

Australian Financial Complaints Authority (AFCA)

Complaint Resolution Scheme Rules

25 November [] 2023



The rules of the Australian Financial Complaints Authority (the scheme) have been prepared by Australian Financial Complaints Authority Limited (ACN 620 494 340), a company limited by guarantee which has been authorised by the responsible Minister to establish, maintain and promote the scheme.

References to AFCA in this document may mean the scheme or the company operating the scheme as the context requires.

Quick Guide

The AFCA's Rules set out the rules and processes that apply to all complaints submitted to the AFCA scheme, including superannuation complaints. The aim of this 'quick guide' is to assist understanding of some key features of the AFCA's Rules and should be read in the context of the whole document.

Sections of AFCA's Rules

A	Complaint Resolution Processes	B	Requirements	C	Exclusions	D	Remedies
E	Defined Terms	F	Legacy Complaints	G	Complaints about SMEG Loans and COVID-19-related repayment deferrals		

A complaint is within AFCA's jurisdiction provided it meets the requirements (as set out in section B) unless it is outside jurisdiction (as set out in section C). Remedies that AFCA can award are set out in section D. All definitions are set out in section E.

Section F allows AFCA to deal with certain "legacy complaints" which would otherwise fall outside AFCA's time limits. Section G deals with complaints about certain loan decisions and repayment deferral decisions affected by measures taken in response to the COVID-19 pandemic.

A complaint is made by an Eligible Person about a Financial Firm who is a member of AFCA, including its employees and agents

A.4

**B.1
Super**

The complainant must have a certain type of relationship with the Financial Firm

**B.2
Other**

What other requirements must be met?

There must be sufficient connection to Australia

B.3

The complaint must be made within relevant time limits

**B.4.1
Super**

**B.4.2
Other**

There are additional requirements for complaints about a Traditional Trustee Company Service

B.5

What types of complaints are excluded?

AFCA must exclude some complaints regarding credit, insurance, investments, Superannuation or Traditional Trustee Company Services

C.1

AFCA may exclude certain complaints

C.2

What remedies can be awarded?

There is no monetary limit on the amount that may be awarded to the Complainant in a Superannuation Complaint

D.1

For most other complaints a limit per claim applies

D.3

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Section A – Complaint Resolution Processes

Section A provides an overview of the AFCA complaint resolution scheme and how complaints are considered. Reference should be made to section E for the meanings of terms that are capitalised.

A.1 Introduction to AFCA complaint resolution scheme

- A.1.1 AFCA is an external complaint resolution scheme established to resolve complaints by Complainants about Financial Firms. AFCA is operated by an independent not-for-profit company that has been authorised to do so by the responsible Minister under the Corporations Act.
- A.1.2 These rules form part of a contract between AFCA and Financial Firms and Complainants. AFCA may develop Operational Guidelines setting out how AFCA interprets and applies these rules.
- A.1.3 AFCA's complaint resolution scheme is free of charge for Complainants. Complainants do not generally need legal or other paid representation to submit or pursue a complaint through AFCA.
- A.1.4 A person is not obliged to use the AFCA complaint resolution scheme to pursue a complaint against a Financial Firm and instead may institute court proceedings or use any other available dispute resolution forum. A Complainant who submits a complaint to AFCA may withdraw their complaint at any time.
- A.1.5 These rules apply to complaints submitted to AFCA from 1 November 2018, and complaints treated as being submitted to AFCA under rule B.4.5.1.

A.2 Principles that underpin the scheme

A.2.1 AFCA will:

- a) promote awareness of the scheme, including by undertaking outreach to vulnerable and disadvantaged communities;
- b) make the scheme appropriately accessible to a person dissatisfied with a Financial Firm's response to their complaint including by:
 - (i) providing a range of ways by which to submit a complaint,
 - (ii) helping Complainants submit a complaint, and
 - (iii) using translation services and providing information in alternative formats, as appropriate;
- c) consider complaints submitted to it in a way that is:
 - (i) independent, impartial, fair,
 - (ii) in a manner which provides procedural fairness to the parties
 - (iii) efficient, effective, timely, and
 - (iv) cooperative, with the minimum of formality;
- d) support consistency of decision-making, subject to its obligations both under section 1055 of the Corporations Act and to do what is fair in all the circumstances;
- e) have appropriate expertise and resources to consider complaints submitted to it;
- f) be as transparent as possible, whilst also acting in accordance with its confidentiality, privacy and secrecy obligations;
- g) support regulators of Financial Firms by:
 - (i) reporting matters to them in accordance with the Corporations Act, the Privacy Act and any other relevant legislation, and
 - (ii) complying with any ASIC regulatory requirements and directions;
- h) account for its operations by publishing Determinations and information about complaints and reporting systemic issues;
- i) consult regularly with AFCA's stakeholders; and
- j) promote continuous improvement of its service, including by commissioning regular independent reviews of its complaint handling operations and meet the benchmarks for Industry-Based Customer Dispute Resolution.

A.3 How a complaint may be submitted to AFCA

- A.3.1 A person may submit a complaint by using AFCA's online form, writing to AFCA or by contacting AFCA by telephone. By submitting a complaint, the Complainant is deemed to have agreed to having the complaint considered under the rules.
- A.3.2 AFCA may assist Complainants to submit a complaint.

A.4 Complaints that AFCA considers

- A.4.1 The Complainant must be an Eligible Person who is neither an Excluded Complainant nor represented by an Excluded Paid Representative.
- A.4.2 A complaint must be about a Financial Firm that is an AFCA Member at the time that the complaint is submitted to AFCA (even if not an AFCA Member at the time of the events giving rise to the complaint).
- A.4.3 There are some additional requirements that must be met in order for AFCA to be able to consider a complaint. In summary:
- a) The complaint must arise from a customer relationship or other circumstance that brings the complaint within AFCA's jurisdiction.
 - b) There must be a sufficient connection with Australia.
 - c) Generally, there is a time limit within which the complaint must be submitted to AFCA.
 - d) If the complaint is about a Traditional Trustee Company Service that involve Other Affected Parties, the Complainant must get the consent of all Other Affected Parties.

Section B sets out these requirements.

- A.4.4 There are some types of complaints that AFCA must exclude and some situations in which AFCA can decide to exclude a complaint.

Section C sets this out.

- A.4.5 If AFCA excludes a complaint, AFCA will give written reasons to the Complainant and specify the timeframe within which the Complainant may object to this decision.
- A.4.6 If the Complainant objects within the specified timeframe, AFCA will review the decision if AFCA is satisfied that the objection may have substance. If this is the case, AFCA will inform the Financial Firms involved in the complaint and provide them with an opportunity to make submissions before AFCA makes a final decision as to whether to consider the complaint.
- A.4.7 Despite other rules, AFCA may consider a complaint if all parties to the complaint consent in writing and AFCA agrees to this. This does not apply to complaints about payment of a death benefit excluded under the time limits in rule B.4.1.3.

A.5 Notifying the Financial Firm of the complaint

- A.5.1 When AFCA receives a complaint, AFCA will notify the relevant Financial Firm in writing of the complaint.
- A.5.2 AFCA will refer the complaint back to the Financial Firm and set a timeframe for the Financial Firm to either resolve the complaint or to provide its position in relation to the complaint. This opportunity will not normally be provided:
- a) if AFCA considers it appropriate to commence investigating or otherwise progressing the complaint immediately, or
 - b) for a Superannuation Complaint relating to the payment of a death benefit.
- A.5.3 AFCA will specify the time provided for a Financial Firm to resolve the complaint, having regard to any applicable regulatory guidance.
- A.5.4 If a Superannuation Complaint is about payment of a death benefit, the Financial Firm must inform AFCA:
- a) when it has complied with the obligation in section 1056A of the Corporations Act to notify each person believed to have an interest in the death benefit; and
 - b) of the names and contact details of those persons.
- A.5.5 If the complaint is about Traditional Trustee Company Services that involve Other Affected Parties, AFCA will ask the Financial Firm to provide the following information within the timeframe set by AFCA:
- a) the names of all Other Affected Parties and their contact details to the extent possible; and
 - b) if any of this information cannot be provided, an explanation as to why this is the case.

A.6 Joining other parties

- A.6.1 For a Superannuation Complaint, AFCA may join another person:
- a) who applies to become a party to the complaint in accordance with section 1056A(2) of the Corporations Act after receiving a notice under section 1056A(1) of the Corporations Act; or
 - b) as permitted or required by section 1054 and section 1056A(3)(b) of the Corporations Act.
- A.6.2 For other complaints, AFCA may at any time decide that it is appropriate to join another Financial Firm as a party to the complaint. A joined Financial Firm has all the rights and duties under these rules as if they were the original Financial Firm under the complaint.

A.7 Restrictions on Financial Firms during a complaint

A.7.1 While AFCA is considering a complaint, the Financial Firm is subject to the following restrictions.

- a) The Financial Firm must not begin legal proceedings against the Complainant, anyone else joined as a party to the complaint or Other Affected Party about any aspect of the subject matter of the complaint.
- b) The Financial Firm must not seek judgment or take other action to pursue debt recovery legal proceedings that the Financial Firm began before the Complainant submitted the complaint to AFCA, other than to the minimum extent necessary to preserve the Financial Firm's legal rights.
- c) The Financial Firm must not take any action to:
 - (i) recover a debt the subject of the complaint, including enforcement of a default judgment obtained in court,
 - (ii) protect any assets securing that debt,
 - (iii) assign any right to recover that debt, or
 - (iv) list a default on a Complainant's credit file.

A.7.2 Despite rule A.7.1, the Financial Firm may with AFCA's consent:

- a) begin legal proceedings if the legal limitation period for the proceedings is about to expire – but the Financial Firm may not pursue those legal proceedings other than to the minimum extent necessary to preserve the Financial Firm's legal rights;
- b) begin legal proceedings if AFCA agrees to allow the Financial Firm to treat the complaint as a test case and the Financial Firm meets the requirements set out in rule C.2.2(f);
- c) exercise any rights it might have to freeze, preserve or sell assets the subject of the complaint;
- d) continue with legal proceedings if the Complainant, anyone else joined as a party to the complaint or Other Affected Party took a step in defending those legal proceedings that went beyond lodging a defence or a defence and counterclaim;
- e) continue with legal proceedings about a Small Business (including Primary Producer) credit facility of more than \$5 million; or
- f) enforce a default judgment obtained in court.

In each case, the Financial Firm must comply with any conditions that AFCA imposes.

- A.7.3 For a Superannuation Complaint, AFCA may decide that a Financial Firm may not implement a decision that is the subject of a complaint submitted to AFCA, while AFCA is considering the complaint. AFCA must not make a decision of this type unless:
- a) AFCA has received a request by the Complainant to halt the operation of the Financial Firm's decision; and
 - b) AFCA has provided the Financial Firm with a reasonable opportunity to make submissions and taken any submissions into account.
- A.7.4 Apart from the restrictions in rules A.7.1 and A.7.3, a Superannuation Complaint neither:
- a) affects the operation of the decision of the Financial Firm; nor
 - b) prevents the Financial Firm from implementing the decision, while AFCA is considering the complaint.
- A.7.5 If a complaint submitted to AFCA is resolved by agreement between the parties or is determined by an AFCA Decision Maker and the Determination becomes binding upon the Financial Firm, the Financial Firm must not begin or continue with legal proceedings against the Complainant, anyone else joined as a party to the complaint or Other Affected Party that are inconsistent with the agreed resolution or the Determination. This does not prevent a Financial Firm from pursuing any appeal rights available to it under the Corporations Act in respect of determinations about Superannuation Complaints.
- A.7.6 A Financial Firm must not instigate defamation action of any kind in relation to allegations about the Financial Firm made to AFCA by the Complainant, anyone else joined as a party to the complaint or Other Affected Party.

