Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018

No. 13, 2018

An Act to amend the *Corporations Act 2001* and repeal the *Superannuation (Resolution of Complaints) Act 1993*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018

No. 13, 2018

An Act to amend the *Corporations Act 2001* and repeal the *Superannuation (Resolution of Complaints) Act 1993*, and for related purposes

[*Assented to 5 March 2018*]

The Parliament of Australia enacts:

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1 Short title

This Act is the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	5 March 2018
2. Schedule 1, Parts 1 and 2	The day after this Act receives the Royal Assent.	6 March 2018
3. Schedule 1, items 32 to 41	The day after this Act receives the Royal Assent.	6 March 2018
4. Schedule 1, items 42 and 43	Immediately after the commencement of the provisions covered by table item 7.	6 March 2018
5. Schedule 1, item 44	The day after this Act receives the Royal Assent.	6 March 2018
6. Schedule 1, Parts 4 and 5	Immediately after the commencement of the provisions covered by table item 2.	6 March 2018
7. Schedule 2	The day after this Act receives the Royal Assent.	6 March 2018
8. Schedule 3	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 4 years beginning on the day this Act receives the Royal Assent, they commence on the day	

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
	after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Review of operation of amendments

(1) The Minister must cause an independent review of the operation of the amendments made by this Act to be undertaken as soon as practicable after 18 months after the day on and after which, under item 58 of Schedule 1 to this Act, the amendments made by Part 4 of Schedule 1 to this Act apply.

(2) The review must take into account feedback, provided by complainants under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001* as amended by this Act), relating to whether their complaints were resolved in a way that was fair, efficient, timely and independent.

Note: Paragraph 1051(4)(b) of the *Corporations Act 2001* as amended by this Act provides that one of the operational requirements for the AFCA scheme is that complaints against members of the scheme are resolved in a way that is fair, efficient, timely and independent.

(3) The review must also specifically examine the appropriateness of limits on:

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(a) the value of claims that may be made under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001* as amended by this Act); and

(b) the value of remedies that may be determined under that scheme;

in relation to disputes about credit facilities provided to primary production businesses, including agriculture, fisheries and forestry businesses.

(4) The Minister must cause a written report about the review to be prepared.

(5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

(6) The report is not a legislative instrument.

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Schedule 1—External dispute resolution

Part 1—Amendments applying from the day after Royal Assent

Corporations Act 2001

1 Section 761A

Insert:

AFCA (short for the Australian Financial Complaints Authority) means the operator of the AFCA scheme.

AFCA scheme means the external dispute resolution scheme for which an authorisation under Part 7.10A is in force.

AFCA staff member means:

(a) a director, officer or employee of AFCA; or

(b) a person engaged as a consultant to, or to perform services for, AFCA for the purposes of the AFCA scheme.

annuity policy means a life policy in relation to an annuity that is declared to be a superannuation policy under regulations made for the purposes of paragraph (b) of the definition of ***superannuation policy*** in the Dictionary in the *Life Insurance Act 1995*.

approved deposit fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

death benefit decision-maker means any of the following persons:

(a) the trustee of a regulated superannuation fund or approved deposit fund;

(b) an insurer in relation to a superannuation complaint;

(c) an RSA provider.

exempt public sector superannuation scheme has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

holder, in relation to an RSA, has the same meaning as in the *Retirement Savings Accounts Act 1997*.

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insurer, in relation to a superannuation complaint, means the life company (within the meaning of the *Life Insurance Act 1995*) that is a party to the policy to which the complaint relates.

investigating authority means a tribunal, authority or person having power to require the production of documents or the answering of questions.

life policy has the same meaning as in the *Life Insurance Act 1995*.

life policy fund means a regulated superannuation fund for the purpose of which the trustee maintains, in relation to at least some of the members of the fund:

(a) individual life policies covering each of those members; or

(b) a single life policy covering all of those members.

regulated superannuation fund:

(a) has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; and

(b) includes the scheme provided for by the *Australian Defence Force Cover Act 2015*; and

(c) if, under the AFCA scheme, an exempt public sector superannuation scheme may elect to join the AFCA scheme, and such a superannuation scheme so elects—includes that superannuation scheme.

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

sale, in relation to an annuity policy, includes any activity undertaken, or representation made:

(a) at the time of, or preliminary to, the entry into the policy, so that the policy as so entered into extends to a particular person; and

(b) at the time of, or preliminary to, the variation of the policy, so that the policy as so varied affects a particular person.

superannuation complaint has the meaning given by subsection 1053(3).

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superannuation provider means a person who is a superannuation provider within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* or the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

trustee, of a regulated superannuation fund that is the scheme provided for by the *Australian Defence Force Cover Act 2015*, means CSC (within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*).

2 After Part 7.10

Insert:

Part 7.10A—External dispute resolution

Division 1—Authorisation of an external dispute resolution scheme

Subdivision A—Minister may authorise an external dispute resolution scheme

1050 Minister may authorise an external dispute resolution scheme

(1) The Minister may, by notifiable instrument, authorise an external dispute resolution scheme if the Minister is satisfied that the mandatory requirements under section 1051 will be met.

(2) In considering whether to authorise an external dispute resolution scheme, the Minister:

(a) must take into account the general considerations for an external dispute resolution scheme under section 1051A; and

(b) may take into account any other matter the Minister considers relevant (whether or not those other matters are consistent with those general considerations).

(3) An authorisation of an external dispute resolution scheme must not come into force while an authorisation of another external dispute resolution scheme is in force.

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(4) The Minister may, by notifiable instrument, vary or revoke an authorisation of an external dispute resolution scheme.

(5) In an instrument under subsection (1) or (4), the Minister:
  (a) must specify the day the authorisation, variation or revocation comes into force; and
  (b) may specify, vary or revoke conditions relating to the authorisation.

