person a statement of compliance in accordance with subsection (2).

Note: this subsection only applies to the entity when the SPF Rules prescribe matters for paragraphs (2)(b), (d) and (e) that are relevant to the complaint.

(2) For the purposes of paragraph (1)(b), the statement of compliance must:

- (a) include a statement by the regulated entity about whether, based on information reasonably available to the entity at the time of making the statement, it has complied with its obligations under the SPF provisions that are relevant to the complaint; and
- (b) contain the kinds of information prescribed by the SPF rules that are relevant to the complaint; and
- (c) not contain the kinds of information (if any) prescribed by the SPF rules that are relevant to the complaint; and
- (d) be in writing and signed by a person who is an authorised representative of the entity of a kind prescribed by the SPF rules; and
- (e) be given in accordance with the timeframes, and in the manner and form, prescribed by the SPF rules.

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

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

(4) A statement of compliance given by the entity under this section is admissible, in any proceeding that:

- (a) relates to the complaint; and
- (b) is under or relates to an SPF EDR scheme; as prima facie evidence of the entity's position, at the time of making the statement, on the matters in the statement.

(5) Nothing in this section limits or affects the admissibility in a proceeding of any other statement or evidence.

With some further improvements to the SPF Bill, including inserting a compensation provision in subdivision G of Division 2 of Part IVF, the Certification Amendment can ensure we have a dispute resolution system able to provide fair and efficient outcomes. Rather than the victim bearing an insurmountable burden to prove a multi-million-dollar business failed to protect them, the business will be required to prove that their systems sufficiently protected the consumer.

This will drive the overall implementation of the SPF across industry.

¹⁶ See: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7275

An amended Certification Amendment is essential to codify the process already foreshadowed in the EM at 1.264 and would assist in supporting a reasonable level of consumer protection in the SPF. We understand the intention is for a scam victim to be provided with a holistic Statement of Compliance (**Statement**) including specific evidence from all regulated entities involved in the complaint. The Statement must be simple to understand, and not overwhelm complainants with complex and unhelpful information. Equally, it must contain enough information to prove an entity has met its obligations, and to ensure the regulated entity isn't just 'signing off' on the certificate in a tick-a-box fashion where a regulated entity could have prevented a scam.

One key risk of adopting a Certification process that must be prevented is that it may allow regulated entities to mask non-compliance with the SPF. The consequential impact is that it will be harder for scam victims to access redress. The Certification Amendment will require businesses to self-assess whether they met their obligations under the Framework. The business' incentive to minimise redress owed to consumers on a broad level will be extremely high. This is the status quo. Banks seriously under-assess their liability and compensate just 2% of losses. For the 15% of scam victims who lodge an IDR complaint, this rises to a paltry 7%.¹⁷ In one scam matter we assisted with, a bank's initial offer of \$6,000 increased to \$210,000 after the victim lodged their complaint with AFCA. As noted in our Exposure Draft Submission, many people in similar situations accept that initial offer (if there is one at all) and never make it to AFCA.¹⁸

To help prevent this type of conduct, AFCA should be able to verify the accuracy of the Statement and report falsified or non-compliant documentation to the SPF Regulator as a systemic issue. Providing a non-compliant Statement must be met with serious penalties. A Certification Amendment would support the work of SPF Regulators and AFCA, but would benefit from further specificity to ensure the dispute resolution system will provide fair outcomes for scam victims. Most importantly, it needs to be specifically linked to a reversal of an onus of proof in the SPF Bill and include a presumption of compensation if the regulated entity cannot certify it met its obligations, or fails to do so in the prescribed time.

A further incentive that would drive good consumer outcomes is if a regulated entity was made exempt from the requirement to provide a Statement if it has agreed to settle a complaint by compensating a scam victim in full. We propose a new subsection to the amendment proposed for 58BZDA to provide relief to regulated entities from certain civil penalty provisions if they have agreed to compensate a victim for their scam losses:

(4A) Despite subsection (3) a regulated entity does not contravene subsection (1) if the entity agrees in writing to compensate the SPF consumer in their internal dispute resolution complaint, for the entire scam loss claimed and the compensation is paid to the consumer before the expiry of the timeframe that the statement of compliance would have otherwise been required in accordance with paragraph 2(e) and the SPF Rules.

We also suggest a definition to accompany this proposed amendment for 'internal dispute resolution complaint' or 'complaint' to ensure all complaints by scam victims are captured in the SPF IDR process. The definition should model the definition of a 'complaint' in ASIC's Regulatory Guide 271 – Internal dispute resolution.¹⁹

We propose that the following definition is inserted into the SPF Bill, or added as an additional note directly into the amendment proposing subsection 58BZDA:

Note: An internal dispute resolution complaint for the purpose of section 58BZDA is any notification by an SPF consumer or expression of dissatisfaction to a regulated entity after the consumer has experienced loss or damage as a result of a scam that has a connection to that entity – where a response or resolution is explicitly or implicitly expected or legally required.

¹⁷ ASIC REP 790 p 3.

¹⁸ Joint Submission, Scams Prevention Framework – Draft Exposure Legislation, p 23.

