



Australian Financial Complaints Authority (AFCA) Transition and Complaints Handling Procedures

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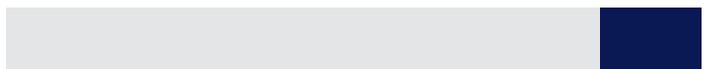


Table of Contents

| | |
|---|---|
| 1. Introduction..... | 3 |
| 2. The Establishment of AFCA | 3 |
| 3. Key Dates..... | 3 |
| 4. The Transition to AFCA and ASIC's Role | 4 |
| How CompliSpace can help..... | 4 |

1. Introduction

One of the key processes by which ethical conduct can be encouraged is by having a robust and transparent complaints handling program, which avoids the need for external agencies and legal action. However, occasionally the need arises to use an external dispute resolution (EDR) body, where the complaint cannot be resolved internally. In this situation, financial services companies should be prepared for the transition process from the current ombudsman arrangements (for example the FSO, CIO and SCT) to the new Australian Financial Complaints Authority (AFCA), and the impact on their internal processes.

2. The Establishment of AFCA

The Review of the Financial System External Dispute Resolution and Complaints Framework (The Ramsay Review) was commissioned by the Federal Government in May 2016. It was tasked with reviewing the operation of the three current financial services complaints bodies - the Superannuation Complaints Tribunal (SCT); Financial Services Ombudsman (FSO) and the Credit Industry Ombudsman (CIO) – and recommending avenues for improvement.

Some of the key findings included in the Report from the Ramsay Review, published in April 2017, included:

- ✓ The existence of multiple EDR schemes with overlapping jurisdictions meant it was difficult to achieve comparable outcomes for consumers with similar complaints.
- ✓ Multiple EDR schemes gave rise to duplication in costs for both industry members and ASIC.
- ✓ Consumers and small business did not have adequate access to EDR schemes and existing monetary limits on access to EDR schemes and existing caps on compensation that could be awarded were too low.
- ✓ There were long-standing problems with the arrangements for resolving superannuation complaints in the SCT.

The Federal Government announced the establishment of AFCA through the introduction of the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2017 (the Act), assented to in March 2018.

The Act kept the best aspects of the current EDR framework, which had been identified by the Ramsay Review as:

- ✓ independence, flexibility and responsiveness of the ombudsman model embodied by the FSO and the CIO; and
- ✓ the unlimited compensation cap, broad jurisdiction to review trustee decisions and statutory provisions such as the ability to join third parties to a dispute in the SCT.

The Act amends the Corporations Act 2001 (Cth) to establish AFCA, a one-stop shop for fair, timely and effective EDR in the financial services industry using the current consumer protection framework. AFCA will ultimately replace all three current complaints handling bodies. However, while the FSO and CIO are to be immediately subsumed on the commencement of AFCA and their current complaints transferred to AFCA, the SCT will resolve all complaints currently being heard before being retired.

3. Key Dates

Key dates for AFS licence holders are set out in the table below:

| Date | Important Compliance Obligations |
|--------------------------|---|
| 21 September 2018 | Membership of AFCA must be complete Membership of current EDR body (FSO or CIO) must also be maintained for 12 months from this date or until further notice from ASIC |
| 1 November 2018 | AFCA commences operation Websites and customer service information updates required |
| 1 July 2019 | All Financial Services Guides, Product Disclosure Statements and Statements of Advice must refer to AFCA as the EDR. |

Consumers will be able to lodge complaints with the FSO, CIO or SCT until 31 October 2018. Complaints can then be lodged with AFCA on and from its 1 November 2018 commencement date. Unresolved complaints transferred to AFCA will be dealt with under the old FOS or CIO terms, but no complaints will be transferred from the SCT to AFCA.

Internal dispute resolution (IDR) policies and procedures should be updated by November 2018 to refer to AFCA and how AFS licence holders and their clients will interact with AFCA.

AFS licence holders have until 1 July 2019 to update all external EDR documentation like product disclosure statements, financial services guides and statements of advice.

4. The Transition to AFCA and ASIC's Role

AFCA, as a single EDR body, will have the following key features:

- ✓ accessibility – free to consumers
- ✓ accountability – through regular independent reviews
- ✓ enforceability – all financial services companies will be required to comply with determinations as a condition of membership
- ✓ improve industry practice – monitoring, addressing and reporting systemic failures must be made to ASIC
- ✓ expertise – especially in complex disputes involving multiple providers
- ✓ community engagement – including raising awareness among consumers and the financial services industry.

AFCA will be empowered to hear a wide range of disputes including:

- ✓ Small business matters – including businesses with fewer than 100 employees
- ✓ Small business primary production producers – including disputes about credit facilities up to \$5 million
- ✓ Income stream insurance policy disputes – with an increased cap to \$13,400 per month
- ✓ Uninsured third-party motor vehicle claims disputes – with an increased cap to \$15,000
- ✓ General insurance broker disputes – with an increased cap to \$250,000.

On 20 June 2018, ASIC issued [Regulatory Guide 267](#) which outlines how ASIC will perform its oversight role in relation to AFCA. It also includes AFCA membership obligations which are relevant to all financial services companies. In relation to membership, section 1051(2)(a) of the Corporations Act 2001 (Cth) details that membership of AFCA is open to every entity that is required to be a member of an EDR scheme under:

- ✓ a law of the Commonwealth;
- ✓ an instrument made under such law; or
- ✓ the conditions of a licence or permission issued under such a law.

Importantly, all AFS licence holders must have a dispute resolution system that consists of IDR procedures that comply with ASIC's [Regulatory Guide 165](#) and they must also be a member of AFCA for EDR procedures. AFCA commences on 1 November 2018 and all AFS licence holders are required to maintain current membership of their previous EDR body for 12 months or until further notice following that date to enable any outstanding matters to be resolved.

How CompliSpace Can Help

At CompliSpace we combine governance, risk, compliance and policy management expertise with technology solutions to deliver sustainable governance solutions to businesses in every state and territory in Australia. Our team of lawyers and industry experts actively monitor changes to relevant laws and registration standards and deliver a full suite of online policies, procedures and governance programs that enable businesses to continuously comply with their legal and regulatory obligations.

CompliSpace works with businesses to tailor compliance and risk management systems to a company's individual needs and characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

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