Note: Once the authorisation of an external dispute resolution scheme comes into force, the scheme is known as the AFCA scheme and the operator is known as AFCA (AFCA is short for Australian Financial Complaints Authority): see the definitions of ***AFCA*** and ***AFCA scheme*** in section 761A.

Subdivision B—Mandatory requirements and general considerations

1051 Mandatory requirements

(1) The mandatory requirements for an external dispute resolution scheme are:
  (a) the organisational requirements under subsection (2); and
  (b) the operator requirements under subsection (3); and
  (c) the operational requirements under subsection (4); and
  (d) the compliance requirements under subsection (5).

Organisational requirements

(2) The organisational requirements are that:
  (a) the membership of the scheme is open to every entity that is required, under:
    (i) a law of the Commonwealth; or
    (ii) an instrument made under such a law; or
    (iii) the conditions of a licence or permission issued under such a law;
  to be a member of an external dispute resolution scheme authorised under this Part; and
  (b) the operations of the scheme are financed through contributions made by members of the scheme; and

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(c) the scheme has an independent assessor; and

(d) complainants are exempt from payment of any fee or charge, to the operator of the scheme or to any other entity, in relation to a complaint.

Operator requirements

(3) The operator requirements are that:

(a) the operator of the scheme commissions the conducting of independent reviews of the scheme's operations and procedures; and

(b) the operator of the scheme is a company limited by guarantee; and

(c) the operator's constitution provides that the operator must not be operated for profit; and

(d) the operator's constitution provides that the number of directors of the operator who have experience in carrying on the kinds of businesses operated by members of the scheme must equal the number of directors who have experience in representing consumers; and

(da) the operator's constitution provides that the Chair of the board of the operator must be an independent person; and

(e) the operator's constitution provides that, within 6 months after the scheme is authorised under section 1050, the Minister:

(i) may appoint an independent person as the Chair of the board of the operator; and

(ii) may appoint any director, if the total number of directors (including that director) whom the Minister has appointed, as mentioned in subparagraph (i) and this subparagraph, is less than half the total number of directors.

Operational requirements

(4) The operational requirements are that:

(a) the complaints mechanism under the scheme is appropriately accessible to persons dissatisfied with members of the scheme; and

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(b) complaints against members of the scheme are resolved (including by making determinations relating to such complaints) in a way that is fair, efficient, timely and independent; and

(c) appropriate expertise is available to deal with complaints; and

(d) reasonable steps are taken to ensure compliance by members of the scheme with those determinations; and

(e) under the scheme, determinations made by the operator of the scheme are:

(i) binding on members of the scheme; but

(ii) not binding on complainants under the scheme; and

(f) for superannuation complaints, there are no limits on:

(i) the value of claims that may be made under the scheme; or

(ii) the value of remedies that may be determined under the scheme.

Note: The complaints may be complaints relating to superannuation or complaints relating to other financial services. Division 3 includes additional provisions relating to superannuation complaints.

Compliance requirements

(5) The compliance requirements are that:

(a) the operator of the scheme is to ensure that the following are complied with:

(i) conditions of the authorisation of the scheme specified under paragraph 1050(5)(b);

(ii) regulatory requirements issued under section 1052A;

(iii) directions given under section 1052B, 1052BA or 1052C;

(iv) the requirements of section 1052E; and

(b) material changes to the scheme are not to be made without the approval of ASIC under section 1052D.

1051A General considerations

The general considerations for an external dispute resolution scheme are the following:

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(a) the accessibility of the scheme;
(b) the independence of the scheme;
(c) the fairness of the scheme;
(d) the accountability of the scheme;
(e) the efficiency of the scheme;
(f) the effectiveness of the scheme.

Division 2—Regulating the AFCA scheme

1052 Obligation to comply with mandatory requirements

AFCA must ensure that the mandatory requirements for the AFCA scheme under section 1051 are complied with.

1052A ASIC may issue regulatory requirements

ASIC may, by legislative instrument, issue to AFCA regulatory requirements relating to:

(a) compliance with the mandatory requirements for the AFCA scheme under section 1051; or
(b) any of the general considerations for the AFCA scheme under section 1051A.

1052B Directions to increase limits on the value of claims

(1) If, under the AFCA scheme, there are one or more limits on:

(a) the value of claims that may be made under the scheme; or
(b) the value of remedies that AFCA may determine under the scheme;

ASIC may give AFCA a written direction requiring the limit, or some or all of the limits, to be increased.

Note: One of the operational requirements for the scheme is that there are no such limits for superannuation complaints (see paragraph 1051(4)(f)).

(2) However:

(a) ASIC must not give a direction under this section unless ASIC has given AFCA written notice of at least 1 month of ASIC's intention to issue the direction; and

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(b) a direction under this section must not apply in relation to complaints AFCA received before ASIC gives the direction.

(3) AFCA must comply with a direction made under this section.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(4) If AFCA fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that AFCA comply with the direction.

(5) A direction made under this section is not a legislative instrument.

1052BA Directions to ensure sufficient financing

(1) ASIC may give AFCA a written direction under this section if ASIC considers that AFCA has not done all things reasonably practicable to ensure that the operations of the AFCA scheme are sufficiently financed.

(2) The direction must set out the specific measures that AFCA must take to ensure that the operations of the AFCA scheme are sufficiently financed.

(3) ASIC must not give a direction under this section unless ASIC has given AFCA written notice of at least 1 month of ASIC's intention to issue the direction.

(4) AFCA must comply with a direction made under this section.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(5) If AFCA fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that AFCA comply with the direction.

(6) A direction made under this section is not a legislative instrument.

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1052C General directions to AFCA

Notice of intention to issue a direction

(1) If ASIC considers that AFCA has not done all things reasonably practicable to ensure compliance with:
  (a) the mandatory requirements for the AFCA scheme under section 1051; or
  (b) a condition of the authorisation of the AFCA scheme imposed by the Minister under paragraph 1050(5)(b); or
  (c) regulatory requirements issued under section 1052A;

ASIC may give AFCA written notice that it intends to give AFCA a specified direction under this section.

