DIGITAL ECONOMY COUNCIL OF AUSTRALIA

Submission to the Australian Financial Complaints Authority

Proposed changes to the AFCA Rules to give effect to the Scams Prevention Framework

To	Australian Financial Complaints Authority, via the AFCA consultation page
Consultation	AFCA Scams Prevention Framework Rules consultation, 31 August to 28 September 2026
Date	28 September 2026
Prepared by	DECA Banking and Payments Working Group, with input from DECA members
Contact	Alec O'Sullivan, Head of Operations, alec@deca.org.au
Related submissions	DECA submissions on the SPF regulated sectors designation (February 2026) and on the SPF codes and rules exposure draft (25 June 2026)
Publication	DECA consents to publication of this submission.

1. About DECA

The Digital Economy Council of Australia (DECA) is the nation's peak industry body for the digital economy, representing businesses across blockchain, digital assets, artificial intelligence, payments and related technologies. Our members include digital asset exchanges and platforms, payments and infrastructure providers, custody businesses, stablecoin and tokenised money issuers, and the technology and professional services firms that support them.

This submission was prepared through DECA's Banking and Payments Working Group and draws on input from DECA members received during the consultation period. DECA has engaged consistently with the Scams Prevention Framework (SPF) since its inception, including through submissions on the regulated sectors designation and on the codes and rules exposure draft.[1] We also value our ongoing engagement with AFCA through the AFCA/DECA quarterly meeting and the AFCA Crypto Liaison Group, and many of our members are AFCA members in their own right in respect of their financial services activities.

Many of our members are themselves frequent targets of sophisticated impersonation and brand abuse, and they invest substantial resources in protecting consumers. We approach this consultation as a supporter of the framework's objectives and of AFCA's role within it.

[1] DECA, Submission to the Treasury on the Scams Prevention Framework codes and rules exposure draft, 25 June 2026 (consultation c2026-765133); and DECA, Response to the Competition and Consumer (Scams Prevention Framework - Regulated Sectors) Designation 2025 Exposure Draft, February 2026.

2. Summary of position

DECA welcomes AFCA's consultation on the Rules changes required to give effect to its new jurisdiction.[2] We make five points.

- **First, the Scam Rules should confirm where they stop.** DECA's members are not a designated sector but will be drawn into SPF complaints in practice. The Designation confines the banking sector to authorised deposit-taking institutions and ADI-issued purchased payment facilities, and the digital platforms sector to instant messaging, internet search and social media services.[3] A digital asset exchange, wallet or settlement service falls within none of these. It will nonetheless sit in the payment chain in a substantial proportion of scam complaints, will hold evidence relevant to those complaints, and may be the destination of the funds. The proposed Scam Rules are framed around a Regulated Entity and permit AFCA to add or remove a regulated entity from a complaint at any point.[4] They do not say what happens to a participant in the chain that is not a Regulated Entity, whether or not it is an AFCA member for other purposes. That is the question our members most need answered. A related question is how AFCA will treat a firm whose customer, on their own instruction, sent funds to an external wallet that the firm does not control and cannot recover from. We are not asking AFCA to express a view on designation, which is a matter for Government.
- **Second, multi-party complaint handling is untested at the scale the SPF will produce, and the procedural protections should be built now rather than after the first difficult case.** AFCA's consultation paper records that only 1.3 per cent of complaints in the 2026 financial year involved an additional joined firm. The SPF anticipates that a typical complaint will involve a platform carrying an advertisement, a telecommunications provider carrying a call or message, and one or more banks moving the money. That is a step change in complexity. The Rules should carry notice periods, a right to be heard before apportionment is determined, a removal process, clarity on cost allocation, and a clear rule that the same loss cannot be recovered through more than one pathway.
- **Third, proportionality should scale to the size of the entity and not only to the value of the loss.** DECA raised this with Treasury in June and repeats it here because AFCA controls one of the two levers.[5] Automatic reimbursement below $3,000, an equal apportionment default that can only be departed from by unanimous agreement, and a per-complaint fee model that imposes cost on the member largely regardless of outcome, are together capable of being an existential cost for a small operator facing high complaint volumes, irrespective of whether it did anything wrong.[6] A firm that can show it took all reasonable steps should not be required to fund reimbursement simply because the payment passed through it.

