

## **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 – External Dispute Resolution) Authorisation 2025*

Paragraph 58DB(1)(a) of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may, by legislative instrument, authorise an external dispute resolution (EDR) scheme for the purposes of Part IVF of the Act and one or more regulated sectors under that Part, if the scheme is already authorised under a Commonwealth law for another purpose.

Part IVF of the Act establishes the Scams Prevention Framework (SPF) for preventing and responding to scams that impact the Australian community, by requiring sectors of the Australian economy designated under the SPF to adhere to principle-based obligations (called SPF principles) and sector-specific codes (called SPF codes). Under the *Competition and Consumer (Scams Prevention Framework—Regulated Sectors) Designation 2025*, the banking sector, telecommunications sector and digital platforms sector are each designated as a regulated sector for the purposes of the SPF.

The purpose of the *Competition and Consumer (Scams Prevention Framework – External Dispute Resolution) Authorisation 2025* (the Authorisation) is to authorise the Australian Financial Complaints Authority (AFCA) scheme to be the SPF EDR scheme for the banking, telecommunications and digital platforms sectors. As a result, a regulated entity providing a regulated service in one of those sectors must, among other things, become a member of the AFCA scheme – and provide reasonable assistance to, and cooperate with, the operator of the scheme – under subsections 58BZG(1) and (2) of the Act, which are civil penalty provisions.

The *AFCA Scheme Authorisation 2018* already authorises the AFCA scheme as an EDR scheme under Part 7.10A of the *Corporations Act 2001* (Corporations Act). The AFCA scheme is a member-funded EDR scheme operated by AFCA. The scheme is subject to mandatory requirements under section 1051 of the Corporations Act and is overseen by the Australian Securities and Investment Commission (ASIC) under Division 2 of Part 7.10A of that Act. One of these requirements is that complaints are resolved in a way that is fair, efficient, timely and independent.

Authorising the AFCA scheme as an SPF EDR scheme for the three regulated sectors ensures SPF consumers in these sectors have access to a ‘single door’, free and fair complaints resolution mechanism to seek redress for their scams-related complaints. This avoids the administrative burden for both complainants and regulated entities of having multiple SPF EDR schemes involved in complaints that relate to multiple regulated entities across different sectors.

In making the Authorisation, the Minister has considered the accessibility, independence, fairness, accountability, efficiency and effectiveness of the AFCA scheme, in accordance with subsection 58DB(2) of the Act.

The Authorisation is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the sunseting and disallowance regimes set out in that Act.

The Authorisation commences on 1 September 2026.

Details of the Authorisation are set out in Attachment A.

**Details of the *Competition and Consumer (Scams Prevention Framework – External Dispute Resolution) Authorisation 2025***

**Part 1 – Preliminary**

This Part sets out machinery matters, which include the name, commencement, legislative authority and definitions.

**Section 1 – Name**

This section provides that the name of the instrument is the *Competition and Consumer (Scams Prevention Framework – External Dispute Resolution) Authorisation 2025* (the Authorisation).

All legislative references are to the Authorisation unless noted otherwise.

**Section 2 – Commencement**

The Authorisation commences on 1 September 2026.

**Section 3 – Authority**

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

**Section 4 – Definitions**

This section sets out definitions of terms used in this Authorisation as follows:

- ‘AFCA scheme’ has the same meaning as in section 761A of the *Corporations Act 2001* (Corporations Act). Under section 761A of that Act, the AFCA scheme is an external dispute resolution (EDR) scheme for which an authorisation under Part 7.10A of the Corporations Act is in force. Further, ‘AFCA’ (short for the Australian Financial Complaints Authority) is the operator of the AFCA scheme.
- ‘Banking sector’ means the covered banking services designated as a regulated sector of the Australian economy under the *Competition and Consumer (Scams Prevention Framework—Regulated Sectors) Designation 2025* (the Designation). Broadly, covered banking services encompass services provided by an authorised deposit-taking institution (ADI) in the course of its banking business and the provision of a purchased payment facility by an ADI.
- ‘Digital platforms sector’ means the covered digital platform services designated as a regulated sector of the Australian economy under the Designation. Broadly, covered digital platform services comprise social media services, instant messaging services and internet search engine services provided by entities of a certain size.
- ‘Telecommunications sector’ means the covered telecommunications services designated as regulated sector of the Australian economy under the Designation. Broadly, covered telecommunications services encompass voice call services and message services provided by carriers and public carriage service providers.

- ‘The Act’ refers to the *Competition and Consumer Act 2010*.

Expressions in the Authorisation otherwise have the same meaning as in the Act as in force from time to time, in accordance with paragraph 13(1)(b) of the *Legislation Act 2003*.

## **Part 2 – Authorised external dispute resolution schemes**

### Section 5 – Authorisation of external dispute resolution scheme for banking, digital platforms and telecommunications sectors

This section authorises the AFCA scheme as the SPF EDR scheme for the purposes of the Scams Prevention Framework (SPF) in Part IVF of the Act for the banking sector, the telecommunications sector and the digital platforms sector, respectively, under subsection 58DB(1) of the Act.

Paragraph 58DB(1)(a) of the Act allows the Minister to authorise an EDR scheme if the scheme is already authorised under a Commonwealth law for another purpose. The AFCA scheme is already authorised for the purposes of Part 7.10A of the Corporations Act (see the *AFCA Scheme Authorisation 2018*).

On commencement, the Authorisation operationalises the obligations in the Act related to an SPF EDR scheme for regulated entities in the banking, telecommunications and digital platforms sectors. For example, a regulated entity that provides a regulated service in one of those sectors must become a member of the AFCA scheme under subsection 58BZG(1) of the Act.

The Authorisation commences two months after designation of the banking, telecommunications and digital platforms sectors as regulated sectors. This delayed commencement is intended to allow AFCA time to update its constitution and complaint resolution scheme rules to enable membership of regulated entities in these sectors and make other necessary updates for the purposes of the SPF.

ASIC’s functions and powers relating to the AFCA scheme will also apply for the purposes of the SPF and each of the banking, digital platforms and telecommunications sectors. For example, under section 1052A of the Corporations Act, ASIC may issue regulatory requirements to AFCA relating to compliance with the mandatory requirements for the AFCA scheme for the purposes of the SPF and each of those regulated sectors.

## **Part 10 – Application and transitional provisions**

### Section 50 – Application of authorisation

The Authorisation only applies in relation SPF-related complaints made to AFCA on or after 1 January 2027 (whether the complaint, or the matter resulting in the complaint, arose before, on or after 1 January 2027).

This is intended to provide AFCA an additional transitional period to operationalise the AFCA scheme (such as processing applications for memberships) for the purposes of the SPF and banking, telecommunications and digital platforms sectors before accepting SPF-related complaints from SPF consumers. This does not limit the AFCA scheme to SPF-related complaints that relate only to matters that occurred on or after 1 January 2027.

This does not affect the application of the Authorisation in relation to regulated entities in the banking, telecommunications and digital platforms sectors. Accordingly, the obligations in the SPF related to SPF EDR schemes (such as the obligation to become a member) apply to regulated entities in these sectors on commencement of the Authorisation.