

Scams Prevention Framework Bill 2024

AFCA submission to the Senate Economics
Legislation Committee

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1. Introduction

The Australian Financial Complaints Authority (AFCA) is the external dispute resolution (EDR) scheme authorised under the *Corporations Act 2001* Cth (Corporations Act) for consumer and small business complaints about financial products and services. For over 25 years, AFCA and its predecessors have provided a free, fair and independent forum for the resolution of consumer and small business complaints in the financial sector.

AFCA has received **472,485** complaints and awarded total compensation of almost **\$1.38 billion** since commencing operations as the single EDR scheme for the financial services sector on 1 November 2018 to 30 June 2024. AFCA's systemic issues work has also seen the return of over **\$380 million** in compensation to over 4,900,000 consumers.

AFCA welcomes the Government's introduction of the *Scams Prevention Framework Bill 2024* (SPF Bill) into Parliament and the opportunity to make a submission to inform the Senate Economics Legislation Committee's assessment of the provisions of the SPF Bill.

2. Executive summary

AFCA strongly supports the establishment of a whole of ecosystem response to scams as proposed by the SPF Bill with clear, consistent and comprehensive obligations on designated firms to identify, detect, prevent, report and respond to scams.

A whole of eco-system response to scams: the case for change

Early and effective intervention and response is key to addressing the devastating personal outcomes and billions of dollars in losses to Australian consumers and small businesses resulting from scam activity.

Scam complaints lodged with AFCA have been increasing year on year. Over the past five financial years since 2020-21, AFCA has received approximately **27,000** scam related complaints. Over the same period, AFCA has dealt with more than 400,000 consumer and small business complaints across its broader jurisdiction.

In the 2023-2024 financial year, AFCA received over **11,000** scam complaints escalated from financial firms' Internal Dispute Resolution (IDR) processes.¹ These are complaints that firms did not resolve at the IDR stage. Complaints escalating to

¹ Complaint numbers reported here are based on the latest data available at the time of compilation. As complaints progress and / or new information is received, they may be reclassified. For this reason, there is a small variance between the case numbers reported here and those reported in AFCA's annual report for FY 23-24, where AFCA reported 10,928 scam complaints.

AFCA represent only 7% of the total of scam and fraud complaints firms received at IDR and reported to ASIC for the same period (**159,188** complaints). As reported by ASIC, 17% of these IDR complaints resulted in compensation outcomes to affected customers.² The evidence indicates that under current settings, scam complaints that progress to AFCA are more likely to receive compensation outcomes.³

AFCA's significant experience with scam complaints shows that current legislative and regulatory settings are not fit for purpose and are unable to fully and effectively respond to the complex and evolving challenges scams present. These limitations are set out in detail in AFCA's submission to Treasury, *Scams – mandatory industry codes (January 2024)*.⁴

AFCA supports legislative passage of the SPF Bill as key to shifting the dial in scam prevention and response and to establishing a consumer centred model that provides:

- legal clarity and certainty of obligations and accountability for consumers and regulated firms across the designated sectors for scam activity; and
- a simple pathway to redress.

Our submission sets out our observations on practical requirements necessary to achieve this outcome.

AFCA's role under the SPF

Under the proposed Scams Prevention Framework (SPF), it is intended that AFCA be authorised as the single EDR scheme for the first three designated sectors: banking, telecommunications and, digital platforms.

AFCA has extensive operational experience in:

- expanding its jurisdiction to new sectors and onboarding new member firms
- joining parties (different financial firms and authorised representatives) in multi-party complaints
- managing high volumes of complaints and dealing with complex technical issues
- consulting on and establishing a robust and effective operating model for the scheme with rules and processes that support effective EDR complaints resolution
- adapting and evolving operating and funding models to respond to emerging needs
- developing systems and technology solutions to support effective case handling
- reporting to multiple regulators to support timely regulatory intervention in response to systemic issues or serious contraventions of the law.

² [REP 801 Insights from internal dispute resolution data reporting: July 2023 to June 2024.](#)

³ [AFCA Annual Review shows record complaints, signs of downturn in scams | Australian Financial Complaints Authority \(AFCA\)](#)

⁴ [AFCA submission scams mandatory codes 2401 \(5\).pdf](#)

AFCA will leverage this experience and build capability in new sectors to establish Australia's first scams EDR jurisdiction. We look forward to collaborating with government, regulators, new and existing industry sectors, dispute resolution colleagues, particularly the Telecommunications Industry Ombudsman (TIO) and consumer sector stakeholders to deliver a robust, fair, independent and efficient dispute resolution process in line with the principles and objectives of the SPF Bill (and SPF rules and codes, still to be developed).

