EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Competition and Consumer Act 2010

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

Subsection 58AC(1) of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may designate one or more businesses or services to be a regulated sector of the Australian economy for the purposes of the Scams Prevention Framework (SPF) in Part IVF of that Act. Further, subsection 58ED(1) provides that the Minister may designate a Commonwealth entity to be an SPF sector regulator for a regulated sector.

The purpose of the *Competition and Consumer (Scams Prevention Framework—Regulated Sectors) Designation 2025* (the Designation) is to implement the Government's commitment to designate the banking, telecommunications and digital platforms (initially social media, instant messaging and internet search engine services) sectors as regulated sectors under the SPF. The Australian Securities and Investments Commission (ASIC) is the SPF sector regulator for banking, the Australian Communications and Media Authority (ACMA) is the SPF sector regulator for telecommunications, and the Australian Competition and Consumer Commission (ACCC) is the SPF sector regulator for digital platforms.

The SPF was introduced into the Act in 2025 as a whole-of-economy initiative aimed at preventing and responding to scams affecting the Australian economy. Under the framework, designated sectors of the economy are required to comply with principles-based obligations (referred to as SPF principles) and sector-specific codes (known as SPF codes).

Broadly, any entity that carries on or provides a business or service comprising a regulated sector is a regulated entity for that sector, and the business or service provided is a regulated service for that entity. Regulated entities must comply with the SPF principles, which require the entities to take reasonable steps to prevent, detect and disrupt scams, report about and respond to scams, and have governance arrangements related to scams, with respect to their regulated services. A regulated entity must also comply with any SPF code made for the sector, which contain sector-specific obligations.

Designation of the banking sector

This instrument designates the banking sector as a regulated sector under the SPF. The banking sector is comprised of banking services provided by authorised deposit-taking institutions

(ADIs). This designation makes ADIs subject to the SPF obligations in relation to their banking services.

Consumers' trust in ADIs is critical to the Australian economy. ADIs are entrusted with safeguarding consumer funds and play a central role in the financial system. However, they are also a key channel through which scams are perpetrated. Scamwatch data highlights the prominence of bank transfers in scam-related losses, with bank transfers the most common reported payment method by victims in scams, accounting for a combined consumer financial loss of $141.7 million in 2024.

Despite some progress through industry-led initiatives, gaps remain in scam prevention and consumer support. There is a need for more consistent and coordinated action across the sector to reduce harm and ensure accountability.

Reports published in 2023[1] and 2024[2] by ASIC found that the approaches of banks to scam governance and strategy were variable and less mature than expected. These reviews identified inconsistencies in scam detection, response and victim support across institutions.

Designating the banking sector under the SPF ensures that ADIs use appropriate and proactive anti-scam measures and adhere to the SPF principles and SPF code (if made).

Designation of the telecommunications sector

This instrument designates the telecommunications sector as a regulated sector under the SPF. The telecommunications sector is comprised of services provided by carriers and carriage service providers (CSPs) in connection with voice calls and messages, excluding those delivered wholly over the internet.

The Australian community relies on the telecommunications network for a range of personal and business purposes. However, it is also a common channel used by scammers to initiate and sustain deceptive activity. Scamwatch reported that scams where phone calls were the contact method accounted for $107.2 million in reported losses in 2024.

Scammers frequently use phone calls and text messages to impersonate legitimate entities, deliver phishing links and manipulate victims into sharing sensitive information or transferring funds. These channels are often the first point of contact and may also be used to build trust over time, as seen in investment scams.

Certain telecommunications activities are currently regulated by an industry code, C661:2022 Reducing Scam Calls and Scam SMs (the industry code), registered by the ACMA under subsection 117(2) of the *Telecommunications Act 1997* (the Telecommunications Act). The

industry code was developed by the Australian Telecommunications Alliance and registered in July 2022.

It is expected that the SPF code for the telecommunications sector will replace the existing industry code, subject to its deregistration under the Telecommunications Act. Accordingly, the policy intent is for the scope of the telecommunications designation to generally capture the same businesses and services captured by the industry code.

Designating the telecommunications sector under the SPF ensures that carriers and CSPs implement consistent and proactive anti-scam measures, including intelligence sharing and service-level protections. This reflects the unique technical capabilities available within the telecommunications network to detect and disrupt scams, which differs from those of other digital communication channels.

Designation of the digital platforms sector

This instrument designates the digital platforms sector as a regulated sector under the SPF. The digital platforms sector is comprised of social media services, instant messaging services, and internet search engine services. This designation is not intended to define the term digital platforms in law or capture all digital services in the economy, but rather to address specific areas of risk.