(2) The notice must set out:
  (a) the specific measures that the direction will require AFCA to take to comply with the requirements or condition; and
  (b) the reasons for ASIC's intention to give the direction.

Issuing a direction

(3) If, after receiving the notice:
  (a) AFCA does not take those specific measures; and
  (b) ASIC still considers that it is appropriate to give the direction to AFCA;

ASIC may give AFCA the direction, in writing, with a statement setting out the reasons for giving the direction.

(4) The direction must deal with the time by which, or the period during which, it is to be complied with. The time or period must be reasonable.

(5) A direction made under this section is not a legislative instrument.

Compliance

(6) AFCA must comply with a direction made under this section.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

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(7) If AFCA fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that AFCA comply with the direction.

Varying or revoking a direction

(8) ASIC may vary a direction made under this section by giving written notice to AFCA.

(9) The direction has effect until ASIC revokes it by giving written notice to AFCA.

(10) ASIC may revoke the direction, by giving written notice to AFCA, if, at the time of revocation, ASIC considers that the direction is no longer necessary or appropriate.

1052D Approval of material changes to the AFCA scheme

(1) AFCA may request ASIC to approve a material change to the AFCA scheme.

Note: A material change must not be made to the scheme without ASIC's approval (see paragraph 1051(5)(b)).

(2) ASIC may, by written notice given to AFCA, approve the change.

(3) In considering whether to approve the change, ASIC must take into account the following in relation to the scheme as it is proposed to be changed:

(a) the mandatory requirements for the scheme under section 1051;

(b) the general considerations for the scheme under section 1051A;

(c) any conditions imposed by the Minister on the authorisation of the scheme under paragraph 1050(5)(b);

(d) any regulatory requirements issued under section 1052A.

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1052E Referring matters to appropriate authorities

Referring contraventions and breaches etc. to appropriate authorities

(1) If AFCA becomes aware, in connection with a complaint under the AFCA scheme, that:

(a) a serious contravention of any law may have occurred; or

(b) a contravention of the governing rules of a regulated superannuation fund or an approved deposit fund may have occurred; or

(c) a breach of the terms and conditions relating to an annuity policy, a life policy or an RSA may have occurred; or

(d) a party to the complaint may have refused or failed to give effect to a determination made by AFCA;

AFCA must give particulars of the contravention, breach, refusal or failure to one or more of APRA, ASIC or the Commissioner of Taxation.

(2) However, if:

(a) the complaint relates to the scheme provided for by the *Australian Defence Force Cover Act 2015*; and

(b) subsection (1) applies because AFCA becomes aware that:

(i) a serious contravention of any law may have occurred; or

(ii) a party to the complaint may have refused or failed to give effect to a determination made by AFCA;

AFCA must instead give particulars of the contravention, refusal or failure to the Minister administering that Act and the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

Referring settled complaints

(3) If:

(a) the parties to a complaint made under the AFCA scheme agree to a settlement of the complaint; and

(b) AFCA thinks the settlement may require investigation;

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AFCA may give particulars of the settlement to one or more of APRA, ASIC or the Commissioner of Taxation.

Referring systemic issues

(4) If AFCA considers that there is a systemic issue arising from the consideration of complaints under the AFCA scheme, AFCA must give particulars of the issue to one or more of APRA, ASIC or the Commissioner of Taxation.

Division 3—Additional provisions relating to superannuation complaints

Subdivision A—When complaints relating to superannuation can be made under the AFCA scheme

1053 When complaints relating to superannuation can be made under the AFCA scheme

(1) A person may, subject to section 1056, make a complaint relating to superannuation under the AFCA scheme only if the complaint is a complaint:

(a) that the trustee of a regulated superannuation fund or of an approved deposit fund has made a decision (whether before or after the commencement of this section) relating to:

(i) a particular member or a particular former member of a regulated superannuation fund; or

(ii) a particular beneficiary or a particular former beneficiary of an approved deposit fund;

that is or was unfair or unreasonable; or

(b) that a decision, by a trustee maintaining a life policy that covers a member of a life policy fund, to admit the member to the fund was unfair or unreasonable; or

(c) that the conduct (including any act, omission or representation) of an insurer, or of a representative of an insurer, relating to the sale of an annuity policy was unfair or unreasonable; or

(d) that a decision of an insurer under an annuity policy is or was unfair or unreasonable; or

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(e) that a decision of a superannuation provider to set out, in a statement to which subsection (2) applies, an amount or amounts in respect of a person was unfair or unreasonable; or

(f) that the conduct (including any act, omission or representation) of an RSA provider, or of a representative of an RSA provider, relating to the opening of an RSA was unfair or unreasonable; or

(g) that a decision of an RSA provider relating to a particular RSA holder or former RSA holder is or was unfair or unreasonable; or

(h) that the conduct (including any act, omission or representation) of an insurer, or of a representative of an insurer, relating to the sale of insurance benefits in relation to a contract of insurance where the premiums are paid from an RSA, was unfair or unreasonable; or

(i) that a decision of an insurer relating to a contract of insurance where the premiums are paid from an RSA is or was unfair or unreasonable; or

(j) that a decision by a death benefit decision-maker relating to the payment of a death benefit is or was unfair or unreasonable.

Note 1: Section 1056 provides further limitations on when a superannuation complaint may be made to AFCA in relation to a decision about the payment of a death benefit.

Note 2: Certain persons are taken to be members of regulated superannuation funds or approved deposit funds, or holders of RSAs (see section 1053A).

(2) This subsection applies to a statement given to the Commissioner of Taxation under:

(a) section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or

(b) section 12 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; or

(c) subsection 133-120(2) or 133-140(1) in Schedule 1 to the *Taxation Administration Act 1953*; or

(d) section 390-5 or 390-20 in that Schedule.