¹⁹ ASIC [Regulatory Guide 271 – Internal Dispute Resolution](#)

Key Recommendation

Strengthen and support Ms Zali Steggall MP's amendment in the House of Representatives, in the SPF Bill, to

- a. Explicitly place the burden of proof on the regulated entity to prove it met its obligations.
- b. Explicitly indicate that the Australian Financial Complaints Authority may look behind and verify Statements of Compliance and report any incorrect certification to the SPF regulator/s.
- c. Require regulated entities to compensate SPF consumers if they cannot provide a Statement of Compliance within the required timeframe, or if they have not met their obligations under the Framework.
- d. Exempt a regulated entity from providing a Statement of Compliance if the SPF consumer is fully compensated.

Recommendation

The Senate move an amendment to define an IDR complaint in line with ASIC Regulatory Guide 271 as:

"An internal dispute resolution complaint for the purpose of section 58BZDA is any notification by an SPF consumer or expression of dissatisfaction to a regulated entity after the consumer has experienced loss or damage as a result of a scam that has a connection to that entity – where a response or resolution is explicitly or implicitly expected or legally required."

Fair apportionment rules

The additions to subdivision G of Division 2 of Part IVF of the SPF Bill requiring regulated entities to have regard to guidelines prescribed by the Rules for apportionment of liability when assessing matters at IDR is welcomed. We believe more specificity and guidance in the SPF Bill or at a minimum the EM and ACCC guidance is still needed, including how apportionment would apply for at least for the first three designated sectors.

The SPF Bill needs to ensure that scam victims will not be left out of pocket under this process. In a scenario where a scam was successful because only one of several entities failed to meet their obligations, that business should be liable to compensate for the full loss, and not be able to argue that they should only pay a proportion and leave the rest with the victim.

This clarity is needed to remove barriers to scam victims accessing just compensation. Of further concern, section 58FZF(3) of the SPF Bill complicates the apportionment rules:

In apportioning responsibility between defendants in the proceedings:

(a) the court is to exclude that proportion of the loss or damage in relation to which the victim is contributorily negligent under any relevant law; and

(b) the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.

If the purpose of the Framework is to protect people who have been deceived by scammers, this provision shifts the focus from what the regulated entities should be doing to protect consumers, back to how the scam victim was 'responsible' for the scam. For example, in a remote access scam case, a bank could argue that the customer was 'negligent' in downloading the software to enable to scam to take place.

In contrast, under the ePayments Code, the passcode security requirements require a customer to have acted with 'extreme carelessness' to be found liable, which is a much higher test than 'negligence':

12.4 A user must not act with extreme carelessness in failing to protect the security of all passcodes where extreme carelessness means a degree of carelessness that greatly exceeds what would normally be considered careless behaviour.

Uncertain and inflexible default levels of apportionment of liability may be unfair both to businesses and scam victims. Apportionment tables and calculations should be dynamic and adjustable based on the specific circumstances and factual scenario of the individual scam case, with an exception to these rules if a regulated entity agrees to compensate a consumer in full for their scam losses.

We have reviewed the approach to scams apportionment in Malta (**Maltese model**) and formed the conclusion that it is a good model to design our system on. Under the Maltese model a scam victim's entitlement to compensation is determined by reference to set tables and percentages. The complainant's entitlement can also increase due to misconduct by the financial firm, in accordance with pre-determined tables and percentages.²⁰ If only one business of several is found to have breached their obligations, it pays the entirety of the complainant's loss.

Australia could still borrow many of the positive aspects of this model and leverage the strengths of our existing EDR structures. It is essential that the business/s that have breached their SPF obligations remediate the complainant fully – the customer cannot be left to bear part of the loss incurred through no fault of their own.

²⁰ Arbitrator for Financial Services, Malta. 'Annual Report 2023'. June 2024. Available at: <https://www.financialarbiter.org.mt/content/annual-reports>

Apportionment between regulated entities after the consumer is compensated by their bank

A scams determination issued by an EDR scheme must identify one ('primary') regulated entity to compensate the consumer, with any shared liability amounts to be paid by other regulated entities to the primary compensating entity. This will ensure proper functioning of a scams EDR system and good outcomes for scammed consumers. It is essential that any transactions of shared liability owed by regulated entities to the primary compensating entity is finalised after the consumer has been made whole from their scam losses.

We anticipate that the default primary compensating entity should be the regulated financial firm where funds were lost – i.e. a bank, or in future a superannuation fund or cryptocurrency platform. This recognises that these entities are in the best position to stop scams and recover lost funds, and generally have the most direct relationship with the consumer.

For example, a sending bank would be best placed to co-ordinate and recover apportionment contributions from other entities due to their custodianship of their consumers money and their unique position to be able to investigate how a scam victim's money was lost. Where no funds were lost or the loss claimed is non-financial, the primary compensating entity may be a telco or digital platform. We anticipate that these complaints will need greater oversight from AFCA to ensure compliance with final determinations.

There is already precedent for efficiently settling apportionment in the insurance industry via 'knock-for-knock' agreements, which minimise recovery costs between parties. A similar system adopted for the SPF will minimise administrative costs on AFCA to monitor compliance with determinations. It will also ensure the Framework is designed to meet the needs of consumers, not just industry.