Australians rely heavily on digital platforms in their day to day lives both for personal and work purposes and they are a significant point of vulnerability in the scam's ecosystem. The prevalence of scams on digital platforms is alarming, with social media, mobile apps and internet scams comprising 61% of all reports to Scamwatch in 2024. Social media was the most reported contact method leading to financial loss through scams, with reported losses to social media scams being $69.5 million in 2024.

The September 2022 Digital Platform Services Inquiry interim report[3] conducted by the ACCC identified that digital platforms were not taking sufficient and consistent steps to protect users from scams. It recommended targeted regulatory measures, including mandatory scam prevention and removal mechanisms, user and ad verification and public reporting on scam mitigation efforts.

Designating the digital platforms sector under the SPF responds directly to these concerns. It ensures that platforms implement consistent and proactive measures to prevent, detect and disrupt scams, and are accountable for the safety of their users.

Pursuant to subsection 33(3) of the *Acts Interpretation Act 1901* the Minister may vary or repeal a designation instrument once made.

The Designation is a legislative instrument for the purposes of the *Legislation Act 2003*, and is subject to the disallowance and sunsetting regimes under that Act.

The Designation commences on 1 July 2026.

Details of the Designation are set out in Attachment A.

ATTACHMENT A

Details of the *Competition and Consumer (Scams Prevention Framework – Regulated Sectors) Designation 2025*

Part 1 – Preliminary

This Part sets out machinery provisions, including the name of the instrument, the commencement, authorising legislation and definitions.

Section 1 – Name

This section provides that the name of the instrument is the *Competition and Consumer (Scams Prevention Framework – Regulated Sectors) Designation 2025* (the Designation).

Section 2 – Commencement

The Designation commences on 1 July 2026.

Section 3 – Authority

The Designation is made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Definitions

This section sets out definitions relevant to the Designation.

Definitions of general application

The term ***the Act*** means the *Competition and Consumer Act 2010*.

Definitions relevant for the banking sector

The following terms are definitions relevant to the banking sector:

- ***Banking business*** has the same meaning as in the *Banking Act 1959* (the Banking Act). Under subsection 5(1) of that Act, banking business means a business that consists of banking within the meaning of paragraph 51(xiii) of the Constitution, or a business that is both carried on by a corporation which paragraph 51(xx) of the Constitution applies and consists, to any extent, of:
  - both taking money on deposit (otherwise than as part-payment for identified goods and services) and making advances of money; or

– other financial activities prescribed by the regulations for the purposes of this definition.

- ***ADI*** has the same meaning as in the Banking Act. Under that Act, an ADI (authorised deposit-taking institution) is a body corporate that has authority from the Australian Prudential Regulation Authority (APRA) under subsection 9(3) of that Act to carry on banking business in Australia.

- ***Restricted ADI*** is an ADI that has authority under section 9 of the Banking Act to carry on a banking business in Australia, but for a limited time only, in accordance with section 9D of that Act.

- ***Covered banking service*** is defined in section 5 of the Designation. This is explained in detail later in this Explanatory Statement.

Definitions relevant for the telecommunications sector

The following terms are definitions relevant to the telecommunications sector

- ***Carriage service*** is defined in section 7 of the Telecommunications Act as a service for carrying communications by means of guided and/or unguided electromagnetic energy. An example of a carriage service includes a voice call service.

- A ***carrier*** is the holder of a carrier licence granted by the Australian Communications and Media Authority (ACMA) under section 56 of the Telecommunications Act. A ***carrier*** owns the network units that deliver carriage services to the public. A ***carrier*** may also be a nominated carrier as defined in section 7 of the Telecommunications Act, if a nominated carrier declaration under section 81 of that Act is in force in relation to one of the carrier's network units.

- The term ***covered telecommunications service*** is defined in subsection 13(2) of the Designation. This is explained later in this Explanatory Statement.

- The term ***listed carriage service*** has the same meaning as in section 16 of the Telecommunications Act. In simple terms, a ***listed carriage service*** is any carriage service between a point and one or more other points, where one 'point' is connected to Australia. The term 'point' is also defined in section 16 of the Telecommunications Act. This means that a ***listed carriage service*** effectively refers to the services provided by a carriage service provider for communications connected to Australia.