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(3) A complaint made in accordance with subsection (1) of this section is a ***superannuation complaint***.

(4) However, a complaint is not a ***superannuation complaint*** to the extent that it is a complaint that:

(a) a decision made by a trustee of a self-managed superannuation fund; or

(b) conduct engaged in by an insurer, or by a representative of an insurer, relating to the sale of an annuity policy maintained, or to be maintained, by a trustee of a self-managed superannuation fund on behalf of its members; or

(c) a decision made by an insurer, or by a representative of an insurer, under an annuity policy maintained by a trustee of a self-managed superannuation fund on behalf of its members;

is unfair or unreasonable.

(5) For the purposes of this section, a trustee, an insurer, an RSA provider or another decision-maker, makes a decision if:

(a) the trustee, insurer, RSA provider or other decision-maker, or a person acting for the trustee, insurer, RSA provider or other decision-maker, makes, or fails to make, a decision; or

(b) the trustee, insurer, RSA provider or other decision-maker, or a person acting for the trustee, insurer, RSA provider or other decision-maker, engages in any conduct, or fails to engage in any conduct, in relation to making a decision;

whether or not the decision or conduct involved the exercise of a discretion.

1053A Persons taken to be members of regulated superannuation funds and approved deposit funds and holders of RSAs

For the purposes of this Division, each of the following persons is taken to be a member of a regulated superannuation fund or an approved deposit fund, or a holder of an RSA, (as the case requires):

(a) a non-member spouse in relation to whom a splitting order under the *Family Law Act 1975* has been made, from the day on which a copy of the order is served on the trustee of the fund;

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(b) a non-member spouse who is a party to a superannuation agreement under the *Family Law Act 1975*, from the day on which a copy of the agreement is served on the trustee of the fund;
(c) a party to a marriage in relation to which an order of a kind referred to in Part VIIIAA of the *Family Law Act 1975* has been made, if the order relates to an interest in the fund;
(d) an eligible person, within the meaning of section 90MZB of the *Family Law Act 1975*, in relation to an interest of the member or holder in the fund;
(e) a covered ADF member within the meaning of the *Australian Defence Force Cover Act 2015*.

Subdivision B—Powers of AFCA

1054 Power to join other parties to superannuation complaint

(1) AFCA may (subject to subsection 1056A(3)) at any time join, as a party to a superannuation complaint made under the AFCA scheme, any of the following persons whom AFCA decides should be a party to the complaint:
(a) a person who has applied to become a party to the complaint;
(b) a trustee of a regulated superannuation fund or an approved deposit fund;
(c) an insurer;
(d) an RSA provider;
(e) a superannuation provider;
(f) a person whom AFCA decides is responsible for determining either or both of the existence and the extent of a disability (whether total and permanent or otherwise), if the subject matter of the complaint relates to a benefit in respect of the disability, whether under a contract of insurance or otherwise.

Note: Section 1056A requires certain procedures to be followed before a person can be joined as a party to a superannuation complaint about a decision relating to the payment of a death benefit.

(2) If AFCA decides under subsection (1) that a person should be a party to the complaint, AFCA must give the new party, and all of

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the existing parties to the complaint, written notice of the decision and of the reasons for the decision.

(3) If AFCA decides that a person who has applied to become a party to the complaint should not be a party to the complaint, AFCA must give the person written notice of the decision and of the reasons for the decision.

1054A Power to obtain information and documents

(1) If AFCA has reason to believe that a person is capable of giving information or producing documents relevant to a superannuation complaint, AFCA may, by written notice to the person, require the person:

(a) to give to AFCA, by writing, any such information; or

(b) to produce to AFCA such documents or copies of such documents as are stated in the notice;

at such place, and within such period or on such date and at such time, as are stated in the notice.

Note: A strict liability offence may apply under section 1058 (secrecy) in relation to information acquired under this section.

(2) If documents (whether originals or copies) are so produced, AFCA:

(a) may take possession of, and may make copies of, or take extracts from, the documents; and

(b) may keep the documents for as long as is necessary for the purpose of dealing with the complaint; and

(c) must, while keeping the documents, permit a person who would be entitled to inspect any one or more of them (if the documents were not in the possession of AFCA) to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

(3) A person must not fail to comply with a requirement made by AFCA under subsection (1).

Penalty: 30 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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(5) Subsection (3) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

1054B Power to require attendance at conciliation conferences

(1) AFCA may, if AFCA thinks it desirable to do so, by notice in writing given to:

(a) each party to a superannuation complaint; and

(b) any other person:

(i) who, in AFCA's opinion, is likely to be able to provide information relevant to the settlement of the complaint; or

(ii) whose presence at a conciliation conference would, in AFCA's opinion, be likely to be conducive to settling the complaint;

require the party or other person to attend the conference.

Note: A strict liability offence may apply under section 1058 (secrecy) in relation to information acquired during a conference held under this section.

(2) The notice must also fix the date, time and place for the conference.

(3) If the complainant fails to attend the conference, AFCA may deal with the complaint as if it had been withdrawn by the complainant.

(4) A person (other than the complainant) commits an offence if he or she does not attend a conference when required to do so under this section.

Penalty: 30 penalty units.

1054BA Power to give directions

(1) AFCA may, in connection with, or as part of the process of, determining a superannuation complaint:

(a) give directions prohibiting or restricting the disclosure of documents or information relating to the complaint; and

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(b) give directions as to who may be present at any meeting held by AFCA relating to the complaint.

(2) In giving directions, AFCA must have regard to the wishes of the parties in relation to the complaint and the need to protect their privacy.

(3) Directions may be made in writing or orally.

(4) A person must not refuse or fail to comply with a direction under this section.

Penalty: 30 penalty units.