Expecting a consumer to collect on their determination from potentially five or six regulated entities is unreasonable and out of step with community expectations. An individual is at a considerable disadvantage compared to their bank. A bank would have a much better chance of recovering owed funds by establishing industry-level apportionment agreements or contracts rather than a consumer chasing down payment every time. We note that the eSafety Commissioner has experienced significant difficulties in pursuing enforcement against digital platforms, and in these circumstances, it is wholly unreasonable to place a similar burden on individual consumers.²¹

Introducing a requirement for one regulated entity to provide compensation, who can then recover from the other contributing entities, will incentivise approaching apportionment on an aggregate and cost-effective basis. Rather than looking at each individual dispute, businesses are more likely to look at their 'books' or bundle together disputes for the purpose of apportionment, to benefit from to cost savings across the system.

Such principles of apportionment can work in concert with other consumer-centred approaches that should be introduced in the future, such as industry funded compensation pools, which we note the ACCC supports,²² and which we agree will save cost and is another way victims of scams could access redress faster.

We also note that Singapore has recently introduced a 'Shared Responsibility Framework',²³ which is a model with several good aspects that Australia could draw from. The Singapore framework establishes obligations for financial firms and telcos to prevent scams. It first considers if the account-issuing financial firm (the 'sending bank') has met its obligations, and if not, they are liable for the consumer's loss. If their obligations were met, it then considers if the telco met its obligations and should pay compensation. If both parties failed to meet their obligations, the financial firm still owes the primary duty and pays compensation.

²¹ We refer to the protracted legal proceedings to enforce a \$610,500 fine against X (formerly Twitter) and the cessation of proceedings to enforce the removal of footage of a violent attack, also on X, in 2024.

²² Australian Consumer and Competition Commission, submission to the Senate Economics Committee Inquiry in the Scams Prevention Framework Bill, p2.

²³ Monetary Authority of Singapore, www.mas.gov.sg/regulation/guidelines/guidelines-on-shared-responsibility-framework.

Key Recommendation

Provide a high-level principle for apportioning liability between regulated entities, including amending Subdivision G Part IVF of the SPF Bill to provide that following a breach of the Framework, a 'primary' regulated entity will be required compensate the consumer for the related scam losses in their entirety, with contributions from other regulated entities to be handled directly between the culpable entities or via a compensation pool.

Lodging IDR complaints with AFCA

IDR presents significant feasibility challenges because of the multiple entities potentially liable in a scam's complaint, but it is important because it will reduce the volume of complaints that reach EDR.

The Framework relies heavily on regulated entities handling the majority of scam complaints in good faith and always putting their customer's rights and needs ahead of their other commercial interests. The evidence from scam victims who present on our frontlines show that we cannot rely on this. So too do ASIC Report's 790 and 761. We assist people every week who are treated appallingly by the business that has let their money be stolen.

In our experience, this is not the conduct of outlier bad actors, but industry-wide practice. All of the HSBC complainants who were victims of a bank impersonation scam and who were in contact with Consumer Action were denied fair compensation at IDR – a position that has now been reversed in light of AFCA's publicly reported determination of August 2024 in favour of an affected HSBC customer, and with HSBC presently the subject of ASIC enforcement action. David Sweeney's story, as reported in the ABC, is another stark example of banks refusing to compensate a scam victim despite documented evidence of their failings.²⁴

Without further clarity provided in the SPF, there is also a significant risk that apportionment will often be almost impossible to determine at IDR. For example, the bank would likely argue that the telco was partly liable for its failure to prevent phishing added to the scam. Equally, if the victim fell for the scam when the scam call was not made through an official bank phone number, the telco will argue that this proves that the phishing calls were not a cause of the scam and so apportionment does not apply.

A process that would make IDR more workable would include:²⁵

- Immediate registration of a scam complaint (IDR) with AFCA by either the victim themselves or the entity they first complained to;
- AFCA would then contact all regulated entities in the scam chain and require them to certify/provide a Statement of Compliance that they met their SFP obligations within a set timeframe, say with 15-30 days;
- AFCA could also be specifically empowered to guide or set apportionment of liability between each regulated entity, noting that the process of claiming funds from other regulated entities cannot delay customer compensation; and
- If the dispute is not resolved within the set timeframe, the matter would immediately escalate to EDR.

This would avoid many of the issues we anticipate for both consumers and regulated entities in resolving and achieving efficient resolution of scam disputes in the context of multiple parties. The Codes and Rules can finalise the details, but the SPF Bill or EM should be amended to enshrine this intention.

Recommendation

Require IDR scam complaints to be registered with the Australian Financial Complaints Authority and automatically escalate to EDR at the Australian Financial Complaints Authority if not resolved within a set timeframe.

²⁴ [Does the government's scam crackdown go far enough? It depends on where you're standing - ABC News](#) (16 September 2024). After 5 years, Mr Sweeney's father was compensated for his loss of \$1,000,000 after a Freedom of Information request showed that ASIC had warned the bank about the scam months prior.

²⁵ AFCA would need to be resourced to take on this additional 'registration' role, which may be carried out through an online portal.

Protecting effective dispute resolution

AFCA received nearly 11,000 scam complaints last financial year and we are sure this will continue to increase year-on-year, whether or not the SPF passes. Nearly a third of closed scam complaints in 2023-2024 took over two months to resolve, irrespective of whether the scam victim was compensated or not.²⁶ The proposed funding and staffing uplift for AFCA is unlikely to reduce dispute timeframes if the SPF Bill does not ensure that IDR provides fair and transparent outcomes. Many people, particularly those experiencing vulnerability and in financial hardship, will not be able to endure such time frames after they have been traumatised by a scam. Without incentivising fair IDR outcomes, the result will be an avalanche of complaints at AFCA, and many scam victims ultimately dropping out of the process altogether. This will seriously undermine the incentives for industry to implement the Framework.