- The term ***message*** means a message (within the meaning of the *Spam Act 2003*) other than a message sent using a voice call service. A message in that Act means information

whether in the form of text, data, speech, music or other sounds, visual images (animated or otherwise), in any other form, or in any combination of forms.

- A ***message service*** is a service that enables messages to be sent or received using a carriage service (other than where a message is carried wholly over the internet). This includes, but may not be limited to, a short message service, multimedia message service and rich communication service. These services are all ways to send messages, but they provide different functionalities and features. ***Message services*** are subject to the Designation in the telecommunications sector when they are sent using a service provided by a carrier and public carriage service provider. This means that messages wholly sent over the internet, such as instant messages, are not captured in the telecommunications sector. These types of communications will generally be captured in the digital platforms sector. For example, if an instant message is sent from a scammer to an SPF consumer using an over-the-top application and is carried wholly over the internet, it is not a regulated service in the telecommunications sector.

- A ***public carriage service provider*** is a carriage service provider as defined in the Telecommunications Act. Under subsection 87(1) of the Telecommunications Act, a carriage service provider is a person who supplies, or proposes to supply, a listed carriage service to the public using a network unit owned by one or more carriers or a network unit in relation to which a nominated carrier declaration is in force. For example, a supplier of voice call services or message services. It also includes an international carriage service provider and carriage service intermediary as defined within subsections 87(2) and (5) of the Telecommunications Act respectively. An international carriage service provider is a person who supplies, or proposes to supply, a listed carriage service to the public (where one of the points is in Australia and one of the points is outside of Australia) using a line link connecting a place in Australia and place outside of Australia, or using a satellite facility. A carriage service intermediary is also a public carriage service provider as they are a person who arranges, or proposes to arrange, for the supply of a listed carriage service by a carriage service provider to a third person (i.e. it is the middle person that acts between the carriage service provider and customers). A carriage service provider does not need a licence issued by ACMA to operate. A ***public carriage service provider*** does not include a person who is a carriage service provider only because of subsection 87(3) of the Telecommunications Act. Subsection 87(3) provides that particular carriers or exempt network-users who supply a carriage service to the public are carriage service providers for the purposes of the Telecommunications Act. This includes, for example, transport authorities, broadcasting services and electricity supply bodies.

- The term ***voice call*** has the same meaning as in the *Do Not Call Register Act 2006*. Under section 4 of that Act, a ***voice call*** means a voice call within the ordinary meaning of that expression; or a call that involves a recorded or synthetic voice; or if a call such as that

already mentioned is not practical for a particular recipient with a disability (for example, because the recipient has a hearing impairment) – a call that is equivalent to a call previously mentioned, whether or not the recipient responds by way of pressing buttons on a telephone handset or similar thing. Generally, a ***voice call*** is a call made on a phone or other device in which participants can hear but not see each other.

- A ***voice call service*** means a service that enables voice calls to be made or received using a carriage service (other than where a voice call is carried wholly over the internet). The intention of this exclusion is that where a call is initiated using the internet but then terminates on a carriage service (or vice versa), it will be subject to the Designation as part of the telecommunications sector. For example, a voice call from a scammer that originates from an over-the-top service call application that uses the internet to a person's mobile phone number (and so it terminates on a carriage service) is intended to be captured in the telecommunications sector. However, where a voice call service is facilitated entirely over the internet, it is not a regulated service in the telecommunications sector.

Definitions relevant for the digital platforms sector

The following terms are definitions relevant to the digital platforms sector:

- ***Accounting standards*** means accounting standards within the meaning given by the *Corporations Act 2001*, international accounting standards made or adopted by the International Accounting Standards Board, or accounting standards made by a responsible body of a foreign country that correspond to (and are equivalent to) either such standards.
  - For example, the Generally Accepted Accounting Principles published by the Financial Accounting Standards Board.
- An entity is a ***controlled entity*** of another entity if the other entity controls the entity. ***Control*** of an entity by another entity has the same meaning as in the accounting standards.
- ***Electronic service*** has the same meaning as in the *Online Safety Act 2021*, which is currently defined in that Act to be a service:
  - that allows end-users to access material using a carriage service; or
  - that delivers material to persons having equipment appropriate for receiving that material, where the delivery of the service is by means of a carriage service;
  - but does not include a broadcasting service or a datacasting service (both within the meaning of the *Broadcasting Services Act 1992*).
- ***Material*** has the same meaning as in the *Online Safety Act 2021*.