1054C Reference of questions of law to Federal Court

(1) AFCA may, on its own initiative or on the request of a party to a superannuation complaint, refer a question of law arising in relation to the making of a determination relating to the complaint to the Federal Court for decision.

(2) The Federal Court has jurisdiction to hear and determine a question of law referred to it under this section.

(3) If a question of law has been so referred to the Federal Court, AFCA must not:
(a) make the determination to which the question is relevant while the reference is pending; or
(b) do anything that is inconsistent with the opinion of the Federal Court on the question.

Subdivision C—Determinations of superannuation complaints

1055 Making a determination

(1) In making a determination of a superannuation complaint, AFCA has, subject to this section, all the powers, obligations and discretions that are conferred on the trustee, insurer, RSA provider or other person who:
(a) made a decision to which the complaint relates; or
(b) engaged in conduct (including any act, omission or representation) to which the complaint relates.

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Affirming decisions or conduct

(2) AFCA must affirm a decision or conduct (except a decision relating to the payment of a death benefit) if AFCA is satisfied that:

(a) the decision, in its operation in relation to the complainant; or

(b) the conduct;

was fair and reasonable in all the circumstances.

(3) AFCA must affirm a decision relating to the payment of a death benefit if AFCA is satisfied that the decision, in its operation in relation to:

(a) the complainant; and

(b) any other person joined under subsection 1056A(3) as a party to the complaint;

was fair and reasonable in all the circumstances.

Varying etc. decisions or conduct

(4) If AFCA is satisfied that:

(a) a decision (except a decision relating to the payment of a death benefit), in its operation in relation to the complainant; or

(b) conduct;

is unfair or unreasonable, or both, AFCA may take any one or more of the actions mentioned in subsection (6), but only for the purpose of placing the complainant, as nearly as practicable, in such a position that the unfairness, unreasonableness, or both, no longer exists.

(5) If AFCA is satisfied that a decision relating to the payment of a death benefit, in its operation in relation to:

(a) the complainant; and

(b) any other person joined under subsection 1056A(3) as a party to the complaint;

is unfair or unreasonable, or both, AFCA may take any one or more of the actions mentioned in subsection (6), but only for the purpose of placing the complainant (and any other person so joined as a party), as nearly as practicable, in such a position that the unfairness, unreasonableness, or both, no longer exists.

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(6) AFCA may, under subsection (4) or (5), do any of the following:

(a) vary the decision;

(b) set aside the decision and:

(i) substitute a decision for the decision so set aside; or

(ii) remit the decision to the person who made it for reconsideration in accordance with any directions or recommendations of AFCA;

(c) if the complainant was unfairly or unreasonably admitted into a life policy fund:

(i) require a party to the complaint to repay all money, or particular money, received under the life policy to which the complaint relates; or

(ii) set aside the whole or part of the terms or conditions of the life policy in their application to the complainant; or

(iii) vary the governing rules of the life policy fund in their application to the complainant; or

(iv) cancel the complainant's membership of the life policy fund or of any sub-plan of the fund;

(d) if the complainant was unfairly or unreasonably sold an annuity policy, contract of insurance or RSA:

(i) require a party to the complaint to repay all money, or particular money, received under the annuity policy, contract or RSA; or

(ii) set aside the whole or part of the terms or conditions of the annuity policy, contract or RSA in their application to the complainant; or

(iii) vary the terms or conditions of the annuity policy, contract or RSA in their application to the complainant.

Limitations on determinations

(7) AFCA must not make a determination of a superannuation complaint that would be contrary to:

(a) law; or

(b) subject to paragraph (6)(c), the governing rules of a regulated superannuation fund or an approved deposit fund to which the complaint relates; or

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(c) subject to paragraph (6)(d), the terms and conditions of an annuity policy, contract of insurance or RSA to which the complaint relates.

1055A AFCA to give reasons

AFCA must give written reasons for its determination of a superannuation complaint.

1055B Operation of determination of superannuation complaint

(1) Subject to subsection (2), a determination of a superannuation complaint by AFCA comes into operation immediately upon the making of the determination.

(2) AFCA may specify in the determination that the determination is not to come into operation until a later date specified in the determination and, if a later date is so specified, the determination comes into operation on that date.

(3) If, under subsection 1055(4) or (5), the determination varies a decision of another person, or substitutes a decision for a decision of another person, that decision as varied or substituted:
  (a) is, for all purposes (other than the making of a complaint about the decision) taken to be a decision of the other person; and
  (b) on the coming into operation of the determination by AFCA, unless AFCA otherwise orders, has effect, and is taken to have had effect, on and from the day on which the original decision has or had effect.

1055C Evidence of determination of superannuation complaint

(1) A document purporting to be a copy of AFCA's determination of a superannuation complaint, and purporting to be certified, by an AFCA staff member who is authorised to do so, to be a true copy of the determination, is, in any proceeding, prima facie evidence of the determination.

(2) This section does not affect any other method available by law for the proof of determinations of AFCA.

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1055D Compliance with determinations under the AFCA scheme

If:

(a) a superannuation complaint has been made concerning a disability benefit (whether under a contract of insurance or otherwise); and

(b) a determination is made by AFCA that a person other than a member of the AFCA scheme is responsible for determining either or both of the existence and the extent of the disability; and

(c) AFCA joins the person under subsection 1054(1) as a party to the complaint;

the person must comply with any determination made in respect of the person by AFCA.

Subdivision D—Superannuation complaints relating to payment of death benefits

1056 When superannuation complaint cannot be made in relation to decision about the payment of death benefit

(1) A person cannot make a superannuation complaint under the AFCA scheme relating to a decision by a death benefit decision-maker relating to the payment of a death benefit unless the person has an interest in the death benefit.

