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Australian Financial Complaints Authority Limited
Consultations
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By email: submissions@afca.org.au

Dear Sir/Madam,

Thank you for the opportunity to provide input into AFCA's consultation on the rule changes related to meeting the revised authorisation conditions in order to deal with legacy complaints.

As you will be aware, Maurice Blackburn is a plaintiff law firm with 32 permanent offices and 31 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions.

We also have a proud history of supporting those who have fallen victim to misconduct by financial service providers.

Our responses to the questions specified on page 2 of the Consultation paper appear below.

1. Does the proposed change satisfy the requirements of the new authorisation conditions?

No response to this consultation question.

2. Do the Operational Guidelines adequately explain how Section F will apply?

Maurice Blackburn respectfully submits that the explanation of the changes set out in this process may mislead and confuse consumers who are hoping to achieve justice through having their legacy claim finally settled.

In the Government's response¹ to Recommendation 7.1 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, a number of highly publicised commitments were made, which can be summarised as follows:

- The Government agreed to establish an industry-funded, forward-looking compensation scheme of last resort (CSLR).
- The CSLR will operate as a last resort mechanism to pay out compensation owed to consumers and small businesses that receive a court or tribunal decision in their favour or a determination from AFCA, but are unable to get the compensation owed by the financial firm — for example, because the firm has become insolvent.
- The CSLR will be established as part of AFCA.
- The Government also agreed to fund the payment of legacy unpaid determinations from the Financial Ombudsman Service and Credit and Investments Ombudsman.
- The Government will also require AFCA to consider disputes dating back to 1 January 2008 — the period looked at by the Royal Commission — if the dispute falls within AFCA's thresholds as they stand today.
- Consumers and small businesses will have twelve months from the date that AFCA commences accepting legacy disputes to lodge their complaint with AFCA.

We infer that these new authorisation conditions (which relax AFCA's jurisdictional thresholds to enable consumers to seek legacy losses) are the implementation of the above commitment for "AFCA to consider disputes dating back to 1 January 2008".

However the AFCA consultation paper does not say so and that may not be apparent to consumers.

We note clause 9(1)(a) of the *AFCA Scheme (Additional Condition) Amendment Authorisation 2019*² which states:

(1) It is an additional condition relating to the authorisation of the AFCA scheme that the AFCA scheme must permit an eligible person to make a complaint if:

(a) the complaint relates to a compulsory member of the AFCA scheme who is a member of the AFCA scheme at the time the complaint is made

It follows that legacy claims against *former* AFCA, FOS or CIO members, including deregistered or insolvent entities, will remain outside AFCA's jurisdiction. Again, this matter should be clarified as it may be unclear to consumers, particularly given the above commitment by the Government for "AFCA to consider disputes dating back to 1 January 2008" is set out in a tabulated response to the CSLR recommendation. Hence consumers may conflate the two distinct issues and derive false hope that a legacy claim against a former member may be open in AFCA pursuant to these authorisation conditions.

We submit that before the new authorisation conditions for legacy claims is implemented the operational guidelines should explain the difference between these processes and confirm the CSLR will be subject to a separate process (ideally with some communication as to the timing and operation of that process).

3. Do you have any other comments about the proposed change?

No response to this consultation question.

¹ <https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf>, p.36 - 37

² <https://www.legislation.gov.au/Details/F2019N00018>

Should you require any further information about anything included in this submission, please do not hesitate to make contact with me via [REDACTED] or [REDACTED]

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Josh Mennen', written in a cursive style.

Josh Mennen
Principal Lawyer
Maurice Blackburn