The definitions of ***active Australian user test***, ***Australian revenue***, ***covered digital platform service***, ***designated instant messaging service***, ***designated internet search engine service***, ***designated social media service, instant messaging service*** and ***revenue test*** are explained in detail at relevant points later in this Explanatory Statement.

Parts 2 to 4 - Designation of regulated sectors

Parts 2 to 4 designate the banking, telecommunications and digital platforms sectors as regulated sectors of the Australian economy for the purposes of subsection 58AC(1) of the Act. Under section 58AD of the Act, any entity that carries on, or provides, a business or service that is included in the regulated sector is automatically a 'regulated entity', and the business or service is a 'regulated service' for the entity in accordance with that section. Regulated services are not designated in this instrument by reference to the recipient of a particular service. A regulated service may be provided to an SPF consumer directly or indirectly, whether or not under a contract, arrangement or understanding with the person, or whether or not the regulated entity knows that person is a natural person or small business operator. A regulated service may involve the supply of goods.

Regulated entities must comply with the SPF principles in Part IVF of the Act. The SPF principles require these regulated entities to take reasonable steps to prevent, detect and disrupt scams, report about and respond to scams, and have appropriate governance arrangements relating to scams. The Australian Competition and Consumer Commission (ACCC) regulates and enforces compliance with the SPF principles as the SPF general regulator.

The SPF principles will be supported by an SPF code for each regulated sector, which sets out sector-specific obligations. These code obligations must be consistent with the SPF principles but will be more prescriptive in nature. The SPF sector regulator designated for the sector will regulate and enforce compliance with the SPF code for that sector.

Failure to comply with obligations in the SPF principles and SPF codes may attract civil penalties. Further, a regulated entity may be liable to an SPF consumer in civil action for damages for loss or harm.

While the scope of the instrument is intended to be broad enough to capture indirect services, the instrument is generally limited in its application by the scope of the SPF regime, which applies to scams that are attempts to engage 'SPF consumers', that is, natural persons and small business operators.

Part 2 – Designation of services as a regulated sector – banking

<u>Section 5 – Designation of services as regulated sector - banking</u>

Subsection 5(1) provides that, for the purposes of subsection 58AC(1) of the Act, covered banking services are designated as a regulated sector.

Subsection 5(2) defines ***covered banking service*** to be:

- a service provided by an ADI in the course of carrying on its banking business; or
- the provision of a purchased payment facility (PPF) within the meaning of the *Payment Systems (Regulation) Act 1998* by an ADI, to the extent this is not already a service provided in the course of carrying on banking business.

Accordingly, an ADI (unless it is a restricted ADI – see exception explained further below) that provides a covered banking service is a regulated entity for the purposes of the banking sector and a covered banking service is a regulated service for that entity. In effect, this makes ADIs subject to the SPF with respect to their covered banking services. To avoid doubt, a service is only a covered banking service if it is provided by an ADI (except a restricted ADI).

Covered banking service

The banking sector captures each service that forms part of an ADI's banking business. These services are 'regulated services' for the ADI. This includes (without limitation):

- Opening, closing or making available a bank account, margin lending facility, cheque account, credit facility or other like facility, including issuing of a digital or physical bank card.
  - For example, an ADI would have obligations under the SPF with respect to a scammer opening a bank account in a victim's name with that ADI.
- Receiving money on deposit.
- Making advances of money (such as loans and provisions of credit).
  - This may include credit card facilities, home loans, personal loans, margin loans and buy-now-pay-later contracts.
  - It may also include banking services provided by the ADI in a 'white labelling' arrangement. For example, if a credit card facility is branded and distributed by a person other than an ADI (such as a department store) but provided by the ADI, the department store distributing the branded card would not have obligations under the SPF. However, the ADI that provides the credit card would have SPF obligations as they are an ADI providing a covered banking service.

- Enabling transactions, transfers, payments or receipt of money through an account or facility provided by that ADI, including via cheques.
  - For example, a scam victim transfers money from a bank account with an ADI to a scammer's bank account with a different ADI. In this example, the victim is an SPF consumer of both the 'sending' ADI and the 'receiving' ADI, despite the 'receiving' ADI having no contractual relationship with the victim. The 'sending' ADI has provided a direct covered banking service to the victim, and the 'receiving' ADI an indirect covered banking service to the victim.
  - An ADI providing the covered banking service must comply with the SPF in relation to transaction and payment activity, even if the ADI is using a third-party service to support that transaction and payment capability.
- Providing and enabling use of a PPF authorised to be banking business under regulation 6 of the *Banking Regulation 2016*.