(2) A person cannot make a superannuation complaint under the AFCA scheme relating to a decision by a death benefit decision-maker relating to the payment of a death benefit if:

(a) the decision-maker gave the person notice:

(i) that the decision-maker proposed to make the decision; and

(ii) that the person may object to the proposed decision within 28 days after being given notice;

and the person did not, by notifying the decision-maker, object to the proposed decision within 28 days after being given notice; and

(b) the decision-maker gave the person notice:

(i) that the decision-maker had made the decision; and

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(ii) that the person may make a complaint under the AFCA scheme relating to the decision within 28 days after being given notice;

and the person does not make the complaint to AFCA within 28 days after being given notice.

(3) If a person has not been given either of the notices referred to in subsection (2) relating to a decision by a death benefit decision-maker relating to the payment of a death benefit, the person cannot make a superannuation complaint under the AFCA scheme relating to the decision unless AFCA is satisfied that:

(a) the person has an interest in the death benefit; and

(b) it was unreasonable for the person not to be given those notices from the decision-maker.

1056A Joining persons to complaints relating to death benefit decisions

(1) If a death benefit decision-maker:

(a) makes a decision relating to the payment of a death benefit; and

(b) is notified by AFCA of a superannuation complaint made in accordance with section 1056 relating to the decision;

the decision-maker must, within 28 days after being so notified, give notice to each person (other than the complainant) whom the decision-maker believes, after reasonable enquiry, may have an interest in the death benefit.

(2) A notice given to a person under subsection (1) must:

(a) state that a complaint has been made to AFCA about the decision; and

(b) set out the details of the complaint; and

(c) state that the person may apply to be joined as a party to the complaint by giving notice to AFCA within 28 days after the person is given notice, or such longer period as AFCA allows.

(3) A person (other than a person referred to in any of paragraphs 1054(1)(b) to (f)) may be joined as a party to the complaint under section 1054 only if:

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(a) the person applies in accordance with paragraph (2)(c) of this section; or

(b) AFCA is satisfied that, in all the circumstances, the person should be joined as a party despite not so applying.

Subdivision E—Appeals to the Federal Court

1057 Appeals to the Federal Court from determination of superannuation complaint

(1) A party to a superannuation complaint may appeal to the Federal Court, on a question of law, from AFCA's determination of the complaint.

(2) An appeal by a person under subsection (1) is to be instituted:

(a) not later than the 28th day after the day on which a copy of the determination of AFCA is given to the person, or within such further period as the Federal Court (whether before or after the end of that day) allows; and

(b) in accordance with rules of court made under the *Federal Court of Australia Act 1976*.

(3) The Federal Court is to hear and determine the appeal and may make such order as it thinks appropriate.

(4) Without limiting subsection (3), the orders that may be made by the Federal Court on an appeal include:

(a) an order affirming or setting aside the determination of AFCA; and

(b) an order remitting the matter to be determined again by AFCA in accordance with the directions of the Court.

(5) The Federal Court must not make an order awarding costs against a complainant if the complainant does not defend an appeal instituted by another party to the complaint.

1057A Operation and implementation of determination that is subject to appeal

(1) Subject to this section, the institution of an appeal to the Federal Court from AFCA's determination of a superannuation complaint

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does not affect the operation of the determination or prevent the taking of action to implement the determination.

(2) If an appeal is brought to the Federal Court from the determination, the Court or a Judge of the Court may make such order or orders staying or otherwise affecting the operation or implementation of either or both of the following:

(a) the determination or a part of the determination;

(b) if the complaint relates to a decision of another person—the whole or part of the decision that is complained of, or of a decision of an insurer or other person who is a party to the complaint;

as the Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

(3) If an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this subsection), the Court or a Judge of the Court may make an order varying or revoking the first-mentioned order.

(4) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)):

(a) is subject to such conditions as are specified in the order; and

(b) has effect until:

(i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or

(ii) if no period is so specified—the giving of a decision on the appeal.

1057B Sending of documents to, and disclosure of documents by, the Federal Court

If an appeal is instituted in the Federal Court from AFCA's determination of a superannuation complaint:

(a) AFCA must send to the Court all documents that were before AFCA in connection with the consideration of the matter to which the appeal relates; and

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(b) at the conclusion of the proceeding before the Court in relation to the appeal, the Court must return the documents to AFCA.

Subdivision F—Secrecy

1058 Secrecy

(1) An AFCA staff member must not directly or indirectly:

(a) make a record of, or disclose to any person, court or investigating authority, any information acquired by the staff member under section 1054A or during a conference held under section 1054B in connection with a superannuation complaint; or

(b) produce to any person, court or investigating authority a document so acquired; or

(c) permit any person, court or investigating authority to have access to a document so acquired.

Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply to the extent that the AFCA staff member makes the record of the information, discloses the information, produces the document or permits access to the document for the purposes of this Part.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

(4) Subsection (1) does not apply to the AFCA staff member disclosing information, producing a document or permitting access to a document:

(a) to ASIC; or

(b) to APRA; or

(c) to the Information Commissioner; or

(d) to the Commissioner of Taxation; or

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(e) to a particular party to the complaint if the person who provided the information or document to the staff member consents in writing to the disclosure, production or access.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

(5) Subsection (1) does not apply to the AFCA staff member disclosing information if:

(a) the disclosure is made in a way that does not enable the identification of the parties to a complaint; or

(b) the disclosure is made to a police officer (within the meaning of the *Evidence Act 1995*) because:

(i) a threat has been made against an AFCA staff member or another person; or

(ii) the AFCA staff member believes that a party to a complaint may commit an act of self-harm.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

3 Schedule 3 (after table item 310)

Insert:

311	Subsection 1052B(3)	100 penalty units for each day, or part of a day, in respect of which the offence is committed.
311A	Subsection 1052BA(4)	100 penalty units for each day, or part of a day, in respect of which the offence is committed.
312	Subsection 1052C(6)	100 penalty units for each day, or part of a day, in respect of which the offence is committed.

Retirement Savings Accounts Act 1997

4 At the end of subsection 38(2)

Add:

; (o) dispute resolution.