A.8 Complaint resolution approach

A.8.1 AFCA will generally try to resolve a complaint by informal methods. This includes, for example, by:

- a) facilitating negotiations between the parties; or
- b) conciliating a complaint, for example, by conducting a conciliation conference.

If reasonable attempts to resolve a complaint by these methods do not succeed, AFCA may then:

- c) provide a preliminary assessment in accordance with rule A.12; or
- d) proceed to determine the complaint.

A.8.2 Alternatively AFCA may proceed immediately to determine a complaint, for example, if it thinks the complaint is unlikely to be resolved by other means.

A.8.3 AFCA may decide that it is not appropriate to continue to consider a complaint, in circumstances such as:

- a) the complaint is without merit;
- b) the Complainant has suffered no loss ~~(or has been appropriately compensated for such loss and AFCA would not award any further amount)~~;
- c) the Financial Firm has committed no error; or
- d) the Financial Firm has appropriately compensated the Complainant for their loss, or has offered the Complainant an appropriate remedy or compensation.

A.8.4 AFCA may also decide that it is not appropriate to continue to consider a complaint because:

- a) the Complainant is dealing with AFCA through a Paid Representative and AFCA is satisfied that:
 - (i) the Paid Representative does not hold an Australian credit licence or Australian financial services licence where this is required by law; or
 - (ii) the Paid Representative:
 1. is either not acting in the Complainant's best interests or acting in a way that prevents AFCA from achieving a cooperative, fair, efficient and timely resolution of the Complainant's complaint; and
 2. fails to promptly remedy the matters of concern to AFCA despite AFCA informing the Paid Representative of its concerns; or
- b) in AFCA's reasonable opinion:

- (i) the Complainant's conduct to AFCA staff is threatening, intimidating, abusive, bullying, discriminatory or otherwise unreasonable;
- (ii) the conduct denies AFCA staff a safe working environment, and
- (iii) the Complainant has failed to respond to substantively cooperate with or respond to attempts (if any) by AFCA to manage the conduct.

A.8.5 ~~If so, either rule A.8.3 or A.8.4 applies, AFCA will inform the Complainant in writing that it intends to close the complaint, setting out its reasons and the timeframe within which the Complainant may object to this decision. follow the process for excluding a complaint set out in rules A.4.5 and A.4.6.~~

A.8.6 If the Complainant objects within the specified timeframe, AFCA will review its decision under rule A.8.3 or A.8.4 if AFCA is satisfied that the Complainant's objection may provide reasonable grounds to change the decision. If rule A.8.3 applies, AFCA will inform the Financial Firms involved in the complaint and provide them with an opportunity to make submissions before AFCA makes a final decision as to whether to continue to consider the complaint.

A.9 Gathering relevant information

A.9.1 AFCA will often need to obtain information from the parties. A party to a complaint must comply with AFCA requirements to provide information within the timeframe specified by AFCA, unless they satisfy AFCA that:

- a) to provide information would breach a duty of confidentiality to a third party, other than an agent or contractor, and despite best endeavours, the third party's consent to the disclosure of the information has not been able to be obtained;
- b) to provide the information would breach a Court order or prejudice a current investigation by the police or other law enforcement agency; or
- c) the information does not or no longer exists or cannot reasonably be obtained.

A.9.2 A party to a complaint relying upon rule A.9.1 to refuse an AFCA requirement for information must, if requested by AFCA, provide AFCA with a statutory declaration setting out the steps taken to try to comply with AFCA's request for the information and detailing the reasons they were unable to do so. AFCA may then decide if it is satisfied with those steps and reasons.

A.9.3 AFCA may require a party to a complaint to do anything else that AFCA considers may assist AFCA's consideration of the complaint. This may include requiring:

- a) a party to a complaint to attend an interview; or
- b) the Financial Firm to investigate the complaint further or to appoint an independent expert to report back to AFCA on something relating to the complaint.

- A.9.4 For a Superannuation Complaint, AFCA has additional powers to obtain information and require attendance at conciliation conferences as set out in sections 1054A and 1054B of the Corporations Act.
- A.9.5 If a party to a complaint without reasonable excuse fails to provide information, or to take any other step required by AFCA, within the AFCA specified timeframe, AFCA may take whatever steps it considers reasonable in the circumstances:
- a) If the information requested by AFCA is of material importance, AFCA will proceed with the resolution of the complaint on the basis that an adverse inference will generally be drawn from that party's failure to comply with AFCA's requirement, unless special circumstances apply.
 - b) If the Complainant (whether dealing with AFCA directly or through a representative) fails to comply with an AFCA requirement, AFCA may refuse to continue considering the complaint.
- A.9.6 When considering a complaint, AFCA may consult with industry and consumer advisors as AFCA thinks appropriate.
- A.9.7 AFCA may also seek expert advice including from an AFCA appointed legal expert, industry expert, medical practitioner, building or other relevant expert. AFCA may require the Financial Firm to pay or contribute to the cost provided that:
- a) the fees of the expert are reasonable, having regard to the complexity of the complaint and usual market rates; and
 - b) the person has the necessary expertise.
- Unless special circumstances apply, AFCA will not require a Financial Firm to contribute more than \$5,000 per complaint to the cost of expert advice obtained by AFCA.

A.10 Information sharing and opportunity to make submissions

- A.10.1 AFCA will generally share information provided by a party to a complaint with the other parties to the complaint, including after the complaint has been closed when appropriate.
- A.10.2 Before a complaint is determined by an AFCA Decision Maker, AFCA must provide the parties to the complaint:
- a) with access to relevant information; and
 - b) an opportunity to make submissions.
- A.10.3 Despite rules A.10.1 and A.10.2, AFCA need not provide the parties with any memoranda, analysis or other documents prepared by AFCA's employees or contractors unless required by law.

- A.10.4 Despite rules A.10.1 and A.10.2, AFCA need not provide a party with access to relevant information, if the party that provided the information does not consent to the information being shared with the other party and tells AFCA this when they provide the information. However, if the information is not shared AFCA cannot rely upon it when reaching a decision about the merits of the complaint, unless special circumstances apply.
- A.10.5 A party claiming special circumstances should give reasons why the information should be taken into account without being shared with the other party, and should suggest how the other party can be given an opportunity to rebut the information to the extent it is relevant to the complaint.

A.11 Confidentiality

- A.11.1 AFCA operates on a 'without prejudice' basis. This means that information obtained through AFCA may not be used in any subsequent court proceedings unless required by an appropriate court process.
- A.11.2 The parties must maintain the confidentiality of all information provided to them through the course of a complaint except:
- a) to the extent reasonably necessary to resolve the complaint;
 - b) to the extent reasonably necessary to discuss the complaint with their lawyer, adviser, accountant or insurer;
 - c) with the consent of the party who provided the information;
 - d) as required or permitted by law; or
 - e) where the information is already publicly available.
- A.11.3 For a Superannuation Complaint, AFCA has additional powers to give directions to parties prohibiting or restricting disclosure of documents or information relating to that complaint and affecting who may be present at any meeting relating to that complaint as set out in section 1054BA of the Corporations Act.
- A.11.4 AFCA must maintain the confidentiality of all information provided to it except:
- a) to the extent reasonably necessary to carry out AFCA's responsibilities including under these rules or for any incidental purpose; or
 - b) as required or permitted by law.

Where AFCA receives protected information provided to it under statutory authority by a regulator or government agency, AFCA will take all reasonable steps to maintain the protected nature of that information.

- A.11.5 AFCA may provide information obtained from the parties to a complaint to:
- a) any regulator such as ASIC, the Office of the Australian Information Commissioner, APRA, ATO, or a regulated securities exchange; or
 - b) a disciplinary or professional standards body, industry code compliance committee or other external dispute resolution scheme that AFCA has a written agreement with for the release of such information; or
 - c) any insolvency practitioner duly appointed to manage the insolvency of a Financial Firm; or
 - d) any compensation mechanism with jurisdiction over the types of complaints considered by AFCA.

In providing information to these third parties, AFCA will comply with its obligations under the Corporations Act, the Privacy Act and any other relevant legislation.

A.12 Preliminary assessment

- A.12.1 After collecting relevant information and obtaining submissions from the parties to a complaint, AFCA may choose to provide the parties with a preliminary assessment of the complaint. AFCA's preliminary assessment will set out reasons for any conclusions made about the merits of the complaint and will provide a recommendation as to how the complaint should be resolved.
- A.12.2 AFCA must inform the parties to the complaint that they can either accept the preliminary assessment or request a Determination and the time they have to make a choice. If they all accept AFCA's preliminary assessment within that time, the complaint is settled on this basis.
- A.12.3 The complaint must proceed to a Determination by an AFCA Decision Maker:
- a) if the complaint is about Traditional Trustee Company Services that involve Other Affected Parties – unless all parties accept AFCA's preliminary assessment within the timeframe specified by AFCA;
 - b) for all other complaints, if:
 - (i) the Financial Firm fails to accept AFCA's preliminary assessment within the timeframe specified by AFCA; or
 - (ii) either a Complainant or Financial Firm requests that the complaint proceeds to Determination, and provides reasons for disagreeing with the preliminary assessment, within the time specified by AFCA.
- A.12.4 If the Financial Firm accepts AFCA's preliminary assessment but the Complainant does not respond within the timeframe specified by AFCA, the complaint may be closed. If the Complainant does not respond or does not accept the preliminary assessment, it will not bind the parties.
- A.12.5 When determining a complaint at the request of a party, the AFCA Decision Maker must consider the party's reasons for disagreeing with the preliminary assessment, but is not limited to those reasons.

A.13 Decision makers

- A.13.1 A complaint may be determined by an Ombudsman, an Adjudicator or an AFCA Panel. AFCA's Chief Ombudsman or his or her delegate allocates complaints to AFCA Decision Makers as they consider appropriate taking into account:
- a) the complexity of the complaint;
 - b) the amount of loss as well as other potential consequences of the complaint;
 - c) whether the complaint raises a systemic issue;
 - d) whether the complaint raises new issues for AFCA of law or good industry practice; and
 - e) considerations of efficiency.

- A.13.2 When forming an AFCA Panel to determine a complaint, AFCA's Chief Ombudsman or his or her delegate must consider the Panel Members' expertise and experience and whether as a group they will be able to determine the complaint fairly and impartially.
- A.13.3 When allocating an Ombudsman or Adjudicator to determine a complaint, AFCA's Chief Ombudsman or his or her delegate must consider the Ombudsman's or Adjudicator's expertise and experience and whether they will be able to determine the complaint fairly and impartially.