'Shifting the dial' in scam prevention and response

To 'shift the dial' in scam prevention and response to ensure consumers receive timely and fair redress from harms caused by scams activity, AFCA has identified the following practical requirements necessary to deliver a 'consumer centred model' under the response pillar of the SPF.

1. Regulated firms must have clear and consistent legal and industry standards to apply
2. Regulated firms must be the 'first responders' with primary responsibility to address scams activity causing consumer harms. This includes:
 - taking early, active and timely preventative action to address harms; and
 - responding effectively and fairly at IDR, demonstrating objective accountability and compliance with SPF requirements
3. There must also be an effective remediation framework to support timely regulatory intervention where groups of consumers are affected by the same event, particularly in a multi-party eco system
4. Clarity on proportionate liability and contribution to redress under a 'shared responsibility framework' will be critical to facilitate timely redress. It will underpin the effective operation of a multi-party IDR and EDR frameworks and reduce the risk of complex and adversarial complaint handling
5. A 'right door', simple path and process for both IDR and EDR.

Scam prevention and response – a resolution pathway



Active, early and timely intervention by regulated firms to respond to consumer harm arising from breaches of SPF obligations.



Ability to establish remediation and redress programs by regulators to address harm to groups of consumers arising from the same scams and breach event.



Effective, timely, consistent and fair internal dispute resolution processes supported by a certification model and "shared responsibility" redress framework that articulates and guides all participants about proportionate liability and contribution in different scenarios.



Effective, specialised and universal EDR for assessment and determination of liability and compensation in complex and multi-party disputes.

Reporting to regulators and industry on trends and patterns in the operation of the SPF and the shared responsibility model, arising from consumer complaints.

3. 'Shifting the dial' in scam prevention and response

3.1 Regulated firms must have clear and consistent legal and industry standards to apply

The SPF design provides that SPF rules and codes will establish specific obligations under the overarching SPF principles in the law. As proposed, the SPF rules may prescribe processes for liability apportionment alongside other aspects of IDR and EDR processes (including any certification requirements, if legislated) to bring clarity to some of the principles in the SPF such as what constitutes reasonable steps, with the SPF codes setting out sector specific obligations.

Simplicity and clarity of the SPF rules will be key to ensuring IDR settings are workable for firms and for AFCA to apply where complaints arise. Standards in the SPF rules must be specific and practical with clearly defined obligations and consequences for failing to meet those obligations, that link to the payment of redress.

Application of the ePayments code (ePC)

Under a consumer centred design for scam complaints (which may involve multiple, cross sector parties), it will be essential that the SPF is capable of holistically responding to the complaint. To enable this holistic response, AFCA considers that the SPF should expressly exclude the operation of the ePC from application to scam complaints. This will mitigate the risk of uncertainty, confusion, delay and cost for regulated firms and AFCA in deciding which regime applies when determining liability in scam complaints.

AFCA considers timely resolution of any conflict between the application of the SPF and the ePC is a priority ahead of SPF commencement. In doing so, it will be important to ensure that the uplift and harmonisation of standards for firms' response to scams in the transition to the SPF is achieved without reduction in consumer protections that may be available under current settings.

3.2 Regulated firms must be the 'first responders' with primary responsibility to address scam activity causing consumer harms

Early, active and timely action that supports early resolution

Consumer-centred design is a key principle for effective complaints handling and essential under a multi-sector framework. Under the SPF, this requires the 'front-end' of the framework for identification, detection, prevention and reporting of scams to work effectively with firms taking early, active and timely action to address harms, and responding effectively at IDR to resolve most matters early, with only more complex cases escalating for resolution to AFCA.

AFCA supports proposed amendments to the SPF bill which would require regulated firms to certify compliance with SPF obligations as part of the IDR process. Such a measure would go some way to addressing the information asymmetry and power imbalance that will exist between a victim of a scam and very large firms at IDR, particularly in a multi-party setting. This certification should be open to independent scrutiny by regulators and the EDR scheme to ensure accountability and the veracity of claims made. It should not be an absolute defence to a consumer complaint.

Responding effectively and fairly at IDR

IDR is complex in a multi-sector framework, and effective IDR is essential to the SPF delivering on its promise to consumers.

In AFCA's experience, consumers and small businesses who have been scammed can be reluctant to report or complain because of embarrassment or mental distress resulting from the nature of the deception and the quantum of loss. This underscores the need for IDR settings that centre the consumer experience with simple, accessible processes with the onus squarely on the firm for a timely response.

If firms are not resolving most scam complaints at IDR, this will result in additional consumer stress and harm and put pressure on EDR. For this reason, clear standards and expectations of firms at IDR are critical, in addition to consequences for non-compliance.

We note there remains a significant body of policy development work to be completed by government and SPF regulators to set clear and comprehensive IDR standards across the three designated sectors.