Additionally, and as noted in our Exposure Draft Submission, sections 58DC(2)(c) and (f) of the SPF Bill permits future EDR schemes to make rules relating to appeals to the Federal Court from scheme determinations and on fees. This has the potential to be weaponised against scam victims and disincentivise them from accessing EDR.

We remain highly concerned that section 58DC(2) leaves the door open for regulated entities to have a general right to appeal scam determinations from a future EDR scheme. We understand this provision is intended to 'future proof' the legislation and won't impact the status quo. If that's the case, then if a future appeal right is needed, it should be introduced through specific consultation and future amendment to the legislation once passed. Introducing a broad appeal provision undermines the cornerstone of effective EDR. The threat of a Federal Court appeal maintains the gross power imbalance between our biggest corporations and individual scam victims.

Instead, the SPF Bill should replicate the relevant 'Mandatory requirements' for an EDR scheme found in section 1051 of the *Corporations Act 2001* that clarifies there is no general right of appeal by regulated entities against determinations made by a future scams EDR scheme, and that it will be free of charge for complainants to access.

Recommendation

Amend section 58DC(2) to replicate section 1051 of the *Corporations Act*. At a minimum, clarify in sections 58DC(2)(c) and (f) that general appeals of determinations made by a future scams EDR schemes will not be permitted and will be free for complainants to access.

²⁶ [Scam complaints | Australian Financial Complaints Authority \(AFCA\)](#). 3,033 out of 10,440 complaints took between 61 and 365 days, with another 76 taking more than a year.

Protecting vulnerable customers

We support the proposed amendment to the SPF Bill introduced into Parliament by Dr Sophie Scamps MP to insert a consideration of consumer vulnerability ('vulnerable consumers') when determining whether regulated entities have taken 'reasonable steps' to meet their obligations under the SPF.²⁷

Our frontline casework strongly indicates that the SPF Bill must provide sufficient consumer protections and guardrails to ensure businesses take extra care when people experience vulnerability that make them more susceptible to and more impacted by scams.

Concepts such as 'reasonable steps' and 'actionable scams intelligence' in the SPF remain broad, grey concepts that would benefit from greater clarity in the SPF Bill to shape their effectiveness in practice for both consumers and regulated entities. We note the insertion of subsection '58BB – Meaning of reasonable', to define the parameters that will determine whether regulated entities have met their obligations. These factors currently appear to be weighted towards limiting the obligations on businesses, with considerations for consumers largely absent.

The SPF Bill is extremely limited in directing where regulated entities may be required to assist vulnerable consumers (i.e section 58BK(2)(b)). These provisions are ambiguous, requiring regulated entities to only 'identify' and 'provide information' to its SPF consumers who are at 'risk of being targeted by a scam'. We are concerned this is insufficient to protect customers experiencing vulnerability and will not lead to robust sector Codes.

Furthermore, a narrow interpretation of 'reasonable steps' could result in businesses being able to ostensibly meet their obligations without providing any meaningful protections for their customers, even with the Certification Amendment. For example, the existence of a scams policy will 'tick off' the SPF obligation, even if the policy was inadequate and failed to protect the victim. We also fear that if the bar is too low for businesses to provide a legitimate Statement of Compliance, it will result in very few scam victims receiving compensation through IDR and EDR.

We regularly assist scam victims experiencing vulnerability – they may have an acquired brain injury, be older, have limited English or digital literacy, be experiencing domestic or family violence, or suffering extreme financial hardship both before and because of the scam.

Although largely not settled in Australia, we support a best practice approach in defining vulnerability, including from other jurisdictions around the world that have implemented scam laws. For example, the UK Payment Systems Regulator's (PSR) refers to the following definition for 'vulnerable consumer' in its Final Policy Statement:

*"Someone who, due to their personal circumstances, is especially susceptible to harm – particularly when a firm is not acting with appropriate levels of care."*²⁸

Any definition of 'vulnerable consumer' adopted in the SPF or EM should refer to a non-exhaustive number of factors to indicate vulnerability. This will enable the development of the sector Codes to be appropriate and responsive to the needs of a diverse cohort of customers experiencing vulnerability.

The UK's Contingent Reimbursement Model (CRM) Code provided a clear benchmark and a case-by-case approach to considering vulnerability:²⁹

²⁷ See: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7275

²⁸ UK Payment Systems Regulator. 'Policy statement – Fighting authorised push payment scams: final decision'. December 2023. Available at: <https://www.psr.org.uk/media/kwlgzti/ps23-4-app-scams-policy-statement-dec-2023.pdf>

²⁹ See: <https://www.lendingstandardsboard.org.uk/crm-code/>

"A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.

Factors to consider include:

(a) All Customers can be vulnerable to APP scams and vulnerability is dynamic. The reasons for dynamics of vulnerability may include: the personal circumstances of the Customer; the timing and nature of the APP scam itself; the capacity the Customer had to protect themselves; and the impact of the APP scam on that Customer.

(b) A Customer's personal circumstances which lead to vulnerability are varied, may be temporary or permanent, and may vary in severity over time.