A.14 Decision making approach

- A.14.1 When determining a Superannuation Complaint, the AFCA Decision Maker:
- a) may refer a question of law to the Federal Court in accordance with section 1054C of the Corporations Act; and
 - b) must apply the approach specified in section 1055 of the Corporations Act.
- A.14.2 When determining any other complaint, the AFCA Decision Maker must do what the AFCA Decision Maker considers is fair in all the circumstances having regard to:
- a) legal principles,
 - b) applicable industry codes or guidance,
 - c) good industry practice and
 - d) previous relevant Determinations of AFCA or Predecessor Schemes.
- A.14.3 An AFCA Decision Maker is not bound by rules of evidence or previous AFCA or Predecessor Scheme decisions.
- A.14.4 A Determination must be in writing with reasons. Any remedy must be within AFCA's jurisdiction as set out in Section D.
- A.14.5 AFCA will publish its Determinations in a form which identifies the Financial Firm or Firms against which the complaint is made but does not identify the other parties to the complaint. A Determination will not be published if to do so would risk identifying any party other than the Financial Firm or Firms, or if there are other compelling reasons not to publish it.
- A.14.6 If the AFCA Decision Maker is satisfied that there is a clerical mistake or error in a Determination arising from an accidental slip or omission, they may correct and re-issue the Determination. This includes, for example, where there is a miscalculation of figures or mistake in the description of a person, thing or matter. This is not, however, a mechanism for AFCA (or the parties to request AFCA) to re-open a Determination for substantive revision.

A.15 Effect of Determinations

A.15.1 In the case of a Superannuation Complaint, a Determination by an AFCA Decision Maker has effect and comes into operation as prescribed by sections 1055B, 1055D and 1057A of the Corporations Act. AFCA must give each party a written notice informing the party that they may appeal its decision to the Federal Court on a question of law under section 1057 of the Corporations Act.

A.15.2 In the case of a complaint about Traditional Trustee Company Services that involves Other Affected Parties, a Determination by an AFCA Decision Maker:

- a) has effect and comes into operation on the date specified by the AFCA Decision Maker; and
- b) is binding upon the Financial Firm from that date.

~~A.15.3~~ In the case of any other complaint, ~~:-~~

~~a) a Determination by an AFCA Decision Maker is final, and is binding upon the parties if accepted by the Complainant within 30 days of the Complainant's receipt of the Determination.:-~~

~~b) If a Complainant does not accept a Determination within that timeframe, neither the Complainant nor the Financial Firm is not bound by the Determination and the Complainant may bring an action in the courts or take any other available action against the Financial Firm.~~

~~A.15.3~~

~~A.15.4~~ If ~~R~~rule A.15.3~~a~~) applies, the Financial Firm may ask the Complainant to provide it with a binding release from liability in respect of the matters resolved by the Determination, provided the release:

- ~~a) is limited to the matters dealt with in the Determination,~~
- ~~b) is consistent with the Determination, and~~
- ~~c) is provided to the Complainant within a timeframe specified by AFCA.~~

~~e) If a Financial Firm asks a Complainant to provide it with a binding release in accordance with this rule, the Complainant must complete the release. The release shall be effective from the date on which the Financial Firm fulfils all of its obligations under the Determination.~~

~~A.15.4 If a Complainant does not accept a Determination, the Complainant is not bound by the Determination and may bring an action in the courts or take any other available action against the Financial Firm.~~

A.16 Complaints about AFCA's service

- A.16.1 A party to a complaint who is dissatisfied with the standard of service provided by AFCA when dealing with a complaint may lodge a complaint with AFCA about its service. Any user of the AFCA service, including a complainant, financial firm, joined party, or a representative of a party may lodge a complaint about AFCA's service.
- A.16.2 Where a party to a complaint expresses dissatisfaction to AFCA about its complaints service, AFCA must respond to the person within a reasonable timeframe. If that person remains dissatisfied after receiving that response, they may refer their concerns to the Independent Assessor within the timeframe specified in the Independent Assessor's Terms of Reference.
- A.16.3 The Independent Assessor is appointed by AFCA's Board. The Independent Assessor's role is to consider whether AFCA provided an appropriate standard of complaints handling service. The Independent Assessor function supplements AFCA's complaints and feedback process, which deals with complaints about AFCA's service. The Independent Assessor does not have power to re-open a complaint submitted to AFCA or to consider the merits of a complaint or the substantive outcome of a complaint.
- A.16.4 If the Independent Assessor finds that AFCA has not provided an appropriate standard of complaints handling service, the Independent Assessor must recommend in writing to AFCA the action that AFCA should take. This may include compensation if an unusual degree of distress or inconvenience has been incurred by the person who escalated the complaint to the Independent Assessor (capped at the maximum amount that may be awarded under these rules for non-financial loss).
- The Independent Assessor cannot make a recommendation that AFCA give consideration to re-opening, changing or correcting a determination or other finding issued by AFCA about the merits of a complaint, or AFCA's jurisdiction.
- A.16.5 The Independent Assessor must provide a copy of their recommendation to the person who referred the matter to the Independent Assessor.
- A.16.6 The Independent Assessor is governed by separate Terms of Reference set by the AFCA board, in accordance with any regulatory guidance.

A.17 Systemic issues

- A.17.1 A systemic issue is an issue that is likely to have an effect on consumers or Small Businesses in addition to any Complainant.
- A.17.2 AFCA will investigate potential systemic issues. In doing so, it:
- a) must raise the potential systemic issue with the relevant Financial Firm and give it a reasonable opportunity to respond;
 - b) can require the Financial Firm to provide any information and documents AFCA considers necessary to investigate the issue
- A.17.3 If AFCA identifies a systemic issue as a result of its investigation, it will:
- a) refer the issue to the relevant Financial Firm for remedial action;
 - b) obtain a report from the Financial Firm as to the remedial action undertaken; and
 - c) continue to monitor the matter until a resolution has been achieved that is acceptable to AFCA.
- A.17.4 As part of investigating and referring a systemic issue to the Financial Firm for remedial action, AFCA can require the Financial Firm to do or refrain from doing any act which AFCA considers reasonably necessary to achieve any one or more of the following objectives:
- a) facilitating AFCA's investigation of the systemic issue;
 - b) improving industry practice and communication;
 - c) remedying loss or disadvantage suffered by consumers or Small Businesses (whether or not they have complained about the systemic issue);
 - d) preventing foreseeable loss or disadvantage to consumers or Small Businesses;
 - e) minimising the risk of the systemic issue recurring; or
 - f) efficiently dealing with multiple complaints related to the systemic issue.
- A.17.5 In accordance with the Corporations Act, the Privacy Act and any other relevant obligations, after identifying a systemic issue AFCA must report the issue to:
- a) ASIC,
 - b) the Australian Prudential Regulation Authority,
 - c) the Commissioner of Taxation,
 - d) the Office of the Australian Information Commissioner, or,
 - e) any other appropriate body.

A.18 Serious contraventions and other breaches

- A.18.1 In accordance with the Corporations Act and any other relevant obligations, AFCA must refer certain matters to the bodies listed in rule A.17.5, such as:
- a) the particulars of a settlement under section 1052E(3) of the Corporations Act if AFCA thinks the settlement may require investigation; and
 - b) serious contraventions by Financial Firms.
- A.18.2 In addition to AFCA's reporting obligations under rule 18.1, AFCA may report to ASIC other serious breaches including non-compliance with these rules.

A.19 Collection of information

- A.19.1 AFCA must collect and record comprehensive information about its complaint resolution, for example:
- a) the number of complaints and enquiries, including the number of complaints referred to a Financial Firm to resolve through internal dispute resolution;
 - b) demographics of the Complainants;
 - c) details of complaints that AFCA excluded and why;
 - d) the outcome of complaints that were resolved by AFCA;
 - e) the current caseload including the age and status of open cases;
 - f) the time taken to resolve complaints; and
 - g) a profile of complaints that identifies:
 - (i) type and purpose of Financial Service;
 - (ii) type of Financial Firm;
 - (iii) issues raised in complaints; and
 - (iv) any systemic issues or other trends.

A.20 Publication of information

- A.20.1 To facilitate public reporting, AFCA must produce a report at least every twelve months and provide this to ASIC, the Financial Firms and the public via AFCA's website. This report must be a comprehensive summary and analysis of the data collected and must meet AFCA's obligations to regulators. ~~Amongst other things, it must include statistical information about:~~
- ~~a) — the number of complaints submitted to AFCA per Financial Firm;~~
 - ~~b) — the number of complaints closed per Financial Firm; and~~
 - ~~c) — the outcome of those complaints.~~
- A.20.2 AFCA will also provide quarterly reports to ASIC in respect of its operations.

A.21 How AFCA operates

- A.21.1 The Board of Directors of AFCA appoints the Ombudsmen, Adjudicators and Panel Members.
- A.21.2 The Chief Ombudsman is responsible for the operations of AFCA and is able to authorise an employee or contractor to AFCA to carry out any responsibility of AFCA other than making a Determination.
- A.21.3 These rules specify some timeframes that apply to parties to a complaint. Unless a rule expressly states otherwise, AFCA may extend a timeframe if it considers this appropriate (even if the original period has ended).

A.22 Immunity from liability

- A.22.1 AFCA, the Chief Ombudsman, Ombudsmen, Adjudicators, Panel Members, someone authorised by the Chief Ombudsman to carry out any responsibilities or exercise any powers or discretions of AFCA and AFCA employees, contractors and agents shall not be liable to a party to a complaint for any loss or damage arising directly or indirectly in the course of carrying out AFCA functions.

A.23 Changes to AFCA rules

- A.23.1 AFCA must periodically consider the adequacy of the monetary limits that are set out in Section D for complaints other than Superannuation Complaints.
- A.23.2 These rules, including the monetary limits set out in Section D, may be changed to meet any regulatory requirements or directions given to AFCA by ASIC under the Corporations Act.
- A.23.3 AFCA must consult with stakeholders including Financial Firms, key consumer, community and industry organisations and ASIC, before making an amendment to the rules. This does not apply if the amendment is to comply with an ASIC regulatory requirement or direction under the Corporations Act.
- A.23.4 AFCA will not make a material change to the rules without the approval of ASIC under section 1052D of the Corporations Act.
- A.23.5 When considering a complaint, AFCA must apply the rules that were in existence at the date that the complaint was first submitted to AFCA. If AFCA decides that a previously submitted complaint should be re-opened, AFCA will consider the complaint by applying the rules that were in existence at the date that the complaint was first submitted.

Section B – Requirements

Section B sets out requirements that must be met in order for AFCA to be able to consider a complaint that is submitted to it by a Complainant.

The following table sets out which rules apply according to type of complaint.

Type of complaint	Applicable rules
Superannuation Complaint	B.1, B.3, B.4.1, B.4.5, B.6
Complaint about Traditional Trustee Company Services	B.2, B.3, B.4.3, B.4.4, B.4.5, B.5, B.6
Other complaints	B.2, B.3, B.4.2, B.4.3, B.4.4, B.4.5, B.6

B.1 Relationship giving rise to the complaint – Superannuation Complaints

B.1.1 A Superannuation Complaint must be submitted by:

- a) a member or former member of a Regulated Superannuation Fund, other than a Self Managed Superannuation Fund;
- b) a beneficiary or former beneficiary of an Approved Deposit Fund;
- c) a person who is, or claims to be, the holder or former holder of an RSA;
- d) a person acting for the estate of a person referred to in paragraphs (a), (b) or (c);
- e) a person who has, or claims to have, an interest in an Annuity Policy;
- f) a person who is, or claims to be, a member of a life policy fund;
- g) in the case of a complaint about a death benefit payable from a Regulated Superannuation Fund, an Annuity Policy, a RSA, or an Approved Deposit Fund, a person with an interest in the benefit; or
- h) a person in respect of whom a superannuation provider has set out an amount in a statement referred to in section 1053(2) of the Corporations Act.