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Superannuation (Resolution of Complaints) Act 1993

5 At the end of section 7A

Add:

(4) The Tribunal Chairperson may, by writing, delegate any or all of his or her functions or powers to any Tribunal member.

(5) In performing functions and exercising powers under the delegation, the delegate must comply with any directions of the Tribunal Chairperson.

6 Subsection 59(1)

Omit "subsection 62(2)", substitute "section 62".

7 Section 61

Omit "subsection 62(2)", substitute "section 62".

8 Subsection 62(1)

Repeal the subsection.

9 Subsection 62(2)

Omit "(2)".

10 Section 63

Omit "subsection 62(2)" (wherever occurring), substitute "section 62".

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Part 2—Amendments applying once the first authorisation of an external dispute resolution scheme comes into force

Administrative Decisions (Judicial Review) Act 1977

11 After paragraph (hb) of Schedule 1

Insert:

(hba) decisions making, or forming part of the process of making, or leading up to the making of, determinations under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*);

Australian Defence Force Cover Act 2015

12 Subsection 57(2) (note)

Repeal the note, substitute:

Note: A person affected by the outcome of the reconsideration of the decision may make a complaint:

(a) under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*), but not before the authorisation of the scheme comes into force; or

(b) under the *Superannuation (Resolution of Complaints) Act 1993*, but not on or after the day on or after which complaints cannot be made because of section 14AB of that Act.

Australian Prudential Regulation Authority Act 1998

13 After paragraph 56(5)(a)

Insert:

(aa) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist the operator of the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*) to perform its functions or exercise its powers, and the disclosure or production is to that operator; or

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Australian Securities and Investments Commission Act 2001

14 Before subparagraph 127(4)(aa)(ii)

Insert:

(i) the operator of the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*); or

Income Tax Assessment Act 1997

15 Section 292-330 (note)

Repeal the note, substitute:

Note: If a person is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*, the person may make a complaint:

(a) under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*), but not before the authorisation of the scheme comes into force; or

(b) under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993*, but not on or after the day on or after which complaints cannot be made because of section 14AB of that Act.

Retirement Savings Accounts Act 1997

16 Subsection 95(1A)

Repeal the subsection, substitute:

(1A) If it appears to ASIC that an RSA provider has refused or failed to give effect to:

(a) a determination of the Superannuation Complaints Tribunal under sections 37D to 37G of the *Superannuation (Resolution of Complaints) Act 1993*; or

(b) a determination made under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*);

ASIC may, by written notice, tell the RSA provider that ASIC proposes to conduct an investigation of the whole or a part of the affairs of the RSA provider.

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17 Subsection 163(12) (paragraph (a) of the definition of *do an act or thing*)

After "Superannuation Complaints Tribunal", insert ", or made under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*)".

18 Subsection 163(12) (at the end of paragraph (b) of the definition of *do an act or thing*)

Add ", or a determination made under that scheme".

Superannuation Contributions Tax (Assessment and Collection) Act 1997

19 Subsection 24(3) (note)

Repeal the note, substitute:

Note: If a member is dissatisfied with an assessment in so far as it relates to the calculation of the member's surchargeable contributions, as based on an amount or amounts set out in a statement given to the Commissioner by a superannuation provider under section 13, the member may make a complaint:

(a) under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*), but not before the authorisation of the scheme comes into force; or

(b) under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993*, but not on or after the day on or after which complaints cannot be made because of section 14AB of that Act;

about the unfairness or unreasonableness of the superannuation provider's decision to set out the amount or any of the amounts in the statement.

Superannuation Industry (Supervision) Act 1993

20 Subsection 10(1)

Insert:

AFCA scheme has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

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21 After paragraph 58(2)(f)

Insert:

(fa) a direction given under the AFCA scheme; or

22 After subsection 58(2)

Insert:

(2A) To avoid doubt, paragraph (2)(fa) applies in relation to any requirement imposed under the AFCA scheme, whether the requirement is referred to, in Part 7.10A of the *Corporations Act 2001* or in a determination under that Part, as a direction or by any other name.

(2B) Subsection (2A) does not affect the meaning of any paragraph of subsection (2) other than paragraph (2)(fa).

23 After paragraph 263(1)(c)

Insert:

or (d) the trustee, or the trustees, of a regulated superannuation fund or an approved deposit fund have refused or failed to give effect to a determination made under the AFCA scheme;

24 Subsection 315(12) (paragraph (a) of the definition of *do an act or thing*)

After "Superannuation Complaints Tribunal", insert ", or made under the AFCA scheme".

25 Subsection 315(12) (at the end of paragraph (b) of the definition of *do an act or thing*)

Add ", or a determination made under that scheme".

Taxation Administration Act 1953

26 Subsection 133-120(2) in Schedule 1 (note)

Repeal the note, substitute:

Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint:

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(a) under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*), but not before the authorisation of the scheme comes into force; or

(b) under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993*, but not on or after the day on or after which complaints cannot be made because of section 14AB of that Act.

27 Subsection 133-140(1) in Schedule 1 (note)

Repeal the note, substitute:

Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint:

(a) under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*), but not before the authorisation of the scheme comes into force; or

(b) under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993*, but not on or after the day on or after which complaints cannot be made because of section 14AB of that Act.

28 Section 155-90 in Schedule 1 (note)

Repeal the note, substitute:

Note: If an individual is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in this Schedule, the individual may make a complaint:

(a) under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*), but not before the authorisation of the scheme comes into force; or

(b) under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993*, but not on or after the day on or after which complaints cannot be made because of section 14AB of that Act.

29 Subsection 355-65(3) in Schedule 1 (table item 3)

Repeal the item, substitute:

3	(a) the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*; or (b) the operator of the AFCA scheme (within the meaning of Chapter 7 of the	(a) is of information that was obtained under or in relation to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and (b) is for the purpose of the Tribunal, or the operator, performing any of its functions or exercising any of its powers.

