



AFCA The New One Stop Shop to Deal with Financial System Complaints

The Government's new one stop shop to deal with financial system complaints is a few steps closer with the passing of the Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018 in February, the commencement of that legislation on 5 March 2018 and the announcement that Helen Coonan a past Minister of Revenue and Assistant Treasurer, as the Chair of the Australian Financial Complaints Authority ("AFCA").

AFCA will replace the Financial Ombudsman Service (FOS), the Credit and Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal (SCT). Members of those dispute services will stay on for 12 months to deal with disputes lodged during the transition period as AFCA sets up ready itself to receive its first disputes from 1 November 2018.

Under the new legislative framework, AFCA's operating rules — known as its terms of reference — will set out the way in which AFCA will govern its operations.

AFCA will deal with financial service disputes with the following monetary limits:

- a monetary limit of \$1 million and a compensation cap of \$500,000 for most non-superannuation disputes;
- unlimited monetary jurisdiction for superannuation disputes;
- no monetary limits and compensation caps for disputes about whether a guarantee should be set aside where it has been supported by a mortgage or other security over the guarantor's primary place of residence; and
- a monetary limit of \$5 million and a compensation cap of \$1 million for small business credit facility

When FOS deals with an insurance dispute it currently has power to order compensation up to \$309,000 and in a claim against a General Insurance Broker it can award up to \$166,000.

AFCA is yet to publish its Terms of Reference and we will need to wait and see if the are specific limits for different types of disputes and whether the insurance broking industry will find itself facing professional indemnity claims managed by AFCA with potential compensation awards of up to \$500,000.

Australia now has a new external dispute resolution (EDR) framework and an enhanced internal dispute resolution (IDR) framework for the financial system.

The enhanced IDR framework will require AFSL holders to report their IDR activities to ASIC requirements and allow ASIC to publish the information it receives. This change will improve transparency about the performance of financial firms in relation to their IDR activities.

Australian financial services licensees (AFS licensees), unlicensed product issuers, unlicensed secondary sellers, Australian credit licensees and credit representatives, regulated superannuation funds (other than self-managed superannuation funds), approved deposit funds, retirement savings account (RSA) providers, annuity providers, and life policy funds and insurers (Financial Firms) will all be required to be members of AFCA.

Consumers and small businesses will be able to access AFCA which will provide an EDR scheme that will determine financial complaints with their decisions being binding on Financial Firms.

AFCA will be based on an ombudsman model and will be established by industry as a company limited by guarantee. Financial Firms will be required to be members of AFCA and fund the company. AFCA's members will be contractually bound to comply with AFCA's operating rules, which will be included in AFCA's terms of reference.

The scheme will be cost free for consumers.

Editors:



David Newey

Amanda Bond

GILLIS DELANEY LAWYERS
LEVEL 40, ANZ TOWER
161 CASTLEREAGH STREET
SYDNEY NSW 2000
AUSTRALIA
T: + 61 2 9394 1144
F: + 61 2 9394 1100
www.gdlaw.com.au

To ensure AFCA maintains an effective scheme an independent assessor will have oversight over the entire scheme.

ASIC will also have power to increase the limits on the value of claims or remedies that can be made under the AFCA scheme and require AFCA to comply with legislative or regulatory requirements that apply in relation to the AFCA scheme.

With 7 months to go before AFCA accepts its first dispute AFSL holders need to begin preparations for Australia's new EDR system.

Financial Service Licensees will need to amend financial services guides and product disclosure statements to incorporate details of the new EDR scheme. That will create some challenges. Documents issued during the transition period which will apply to financial services that extend beyond the transition period may need to reference both the current and future dispute regimes.

Internal Dispute Resolution processes will need to be reviewed.

Compliance procedures will need to be implemented to capture and report details required by ASIC about the performance of IDR activities.

Processes for managing AFCA complaints will also come to the fore.

The next 6 months will see a lot of activity from AFCA and we will bring to you further information as it is published. Publication of the Terms of reference of AFCA will be the next piece on the puzzle to deliver clarity on Australia's new one stop shop for financial services disputes for consumers and small businesses.

David Newey
dtn@gdlaw.com.au



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