B.1.2 The persons described in section 1053A of the Corporations Act are taken to be members of a Regulated Superannuation Fund or an Approved Deposit Fund or holders of an RSA (as applicable).

B.2 Relationship giving rise to the complaint – other complaints

- B.2.1 A complaint (other than a Superannuation Complaint) must arise from or relate to:
- a) the provision of a Financial Service by the Financial Firm to the Complainant;
 - b) the provision by the Complainant of a guarantee or security for, or repayment of, financial accommodation provided by the Financial Firm to an Eligible Person;
 - c) an entitlement or benefit under a Life Insurance Policy that specifies or refers to the Complainant, whether by name or otherwise, as a person to whom the insurance cover extends or to whom money becomes payable under the Life Insurance Policy;
 - d) an entitlement or benefit under a General Insurance Policy that specifies or refers to the Complainant, whether by name, or otherwise, as a person to whom the policy extends;
 - e) a legal or beneficial interest of the Complainant arising out of:
 - (i) a financial investment (such as life insurance, a security or an interest in a managed investment scheme or a superannuation fund); or
 - (ii) a facility under which the Complainant seeks to manage financial risk or to avoid or limit the financial consequences of fluctuations in, or in the value of, an asset, receipts or costs (such as a derivatives contract);
 - f) a claim by the Complainant under another person's Motor Vehicle Insurance Product for:
 - (i) property damage to an Uninsured Motor Vehicle caused by a driver of the insured motor vehicle;
 - (ii) non-financial loss as a result of claims handling by the Financial Firm that insured the motor vehicle, but only where a valid claim has been submitted by the owner of the insured motor vehicle (unless the claim is being made pursuant to section 51 of the Insurance Contracts Act 1984);
 - g) an investment made by the Complainant that was offered by a Financial Firm under a foreign recognition scheme to Australian resident investors, unless expressly excluded from access to AFCA or a Predecessor Scheme by the investment offer document; or
 - h) a Traditional Trustee Company Service where:
 - (i) the Complainant is entitled to request an Annual Information Return from the trustee; and

- (ii) at least one co-trustee was at that time a current AFCA Member and all co-trustees that are not AFCA Members have consented to AFCA considering the complaint.
- i) a breach of obligations arising from the operation of the:
 - (i) Privacy Act; or
 - (ii) the Consumer Data Framework.

B.3 Sufficient connection with Australia

B.3.1 A complaint must arise from:

- a) a contract or obligation arising under Australian law, including but not limited to privacy obligations;
- b) an offer to invest that was received in Australia by a Complainant in relation to a recognised Foreign Collective Investment Scheme; or
- c) a direct or indirect investment in a product through a platform which was offered in Australia.

B.4 Time limits for complaints

B.4.1 Superannuation Complaints

B.4.1.1 For complaints about a decision of a trustee of a Regulated Superannuation Fund or an Approved Deposit Fund, an RSA Provider, or an insurer (where the premiums under the policy have been paid from an RSA), relating to the payment of a disability benefit because of total and permanent disability:

- a) if the Complainant permanently ceased employment because of the physical or mental condition that gave rise to the claim for the disability benefit, the Complainant must have made a claim to the Financial Firm for the payment of a disability benefit within two years of permanently ceasing employment and the Complainant must have submitted the complaint to AFCA within four years of the Financial Firm's decision about the disability claim;
- b) if the Complainant did not permanently cease employment because of the physical or mental condition that gave rise to the claim for the disability benefit, the Complainant must have submitted the complaint to AFCA within six years of the Financial Firm's decision about the disability claim.

B.4.1.2 A reference to a decision in rule B.4.1.1 is to the original decision of the trustee, RSA Provider or insurer (decision maker) in relation to the matter and if, as a result of a complaint to the decision maker about the original decision, the original decision was confirmed or varied, or another decision was substituted for the original decision:

- a) the decision as so confirmed or varied, or the substituted decision, is taken to be the original decision; and
- b) the decision as so confirmed or varied, or the substituted decision, is taken to have been made at the time when the original decision was made.

B.4.1.3 For complaints relating to the payment of a death benefit to which neither rule B.4.1.5a) nor B.4.1.5b) applies, the Complainant must have, consistent with section 1056 of the Corporations Act:

- a) objected to the payment of the death benefit proposed by the Financial Firm within 28 days of being given notice of the proposed decision; and
- b) submitted the complaint to AFCA within 28 days of being given a notice from the Financial Firm of its decision in relation to the payment of the death benefit.

B.4.1.4 For complaints about a statement referred to in section 1053(2) of the Corporations Act, the complaint to AFCA must have been submitted within 12 months of notice being given by the Financial Firm of the time period to complain with a copy of the statement.

B.4.1.5 AFCA will generally not consider other types of Superannuation Complaint unless it was submitted to AFCA within two years of the date of the IDR Response. This includes a complaint relating to the payment of a death benefit where AFCA is satisfied that the Complainant has an interest in the death benefit but:

- a) the Complainant was not notified by the Financial Firm of the proposed payment of the death benefit and the failure to notify was unreasonable; or
- b) the Complainant was notified of the proposed payment of the death benefit but was not notified of the 28 day period to object.

B.4.2 Complaints to which the National Credit Code applies

B.4.2.1 Where a complaint relates to a variation of a credit contract as a result of financial hardship, an unjust transaction or unconscionable interest and other charges under the National Credit Code, AFCA will generally not consider the complaint unless it was submitted to AFCA before the later of the following time limits:

- a) within two years of the date when the credit contract is rescinded, discharged or otherwise comes to an end; or
- b) where, prior to lodging the complaint with AFCA, the Complainant was given an IDR Response in relation to the Complaint from the Financial Firm - within two years of the date of that IDR Response.

B.4.3 Other complaints

- B.4.3.1 In other situations, AFCA will generally not consider a complaint unless it was submitted to AFCA before the earlier of the following time limits:
- a) within six years of the date when the Complainant first became aware (or should reasonably have become aware) that they suffered the loss; and
 - b) where, prior to submitting the complaint to AFCA, the Complainant was given an IDR Response in relation to the complaint from the Financial Firm - within two years of the date of that IDR Response.

B.4.4 Extension of time limits

- B.4.4.1 AFCA will not extend any of the time limits set out in rules B.4.1.1 to B.4.1.4.
- B.4.4.2 AFCA may consider a complaint submitted after the time limits set out in rules B.4.1.5, B.4.2 and B.4.3 if AFCA considers that special circumstances apply.

B.4.5 Time limits generally

- B.4.5.1 (a) For the purposes of AFCA's time limits, a complaint submitted to:
- (i) a Predecessor Scheme on or after 1 November 2018 that is then referred to AFCA will be treated as submitted to AFCA on the date it was received by the Predecessor Scheme;
 - (ii) AFCA before 1 November 2018 will be treated as submitted to AFCA on the date it was first received by AFCA.
- b) For purpose of the rest of AFCA's ~~R~~rules, a complaint submitted to a Predecessor Scheme that is then referred or forwarded to AFCA, and a complaint submitted to AFCA before 1 November 2018, will be treated as received by AFCA when these rules become operational (or such later date when the complaint was referred to AFCA), and these rules will apply.
- c) Where a complaint received by the Superannuation Complaints Tribunal before 1 November 2018 is referred or forwarded to AFCA:
- (i) by the Superannuation Complaints Tribunal;
 - (ii) following a decision of the Federal Court on a question of law referred to it for determination; or
 - (iii) because it has been remitted by the Federal Court for reconsideration;
- then:
- (iv) for the purposes of AFCA's time limits, it will be treated as submitted to AFCA on the date it was received by the Superannuation Complaints Tribunal; and
 - (v) For the purpose of the rest of AFCA's ~~R~~Rules, it will be treated as submitted to AFCA on the date it was referred or forwarded to AFCA.

B.4.5.2 The table below summarises the time limits within which a Complainant must submit a complaint with AFCA. For avoidance of doubt, rules B.4.1 to B.4.4 prevail.

Type of complaint				Time limit within which an AFCA complaint must be submitted		
Superannuation	TPD decision by trustee, RSA provider or insurer see B.4.1.1	Has the Complainant permanently ceased employment because of the condition that gave rise to the claim for the disability benefit?	Yes.	Yes	Four years from TPD decision	No extension of time limits See 5.4.4.1
			Was the claim made with Financial Firm within two years of permanently ceasing employment?	No	Out of time	
				No. The Complainant ceased employment for other reasons	Six years from TPD decision	
	Payment of a death benefit see B.4.1.3	Has the Complainant objected to the Financial Firm within 28 days of being given notice of the proposed decision?	Yes	28 days from final decision		
			No	Out of time		
Statement given to the Commissioner of Taxation under s.1053(2) of the Corporations Act see B.4.1.4				12 months from notice		
Other Superannuation Complaints, including: <ul style="list-style-type: none"> where the Complainant has an interest in the death benefit, but was not properly notified of the proposed payment or the objection period see B.4.1.5 				Two years from IDR Response	Special circumstances may extend time limits See B.4.4.2	
NCC Facility	Financial hardship, unjust transaction or unconscionable interest and other charges under the National Credit Code see B.4.2.1	Complaint must be submitted by the later of:	when the credit contract is rescinded, discharged or otherwise come to an end	Two years from contract end		
			when an IDR Response was provided	Two years from IDR response		
Other	All other complaints including: <ul style="list-style-type: none"> unregulated loans. see B.4.3.1 	Complaint must be submitted by the earlier of:	when the Complainant was aware or should reasonably have become aware of the loss claimed	Six years from awareness of the loss		
			when an IDR Response was provided	Two years from IDR Response		

B.5 Additional requirements for Traditional Trustee Company Services complaints

B.5.1 If the complaint is about Traditional Trustee Company Services and AFCA considers that a favourable outcome would be unlikely to benefit the estate or trust as a whole (and therefore all beneficiaries), the following requirements must be met in order for AFCA to consider the complaint:

- a) the beneficiaries of the estate or trust must form a closed class;
- b) all Other Affected Parties must have been identified;
- c) AFCA must explain to the Complainant the process for AFCA considering the complaint and their right to obtain independent legal advice – and within 28 days of receiving this information from AFCA the Complainant must consent in writing to AFCA considering the complaint and agree to be bound by the outcome;
- d) AFCA must send a notice to each Other Affected Party informing them that the complaint has been submitted, that if AFCA considers the complaint their interests may be affected by the outcome and that they have a right to obtain independent legal advice before deciding whether to consent to AFCA considering the complaint – and within 28 days of receiving this information from AFCA, all Other Affected Parties must consent in writing to AFCA considering the complaint and agree to be bound by the outcome.