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[2] Australian Financial Complaints Authority, Scams Prevention Framework Rules consultation, 31 August to 28 September 2026, with a stakeholder webinar held on 3 September 2026. AFCA has been the authorised external dispute resolution scheme for SPF complaints since 1 July 2026, and consumers and small businesses can make SPF complaints to AFCA from 31 March 2027 about matters occurring on or after that date.

[3] Competition and Consumer (Scams Prevention Framework - Regulated Sectors) Designation 2026 (Cth). The designated banking sector is confined to authorised deposit-taking institutions and ADI-issued purchased payment facilities. The designated digital platforms sector is confined to instant messaging, internet search and social media services. Digital asset exchanges, wallets and settlement services fall within none of these definitions.

[4] AFCA's consultation paper records that only 1.3 per cent of AFCA complaints in the 2026 financial year involved an additional joined firm, and that the proposed rules would allow AFCA to add or remove a regulated entity from a complaint at any point.

[5] See note 1.

[6] The Treasury, Internal Dispute Resolution under the Scams Prevention Framework: Position Paper, May 2026, which proposed automatic reimbursement of verified scam losses below $3,000, equal apportionment of liability between breaching entities with deviation only by unanimous agreement, and that the role of non-regulated entities not be taken into account.

- **Fourth, the Rules should recognise the legal constraints firms operate under, and the reasonable-conduct standard should be built with the sectors that will later be measured against it.** A firm may be legally prevented from explaining how it handled a transaction, and decisions to freeze or preserve funds are time-critical. Separately, the first determinations under the new jurisdiction will set the reasonable-conduct standard in practice, and sectors likely to be designated later should have a route to contribute before that standard is settled.
- **Fifth, DECA can offer AFCA practical assistance on on-chain evidence, and does so.** AFCA case handlers will be assessing complaints involving blockchain transactions and will need a working understanding of what tracing evidence establishes and what it does not. DECA's members do this work daily. We would rather help build that capability than object to its absence later.

3. Recommendations

DECA recommends that AFCA:

Recommendation 1. Confirm expressly in the Scam Rules how AFCA will treat an entity that sits in the payment or transfer chain but is not a Regulated Entity under the SPF, distinguishing between an entity that is an AFCA member under the Financial Firm Rules and an entity that is not an AFCA member, and addressing in each case whether the entity can be joined to a complaint under the Scam Rules, whether it can be required or asked to produce evidence and on what basis, and whether any part of a loss can be apportioned to it.

Recommendation 2. Confirm that, in assessing a complaint involving a transfer to an external or self-hosted wallet, AFCA will assess a firm's conduct up to the point the funds left its control, and will not treat the firm as responsible for funds held in a wallet it does not control and cannot recover from.

Recommendation 3. Provide a minimum notice period before a Regulated Entity is joined to a complaint, a right to make submissions before apportionment is determined, and clear criteria for how evidence will be shared between joined firms, including a channel for material that should be seen by AFCA only because it is security, fraud, investigation or AML/CTF sensitive.

Recommendation 4. Provide an express process for removing a Regulated Entity that has been joined and is subsequently found to have had no relevant role, and confirm that a removed entity does not bear complaint fees incurred after the point at which its lack of involvement was established.

Recommendation 5. Publish the basis on which complaint fees will be allocated between joined firms, including where a firm is joined late in the process, and confirm how fees interact with the automatic reimbursement pathway for losses below $3,000.

Recommendation 6. Express the proportionality principle in the Rules so that it scales to the type and size of the Regulated Entity and not only to the value of the loss, and provide a mechanism by which AFCA can determine apportionment on the basis of relative contribution where the parties do not agree, without requiring the unanimous agreement of all joined firms.

Recommendation 7. Confirm that a firm which demonstrates that it took all reasonable steps to prevent, detect, disrupt and respond to a scam will not be required to fund automatic reimbursement or bear an apportioned share of the loss, so that reimbursement does not operate as liability without fault.