Services not captured

Any service provided by an ADI that is not a covered banking service is not a regulated service for that ADI. For example, the provision of insurance products, superannuation products or share trading services by an ADI are not performed when carrying on a banking business, so are outside of the scope of the banking sector.

In addition, services provided by payment providers, including, for example, transaction initiation and the clearing and settlement of payments, would not be captured in the banking sector. Though these services may be offered by an ADI, they are provided to other entities, and are not provided in the course of the ADI carrying on its banking business.

Provision of a PPF

To the extent it is not already captured by limb (a), the provision of a PPF provided by an ADI is also a regulated service in the banking sector. This limb is included to put beyond doubt that a PPF that is provided by an ADI is a covered banking service whether or not the PPF meets the further requirements in regulation 6 of the *Banking Regulation 2016*, in particular whether or not APRA has determined the facility meets the criteria specified in that regulation.

Exception – services provided by restricted ADIs

Subsection 5(3) sets out a general exception to the definition of ***covered banking service***, by providing that a service is not a covered banking service if it is provided by a restricted ADI.

Restricted ADIs are not regulated entities for the purposes of the banking sector. This is because restricted ADIs are often new businesses that do not yet have established systems and processes. They only have authority to carry on banking business for a limited time (up to two years) and generally use this period as a pathway to obtain a full ADI licence. Therefore, although services provided by restricted ADIs are excluded from the banking sector, a restricted ADI will become a regulated entity for the purposes of the banking sector once it obtains its full ADI licence.

Section 6 – Designation of SPF sector regulator – banking

ASIC is designated as the SPF sector regulator for the banking sector.

Part 3 – Designation of regulated sector – telecommunications

Section 13 – Designation of services as regulated sector – telecommunications

Subsection 13(1) provides that for the purposes of subsection 58AC(1) of the Act, covered telecommunications services are designated as a regulated sector.

Subsection 13(2) provides that a ***covered telecommunications service*** is either a voice call service, or a message service, if the service is provided by a carrier and a public carriage service provider using a listed carriage service. This excludes voice call and message services that are carried wholly over the internet but includes voice call and message services that are initiated over the internet that terminate on a carriage service (or vice versa).

This is intended to capture both the retail arm of providing call and messaging services that would be attributed to a public carriage service provider as well as the role telecommunications infrastructure provides in delivering the services as would be attributed to a carrier. In some instances, a person may be operating as both a carrier and a public carriage service provider. It is anticipated that the end-to-end delivery of a scam message or call may involve multiple carriers and/or public carriage service providers who would all be captured by the SPF with respect to their individual role. The telecommunications sector is not intended to capture other services that an entity that is a carriage or public carriage service provider may provide. For example, if a public carriage service provider is also a reseller of insurance or energy services, these would not be in scope for the telecommunications sector.

The supply of a covered telecommunications service requires a person acting in the capacity of a carrier and a public carriage service provider. It may be same person or a different person.

Section 14 – Designation of SPF sector regulator – telecommunications

For the purposes of subsection 58ED(1) of the Act, the ACMA is designated as the SPF sector regulator for the telecommunications sector.

Part 4 – Designation of regulated sector - digital platform

Section 15 - Designation of services as regulated sector - digital platform

Subsection 15(1) provides that, for the purposes of subsection 58AC(1) of the Act, covered digital platforms services are designated as a regulated sector.

Subsection 15(2) provides that a service is a covered digital platform service, at a time, if the service is:

- a designated instant messaging service, a designated internet search engine service or a designated social media service; and
- the service is accessible to, or delivered to, one or more end-users in Australia; and
- either the service meets the Australian active user test at that time or the entity that provides the service meets the revenue test at that time.

In effect, this means there are three criteria for a service to be a covered digital platform service. Firstly, the service must be a particular type of service. Secondly, the service must have the requisite nexus to Australia. Thirdly, the service (or entity providing the service) must meet the active user or revenue test.

These terms and tests are explained in further detail below.

Because of section 58AD of the Act, an entity that provides a covered digital service is a regulated entity for the digital platforms sector, and that covered digital service is a regulated service for the entity.

This Designation does not select an entity to be the SPF sector regulator for the digital platforms sector. Accordingly, because of the operation of 58ED(2) of the Act, the ACCC is the SPF sector regulator for the sector.

Services captured by the digital platform designation

Designated social media service

Section 7 of the Designation defines ***designated social media service*** to be an electronic service (see section 4) that satisfies two conditions.

