

AFCA Rules Change Consultation

18 March 2019

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Overview

On 19 February 2019, the responsible Minister changed the authorisation conditions for AFCA Limited to operate the AFCA scheme¹. The new conditions require AFCA to deal with complaints about conduct by financial firms (who are current compulsory members of AFCA) dating back to 1 January 2008, which AFCA, its predecessor schemes, courts, or tribunals have not dealt with. Complaints that come within this scope will be subject to the provisions of the existing AFCA Rules, except for the time limit provisions.

In order for AFCA to meet the revised authorisation conditions and deal with these complaints (legacy complaints), we are proposing to add a new Section F to the AFCA Rules. Section F will modify the AFCA 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.

Specifically, Section F will only apply to complaints received between 1 July 2019 and 30 June 2020 (inclusive).

Background

AFCA Limited operates the AFCA scheme. It is authorised to do this by the responsible Minister, and must meet the requirements of the Corporations Act, the authorisation conditions laid down by the Minister, and regulatory requirements issued by ASIC.

As noted above, the authorisation conditions have changed. A copy of the additional authorisation condition is [here and the](#) original authorisation conditions are [here](#).

The new conditions allow 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 previously dealt with.

AFCA's current Rules set out the time limits for complaints to be submitted to AFCA. The new authorisation conditions will allow AFCA to consider complaints which currently fall outside the time limits in the existing AFCA Rules.

To facilitate AFCA's consideration of these complaints, we propose to change the Rules in line with the additional authorisation conditions.

¹ effective 30 June 2019

The Rules change

The proposed change will insert a new Section F. This new Section modifies the operation of the AFCA Rules solely in respect of legacy complaints – the complaints that the change in authorisation conditions requires AFCA to consider. No other class of complaints will be affected by this Section.

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

A draft of Section F is set out in the Appendix at the end of this consultation paper.

Operational Guidelines

AFCA's Operational Guidelines explain how AFCA interprets and applies its Rules. In the interests of transparency, AFCA has also drafted additional information to be included in the Operational Guidelines, explaining how AFCA intends to interpret and apply the proposed Rules change. The new draft section can be found [here](#).

We will provide further guidance prior to 1 July 2019 about how we will handle legacy complaints and our approach to issues that these complaints may raise. We will also provide AFCA members with information about relevant complaint fees and charges that will be applicable for legacy complaints.

Transitional arrangements that are currently in place in relation to superannuation complaints will continue to apply, subject to a complaint otherwise coming within this jurisdiction. Transitional arrangements that will continue to apply include arrangements in relation to complaints previously lodged and being dealt with by the Superannuation Complaints Tribunal.

The consultation

Scope of the consultation

AFCA seeks the views of stakeholders on the proposed Rules change. The consultation is limited to this proposed change.

Summary of consultation questions

- 1 Does the proposed change satisfy the requirements of the new authorisation conditions?
- 2 Do the Operational Guidelines adequately explain how Section F will apply?
- 3 Do you have any other comments about the proposed change?

The consultation process

AFCA is required to consider these additional complaints from 1 July 2019 onwards. The consultation process must be completed well before this date to ensure the proposed Rules change is finalised and approved by that time.

We invite individual written submissions on the proposed Rules change (see below for how to make a submission).

Following the consultation, the AFCA Board will consider all submissions and make any further appropriate changes. The proposed change to Rules, as approved by the Board, will then be submitted to ASIC for review and approval, which may result in further changes.

Once finalised, the Rules as amended will apply to legacy complaints received from 1 July 2019.

How to make a submission

Submissions can be emailed to submissions@afca.org.au before close of business Friday 12 April 2019.

For more information refer to the AFCA website at www.afca.org.au/consultation or contact Mike D'Argaville on 03 8623 2004 or submissions@afca.org.au.

Appendix: The proposed Rules change

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 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 complaints received during the period 1 July 2019 to 30 June 2020 (inclusive), after which time it will be removed from the AFCA Rules.

F.1 Application of this section

- F.1.1 Legacy complaints will be dealt with under this section of the Rules as at 30 June 2019. All other complaints will be dealt with under the other sections of the Rules that apply as at the date the complaint was lodged.
- 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 30 June 2019 Rules will apply to legacy complaints unless modified by Section F. In the event of inconsistency between the other sections of the Rules and Section F, 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 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 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.