We anticipate these standards will leverage and modify existing IDR models and may be supported by tailored regulatory guidance and education, noting differences in IDR settings and experience across the first three designated sectors.

In 2024, AFCA implemented a significant systems transformation. This involved the launch of three new, integrated IT systems – a case management system (CMS), an enhanced member portal and a consumer portal for the delivery of EDR services. We consider there may be opportunities for SPF participants to consult on the establishment of systems and technology solutions, including potentially IDR portals, to support the effective and universal operation of dispute resolution at early stages, and across firms. This may include, for example, enhancing AFCA's technology and systems to facilitate member use for IDR.

3.3 An effective remediation framework to support timely regulatory intervention

The flow of intelligence to regulators under the SPF will support early identification, rectification and remediation activities where systemic failings emerge.

AFCA considers that timely and broad-based customer remediation is in line with the systems lens at the heart of the SPF design and an efficient mechanism to achieve outcomes at scale. This encompasses effective compensation outcomes for consumers who may have been affected by misconduct or other firm failure or breach, but who may not have lodged a complaint.

Regulatory guidance from SPF regulators that is comprehensive and tailored to SPF requirements will support effective remediation outcomes and timely regulatory intervention, where appropriate. For example, if a firm identifies one or more customers who have been a victim of a scam, they have an obligation to proactively investigate whether other customers have been impacted and must contact and remediate those customers. This shifts the onus to the firm rather than the consumer.

Applying a systems lens to customer remediation supports early and efficient resolution of matters and ensures that the onus to respond to scams continues to reside with regulated firms, rather than on individual consumers to lodge complaints at IDR or with AFCA.⁵

3.4 Clarity on proportionate liability and contribution to redress under a ‘shared responsibility framework’

Under the SPF design, firms across sectors have a shared responsibility to prevent and respond to scam harms. The Bill provides that the SPF rules may prescribe:

- processes and guidelines for how firms should interact with each other at the IDR stage to support early resolution of complaints; and
- guidance on how to apportion liability between multiple parties that may have breached their SPF obligations under a particular type of scam.

AFCA considers it essential that:

- the liability regime applies consistently across *all* sectors; and
- relevant SPF rules and codes have *identical settings* for apportionable claims under the SPF so that IDR, EDR and any remediation process can produce consistent outcomes in making a consumer ‘whole’ following scam losses.

⁵AFCA has extensive experience of customer remediations, a successful regulatory tool used to significant effect after the Hayne Royal Commission. ASIC has reported that over the seven years to September 2023 more than \$7 billion of remediation has been paid to an estimated 8.42 million Australian consumers for failures identified across the financial services industry. See [ASIC calls on licensees to strengthen remediation procedures | ASIC](#) See [RG 277 Consumer remediation | ASIC](#) and [Making it right: How to run a consumer-centred remediation | ASIC](#)

A ‘shared responsibility framework’ means that each participant has a role to play to support timely and comprehensive resolution of complaints. To achieve this will require all participants to:

- re-imagine key elements of dispute resolution as it currently operates
- shift from a ‘current state’ that decides complaints and apportions liability on a case-by-case basis which can be complex, costly and distressing to scam victims
- consider and develop models such as standardised decision trees, for example, that clearly and consistently apportion liability when obligations have not been met by one or more parties.

AFCA stands ready to contribute to the development of an Australian model for a ‘shared responsibility framework’ for scams that prioritises early resolution, group complaints handling, shared responsibility tables to support liability apportionment and the adoption of a remediation lens.

3.5 A ‘right door’, simple path and process for both IDR and EDR

AFCA was established and authorised as an EDR scheme under the *Corporations Act, 2001* and operates in accordance with statutory requirements and principles set out in the law and *ASIC Regulatory Guide 267: Oversight of the Australian Financial Complaints Authority* [RG 267].⁶

These operational and compliance requirements and principles—which include accessibility, independence, fairness, accountability efficiency, and effectiveness—will continue to apply to AFCA’s operations under the SPF.

AFCA is committed to working with all SPF stakeholders including policy makers, regulators, firms, existing dispute resolution schemes and consumer groups to:

- test different scam scenarios to ensure consumer access to the ‘right door’ to complaints resolution, removing barriers and confusion
- develop tools and clear pathways for all parties to follow—leveraging and extending existing systems, processes and standards for ‘joined’ complaints
- consult on customised and tailored rules for escalated scam complaints
- develop tools, frameworks (and guidance, as appropriate) to support timely resolution of multi-party group complaints
- communicate effectively to consumers about where to go for help
- enhance existing statutory reporting arrangements to regulators
- build capability and expertise in new sectors with firms, EDR schemes, regulators and sector stakeholders.

⁶ See [RG 267 Oversight of the Australian Financial Complaints Authority | ASIC](#)