



AFCA Scheme Authorisation 2018

made under subsections 1050(1), 1050(4) and 1050(5) of the *Corporations Act 2001*

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About this compilation

This compilation

This is a compilation of the *AFCA Scheme Authorisation 2018* that shows the text of the law as amended and in force on 22 May 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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1 Name

This instrument is the AFCA Scheme Authorisation 2018.

3 Authority

This instrument is made under subsections 1050(1), 1050(4) and 1050(5) of the Corporations Act 2001.

4 Definitions

In this instrument:

Act means the Corporations Act 2001.

AFC means the Australian Financial Complaints Limited (ACN: 620 494 340).

AFCA Decision Maker has the same meaning as in the scheme rules.

AFCA scheme means the external dispute resolution scheme referred to in section 5.

Business Loan means a loan provided to a small business (as defined in the scheme rules) which was not regulated under Chapter 3 of the National Consumer Credit Protection Act 2009 at the time the loan was made.

CIO means the Credit and Investments Ombudsman Limited (ACN 104 961 882).

FOS means the Financial Ombudsman Service Limited (ACN 131 124 448).

Privacy Act means the Privacy Act 1988.

scheme rules means the Australian Financial Complaints Authority (AFCA) Complaint Resolution Scheme Rules.

SMEG Act means the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020.

SMEG Loan means a loan covered by a guarantee granted by the Commonwealth under the SMEG Act.

5 Authorisation of an external dispute resolution scheme as the AFCA scheme

The external dispute resolution scheme operated by AFC is an authorised external dispute resolution scheme for the purposes of subsection 1050(1) of the Act and will be known as the AFCA scheme.

Note: The operator of the AFCA scheme will be known as AFCA.

6 Condition on authorisation – report to Minister about decisions to vary fees

It is a condition relating to the authorisation of the external dispute resolution scheme that within 30 days after the end of each financial year that AFC must report to the Minister on any decisions taken during that financial year to do any of the following:

- (a) vary the amount of member levies payable by members of the AFCA scheme;
- (b) vary the scale of complaint fees payable by members of the AFCA scheme.

7 Condition on authorisation – must seek recognition of the Australian Information Commissioner

It is a condition relating to the authorisation of the external dispute resolution scheme that AFC must take all reasonable steps required to obtain the Information Commissioner's recognition of the authorised external dispute resolution scheme in accordance with section 35A of the Privacy Act.

8 Condition on authorisation – membership of the scheme is open to existing members of FOS and CIO

- (1) It is a condition relating to the authorisation of the external dispute resolution scheme that the Constitution of AFC must enable an entity covered by subsection (2) to apply to become a member of the authorised external dispute resolution scheme.
- (2) An entity is covered by this subsection if:
 - (a) the entity is a member of an external dispute resolution scheme operated by FOS or CIO at the time this authorisation is made; and
 - (b) the entity is required to be a member of a recognised external dispute resolution scheme under Part IIIA of the Privacy Act.

9 Additional condition

- (1) It is an additional condition relating to the authorisation of the AFCA scheme that the AFCA scheme must permit an eligible person to make a complaint if:
 - (a) the complaint relates to a compulsory member of the AFCA scheme who is a member of the AFCA scheme at the time the complaint is made; and
 - (b) the complaint is not an excluded complaint; and
 - (c) the complaint is not otherwise excluded by the scheme rules (other than because of a time limit in the scheme rules); and
 - (d) the complaint is made under the AFCA scheme within the period referred to in subsection (2).