Recommendation 8. Confirm that the same loss cannot be recovered through more than one pathway, so that the SPF pathway (including automatic reimbursement) and a separate AFCA complaint about the same loss, including a complaint under the Financial Firm Rules, do not both deliver recovery, and set out how amounts reimbursed or recovered in one pathway will be taken into account in the other, including where several firms are involved and no fault has been assessed.

Recommendation 9. Develop and publish guidance on evidentiary standards for complaints involving digital asset transactions, addressing what a transaction hash establishes, the limits of address attribution, and what AFCA expects a firm to produce. DECA offers to co-develop that guidance and to convene members to support it.

Recommendation 10. Confirm in the Rules or accompanying guidance how AFCA's processes and timeframes interact with a firm's obligations under the AML/CTF regime, and in particular that (a) no adverse inference will be drawn where a firm is legally constrained, including by the tipping-off provisions, from explaining how a transaction was handled, (b) a firm does not require AFCA's consent, and is not constrained by the existence of a complaint, to freeze or preserve funds, and (c) AFCA will publish the minimum information it expects a firm to provide to AFCA to show that a restriction or freeze was reasonable and has been reviewed, where the reasons cannot be disclosed to the customer.

Recommendation 11. Ensure that SPF complaint data and any intelligence sharing arrangements are capable of surfacing scams directed at regulated entities and their staff, and not only scams directed at consumers.

Recommendation 12. Establish a route, for example through consultation on guidance and through the AFCA Crypto Liaison Group, for sectors likely to be designated in future, including digital asset service providers, to contribute to the development of the reasonable-conduct standard before the first determinations under the new jurisdiction settle it.

Recommendation 13. Confirm that AFCA will recognise good-faith protective intervention on a reasonable suspicion of a scam, such as holding, delaying or declining a transfer, as reasonable conduct when it assesses a later complaint about that intervention, and publish guidance on the factors it will weigh.

Recommendation 14. Publish implementation guidance and worked case examples sufficiently in advance of 31 March 2027 for firms to build internal dispute resolution processes against them, and adopt an education-first approach in the first year of the new jurisdiction.

4. Where DECA's members sit in the framework

4.1 Not designated, but in the chain

DECA supported the scoping decision reflected in the Designation and continues to do so. The obligations in the codes are engineered around custodial fiat banking and mass-market consumer platforms, and several of their assumptions map poorly onto services where transactions may be irreversible, counterparties may be pseudonymous, and the provider may not stand between the consumer and the funds in the way a bank does.[7]

The practical position is nonetheless that our members are involved. Funds that leave a designated bank frequently pass through, or terminate at, a digital asset service. That service will

[7] See note 1.

hold records relevant to the complaint. It may have frozen funds. It may have identified the receiving account as a mule account before the complaint was made. It is, in short, a material witness in a proceeding to which it is not a party, and in some cases the only participant that can trace where the money went.

Members have also told us that they expect the SPF standards to shape how scam-related disputes involving them are assessed, whether or not they are designated. That is a further reason for clarity now.

4.2 Two groups of non-designated participants

For this purpose our members fall into two groups. Many are AFCA members in respect of their financial services activities and are subject to the Financial Firm Rules. Others are not AFCA members at all. Neither group is a Regulated Entity under the SPF, and the proposed Scam Rules, which are framed throughout by reference to a Regulated Entity, do not say how either will be treated.

For AFCA members, the questions are whether a firm that is not a Regulated Entity can be joined to a complaint under the Scam Rules, whether AFCA would instead deal with its conduct in a separate complaint under the Financial Firm Rules, and how the two would interact if both were on foot. For non-members, the questions are whether they can be joined at all, whether AFCA can compel or request evidence from them and on what basis, and whether any part of a loss can be apportioned to their conduct, given the Treasury position paper proposed that the role of non-regulated entities not be taken into account in apportionment.[8]

DECA does not seek to be joined and does not seek designation. We seek clarity, because the current position leaves members exposed to informal pressure to participate in a process in which they have no standing, no procedural rights and no ability to contest an outcome that may nonetheless be published or reported.

4.3 Designation is a separate question

This is not a request for AFCA to express a view on whether digital asset services should be designated. That is a matter for Government, and several of our members expect designation in due course and would welcome the consultation that precedes it. Their interest is in ensuring that the period before then is workable. Because the Scam Rules are already framed around a Regulated Entity, what we ask for is confirmation of where they already stop, rather than a new rule.