B.6 AFCA's power to exclude a Complainant or Paid Representative

B.6.1 AFCA may in its discretion decide to exclude:

- a) a Complainant who has submitted one or more complaints that AFCA has decided under rule A.8.4b) to close or under rule C.2.2d) not to consider;
or
- b) a Paid Representative.

B.6.2 An exclusion under rule B.6.1 must be in writing provided to the excluded person. An exclusion must specify the period for which it applies. This must not be for longer than 12 months.

Excluded Complainant

B.6.3 AFCA may only exercise its power to exclude a Complainant under rule B.6.1a) if AFCA is reasonably satisfied that this action is necessary in view of the person's misconduct or abuse of AFCA's process.

B.6.4 Rule A.4.1 means that, for the duration of the exclusion, AFCA is not able to consider any new complaint submitted to it by or on behalf of the Excluded Complainant.

Excluded Paid Representative

B.6.5 AFCA may only exercise its power to exclude a Paid Representative under rule B.6.1b) if AFCA is satisfied that the Paid Representative, when dealing with AFCA in that capacity on behalf of a Complainant:

- a) did not hold an Australian credit licence or Australian financial services licence where this was required by law; or
- b) either:
 - (i) did not act in the Complainant's best interests; or
 - (ii) acted in a way that prevented AFCA from achieving a cooperative, fair, efficient and timely resolution of the Complainant's complaint; and
 - (iii) despite AFCA informing the Paid Representative of this, the Paid Representative failed to remedy the matters of concern to AFCA.

B.6.6 Rule A.4.1 means that, for the duration of the exclusion, AFCA is not able to consider any new complaint submitted to AFCA by or on behalf of a Complainant who is represented by the Excluded Paid Representative or an officer, employee or agent of the Paid Representative.

Process

B.6.7 AFCA must not exercise its power to exclude a Complainant or Paid Representative under rule B.6.1 without first:

- a) notifying the person in writing that it is proposing to exclude them, the reasons for AFCA's concerns and the effect of exclusion; and
- b) giving the person a reasonable period in which to provide a written response to AFCA's concerns.

Section C – Exclusions

Section C sets out when AFCA will exclude a complaint.

C.1 Mandatory exclusions

AFCA must exclude certain categories of complaints

C.1.1 Rules C.1.2 to C.1.6 specify categories of complaints that AFCA must exclude unless all parties to the complaint and AFCA agree to AFCA considering the complaint.

Exclusions applying generally

C.1.2 AFCA must exclude:

- a) A complaint about the level of a fee, premium, charge, rebate or interest rate – unless:
 - (i) the complaint concerns non-disclosure, misrepresentation or incorrect application of the fee, premium, charge, rebate or interest rate by the Financial Firm having regard to any scale or practices generally applied by that Financial Firm or agreed with that Complainant;
 - (ii) the complaint concerns a breach of any legal obligation or duty on the part of the Financial Firm; or
 - (iii) the Complainant's complaint is with a medical indemnity insurer and pertains to the level of medical indemnity insurance premium or the application of a risk surcharge as defined in:
 - For complaints received before 1 July 2020: the Services Contract between the Health Insurance Commission, and the Commonwealth of Australia represented by the Department of Health and Ageing, and medical indemnity insurers;
 - For complaints received on or after 1 July 2020: section 52 of the Medical Indemnity Act 2002.
- b) A complaint that relates to a decision by a Financial Firm as to how to allocate the benefit of a Financial Service between the competing claims of potential beneficiaries, unless the complaint relates to a Superannuation Complaint or a Traditional Trustee Company Service.
- c) A complaint that raises the same events and facts and is brought by the same Complainant as a complaint previously dealt with by AFCA and there is insufficient additional events and facts raised in the new complaint to warrant AFCA considering the new complaint.

- d) A complaint that has already been dealt with by a court, dispute resolution tribunal established by legislation or a Predecessor Scheme, unless the Complainant has requested a stay on the execution of a default judgment on the basis of financial difficulty, and the Financial Firm has declined the Complainant's financial difficulty assistance request, and the request has not previously been dealt with.

For the avoidance of doubt:

- (i) AFCA may consider a complaint by a Primary Producer about issues unresolved after a farm debt mediation;
 - (ii) Where the Superannuation Complaints Tribunal referred a question of law to the Federal Court for decision and the Court issues an opinion, the complaint is treated as not dealt with by the Superannuation Complaints Tribunal or the Federal Court unless the Superannuation Complaints Tribunal has subsequently determined the complaint in accordance with the court's opinion.
- e) A complaint where the value of the Complainant's claim when the complaint is submitted to AFCA exceeds \$1 million or higher amount that applies as a result of an adjustment in accordance with rule D.4.3. This jurisdictional limit does not apply to:
 - (i) a Superannuation Complaint; or
 - (ii) a complaint by a borrower arising from a credit facility provided to a Small Business (including Primary Producer); or
 - (iii) a complaint to set aside a guarantee supported by security over the guarantor's primary place of residence.
- f) A complaint where the Complainant is a member of a group of Related Bodies Corporate and that group has 100 employees or more.
- g) A complaint that would require review of a trustee's exercise of discretion but this does not exclude:
 - (i) a complaint to the extent that an allegation is made of bad faith, failure to give fair and proper consideration to the exercise of the discretion, or failure to exercise the discretion in accordance with the purpose for which it was conferred; or
 - (ii) a Superannuation Complaint,
- h) A complaint about professional accountancy services provided by an Accountant unless they are provided in connection with one of the following:
 - (i) a financial service within the meaning of section 766A of the Corporations Act or section 12BAB of the ASIC Act;
 - (ii) credit activity within the meaning of the National Consumer Credit Protection Act 2009; or

- (iii) tax (financial) advice services within the meaning of the Tax Agent Services Act 2009.
- i) A complaint about a:
 - (i) Privacy Act Participant that does not relate to a right or obligation arising under the Privacy Act; or
 - (ii) CDR Participant that does not relate to a right or obligation arising under the Consumer Data Framework.

Exclusions applying specifically to credit complaints

C.1.3 AFCA must exclude:

- a) A complaint about the Financial Firm's assessment of the credit risk posed by a borrower or the security to be required for a loan unless the complaint is about:
 - (i) Maladministration in lending, loan management or security matters; or
 - (ii) the variation of a credit contract as a result of the Complainant being in financial hardship;
- b) A complaint about a Small Business (including Primary Producer) credit facility:
 - (i) of more than \$5 million or higher amount that applies as a result of an adjustment in accordance with rule D.4.3; and
 - (ii) where the complaint is submitted by the borrower or a guarantor of the borrower's debt.

Exclusions applying specifically to insurance complaints including Superannuation Complaints

C.1.4 AFCA must exclude:

- a) A complaint about a General Insurance Policy other than a:
 - (i) Retail General Insurance Policy;
 - (ii) Residential Strata Title Insurance Product;
 - (iii) Small Business Insurance Product;
 - (iv) Medical Indemnity Insurance Product; or
 - (v) Title Insurance Policy.
- b) A complaint about underwriting or actuarial factors leading to an offer of a Life Insurance Policy on non-standard terms.
- c) A complaint about rating factors and weightings an insurer under a General Insurance Policy applies to determine the insured's or proposed insured's base premium that is commercially sensitive information.

- d) A complaint about a decision to refuse to provide insurance cover except where:
 - (i) the complaint is that the decision was made indiscriminately, maliciously or on the basis of incorrect information;
 - (ii) the complaint is that the Complainant was misinformed about the insurance cover; or
 - (iii) the complaint relates to a Medical Indemnity Insurance Product.

For the avoidance of doubt, rules C.1.4 (b), (d)(i), and (d)(ii) apply to a Superannuation Complaint to the extent that the insurance policy is issued to either the trustee of a Regulated Superannuation Fund or an Approved Deposit Fund or an RSA provider.

Exclusions applying specifically to investment complaints including Superannuation Complaints

C.1.5 AFCA must exclude:

- a) A complaint solely about the investment performance of a financial investment, other than a complaint concerning non-disclosure or misrepresentation.
- b) A complaint relating to the management of a fund or scheme as a whole.
- c) A complaint against the trustee of a Self Managed Superannuation Fund in respect of their conduct as trustee of that fund.
- d) A complaint relating to the management as a whole of a RSA Provider or insurer, the RSA Provider's or insurer's business or the RSA Provider's or insurer's investments.

For the avoidance of doubt, rules C.1.5 (a), (b), and (d) apply to a Superannuation Complaint.

Exclusions applying specifically to Traditional Trustee Company Service complaints

C.1.6 AFCA must exclude:

- a) A complaint about a Traditional Trustee Company Service where:
 - (i) at least one beneficiary is a minor or lacks mental capacity;
 - (ii) the service may be made under any of the laws listed in Schedule 8AC of the Corporations Regulations; or
 - (iii) the service is provided to a person lacking mental capacity and the trustee was appointed by a court.
- b) A complaint about the alleged capacity of the testator to make a valid will.
- c) A complaint relating to the management of a common fund.

C.2 AFCA's discretion not to consider complaints

C.2.1 AFCA may in its discretion exclude a complaint, if AFCA considers this course of action is appropriate.

AFCA will not exercise its discretion to exclude a complaint lightly. The discretion will only be used in cases where there are compelling reasons for deciding that AFCA should not consider the complaint.

C.2.2 Examples where AFCA may consider excluding a complaint include:

- a) If there is a more appropriate place to deal with the complaint, such as a court, tribunal, another dispute resolution scheme, or the Office of the Australian Information Commissioner;
- b) If the subject matter of the complaint has already been adequately dealt with by AFCA or a Predecessor Scheme;
- c) If the complaint relates to a Financial Firm's practice or policy and does not involve any allegation of either Maladministration or inappropriate application of the practice or policy;
- d) If the complaint being made is frivolous, vexatious, misconceived or lacking in substance;
- e) If the Complainant has commenced legal proceedings in relation to the subject matter of the complaint unless:
 - (i) the Complainant discontinues the legal proceedings; or
 - (ii) the relevant statute of limitation period will shortly expire and the Complainant undertakes in writing to AFCA not to take any further steps in the proceedings while AFCA is considering the complaint;
- f) If AFCA agrees to allow a Financial Firm to treat the complaint as a test case and the Financial Firm:
 - (i) undertakes within 6 months to institute proceedings in any superior court or tribunal which has the ability to make a binding decision of the issue or point of law in respect of the complaint;
 - (ii) undertakes to pay the Complainant's costs and disbursements (if not otherwise agreed, on a solicitor and own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Financial Firm (except by way of respondent's notice, cross appeal or other similar procedure);
 - (iii) undertakes to make interim payments of account of such costs and disbursements if and to the extent that it appears reasonable to do so;
 - (iv) undertakes to meet any other requirements of AFCA; and
 - (v) complies with these undertakings;
- ~~g) If the Complainant is represented or assisted by an agent who may receive remuneration for this service and AFCA considers that:~~

~~(i) the agent is engaging in inappropriate conduct which is not in the best interest of the Complainant, or~~

~~(ii) the complaint is not accompanied by information required by AFCA.~~

~~h) If the Complainant is represented or assisted by an agent who may receive remuneration for this service and the agent has previously submitted complaints that have been excluded under rule C.2.2(g); or~~

g) The Complainant has reached a full and final settlement with the Financial Firm about the subject matter of the complaint, unless the Complainant can show that the settlement was obtained by fraud, duress or misleading and deceptive or unconscionable conduct;

h) The nature and subject matter of the complaint is substantively the same as a previous complaint that was discontinued by AFCA under rule A.8.4b);

i) AFCA considers that the complaint involves (or may involve) another complainant who has not consented to the submitting of the complaint to AFCA and without that person's consent it would not be appropriate for AFCA to consider the complaint;

j) a complaint about a financial service where the Complainant is a wholesale client within the meaning of the Corporations Act, but is not a Small Business.