(c) APP scams may include long-running APP scams or in the moment APP scams.

(d) The capacity of a Customer to protect themselves includes their knowledge, skills and capability in engaging with financial services and systems, and the effectiveness of tools made available to them by Firms.

(e) The impact of the APP scam includes the extent to which the Customer is disproportionately affected by the APP scam, both financially and non-financially."

Recommendation

Support the amendment moved by Dr Sophie Scamps MP and enshrine a best practice, non-exhaustive definition of 'vulnerable consumer' in the SPF Bill or Explanatory Memorandum and require regulated entities to provide greater assistance to customers identified as vulnerable. It should not require the customer to self-identify as vulnerable.

Preserve protections under the ePayments Code

The uncertainty as to how the ePayments Code will interact with the proposed Framework needs to be resolved with confirmation that there will be no reduction of the consumer rights currently conferred by the ePayments Code. The ePayments Code offers protections for consumers and evidentiary presumptions that greatly assist the complainant in matters about unauthorised losses. These rights and protections have been further evolving through recent AFCA determinations. The ePayments Code is a crucial part of ASIC's action against HSBC for allowing \$23 million to be stolen by scammers.³⁰ In the UK, the comparative framework that deals with 'non-APP fraud' remains complementary to the now legislated UK mandatory reimbursement model for 'APP' or authorised fraud.³¹ Victims of scams cannot afford lose the consumer rights and redress provisions of the ePayments Code with the introduction of a scams framework based primarily on prevention.

HSBC cases determined under the ePayments Code

We have been encouraged by AFCA taking a more consumer centred approach resulting in full reimbursement in HSBC determination 12-00-1016692. The complainant sought compensation for a fraudulent transaction of \$47,178.54. The transaction occurred after the complainant provided two passcodes to a scammer. They did so after receiving a scam text message from HSBC's phone number, and dialling a number that perfectly imitated HSBC's customer service lines.

To dispute liability under the ePayments Code, HSBC was required to prove that the complainant had contributed to their loss by breaching their passcode security obligations. AFCA found that the complainant had not voluntarily disclosed the passcodes, in light of the sophistication of the scam. AFCA also noted that the scammer knew personal information about the complainant that would be reasonable to expect his bank to know and further act upon, including his bank username. As a result of the AFCA determination, the complainant was entitled to full compensation for the scam losses incurred (less \$150).

This matter is the lead AFCA determination for similar HSBC scam cases. Around \$23 million was stolen from more than 400 HSBC customers. Following this case, we understand that the majority of scam losses to many of these HSBC customers have been finally compensated, more than two years after the scam losses were first reported.

Paragraph 1.69 of the EM indicates that the Framework will interact with the ePayments Code, but that remote access scams (generally dealt with under the ePayments code as unauthorised transactions) will now be covered under the SPF. As the SPF does not provide any equivalent minimum standards for banks or other regulated entities, it is impossible to know if remote access scams will be as fairly assessed under the SPF compared to the ePayments Code.

The SPF Banking Sector Code will become the basis for AFCA to determine fair and reasonable outcomes and for regulators to assess compliance with broader SPF obligations. Without knowing that it will provide an equivalent or higher standard of consumer protections, we cannot accept remote access scams being removed from the ePayments Code.

We also note that section 58BB of the SPF Bill provides that when assessing if a regulated entity has taken 'reasonable steps' to prevent a scam, the size of the entity will be a relevant consideration. This is not the case in the ePayments Code. All ePayments Code subscribers are held to the same obligations. In the case of an

³⁰ [24-280MR ASIC sues HSBC Australia alleging failures to adequately protect customers from scams | ASIC](#)

³¹ See: <https://www.legislation.gov.uk/uksi/2017/752/regulation/74>

international subsidiary like HSBC, this will imply a lower standard of care under the Framework than the big four banks. The outcome is that a consumer's access to redress may be determined by the size of the institution they bank with. We have already seen the different attitudes to implementing scam prevention measures between HSBC's UK and Australian subsidiaries.³²

To prevent a serious reduction in existing consumer rights, the EM needs to be amended to confirm that 'unauthorised' scam transactions will remain under the ePayments Code. The amended Certification Amendment to the SPF Bill needs to pass to ensure 'authorised' scams are treated consistently under the Framework. Additionally, all future sector Codes need to have high minimum standards that apply regardless of the size of the entity.

As mentioned in our Exposure Draft Submission, there is a clear need for the SPF Bill to be amended to make it clear that rights provided by the SPF Bill are in addition to, and not in derogation of, customers rights under other rules and laws. This includes maintaining the current rights of scam victims to obtain compensation under the ePayments Code, which should be uplifted from a voluntary code to mandatory.

Key Recommendation

Amend the Explanatory Memorandum to confirm that the existing legal rights of scam victims will be preserved, including that 'unauthorised' scam transactions will remain under the ePayments Code. Additionally, all future sector Codes need to have high minimum standards that apply regardless of the size of the entity.

³² In the United Kingdom, HSBC issued warnings to its customers in September 2021 (<https://www.mirror.co.uk/money/hsbc-warns-rise-scammers-pretending-24984085>).