4.4 Wallets outside the firm's control

A common pattern in scams involving digital assets is that the consumer buys digital assets on an exchange with their own funds and then, on their own instruction, transfers them to an external wallet controlled by the scammer. The exchange executes an authorised instruction from its own customer. Once the transfer settles, the exchange has no ability to recall, freeze or reverse it. Where the destination is a self-hosted wallet, there is no receiving institution in the chain that can be asked to freeze and return the funds, and the wallet is controlled by neither the exchange nor any other regulated entity.

This differs materially from a bank-to-bank transfer, where a receiving institution exists and can be asked to act, and it is why the sending and receiving split used in comparable schemes does not map onto these transactions. A firm should be assessed on what it did while the funds were

[8] See note 6.

within its control, including the warnings it gave and any intervention it made, and not held responsible for the loss of funds after they left to a wallet it neither controls nor can reach. AFCA's assessment of these complaints, and any apportionment, should reflect the point at which the firm ceased to have any ability to act.

5. Multi-party complaints and procedural fairness

5.1 A step change in complexity

AFCA's consultation paper records that additional joined firms featured in 1.3 per cent of complaints in the 2026 financial year.[9] The SPF is designed on the assumption that a typical scam involves several regulated entities across three sectors. AFCA is therefore building a multi-party process on a very thin operational base, and the first year of the new jurisdiction will be the test.

5.2 What the Rules should carry

- A minimum notice period before joinder, sufficient for the firm to locate records, obtain internal advice and prepare a response. Scam complaints frequently involve transactions months old and records held across several systems.
- A right to be heard on apportionment before it is determined, not merely a right to be told the outcome. Apportionment is the substantive question in a multi-party complaint and a firm that cannot address it has not been heard on the only issue that affects it.
- An express removal process where a joined firm is found to have had no relevant role, with the consequence that it does not carry fees incurred after that point.
- Clarity on how fees are allocated between joined firms, particularly where one is joined late. A firm joined in the final stages of a complaint should not carry the same fee burden as one involved throughout.
- A stated position on whether determinations will name joined firms, and if so at what point, given AFCA's expanded ability to publish the names of firms that fail to comply with determinations.[10]
- Clear rules on how evidence is shared between joined firms. In a multi-party complaint, one firm's records may be seen by several others, some of them competitors. Firms need to know the criteria for marking material as for AFCA only or as sensitive, including security, fraud, investigation and AML/CTF material, and should not be expected to share it with other joined firms by default.

5.3 Apportionment and firm size

DECA raised the proportionality problem with Treasury in June and it is worth restating in AFCA's context. The Treasury position paper proposed equal apportionment between breaching entities, with deviation available only by unanimous agreement.[11] The consequence is that a small operator may carry half a loss where a much larger co-regulated entity played the greater role, and that the larger entity has no incentive to agree to a different split. Layered on top is AFCA's per-complaint fee model, which imposes cost on the member largely regardless of outcome.

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[9] See note 4.

[10] AFCA Rules, rule A.11.6, in effect from 12 March 2026, which allows AFCA to publish the names of financial firms that fail to comply with AFCA determinations.

[11] See note 6.

DECA asks AFCA to build a mechanism into the Rules by which apportionment can depart from an equal split on the basis of relative contribution, determined by AFCA where the parties do not agree, rather than requiring unanimity. Requiring unanimity gives every joined firm a veto over fairness.

5.4 One loss, one recovery

A scam loss may be the subject of more than one process. A consumer may receive automatic reimbursement under the SPF, pursue a complaint under the Scam Rules against one or more Regulated Entities, and bring a separate complaint under the Financial Firm Rules against a firm in the chain that is an AFCA member for other purposes. Each pathway may be sound on its own terms. Together, without a coordinating rule, they create a risk that the same loss is recovered more than once, and that a firm is asked to contribute to a loss that has already been made good.

The risk is sharpest in the small-claims pathway, where several firms may be involved and no fault has been assessed. DECA asks AFCA to confirm that the same loss cannot be recovered twice, and to set out how amounts reimbursed or recovered in one pathway will be taken into account in any other.