Firstly, the service must be a social media service. Social media is not defined in the Designation and is intended to have its ordinary meaning. For example, the Macquarie Dictionary defines social media as online social networks used to disseminate information through online social interaction. This ensures the definition remains up-to-date and adaptative with developing notions and concepts of social media.

Broadly, social media is intended to capture online social networks that facilitate online social interaction by allowing end-users to upload, post or otherwise share information, material or other kinds of content, (whether it be in the form of text, video, links, audio or another format) with other end-users, including to the user-base at large. To avoid doubt, this may include, for example, online video streaming services or professional networking services if such a service allows end-users to post content (as opposed to just browsing content).

Secondly, the provision of the social media service by an entity must not be ancillary or incidental to the provision of one or more other electronic services by the entity. This is essentially intended to exclude social media services that are provided only to supplement other electronic services.

An example of when a service is ancillary or incidental is provided in section 7 – an online gaming service that also enables online social interaction between end-users (such as through a chat feature) as an ancillary service to the main service of online gaming. In this example, this service would not be a designated social media service. Further examples of services that may enable online social interaction between end-users as an incidental or ancillary service to a main service include:

- education, news, or health websites or apps that allow users to make comments;
- online personal blogs that allow users to make comments;
- dating and ride-hailing apps that allow matched groups of users to communicate with one another; and
- websites for buying and selling of goods or services (such as online shops or marketplaces).

However, where a social media service and an instant messaging service are provided together, it is not intended that they will be considered ancillary or incidental to each other. The instant messaging service would be captured as part of the designated social media service.

A regulated entity that provides a designated social media service is subject to the SPF for scams that occur in relation to the service, including, for example scams instigated through an instant

messaging service that is offered as part of the social media service, advertisements on the social media service and information posted using the social media service.

Designated internet search engine services

Section 6 of the Designation defines a ***designated internet search engine*** to be an electronic service (see section 4) that satisfies four conditions.

Firstly, the service must be an internet search engine service. This is not defined in the Designation and is intended to have its ordinary meaning. For example, the Macquarie Dictionary currently defines search engine as software which enables a user to find items on a database on the internet. This is not intended to include dedicated generative AI chatbot services that incorporate internet search functionality; but is intended to include search engines that use generative AI as part of offering their search services.

Secondly, the service must not be limited to searching for items on a limited or restricted database rather than searching for items on the internet more broadly. For example, a job search site that allows a user to search for job openings advertised or listed on the site does not meet this condition. Similarly, a news site that allows a user to search for articles published on the site does not meet this condition.

Thirdly, the service must not be limited to searching for items to compare prices for particular goods or services, or across a particular sector, rather than search for items on the internet more broadly. For example, an online marketplace that lists a range of goods that can be bought and sold through the site does not meet this condition. Similarly, an airfare or hotel booking site that allows a user to compare prices across those sectors does not meet this condition.

Fourthly, the service must not be a designated social media service. This is because such a service is already designated for the digital platforms sector.

A regulated entity that provides a designated internet search engine service is subject to the SPF for scams that occur in relation to the service, including in advertisements on the service.

Designated instant messaging service

Section 5 of the Designation defines a ***designated instant messaging service*** to be an electronic service (see section 4) that satisfies five conditions.

Firstly, the service must be an instant messaging service. Instant messaging is intended to have its ordinary meaning. For example, the Macquarie Dictionary currently defines instant messaging as text-based, real-time communication between individuals by means of a network of computers or the internet. The intention is for this to include, but not be limited to, text-based, voice-based or video-based communication, as well as the sharing of links and files through a messaging

service. As such, the meaning is clarified in section 4, which specifies that ***instant messaging service*** includes real-time communication of non-text-based-material. It is only intended to include instant and direct communication sent or delivered wholly via the internet. It is therefore not intended to include emails or comment sections, for example.

Secondly, the provision of the instant messaging service by an entity must not be ancillary or incidental to the provision of one or more other electronic services by the entity. An example of when a service is ancillary or incidental is provided in section 5 – an online gaming service that also enables end-users to communicate with other end-users (such as through a chat feature) is an ancillary service to the main service of online gaming. As such, the chat feature that is an instant messaging service is not a designated messaging service. As another example, dating apps allow end-users to communicate with each other through messaging – but this functionality is incidental to the main service of these apps, which is matching users with other users seeking romantic relationships.