Public reporting on scams data

The SPF Bill should have more stringent requirements for regulated entities to publish data about their performance under the SPF, including the value and volume of scam losses affecting their services, and the compensation paid to affected consumers. If not contained in the SPF Bill itself, these requirements must be included under the Codes or Rules.

We note the proposed amendments to the SPF Bill introduced by Ms Allegra Spender MP under subsection '58BGA – Publishing information about scams detected, reported and responded to' (**Reporting Amendment**). This includes the requirement for each regulated entity to publish on its website:

- information on the prevention, detection and disruption of scams for each 3 month period;
- information on the response to scams for each 3 month period; and
- reports relating to scams for each 3 month period.

We support this Reporting Amendment and believe it will promote greater disclosure and transparency than currently required under the SPF Bill. It will also have a positive competitive effect on businesses wanting to demonstrate to customers how they prevent and respond to scams. The Codes should require further detail to be reported.

The public deserve full and frank disclosure of all relevant information that may help them avoid becoming victims of a scam. This includes public disclosure of the names of business who have permitted large numbers of customers to suffer scam losses through their services.

One justification given by regulators for not releasing the individual names of banks based on their scam prevention and response performance is that it may discourage future voluntary disclosure of scams data.³³ We understand this is also a main justification for ASIC's recent anonymised reports into insurance complaints handling and financial hardship practices. While businesses may refuse to voluntarily disclose data that shows poor performance falling short of the law, community expectations and their competitions, regulators have compulsory information gathering powers already. Allowing non-disclosure is anti-competitive in nature and further justifies mandating disclosure. The SPF should require greater transparency in reporting, which would incentivise large businesses to invest in scams prevention—promoting a race to the top.

Recommendation

Support the Reporting Amendment moved by Ms Allegra Spender MP in the House of Representatives.

³³ See: <https://www.smh.com.au/national/scammers-are-targeting-australian-bank-customers-but-there-s-one-key-thing-you-can-t-know-20241025-p5klcc.html>

Risk of leaving too much to the Codes and Rules – more consumer guardrails needed in the SPF Bill

After taking on varying feedback from a range of stakeholders including industry to the SPF Exposure Draft legislation in October 2024, a number of changes were made to the SPF Bill. Several provisions have been rearranged or taken out of the SPF Bill entirely, with the intention that they may be addressed through the Codes or Rules. For example, the 24-hour timeframe for regulated entities to act and report on actionable scam intelligence to the SPF Regulator (formerly section 58BX (3) – Sharing information about scams) has been removed.

Although we agree that some of the granular detail of the Framework may be better left to the Codes or Rules, we believe the SPF Bill can still benefit from greater specificity, not less, when it comes to enshrining consumer safeguards.

We are also left with limited content to scrutinise and we are asked to take a leap of faith that future Codes will serve consumers. The only certainty is that Codes cannot legally be inconsistent with the SPF Bill, hence the significance of including key provisions such as the key amendment on presumption of compensation.

Comparatively low industry investment in the SPF

The Impact Analysis provided by the Government, particularly the level of financial investment that will be required from some of the largest corporations, does not give much confidence that the obligations will be implemented to the level needed to truly protect consumers from well-resourced, industrialised scammers.

The Impact Analysis references a very low personnel investment required from medium to major size banks to comply with the SPF, equal to a 1.1 full-time equivalent (FTE) uplift in staff costs, with major banks expected to incur a combined \$6.1m initial cost and \$1m ongoing cost to meet their total regulatory requirements under the proposed Framework. Much of this cost may already be accounted for under the voluntary Scam-Safe Accord. A number of SPF regulated entities, including major banks, have also expressed concerns that they may find it difficult to implement all that is required under the proposed Framework. This includes how they ensure they correctly interpret the laws and meet the requirements for 'reasonable steps' in each individual circumstance for each consumer.

Furthermore, the Government has forecast significant taxpayer funded public investment in the Framework that does not guarantee any level of reimbursement of losses to victims. It will cost \$51.9 million over four years to enable regulators to administer and enforce the SPF, and \$112.5 million over 10 years to reflect overall regulatory and Government costs. The Government also estimates an overall increase in regulatory compliance costs of around \$228.8 million in the initial year of operation and \$88 million for each year after, across regulated entities.

In contrast, the UK PSR Final Policy Statement and cost benefit analysis in December 2023 forecast UK firms would be expected to invest approximately £17 million to £38 million per year to properly protect their customers.³⁴ This allows for administrative costs of investigating and delaying suspicious payments, pursuing completed payments and resolving disputes. The SPF Impact Analysis provides limited analysis of a projected decrease in overall scam losses expected under the SPF, which is starting from a substantially higher base compared to overall scam losses in the UK.³⁵ The PSR has reported that the resulting benefit to UK consumers

³⁴ UK Payment Systems Regulator. 'Policy statement – Fighting authorised push payment scams: final decision'. December 2023. Available at: <https://www.psr.org.uk/media/kwlgzti/ps23-4-app-scams-policy-statement-dec-2023.pdf>