5.5 Reimbursement where reasonable steps were taken

DECA supports prompt outcomes for consumers. Automatic reimbursement should not, however, operate as liability without fault. Where a firm can show that it took all reasonable steps required of it, such as warnings, holds, interventions and escalation, it should not be required to fund reimbursement or bear an apportioned share of the loss simply because the payment passed through it.

Digital asset businesses frequently intervene before an outgoing transfer (section 9.2), and that effort should count. A reimbursement model that pays out regardless of conduct weakens the incentive to invest in prevention and, as section 8.3 explains, pushes firms towards category-level de-risking rather than transaction-level judgement. The same principle should govern AFCA's approach whether a firm is a Regulated Entity now, is joined under the Financial Firm Rules, or is designated in future.

6. On-chain evidence: an offer of assistance

This section is an offer rather than a request.

Complaints involving digital asset transactions will require case handlers to assess blockchain evidence. That evidence is superficially precise and substantively limited. A transaction hash establishes that a transfer occurred between two addresses at a given time. It does not establish who controlled either address, whether the transfer was authorised, or whether the receiving address belongs to a service or an individual. Attribution requires additional evidence, and the quality of that evidence varies considerably between commercial analytics providers, exchange records and open-source attribution.

The risk for complainants is that an unsupported attribution is treated as proof. The risk for firms is that an accurate statement about what the chain shows is read as evasion. Both are avoidable with guidance, and DECA is well placed to help produce it. Our working groups have already committed to developing a consensus taxonomy and glossary for digital assets, in part to

address the misdescription of digital asset products in consumer-facing contexts,[12] and that work overlaps directly with what AFCA will need.

DECA offers to convene members with tracing, compliance and exchange operations expertise to co-develop evidentiary guidance with AFCA, and to make that guidance publicly available.

7. Scams targeting industry participants

The framework is built around consumer harm, which is correct as a matter of policy priority. DECA asks AFCA to ensure that its data and any intelligence sharing arrangements can also surface scams directed at regulated entities and their staff, which are a distinct and growing typology.

Our members are targets of impersonation of their own brands, of mule account recruitment aimed at their customers, of account takeover attempts against staff, and of social engineering directed at operations and treasury functions. These attacks frequently precede the consumer-facing scam and are the point at which disruption is most effective. A framework that measures only consumer losses will not see them, and the intelligence that would allow the sector to disrupt them earlier will not be collected.

In July 2026, DECA members resolved to establish an initiative circulating information among members on attempted scams targeting industry participants.[13] We offer that channel to AFCA and to the SPF regulators as a source of typology information, and ask that the Rules and supporting arrangements not be drafted so narrowly that industry-directed scam data has nowhere to go.

8. Interaction with other obligations

8.1 AML/CTF

A firm dealing with a scam transaction may be required to freeze funds, notify a counterparty institution, conduct enhanced due diligence and file a suspicious matter report, while simultaneously meeting internal dispute resolution timeframes and responding to an AFCA request.[14] Some of what the firm knows it may not be permitted to disclose, including because of the tipping-off provisions in the AML/CTF regime.[15]

This tension already arises outside the SPF. ASIC's Regulatory Guide 271[16] expects a firm to give reasons when it responds to a complaint, while the tipping-off provisions prohibit a firm from disclosing that it has formed a suspicion or reported one. Member input indicates that AFCA's published determinations generally uphold a firm's right to restrict or close an account on financial crime grounds, while finding against firms on the customer-facing process, including awarding compensation where no reasons were given. AFCA does not assess the AML/CTF

[12] DECA member forum, 23 July 2026, held under the Chatham House Rule, at which members prioritised a consensus-based legal taxonomy for digital assets and committed to drafting a glossary of digital asset terminology to reduce consumer confusion, including the misdescription of contracts for difference as tokenised equities.

[13] DECA member forum, 23 July 2026, held under the Chatham House Rule, at which members resolved that DECA would establish an initiative to circulate information among members on attempted scams targeting industry participants, as distinct from consumer-facing scams.

[14] AUSTRAC enhanced customer due diligence obligations including Rule 6-22 (the Travel Rule), in force from 1 July 2026. DECA has engaged with AUSTRAC on implementation, including an industry roundtable on 10 August 2026 and correspondence following AUSTRAC's meeting with DECA on 26 August 2026.