Section D – Remedies

Section D sets out the remedial action that an AFCA Decision Maker has the power to decide upon. In the case of a Superannuation Complaint, there is no monetary limit on the amount that may be awarded to the Complainant. For most other complaints, a limit per claim applies as set out in the table in this Section.

D.1 Types of remedies for a Superannuation Complaint

- D.1.1 To the extent permitted by section 1055 of the Corporations Act, the AFCA Decision Maker for a Superannuation Complaint may:
- a) affirm, vary or set aside and substitute the decision or conduct the subject of the complaint; and/ or
 - b) set aside and remit part or all of the decision to the trustee, insurer or other decision maker with directions; or
 - c) in the case of a life policy, annuity policy, contract of insurance or RSA, set aside or vary the terms of the governing rules in relation to the Complainant or order the repayment of money; or
 - d) in the case of a life policy fund, determine that the Complainant's membership of the fund is cancelled.
- D.1.2 To the extent required by section 1055 of the Corporations Act, the AFCA Decision Maker for a Superannuation Complaint must affirm a decision or conduct if satisfied it is fair and reasonable in all the circumstances.
- D.1.3 To the extent permitted by section 1055 of the Corporations Act, there is no monetary limit on the remedies under rule D1.1.
- D.1.4 The remedies in rules D.2 to D.5 do not apply to a Superannuation Complaint.

D.2 Types of remedies for a complaint other than a Superannuation Complaint

D.2.1 An AFCA Decision Maker may decide that the Financial Firm or the Complainant must undertake a course of action to resolve the complaint including:

- a) the payment of a sum of money;
- b) the forgiveness or variation of a debt;
- c) the release of security for debt;
- d) the repayment, waiver or variation of a fee or other amount paid to or owing to the Financial Firm or to its representative or agent, including the variation in the applicable interest rate on a loan;
- e) the reinstatement, variation, rectification, or setting aside of a contract;
- f) the meeting of a claim under an insurance policy by, for example, repairing, reinstating or replacing items of property;
- g) in the case of a complaint involving a privacy issue with an individual – that the Financial Firm should not repeat conduct on the basis that it constitutes an interference with the privacy of an individual or that the Financial Firm should correct, add to or delete information pertaining to the Complainant;
- h) in relation to a default judgment, not enforcing the default judgment;
- i) in relation to privacy-related complaints, to make an order that is generally consistent with the declarations available to the Information Commissioner when he or she makes a decision under section 52 of the Privacy Act;
- j) an apology.

D.2.2 Punitive, exemplary or aggravated damages cannot be awarded.

D.3 ~~Compensation~~ Financial loss and non-financial loss remediation for complaints other than Superannuation Complaints

D.3.1 An AFCA Decision Maker may decide that the Financial Firm is to ~~compensate~~ remediate the Complainant for direct financial loss. When calculating the value of such a remedy, monetary compensation and any remedy where the value can readily be calculated, such as the waiving of a debt, are included.

Rule D.4 sets out the maximum amount that an AFCA Decision Maker can award for direct financial loss.

D.3.2 In addition or instead, an AFCA Decision Maker may decide that the Financial Firm is to compensate the Complainant for indirect financial loss. This is not the case if the complaint arises as a result of a claim:

- a) on a General Insurance Policy that expressly excludes such liability; or
- b) by the Complainant under another person's Motor Vehicle Insurance Product.

Rule D.4 sets out the maximum amount that an AFCA Decision Maker can award for indirect financial loss.

D.3.3 An AFCA Decision Maker may decide that the Financial Firm is to compensate the Complainant for non-financial loss:

- a) for a complaint relating to an individual's privacy rights - injury has occurred to the Complainant's feelings or humiliation has been suffered by the Complainant; or
- b) for other complaints – an unusual degree or extent of physical inconvenience, time taken to resolve the situation or interference with the Complainant's expectation of enjoyment or peace of mind has occurred.

This type of compensation, however, is not permitted if the complaint arises as a result of a claim on a General Insurance Policy that expressly excludes such liability.

Rule D.4 sets out the maximum amount that an AFCA Decision Maker can award for non-financial loss.

~~D.3.4 Punitive, exemplary or aggravated damages cannot be awarded.~~

D.4 Monetary limits for complaints other than Superannuation Complaints

~~D.4.1 The table This Section below specifies sets out:~~

- a) the maximum amounts per claim that may be awarded by an AFCA Decision Maker for complaints other than Superannuation Complaints, not including costs awarded under rule D.5 or interest under rule D.6; and:

~~D.4.1-~~

~~D.4.2b) The table below also sets out the monetary restrictions per claim on AFCA's jurisdiction as at 1 November 2018.~~

~~D.4.3~~ D.4.2 These se amounts ~~set out in the table below~~ are subject to change:

- a) AFCA must adjust those amounts on 1 January 2021, and every 3 years thereafter, by the higher of the percentage increase in:
 - (i) the Consumer Price Index, weighted average of eight capital cities, for the 3 year period ending with the most recent report issued by the Australian Bureau of Statistics in the previous year; and

- (ii) the Male Total Average Weekly Earnings for the 3 year period ending with the most recent report issued by the Australian Bureau of Statistics in the previous year.

AFCA must round maximum compensation amounts to the nearest \$100 for rows 1, 3, 7 and 8; and to the nearest \$500 for rows 2, 4, 5, and 6. AFCA must round monetary restriction amounts to the nearest \$1000, regardless of row.

- b) AFCA may change those amounts at any time to meet any regulatory requirements or directions given by ASIC under the Corporations Act.

Limits applying to complaints submitted to AFCA before 1 January 2021

	Row	Type of claim	Compensation amount limit per claim	Monetary restriction on AFCA's jurisdiction <u>per claim</u>			
Claim for direct financial loss	1	Income Stream Insurance Claim on a Life Insurance Policy or a General Insurance Policy dealing with income stream risk or advice about such a contract. If the claim is in excess of this monthly limit, the monthly limit will apply unless: <ul style="list-style-type: none"> the total amount payable under the policy can be calculated with certainty by reference to the expiry date of the policy and/or age of the insured; and that total amount is less than the amount specified in row 6. If this is the case, then the limit will be the amount in row 6.	\$13,400 per month	Amount claimed by Complainant must not exceed \$1 million			
	2	General Insurance Broking Claim against a General Insurance Broker except where the claim solely concerns its conduct in relation to a Life Insurance Policy (in which case row 1 or 6 applies, as the case may be).	\$250,000	Amount claimed by Complainant must not exceed \$1 million			
	3	Uninsured Motor Vehicle Claim under another person's Motor Vehicle Insurance Product for property damage to an Uninsured Motor Vehicle caused by a driver of the insured motor vehicle – see B.2.1 f)(i)	\$15,000	Amount claimed by Complainant must not exceed \$1 million			
	4	Credit Facility	Claim arising from a credit facility provided to a Small Business or Primary Producer – see C.1.2e and C.1.3b	by a borrower	of a Small Business loan	\$1 million	Credit facility must not exceed \$5 million
					of a Primary Producer loan	\$2 million	
				by a guarantor to set aside a guarantee supported by security over	the guarantor's principal place of residence	unlimited	Credit facility must not exceed \$5 million
					other security	for a Small Business loan	
		for a Primary Producer loan	\$2 million	Credit facility must not exceed \$5 million			
	5	Credit Facility	Claim arising from a credit facility that was provided to someone other than a Small Business or Primary Producer		by a borrower		\$500,000
				by a guarantor to set aside a guarantee supported by security over	the guarantor's principal place of residence – see C.1.2e	unlimited	unlimited
other security					\$500,000	Amount claimed by Complainant must not exceed \$1 million	
6		All other claims (excluding Superannuation Complaints) In any other circumstance by any Complainant (whether or not a Small Business or Primary Producer)	\$500,000	Amount claimed by Complainant must not exceed \$1 million			
7		Claim for indirect financial loss	\$5,000	not applicable			
8		Claim for non-financial loss	\$5,000	not applicable			

Limits applying to complaints submitted to AFCA on or after 1 January 2021

Row	Type of claim	Compensation amount limit per claim	Monetary restriction on AFCA's jurisdiction per claim				
1	Income Stream Insurance Claim on a Life Insurance Policy or a General Insurance Policy dealing with income stream risk or advice about such a contract. If the claim is in excess of this monthly limit, the monthly limit will apply unless: <ul style="list-style-type: none"> the total amount payable under the policy can be calculated with certainty by reference to the expiry date of the policy and/or age of the insured; and that total amount is less than the amount specified in row 6. If this is the case, then the limit will be the amount in row 6.	\$14,500 per month	Amount claimed by Complainant must not exceed \$1,085,000				
	General Insurance Broking Claim against a General Insurance Broker except where the claim solely concerns its conduct in relation to a Life Insurance Policy (in which case row 1 or 6 applies, as the case may be).	\$271,500	Amount claimed by Complainant must not exceed \$1,085,000				
	Uninsured Motor Vehicle Claim under another person's Motor Vehicle Insurance Product for property damage to an Uninsured Motor Vehicle caused by a driver of the insured motor vehicle – see B.2.1 f(i)	\$16,300	Amount claimed by Complainant must not exceed \$1,085,000				
Claim for direct financial loss	Credit Facility	Claim arising from a credit facility provided to a Small Business or Primary Producer – see C.1.2e and C.1.3b	by a borrower	of a Small Business loan	\$1,085,000	Credit facility must not exceed \$5,425,000	
				of a Primary Producer loan	\$2,170,000		
			by a guarantor to set aside a guarantee supported by security over	the guarantor's principal place of residence		unlimited	Credit facility must not exceed \$5,425,000
				other security	for a Small Business loan	\$1,085,000	Credit facility must not exceed \$5,425,000
		for a Primary Producer loan	\$2,170,000				
		5	Claim arising from a credit facility that was provided to someone other than a Small Business or Primary Producer	by a borrower		\$542,500	Amount claimed by Complainant must not exceed \$1,085,000
by a guarantor to set aside a guarantee supported by security over	the guarantor's principal place of residence – see C.1.2e			unlimited	unlimited		
	other security			\$542,500	Amount claimed by Complainant must not exceed \$1,085,000		
6	All other claims (excluding Superannuation Complaints)	\$542,500	Amount claimed by				

Row	Type of claim	Compensation amount limit per claim	Monetary restriction on AFCA's jurisdiction per claim
	In any other circumstance by any Complainant (whether or not a Small Business or Primary Producer)		Complainant must not exceed \$1,085,000
7	Claim for indirect financial loss	\$5,400	not applicable
8	Claim for non-financial loss	\$5,400	not applicable

D.5 Costs of pursuing complaint other than a Superannuation Complaint

- D.5.1 An AFCA Decision Maker may decide that the Financial Firm is to contribute to the legal or other professional costs or travel costs incurred by the Complainant in the course of the complaint.
- D.5.2 Unless special circumstances apply, AFCA will not require the Financial Firm to contribute more than \$5,000 to these costs.
- D.5.3 A contribution to the Complainant's costs of pursuing a complaint is not taken into account for the purposes of the maximum value of remedy under D.4.