³⁵ National Anti Scams Centre, ACCC. 'Targeting scams: Report of the National Anti-Scam Centre on scams activity 2023'. April 2024. Available at: <https://www.nasc.gov.au/reports-and-publications/targeting-scams>; UK Finance. 'Half Year Fraud Report'. October 2024. Available at: <https://www.ukfinance.org.uk/policy-and-guidance/reports-and-publications/half-year-fraud-report-2024>; UK Finance. 'Annual Fraud report'. June 2024. Available at: <https://www.ukfinance.org.uk/policy-and-guidance/reports-and-publications/annual-fraud-report-2024#:~:text=We%20saw%20some%20small%20reductions,and%20the%20number%20of%20cases>; UK Payment Systems Regulator. 'Authorised push payment (APP) scams performance report'. July 2024. Available at: <https://www.psr.org.uk/information-for-consumers/app-fraud-performance-data/>; <https://www.afr.com/companies/financial-services/how-an-asic-lieutenant-was-scammed-and-her-warning-for-consumers-20240701-p5jq6d>; <https://www.theage.com.au/politics/federal/a-scams-bill-that-protects-banks-over-victims-is-the-biggest-scam-of-all-20240919-p5kbt6.html>

would be comparatively significant, with the savings from reduced scam losses estimated to be between £70 million to £127 million per year.

The overall assessment of the PSR cost benefit analysis concluded that the new reimbursement requirement provides very substantial benefits overall outweighing the costs. It concludes that financial institutions will be incentivised to improve their fraud prevention capabilities, customers will enjoy greater protections, and fraud victims will have their money reimbursed promptly with very limited exceptions.

The Committee should recommend that the Government update the Impact Analysis to account for the larger scale investment and FTE that will be required by business to effectively implement and maintain systems to meet their SPF obligations.

Recommendation

Update the Impact Analysis to account for the larger scale investment and full-time equivalent that will be required by business to effectively implement systems to meet their SPF obligations.

Scam funding for community legal centres and financial counsellors needed

The lack of allocated funding for frontline specialist CLCs, financial counselling services and other non-fee charging consumer advocates to assist scam victims is alarming.

In our Exposure Draft Submission we provided the estimated cost for one CLC to meet demand for scam assistance – an average of \$28,000 and as much as \$69,000 a month.³⁶ With the introduction of a complex legislative regime, this cost will exponentially increase. Without dedicated funding the expected demand will divert scarce resources away from community legal organisations already at capacity in the face of growing demand from the cost-of-living crisis.³⁷

The Government needs to address this widening gap by sufficiently funding CLCs and financial counsellors. We are finding our services are increasingly at the coalface assisting scam victims, many of whom are experiencing significant vulnerability and have complex needs.

Key Recommendation

Provide dedicated scams funding to specialist consumer law, credit and debt community legal centres and financial counsellors to assist with consumer access, advocacy and implementation of the SPF.

³⁶ Joint Submission: Scams Prevention Framework – exposure draft legislation, p 30 ([Submission: Scams Prevention Framework – exposure draft legislation - Consumer Action Law Centre](#))

³⁷ Consumer Action Law Centre. March 2024. 'At the front line of the cost-of-living crisis: Insights from a Telephone Financial Counselling Helpline'. Available at: <https://consumeraction.org.au/report-at-the-front-line-of-the-cost-of-living-crisis/>. See also the [NDH Data Portal - National Debt Helpline](#), with calls at the highest volume since 2019.

3. Lack of laws is the greatest risk

Enforceable scam laws needed by 2025

Our best estimate is that a scam victim will not be able to bring a claim for compensation under the SPF and sector Codes until 2026. This is too long for scam victims to wait. These timeframes will further be prolonged unless the SPF Bill is passed when Parliament is next in session.

Scams are causing immense harm to Australian consumers on an unprecedented scale. The impacts to scam victim's lives are widespread with victims bearing 96% of the billions of dollars in losses each year. In our work, we hear of the considerable damage to health, family relationships, confidence transacting online and trust in essential institutions.

Scam complaints at AFCA in 2023-24 alone increased 81%.³⁸ As consumers continue to be targeted by scams, become more aware of their rights, and are faced with complex multi-party disputes, the demand on AFCA will only increase. In 2023, while reported scams losses were slightly down, reports to the National Anti-Scam Centre increased by approximately 20%.³⁹ Almost 30% of AFCA scam cases took between two months to one year or more to be closed. With no scam laws in place, these timeframes are also likely to increase.⁴⁰

With the Federal election imminent, Australians cannot risk the uncertainty of a changing political landscape – not while they are losing billions of their life savings to scammers. The SPF Bill must pass in early 2025. It cannot be left to AFCA to continue to deal with an increasing scam caseload in a vacuum of consumer protections. Although AFCA is working hard to close scam complaints in months rather than years, and while AFCA's approach to scam claims is shifting to give greater weight to the human experience, these developments are insufficient to fill the gaps in the absence of strong and workable scam laws needed to protect consumers.

Despite our concerns that the proposed Framework does not meet the needs of scam victims, there is also an urgent need to have laws in place to drive industry investment in scams prevention. We share Government and industry concerns that the SPF Bill will not pass during this term of government. This would be an immense loss of years of cross-sector work.

There are important parts of the SPF Bill that we have called for and welcome. These include a single door EDR system through AFCA; the right for scam victims to initiate complaints and seek redress against all regulated entities associated with a scam, regardless of if they had a pre-existing relationship; and oversight by empowered scam regulators led by the ACCC supported by timely reporting requirements and a robust penalties framework.

Parliament must pass the SPF Bill, with amendment, and promptly designate regulated industries so the full Framework is in force by the end of 2025.