[15] Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), s 123.

[16] ASIC Regulatory Guide 271 Internal dispute resolution, which sets response timeframes and content requirements for IDR responses by financial firms.

judgement itself, but it does assess the conduct around it, and where that line sits is unclear. Restriction and closure complaints are already among the most persistent themes in members' complaint handling, and a framework that asks firms to detect and disrupt scams will increase the number of restrictions whose real reason cannot be given.

Three consequences follow. First, a firm's inability to explain its handling of a transaction may reflect a legal constraint rather than a failure to cooperate, and should not attract an adverse inference. AFCA guidance should say so and should set out how AFCA will approach that situation. Second, decisions to freeze or preserve funds are time-critical and are often the only point at which a loss can be prevented. A firm should not need AFCA's consent to take that step, and the existence of an open complaint should not be read as constraining it. Third, AFCA should publish the minimum information it expects a firm to provide to AFCA, as distinct from the customer, to show that a restriction was reasonable and has been reviewed. Without that, firms are left choosing between an adverse fairness finding and a disclosure offence.

8.2 Internal dispute resolution

Firms will need internal dispute resolution processes capable of handling complaints from people who are not their customers, which is a structural change rather than a procedural one. Existing IDR obligations are built around a customer relationship, including for identification, authentication and communication.[17] Worked examples published well ahead of 31 March 2027 would materially assist.

8.3 De-banking

DECA repeats a concern raised with Treasury. Regulatory settings that reward category-level de-risking will produce category-level de-risking, whatever the accompanying policy statements say.[18] Where a bank faces liability and complaint cost for transfers to digital asset businesses, the rational response is to restrict the category rather than assess the transaction. AFCA's determinations will shape what banks understand reasonable conduct to require, and DECA asks that AFCA be alert to the effect of its published reasoning on this behaviour.[19]

9. The reasonable-conduct standard

9.1 The standard will be set early

Banks, telecommunications providers and digital platforms come within AFCA's SPF jurisdiction for conduct on or after 31 March 2027.[20] The first determinations, and the guidance and case examples that accompany them, will settle in practice what AFCA regards as reasonable steps to prevent, detect, disrupt and respond to scams. That standard is unlikely to stay confined to the initial sectors. It will inform how scam-related complaints are assessed more broadly in the meantime, and sectors designated later will be measured against a standard they had no part in forming.

DECA asks AFCA to provide a route for sectors likely to be designated in future to contribute before that standard is settled rather than after. The AFCA Crypto Liaison Group and

[17] See note 16.

[18] Council of Financial Regulators, Potential Policy Responses to De-banking in Australia, August 2022, and the Australian Government response of 28 June 2023, which accepted that de-banking stifles competition and innovation and disproportionately affects digital currency exchanges, financial technology firms and remittance providers.

[19] DECA, Submission to the Office of the Australian Information Commissioner on Guidance for Transparency in Automated Decision Making, 22 June 2026, in which DECA identified automated account decisions including de-banking and account closure as decisions capable of significantly affecting a person's interests.

[20] See note 2.

consultation on guidance are natural vehicles, and DECA would be glad to help convene that input.

9.2 Protective intervention

Members describe a recurring dilemma. An exchange that interviews a customer before an outgoing transfer will often receive vague or inconsistent answers. The customer may be being coached by a scammer, may simply be unsure of what they are doing, or may be unwilling to share information. In many cases the firm is not certain that a scam is under way, only that it suspects one. The practical tools available are to hold or decline the transfer, or to exit the customer. Each can deny service to a legitimate customer, who may then complain about it.

A framework that asks firms to disrupt scams should not leave them exposed to adverse outcomes for doing so in good faith. DECA asks AFCA to confirm that protective intervention on a reasonable suspicion will be recognised as reasonable conduct when AFCA assesses a later complaint about it, and to publish guidance on the factors it will weigh. The point connects to the de-banking concern in section 8.3: settings that penalise a firm whichever way it acts will push firms towards blunt, category-level responses.