Thirdly and fourthly, the service must not be a designated internet search engine or designated social media service. This is because such services are already designated for the digital platforms sector. For example, a designated social media service may, as part of that service, include an instant messaging service. The provision of this instant messaging service is already captured as part of the designated social media service and is therefore excluded from being a designated instant messaging service. However, if the instant messaging service is capable of being provided independently of the designated social media service (for example, accessible through its own mobile app or website), it would be captured as a designated instant messaging service.

Fifthly, the service must not be a covered telecommunications service. This puts beyond doubt that designated instant message services are intended to only capture instant-messaging services provided wholly using the internet.

A regulated entity that provides a designated instant messaging service is subject to the SPF for scams that occur in relation to the service, including, for example scams instigated through messages on the service, through links sent on the service or in advertisement on the service.

<u>Nexus test</u>

The requirement that the service be accessible to, or delivered to, one or more end-users in Australia provides a nexus to Australia, which is necessary given the designation powers in the Act allow a sector of the *Australian* economy to be designated as a regulated sector.

<u>Sections 8, 9 and 10 - Threshold tests</u>

The provision of designated services described above will only be regulated services for the purposes of the SPF when the service meets the nexus test and either the Australian active user test or the entity providing the service satisfies the revenue test. The entity does not need to meet both the active user test and revenue test to be a regulated entity.

This test acknowledges that many digital platforms are international-based entities and is designed to ensure the Designation captures digital platform services that present the highest likelihood of exposing Australian consumers to scams, including services predominately used by vulnerable communities, while balancing regulatory and compliance burden on small entities that have low use and scam risk in Australia.

Active user test

Section 8 sets out the active Australian user test. A designated digital platform service that satisfies the active Australian user test is a regulated service for the purposes of the digital platform sector.

A service satisfies the active Australian user test if the average monthly active Australian users of the service is 500,000 or more. The test is considered on 1 January of each year, and an entity will be taken to meet the test for that calendar year if, for the financial year immediately before the test time, the user amount was satisfied. Financial year means a period of 12 months starting on 1 July (see section 2B of the *Acts Interpretation Act 1901*). For example, for the test time of 1 January 2030, the financial year ending 30 June 2029 will apply.

For entities that are not already captured on commencement or under the revenue test, this has the effect of providing entities a six-month period before obligations under the SPF will apply, as an entity will know six months prior to the test time whether they will satisfy the test. For example, an entity will know on 30 June whether they will satisfy the Australian active user test on 1 January for the following calendar year.

The average monthly active Australian users should be calculated as an average over the period of the 12 months in the Australian financial year. An active Australian user of a service is one that engaged with or accessed the service at least once in the test year. The user does not need to have an account with the service or be logged into an account.

The regulated entity is not expected to profile or track users to avoid double counting. Where a regulated entity has the means to identify inauthentic users, such as bots, these may be discounted when calculating the average monthly active users.

The active user test is intended to be similar to the active user test used in the Internet Search Engine Services Online Safety Code (see section 7(6)).

Revenue test

Section 10 sets out the revenue test. An entity that provides a covered digital platform service and meets the nexus test and revenue test is a regulated entity for the purposes of the digital platforms sector.

An entity satisfies the revenue test for a calendar year if on 1 January of that year, either of the following apply:

- the entity meets a revenue threshold under this test for the entity's most recently ended 12-month financial reporting period ending immediately before 1 January;
- the entity meets a revenue threshold under this test in at least two of the last three financial reporting periods ending immediately before 1 January.

As clarified in the note in section 10, this means that if the entity does not satisfy either limb of the revenue test on 1 January of a calendar year, the entity does not satisfy the revenue test at any time during that calendar year.

The revenue test uses a 12-month financial reporting period rather than a financial year to reflect that different entities have different financial reporting periods. For example, one entity's 12-month financial reporting period may end on 31 December whereas another entity's 12-month financial reporting period may end on 30 June.

An entity meets a revenue threshold under this test if either of the following apply:

- the Australian revenue of the entity (first entity), each controlled entity of the first entity, each entity that controls the first entity and each controlled entity of the entity that controls the first entity sums to $100 million or more;
- the gross revenue of the entity (first entity), determined in accordance with the accounting standard (see section 4) each controlled entity of the first entity, each entity that controls the first entity and each controlled entity of the entity that controls the first entity sums to $1 billion or more.

To avoid double counting, Australian revenue or gross revenue for an entity that is already included for another entity, for example because consolidated financial statements are prepared, is not counted for the first-mentioned entity. That is, the Australian revenue or gross revenue of a controlled entity is not included in the calculation if the parent entity's consolidated revenue is also being included.