D.6 Interest

- D.6.1 An AFCA Decision Maker may decide that the Financial Firm is to pay interest on a payment to be made by the Financial Firm to the Complainant. Subject to the terms of the Determination, any interest accrues until the payment is made.
- D.6.2 When deciding an award of interest:
- a) if the Insurance Contracts Act 1984 applies - AFCA will normally calculate interest in accordance with that Act; and
 - b) otherwise:
 - (i) AFCA will normally calculate interest from the date of the cause of action or matter giving rise to the claim; and
 - (ii) AFCA may have regard to any factors it considers relevant, including the extent to which either party's conduct contributed to delay in the resolution of the matter.
- D.6.3 An award of interest is not taken into account for the purposes of the maximum value of remedy under rule D.4.

Section E – Defined Terms

This Section defines terms that are used in the rules and explains how the rules should be interpreted.

E.1 Defined terms

E.1.1 For the purposes of these rules, the terms below have the following meanings:

Accountant	means a member of one of the following professional associations: a) CPA Australia b) Chartered Accountants Australia and New Zealand c) Institute of Public Accountants
Adjudicator	means someone appointed to the position of Adjudicator under paragraph 11.2 of AFCA’s Constitution.
AFCA	means Australian Financial Complaints Authority Limited ACN 620 494 340 while authorised to operate the AFCA scheme as defined in the Corporations Act.
AFCA Decision Maker	means an Ombudsman, Adjudicator or AFCA Panel.
AFCA Member	means a person who is a Member of AFCA as defined in AFCA’s Constitution.
AFCA Panel	means a panel of 2 or 3 individuals, comprised either of Panel Members or Panel Members and an Ombudsman, who have been allocated responsibility for making a Determination in relation to a complaint.
Annual Information Return	has the meaning in the Corporations Regulation 5D.
Annuity Policy	has the meaning in the Corporations Act.
Approved Deposit Fund	has the meaning in the Corporations Act.
ASIC	means the Australian Securities and Investments Commission.
ASIC Act	means the Australian Securities and Investments Commission Act 2001.
Australia	includes the external territories.
Chief Ombudsman	means the person appointed by the Board of Directors of AFCA to be the Chief Ombudsman in accordance with AFCA’s Constitution.

CDR participant	means a Financial Firm that: <ul style="list-style-type: none"> a) for particular Consumer Data Right data, is a data holder, or an accredited data recipient, for the Consumer Data Right data within the meaning of section 56AL of the Competition and Consumer Act; and b) is not required to be a member of the AFCA scheme under the Corporations Act or the National Consumer Credit Protection Act 2009.
Competition and Consumer Act	means the Competition and Consumer Act 2010.
Complainant	means a person who has submitted a complaint to AFCA.
Consumer Data Framework	means the Consumer Data Right regulatory framework, including Part IVD of the Competition and Consumer Act and the Consumer Data Rules for relevant designated sectors made by the Australian Competition and Consumer Commission.
Corporations Act	means the Corporations Act 2001.
Determination	means a decision made by an AFCA Decision Maker about a complaint in accordance with rule A.14.
Eligible Person	means: <ul style="list-style-type: none"> a) an individual or individuals (including those acting as a trustee, legal personal representative or otherwise); b) a partnership comprising of individuals – if it carries on a business, the business must be a Small Business; c) the corporate trustee of a Self Managed Superannuation Fund or a family trust – if it carries on a business, the business must be a Small Business; d) a Small Business (whether a sole trader or constituted as a company, partnership, trust or otherwise); e) a not-for-profit organisation or club – if it carries on a business, the business must be a Small Business unless the not-for-profit organisation or club is also a charity registered with the Australian Charities and Not-for-profits Commission; f) a body corporate of a strata title or company title building which is wholly occupied for residential or Small Business purposes; or g) the policy holder of a group life or group general insurance policy, where the complaint relates to the payment of benefits under that policy.
<u>Excluded Complainant</u>	<u>means a Complainant who is subject to a current exclusion by AFCA under rule B.6.</u>
<u>Excluded Paid Representative</u>	<u>Means a Paid Representative who is subject to a current exclusion by AFCA under rule B.6.</u>
Excluded Product	means a product that is not a financial product for the purposes of Part 7.1, Division 3 of the Corporations Act.

Financial Firm

means:

1. an AFCA Member.
2. for the purposes of a Superannuation Complaint, "Financial Firm" also includes a person whose decision or conduct (or the conduct of whose representatives) is referred to in section 1053 of the Corporations Act whether or not an AFCA Member.
3. for the purposes of a complaint relating to a Traditional Trustee Company Service, "Financial Firm" also includes all co-trustees whose joint conduct is the subject of the complaint and who have consented to AFCA considering the complaint.
4. for the purposes of rule B.2, A.7.1, A.7.2 and A.7.6 in relation to a complaint other than a Superannuation Complaint, "Financial Firm" also includes any employee, agent or contractor of the Financial Firm, any Representative of the Financial Firm regardless of whether the Representative's conduct is within or without authority, and without limiting the foregoing, any other person who has actual, ostensible, apparent or usual authority to act on behalf of the Financial Firm or authority to act by necessity in relation to a financial service.

Financial Service

means:

- a) a custodial service; or
- b) a product or service that is financial in nature including a product or service which is or is in connection with:
 - (i) a loan or any other kind of credit transaction (including a credit card used overseas) and guarantees or charges to secure any moneys owing;
 - (ii) a deposit including a term depositor a fund management deposit;
 - (iii) credit reporting;
 - (iv) equity release product;
 - (v) debt administration including debt management assistance or credit reporting assistance within the meaning of those terms in the National Consumer Credit Regulations 2010; and credit repair;
 - (vi) non-monetary default of a credit facility;
 - ~~(vii)~~ (vii) an insurance policy;
 - ~~(vii)~~~~(viii)~~ (viii) a financial investment (such as life insurance, a security, an Annuity Policy, a RSA, an interest in a registered managed investment scheme or a superannuation fund);
 - ~~(viii)~~ (ix) a facility under which a person seeks to manage financial risk or to avoid or limit the financial consequences of fluctuations in, or in the value of, an asset, receipts or costs (such as a derivatives contract or a foreign currency contract);
 - ~~(ix)~~ (x) a facility under which a person may make, or cause to be made, a non-cash payment (such as a direct debit arrangement or a facility relating to cheques, bills of exchange, travellers cheques or a stored value card);
 - ~~(x)~~ (xi) leasing and hire purchase arrangements; or
 - ~~(xi)~~ (xii) financial or investment advice; or
 - ~~(xii)~~ (xiii) Traditional Trustee Company Services.

Foreign Collective Investment Scheme	<p>means either:</p> <ol style="list-style-type: none"> a) a managed investment scheme under section 9 of the Corporations Act; b) a foreign investment company; or c) an investment offered under the Asia Region Funds Passport arrangement, <p>where the operator is incorporated (or is a foreign company that is formed) in a foreign jurisdiction and is regulated in that jurisdiction for the operation of the scheme or company.</p>
General Insurance Broker	<p>means the holder of an Australian financial services licence granted pursuant to section 913B of the Corporations Act whose licence has a condition authorising them to assume or use the expression 'insurance broker' or 'insurance broking' or 'general insurance broker' in relation to general insurance products.</p>
General Insurance Policy	<p>means a contract of general insurance within the meaning of that expression in the Insurance Contracts Act 1984 or part of such a contract.</p>
IDR Response	<p>means a communication in writing from the Financial Firm to a Complainant advising:</p> <ol style="list-style-type: none"> a) the Financial Firm's final position in relation to the Complainant's complaint (or, in the case of a complaint relating to a Traditional Trustee Company Service, a complaint by the Complainant or by an Other Affected Party) after the conclusion of the Financial Firm's internal dispute resolution process; and b) the Complainant's right to take the complaint to AFCA (or Predecessor Scheme), the time limit for doing so and the contact details of AFCA (or Predecessor Scheme).
Incorporated	<p>means being registered under the Corporations Act or under the incorporated associations legislation of a jurisdiction within Australia.</p>
Independent Assessor	<p>means a person appointed to the position of Independent Assessor under paragraph 11.4 of AFCA's Constitution.</p>
Life Insurance Policy	<p>includes any product or service offered by a life insurance company.</p>
Maladministration	<p>means an act or omission contrary to or not in accordance with a duty or obligation owed at law or pursuant to the terms (express or implied) of the contract between the Financial Firm and the Complainant.</p>
Medical Indemnity Insurance Product	<p>has the meaning in the Corporations Regulation 1.0.02.</p>
Motor Vehicle Insurance Product	<p>has the meaning in the Corporations Regulation 7.1.11.</p>
Ombudsman	<p>means a person appointed to the position of Ombudsman under paragraph 11.1 of AFCA's Constitution and includes the Chief Ombudsman.</p>
Operational Guidelines	<p>means the Guidelines developed by AFCA in relation to these rules and made publicly available via AFCA's website.</p>

Other Affected Party or Parties	means a person (other than the Complainant) who is entitled under the Corporations Regulations Part 5D.2 to request an Annual Information Return in respect of the trust which is the subject of a complaint.
<u>Paid Representative</u>	<u>means a person (other than a lawyer with a current practising certificate or an Accountant) who may receive financial remuneration for acting for a Complainant in relation to their complaint lodged with AFCA.</u>
Panel Member	means a person appointed to the position of Panel Member under paragraph 42.3 11.3 of AFCA's Constitution.
Predecessor Scheme	means the Banking and Financial Services Ombudsman Limited, the Financial Industry Complaints Service Limited, the Insurance Ombudsman Service Limited, Credit Union Dispute Resolution Centre Pty Limited, Insurance Brokers Dispute Limited, Financial Ombudsman Service Limited, Credit and Investments Ombudsman Limited and the Superannuation Complaints Tribunal.
Primary Producer	means a primary production business within the meaning of s 995.1(1) of the Income Tax Assessment Act 1997. The Primary Producer must also be a Small Business.
Privacy Act	means the Privacy Act 1988.
Privacy Act Participant	means a Financial Firm that: <ul style="list-style-type: none"> a) is a credit provider within the meaning of section 6G(1)(c), 6G(2) and 6G(3) of the Privacy Act; and b) is not required to be a member of the AFCA scheme under the Corporations Act or the National Consumer Credit Protection Act 2009.
Regulated Superannuation Fund	has the meaning in the Corporations Act.
Related Body Corporate	has the meaning in the Corporations Act.
Representative	means any person or entity for whose conduct a Financial Firm is or may be liable, including but not limited to a representative within the meaning of the Corporations Act, and a credit representative within the meaning of the National Consumer Credit Protection Act 2009.