10. Comparable jurisdictions

10.1 United Kingdom: reimbursement without a multi-sector joinder problem

The United Kingdom mandatory reimbursement requirement for authorised push payment fraud applies to payment service providers only, with a default 50 per cent split between sending and receiving providers and a per-claim cap.[21] It does not impose duties on telecommunications providers or digital platforms, so the multi-party problem AFCA faces does not arise in the same form.

The structural feature most relevant to this consultation is that the United Kingdom separates the consumer outcome from the inter-firm argument. The consumer is reimbursed, and disputes between providers about apportionment are resolved through a separate mechanism operated by the payment system operator rather than through the ombudsman.[22] That design protects the consumer from delay caused by firms disagreeing, and it keeps the ombudsman out of what is essentially a commercial allocation question. DECA asks AFCA to consider whether an equivalent separation is available here.

10.2 Singapore: a defined waterfall rather than equal apportionment

Singapore's Shared Responsibility Framework is confined to financial institutions and telecommunications operators and to a defined class of phishing scams, and allocates responsibility through a defined waterfall: liability falls first on the institution that failed its duties, then on the telecommunications operator, with the consumer bearing the residual.[23] Calls to extend it to messaging and social media platforms were considered and not adopted.

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[21] United Kingdom Payment Systems Regulator, Faster Payments and CHAPS authorised push payment scams mandatory reimbursement requirement, in force 7 October 2024, applying to payment service providers participating in the relevant payment systems, with reimbursement capped at GBP 85,000 per claim and a 50 per cent default split between sending and receiving providers. The requirement does not impose duties on telecommunications providers or digital platforms.

[22] The United Kingdom Financial Ombudsman Service determines complaints about payment service providers under the reimbursement requirement. Disputes between sending and receiving providers about apportionment are resolved through a separate dispute mechanism operated by the payment system operator rather than through the ombudsman scheme, so that the consumer outcome is not delayed by an inter-firm argument.

[23] Monetary Authority of Singapore and Infocomm Media Development Authority, Guidelines on the Shared Responsibility Framework, in force 16 December 2024. The framework is confined to financial institutions and telecommunications operators and to a defined class of phishing scams, and allocates responsibility through a defined waterfall rather than through equal apportionment.

The waterfall is instructive because it produces a determinate answer without requiring agreement between firms, and because it ties allocation to the specific duty breached rather than to an arithmetic default. That is closer to what DECA seeks under Recommendation 6 than the equal apportionment model currently proposed.

10.3 What Australia should take from this

Australia has chosen a broader scope than either comparator, covering three sectors and, in principle, the whole scam chain. That is a defensible policy choice and DECA does not argue against it. It does mean that Australia will encounter the multi-party allocation problem that the United Kingdom avoided by narrow scoping and that Singapore resolved by a waterfall. Neither comparator supports equal apportionment as a default, and neither leaves fairness dependent on unanimous agreement between commercial competitors.

11. Conclusion

DECA supports the Scams Prevention Framework and supports AFCA's role within it. Our submission asks for four things: confirmation of where the Scam Rules stop for participants in the payment chain that are not Regulated Entities, and for funds that leave to wallets a firm does not control; procedural protections for multi-party complaints, including a clear rule against double recovery, built now rather than retrofitted; proportionality that scales to the size of the firm as well as to the size of the loss, and that does not impose liability on a firm that took all reasonable steps; and recognition of the legal constraints and good-faith judgements firms make in disrupting scams, together with a route for the sectors next in line to help shape the reasonable-conduct standard before it is set.

We also make an offer. AFCA is about to acquire jurisdiction over a class of complaint involving evidence that its case handlers have limited reason to have encountered before. DECA's members work with that evidence daily and would rather contribute to building the capability than contest its absence in individual determinations. We would welcome the opportunity to discuss this submission, including at our next AFCA/DECA quarterly meeting, and to convene members to support the development of evidentiary guidance.[24]

Digital Economy Council of Australia

Contact: Alec O'Sullivan, Head of Operations, alec@deca.org.au

Prepared by the DECA Banking and Payments Working Group with input from DECA members. DECA consents to publication of this submission.

[24] Material changes to the AFCA Rules require approval by the AFCA Board and by ASIC, and ASIC has indicated it will consult the other SPF regulators before approving Rules relating to the SPF.