³⁸ See: <https://www.afca.org.au/about-afca/annual-review>

³⁹ See: <https://www.afca.org.au/about-afca/annual-review>

⁴⁰ See: <https://www.afca.org.au/about-afca/annual-review>

Timing

We urge Government to implement the SPF Bill as follows:

SPF Bill	Passed by Parliament in February 2025.
Upon Royal Assent of SPF Bill	Telco, digital platforms, and banking are designated by the Minister. SPF principles apply immediately.
6 months post Royal Assent (second half-2025)	Telco, digital platforms and banking Codes are introduced, designated sectors given 8 weeks to comply.
8 months post Royal Assent	Future sectors designated, including superannuation and cryptocurrency exchanges.
12 months post Royal Assent	Next round of Codes introduced, designated sectors given 8 weeks to comply.
12 months post Royal Assent	EDR and apportionment of liability mechanism finalised and implemented.
3 years from the day the first SPF Code is made.	Review of operation of the SPF provisions.

Key Recommendation

Pass the Amended SPF Bill in the first sitting week of 2025.

4. Australia could have a world-leading scams response

An Australian modified reimbursement model

As Australia looks to introduce new scams laws, we have the opportunity to introduce a world-leading consumer-centred approach, building on the successes and learnings from other jurisdictions. Consumer advocates from across the country have unanimously called for a modified reimbursement model where banks reimburse their customers within 10 days, who can then apply fair apportionment principles to recover losses from other businesses in the scam chain.

As detailed in our Exposure Draft Submission,⁴¹ making telcos, digital platforms and banks accountable to scam victims under a modified Australian reimbursement model would provide victims with fast and fair redress, and place the strongest possible incentives on industry to prevent scams. It would align with an ecosystem wide scam prevention approach, equitably spread liability across businesses through an efficient apportionment system, and provide timely relief from the immense harm perpetrated on consumers who have been scammed.

Limits on reimbursement

Exceptions and limits to compensation could be sensibly applied in instances where consumers are found to have been grossly negligent. In the UK, a consumer 'standard of caution' exception exists to put limits on reimbursement and provide an appropriate incentive for consumers to take care and to address any so-called 'moral hazard'.⁴² To strike the right balance, in the UK, gross negligence is set at a high bar, and this exception does not apply to vulnerable consumers. Equally, financial institutions benefit from 'stop the clock provisions' from the 5-day reimbursement requirement. This can be activated in reasonable circumstances if more time is needed to gather information to help with their assessment, but they must arrive at an outcome within 35 business days to make sure there aren't any further delays to consumers being reimbursed. Reasonable monetary caps to reimbursement and a reimbursement excess could also apply in Australia. In the UK, a reimbursement cap of £85,000 (equivalent to approx. AUD\$164,500) has been adopted and covers 99% of scam claims.⁴³

The reimbursement approach in Malta

Another jurisdiction that has successfully implemented consumer reimbursement through a 'responsibility allocation model' at the Office of the Arbiter for Financial Services (**Ombuds**) level is Malta.⁴⁴ The Maltese model has attracted interest from across Europe and the world, due to its effectiveness in resolving scam and payment fraud complaints fairly and consistently. Under this model, if a scam complaint is filed with the Ombuds, financial firms must reimburse scam victims for their full losses except in case of gross negligence. The financial firm bears the onus of proving that the customer acted with gross negligence. The model features an innovative system of apportioning liability, where the Ombuds can consider special circumstances and a range of aggravating and mitigating factors to calculate the level of reimbursement arising from the various actions or inaction of the financial firm and the scam victim leading up to the scam loss. This includes taking into account the sophistication of the scam, the timing of actions taken, and the position of disadvantage experienced by the consumer.⁴⁵

⁴¹ See: <https://consumeraction.org.au/wp-content/uploads/2024/10/2024-10-04-Consumer-Organisations-SPF-exposure-draft-submission.pdf>

⁴² UK Payment Systems Regulator. 'Policy statement – Fighting authorised push payment scams: final decision'. December 2023. Available at: <https://www.psr.org.uk/media/kwlgvzti/ps23-4-app-scams-policy-statement-dec-2023.pdf>

⁴³ See: <https://www.psr.org.uk/news-and-updates/latest-news/news/groundbreaking-new-protections-for-victims-of-app-scams-start-today/>

⁴⁴ Arbiter for Financial Services, Malta. 'Annual Report 2023'. June 2024. Available at: <https://www.financialarbiter.org.mt/content/annual-reports>

⁴⁵ See: <https://www.financialarbiter.org.mt/content/technical-notes>

The model has been well-received and adopted by Malta's largest banks. The model's effectiveness has been evident as most new cases are being resolved without formal adjudication, either at the pre-mediation or mediation stages, as banks proactively apply the model's principles. The Ombuds expects financial firms to provide a final outcome to complainant's IDR matters within 15 days of receiving the complaint.⁴⁶

The model also operates to efficiently incentivise banks to voluntarily apply the responsibility allocation model for their customers who have been victims of a scam to prevent unnecessary escalation of complaints to the Ombuds and build goodwill with their customers. Additionally, the Ombuds encourages banks to revisit complaints from the past to proactively apply the model, to enable reasonable reimbursements where warranted.

⁴⁶ See: <https://www.financialarbiter.org.mt/content/complaint-handling-principles>