Residential Strata Title Insurance Product	<p>means an insurance policy insuring the body corporate of a strata title or company title building that is wholly occupied for residential or small business purposes including:</p> <ul style="list-style-type: none"> a) Strata Building; b) Common Contents; c) Personal Accident or Sickness for voluntary workers in or about the strata building or common property; <p>but excluding:</p> <ul style="list-style-type: none"> a) Professional Indemnity; b) Public Liability; c) Workers Compensation.
Retail General Insurance Policy	<p>means:</p> <ul style="list-style-type: none"> a) an insurance product specified in section 761G(5)(b) of the Corporations Act; b) where a Complainant (other than a Small Business) has a complaint with a General Insurance Broker pertaining to a product that includes an insurance product specified in section 761G(5)(b) of the Corporations Act – also includes any other insurance cover provided by that product, with the exception of cover under an Excluded Product.
RSA	<p>means a Retirement Savings Account and has the meaning in the Corporations Act.</p>
RSA Provider	<p>has the meaning in the Corporations Act.</p>
Self Managed Superannuation Fund	<p>has the meaning in the Superannuation Industry (Supervision) Act 1993.</p>
Small Business	<p>means a Primary Producer or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint.</p>

Small Business Insurance Product

means:

- a) where the complaint is between a Small Business and a General Insurance Broker – a General Insurance Policy other than an Excluded Product;
- b) for other types of complaints involving a Small Business - a policy or part of a policy that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of one of more of the following:
 - (i) Computer and Electronic Breakdown;
 - (ii) Fire or Accidental Damage – but, in a complaint about an insurance claim that has been made by the Complainant, only to the extent that the insurance cover relates to a Specified Defined Event;
 - (iii) Loss of Profits/Business Interruption;
 - (iv) General Property;
 - (v) Glass;
 - (vi) Land Transit;
 - (vii) Machinery Breakdown;
 - (viii) Money; and
 - (ix) Theft,

but excluding cover in relation to any of the following:

- (x) Contractors All Risks;
- (xi) Fidelity Guarantee;
- (xii) Legal Liability (including Public Liability and Products Liability);
- ~~(xiii)~~ (xiv) Professional Indemnity; and
- ~~(xiii)~~ (xiv) Industrial Special Risks.

Specified Defined Event

means events (however described) as follows:

- a) Fire/Lightning/Explosion;
- b) Storm/Tempest/Rainwater; Flood;
- c) Water from leaking pipes/water systems;
- d) Impact;
- e) Earthquake;
- f) Riot and Civil Commotion or Industrial Disputes;
- g) Malicious Damage;
- h) Fusion;
- i) Spoilage of refrigerated goods.

Superannuation Complaint	<p>has the meaning set out in section 1053 of the Corporations Act.</p> <p>Accordingly:</p> <p>a) a complaint about an insurer's decision under an insurance policy held by the trustee of a Regulated Superannuation Fund or an Approved Deposit Fund will:</p> <p>(i) if all of the time limits in rule B.4.1.1 have been met, be considered as a Superannuation Complaint, by joining the insurer to a complaint against the trustee's decision;</p> <p>(ii) otherwise, be considered as a non-superannuation complaint against the insurer; and</p> <p>b) a complaint about financial product advice relating to superannuation is not a Superannuation Complaint unless it is provided by:</p> <p>1. the trustee of a Regulated Superannuation Fund or Approved Deposit Fund, an RSA provider or a life company as issuer of an Annuity Policy (superannuation provider); or</p> <p>2. an employee or representative of a superannuation provider under the superannuation provider's licence,</p> <p>to a member of the Regulated Superannuation Fund, a beneficiary of the Approved Deposit Fund, a holder of the RSA or a person with an interest in the Annuity Policy.</p> <p>Otherwise a complaint about financial product advice relating to superannuation will be considered as a non-superannuation complaint against the Financial Firm providing the advice.</p>
Superannuation Provider	has the meaning in the Corporations Act.
Title Insurance Policy	means an indemnity insurance product that principally manages financial risk or loss arising from defects in the title of real property.
Traditional Trustee Company Service or Services	has the meaning in the Corporations Act.
Uninsured Motor Vehicle	means a motor vehicle that is not covered by current comprehensive insurance.

E.2 Interpretation of AFCA's rules

- E.2.1 A reference to the doing of an act includes, where the context allows, a reference to a refusal or failure to do or cessation of the act. Accordingly a reference to the provision of Financial Services includes, where the context allows, a reference to their non-provision and to their cancellation.
- E.2.2 A reference to a person includes a natural person, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority.
- E.2.3 A reference to the singular includes the plural and vice versa.

- E.2.4 The words “including”, “such as” or “for example”, when introducing an example, does not limit the meaning of the words to which the example relates, that example or examples of a similar kind.
- E.2.5 Where a term is used in these rules that is not defined, the term is to be interpreted as having its everyday meaning and usage, unless the context otherwise requires.
- E.2.6 References to rules are to paragraphs of these rules.
- E.2.7 A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- E.2.8 Hyperlinks in this document are provided for ease of reference only and do not form part of the rules, unless otherwise specified.

Section F – Legacy Complaints

On 19 February 2019, the responsible Minister changed the authorisation conditions, effective 30 June 2019, for AFCA Limited to operate the AFCA scheme. The new conditions require AFCA to deal with complaints about conduct by Financial Firms (who are compulsory members of AFCA) dating back to 1 January 2008, which AFCA, its Predecessor Schemes, courts, or tribunals have not dealt with.

Section F modifies the operation of the AFCA's Rules solely in respect of Legacy Complaints to give effect to the change in authorisation conditions. No other class of complaints are affected by this Section.

Section F will only apply to Legacy Complaints received during the period 1 July 2019 to 30 June 2020 (inclusive), after which time it will automatically be removed from the AFCA's Rules.

F.1 Application of this section

- F.1.1 Legacy Complaints will be dealt with under this section of the Rules effective as at 30 June 2019. All other complaints will be dealt with under the other sections of the Rules that apply.
- F.1.2 Legacy Complaints will not be subject to the time limits set out in B.4.
- F.1.3 In all other respects, Sections A to E of the Rules will apply to Legacy Complaints unless modified by Section F. In the event of inconsistency with the other sections of the Rules, Section F prevails as it relates to Legacy Complaints.

F.2 Requirements for Legacy Complaints

F.2.1 AFCA will not consider a Legacy Complaint:

- a) unless it is submitted to AFCA between 1 July 2019 and 30 June 2020
- b) about conduct that occurred and ended before 1 January 2008
- c) in relation to which a decision or determination has been made by a court or tribunal
- d) in relation to which a decision or determination about the merits of the complaint has been made by a Predecessor Scheme or AFCA
- e) that has previously been finally settled by the Complainant and the Financial Firm to whom the complaint relates (other than a complaint which can still be made under the [R rules](#))
- f) in relation to a superannuation death benefit
- g) that solely relates to a right or obligation arising under the Privacy Act.

F.2.2 The following defined terms apply only to Section F:

Compulsory Member	means a Financial Firm that is required or obligated to hold membership of AFCA, rather than having joined the AFCA scheme voluntarily.
Legacy Complaint	means an expression of dissatisfaction, against a current Compulsory Member of AFCA, about loss arising from conduct by a Financial Firm that occurred on or after 1 January 2008 which would but for rule F.1 be excluded under the time limits set out in B.4.

Section G – Complaints about SMEG Loans and COVID-19-related Repayment Deferrals

On 21 April 2020, the responsible Minister changed the authorisation conditions, effective 25 April 2020, for AFCA Limited to operate the AFCA scheme. The new conditions required AFCA to amend its rules to deal with certain kinds of complaints as set out in the authorisation conditions. To avoid any risk of inconsistency, the rule changes required by the Minister have been included in a new, standalone section of the Rules.

Section G modifies the operation of ~~the AFCA's~~ Rules in their entirety.

G.1 Application of this section

G.1.1 ~~The AFCA's~~ Rules are to be read subject to Section G. To the extent there is any inconsistency between any provision in Section G and any other provision of the Rules, the provision in Section G prevails.

G.1.2 Section G applies to all complaints lodged with AFCA on or after 25 April 2020 which fall within Rules G.2.1(b) or G.3.1.

G.1.3 In this section:

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

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.

G.2 COVID-19 economic response—guarantee of lending to small and medium enterprises

G.2.1 Rules G.2.2 and G.2.3 apply if:

- a) a loan is made by a lender to a borrower and:
 - (i) the loan is a SMEG Loan; or
 - (ii) the lender believes in good faith that the loan is a SMEG Loan; and
- b) the borrower makes a complaint to the AFCA scheme in accordance with ~~the AFCA's~~ scheme-rules in relation to any of the following:
 - (i) the SMEGs Loan;

- (ii) any other loan (to the extent that the loan is related to, or connected with, the SMEG Loan).

G.2.2 When considering the complaint, AFCA and the AFCA Decision Maker must not take into account any decision made by the lender which relates to:

- a) a decision to provide the SMEG Loan to the borrower; or
- b) the amount of the SMEG Loan.

G.2.3 In relation to decisions which AFCA and the AFCA Decision Maker can consider, they must consider the complaint on the basis that:

- a) the lender was permitted to disregard the impact of COVID-19 when determining the financial situation of the borrower; and
- b) the purpose of the SMEG Act is to encourage the quick and efficient provision of loans to borrowers as a response to the economic impact of COVID-19 on individuals, businesses and the Australian economy; and
- c) the lender is required to comply with the terms of the SMEG Act (and any instruments, rules or conditions made as a consequence of that Act) in providing SMEG Loans to borrowers; and
- d) the considerations in paragraphs (a) to (c) must be given priority by AFCA and the AFCA Decision Maker over other matters when making any preliminary assessment or determination.

G.2.4 AFCA must not consider systemic issues relating to SMEG Loans in relation to the decisions referred to in Rule G.2.2, unless it becomes aware, in connection with a complaint under the AFCA scheme, that a serious contravention of a law may have occurred.

G.3 COVID-19 economic response—deferral of loan repayments

G.3.1 Rule G.3.2 applies if:

- a) a Business Loan (other than a SMEG Loan) was made by a lender to a borrower on or before 1 January 2020 (**Deferral Loan**); and
- b) the lender agrees to provide the borrower with a deferral of loan repayments in relation to the Deferral Loan, at any time in the period of 12 months after 25 April 2020, because the borrower has advised the lender that their business has been impacted by COVID-19 (**Repayment Deferral**); and
- c) the borrower accepts, and makes use of, the Repayment Deferral; and
- d) the borrower, or a person who was a guarantor in relation to the loan on or before 1 January 2020, makes a complaint to the AFCA scheme in accordance with ~~the AFCA's scheme~~ rules in relation to a decision about a Repayment Deferral for the Deferral Loan.

- G.3.2 AFCA must exclude any complaint, or part of a complaint, in relation to the decision to provide a Repayment Deferral and any consequential change to the amounts payable or guaranteed under the Deferral Loan or the duration of the loan or any guarantee of the Deferral Loan.
- G.3.3 AFCA must not consider any systemic issues relating to decisions in relation to Repayment Deferrals referred to in Rule G.3.2, unless it becomes aware, in connection with a complaint under the AFCA scheme, that a serious contravention of a law may have occurred.

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AFCA acknowledges the traditional owners of country throughout Australia and their continuing connection to land, culture and community. We pay our respects to elders past, present and emerging.



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