To assist compliance with the revenue test, section 9 defines an entity's Australian revenue to be so much of the entity's gross revenue, determined in accordance with the accounting standards that is attributable to transactions or assets within Australia, or transactions into Australia.

Examples of the revenue test

Example 1: An entity that provides a social media service that is accessible to, or delivered to, one or more end-users in Australia has a combined gross revenue of $1.08 billion in the 12-month financial reporting period ending 30 June 2026. The entity also had a combined gross revenue over $1 billion in the last two 12-month financial reporting periods (financial years ending 30 June 2024 and 30 June 2025).

On 1 January 2027 (the test time), the entity considers whether it meets the revenue threshold for the purposes of the 2027 calendar year. The entity is taken to satisfy the revenue test as it meets the requirements in paragraphs 10(1)(a) and (b) and must comply with the SPF during the 2027 calendar year.

In the next 12-month financial reporting period ending 30 June 2027, the entity has a combined gross revenue of $980 million. On 1 January 2028 (the test time), the entity considers whether it meets the revenue threshold for the purposes of the 2028 calendar year. The entity is taken to satisfy the revenue test for the 2028 calendar year as its revenue in two of the three previous financial reporting periods was over $1 billion (meeting the requirement in paragraph 10(1)(b)).

In the next 12-month financial reporting period ending 30 June 2028, the entity has a combined gross revenue of $1.12 billion. On 1 January 2029 (the test time), the entity considers whether it meets the revenue threshold for the purposes of the 2029 calendar year. The entity is taken to satisfy the revenue test for the 2029 calendar year as it meets the requirements in paragraphs 10(1)(a) and (1)(b).

In calculating the gross revenue, the entity included the gross revenue (determined in accordance with accounting standards) of itself, its controlled entities, its controlling entities and entities that its controlling entity controls. This was also subject to the provision that prevents double counting by requiring that revenue from a controlled or controlling entity be excluded if it is already included in another entity's consolidated revenue. This ensures the revenue test reflects the actual economic scale of the group without overstating total revenue.

Example 2: An entity that provides an instant messaging service is accessible to, or delivered to, one or more end-user in Australia has a combined gross revenue of $1.08 billion in the 12-month financial reporting period ending 30 June 2026. The entity also had a combined gross revenue over $1 billion in the last two 12-month financial reporting periods (financial years ending 30 June 2024 and 30 June 2025).

On 1 January 2027 (the test time), the entity is taken to satisfy the revenue test for the calendar year 2027 (as the requirements in paragraphs 10(1)(a) and (b) are met) and must comply with the SPF during the 2027 calendar year.

In the next 12-month financial reporting period ending 30 June 2027, the entity has a combined gross revenue of $980 million. On 1 January 2028 (the test time), the entity is taken to satisfy the revenue test for the calendar year 2028 as its revenue in two of the three previous 12-month financial reporting periods was over $1 billion (meeting the requirement in paragraph 10(1)(b)).

In the next 12-month financial reporting period ending 30 June 2028, the entity has a combined gross revenue of $800 million. On 1 January 2029 (the test time), the entity does not satisfy the revenue test for the calendar year 2029 as its revenue in the most recent 12-month financial reporting period was less than $1 billion, and its revenue in the two of the last three 12-month financial reporting periods were less than $1 billion.

As a result, the entity does not have to comply with the SPF in the 2029 calendar year (unless it meets the Australian active user test or revenue test with respect to its Australian revenue).

Part 10 - Miscellaneous

Section 50 – Translation of amounts into Australian currency

To support entities in applying the revenue test, this section requires that amounts expressed in a foreign currency be translated into Australian currency before applying the test. Where an entity's accounting records or financial reports are prepared in a foreign currency, the entity's foreign revenue must be translated into Australian currency before applying the revenue test.

Where amounts are drawn from audited financial reports prepared in accordance with accounting standards, entities must use the same exchange rates as used in the report.

In other cases, entities must use an average exchange rate for the relevant period, sourced from the Reserve Bank of Australia or, if unavailable, a publicly and commercially available market rate.

Part 20 – Application and transitional provisions

Section 100 – Application – active Australian user test and revenue test

To ensure that SPF obligations apply to relevant entities from the commencement date, the test time for the 2026 calendar year is set differently from future years. Specifically, for the purposes of the active Australian user test and the revenue test, the relevant test time for the 2026 calendar year is 1 July 2026, rather than 1 January 2026, as would ordinarily apply in subsequent years.