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Corporations Act 2001)

30 Subsection 390-5(1) in Schedule 1 (note 2)

Repeal the note, substitute:

Note 2: If a person is dissatisfied with a statement given to the Commissioner by a superannuation provider under this section, the person may make a complaint:

(a) under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*), but not before the authorisation of the scheme comes into force; or

(b) under section 15CA of the *Superannuation (Resolution of Complaints) Act 1993*, but not on or after the day on or after which complaints cannot be made because of section 14AB of that Act.

31 Application of amendments

(1) The amendments made by this Part apply on and after the day on which the first authorisation of an external dispute resolution scheme, under Part 7.10A of the *Corporations Act 2001* as amended by Part 1 of this Schedule, comes into force.

(2) Without limiting subitem (1), the amendments made by items 13, 14 and 29 apply in relation to disclosures of information made on and after the day on which that authorisation comes into force, whether the information was acquired before, on or after that day.

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Part 3—Amendments relating to requiring membership of the AFCA scheme

Corporations Act 2001

32 At the end of subsection 912A(2)

Add:

; and (c) membership of the AFCA scheme.

33 At the end of subsection 1017G(2)

Add:

; and (c) membership of the AFCA scheme.

National Consumer Credit Protection Act 2009

34 Subsection 5(1)

Insert:

AFCA scheme has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

35 Paragraphs 47(1)(i), 64(5)(c) and 65(6)(c)

After "scheme", insert "and the AFCA scheme".

36 Section 245 (heading)

Repeal the heading, substitute:

245 Operator of approved external dispute resolution scheme or AFCA scheme may give information to ASIC

37 Section 245

After "external dispute resolution scheme", insert "or the AFCA scheme".

38 Subsection 204(1) of the *National Credit Code*

Insert:

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AFCA scheme has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

39 Paragraph 12(1)(b) of Schedule 2

After "external dispute resolution scheme", insert "and the AFCA scheme".

40 Subitem 16(1) of Schedule 2 (heading)

Repeal the heading, substitute:

Obligation to be a member of an approved external dispute resolution scheme and the AFCA scheme

41 Subitem 16(1) of Schedule 2

After "external dispute resolution scheme", insert "and the AFCA scheme".

Retirement Savings Accounts Act 1997

42 Before paragraph 47(1)(b)

Insert:

(a) must be a member of the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*); and

Note: This paragraph is inserted in subsection 47(1) of the *Retirement Savings Accounts Act 1997* as enacted by item 7 of Schedule 2 to this Act.

Superannuation Industry (Supervision) Act 1993

43 Before paragraph 101(1)(b)

Insert:

(a) must be a member of the AFCA scheme; and

Note: This paragraph is inserted in subsection 101(1) of the *Superannuation Industry (Supervision) Act 1993* as enacted by item 9 of Schedule 2 to this Act.

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44 Application of amendments

(1) The amendments made by this Part apply on and after the day that is:

(a) the day specified under subitem (2); or

(b) if no such day is specified—the day that is 12 months after the day on which the first authorisation of an external dispute resolution scheme, under Part 7.10A of the *Corporations Act 2001* as amended by Part 1 of this Schedule, comes into force.

(2) The Minister may, by notifiable instrument, specify a day for the purposes of paragraph (1)(a). The day must not be earlier than the day on which the first authorisation of an external dispute resolution scheme, under Part 7.10A of the *Corporations Act 2001* as amended by Part 1 of this Schedule, comes into force.

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Part 4—Amendments relating to closing off existing external dispute resolution schemes

Australian Defence Force Cover Act 2015

45 Subsection 57(2) (note)

Repeal the note, substitute:

Note: A person affected by the outcome of the reconsideration of the decision may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

Income Tax Assessment Act 1997

46 Section 292-330 (note)

Repeal the note, substitute:

Note: If a person is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in Schedule 1 to the *Taxation Administration Act 1953*, the person may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

National Consumer Credit Protection Act 2009

47 Subparagraphs 113(2)(h)(ii), 126(2)(e)(ii), 127(2)(e)(ii), 136(2)(h)(ii), 149(2)(e)(ii) and 150(2)(e)(ii)

Omit "approved external dispute resolution scheme of which the licensee is a member", substitute "AFCA scheme".

48 Paragraph 158(2)(h)

Omit "approved external dispute resolution scheme of which the credit representative is a member", substitute "AFCA scheme".

49 Subparagraph 160(3)(f)(ii)

Omit "approved external dispute resolution scheme of which the person is a member", substitute "AFCA scheme".

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50 Subparagraphs 72(4)(b)(iii), 88(3)(g)(i) and 94(2)(b)(i) of the *National Credit Code*

Omit "approved external dispute resolution scheme of which the credit provider is a member", substitute "AFCA scheme".

51 Subparagraphs 177B(4)(b)(iii), 179D(2)(f)(i) and 179H(2)(b)(i) of the *National Credit Code*

Omit "approved external dispute resolution scheme of which the lessor is a member", substitute "AFCA scheme".

Superannuation Contributions Tax (Assessment and Collection) Act 1997

52 Subsection 24(3) (note)

Repeal the note, substitute:

Note: If a member is dissatisfied with an assessment in so far as it relates to the calculation of the member's surchargeable contributions, as based on an amount or amounts set out in a statement given to the Commissioner by a superannuation provider under section 13, the member may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*) about the unfairness or unreasonableness of the superannuation provider's decision to set out the amount or any of the amounts in the statement.

Superannuation (Resolution of Complaints) Act 1993

53 After section 14AA

Insert:

14AB When complaints can no longer be made

(1) A complaint cannot be made under this Part on or after the day that is the day, under item 58 of the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018*, on and after which the amendments made by Part 4 of Schedule 1 to that Act apply.

(2) This section has effect despite any other provision of this Part.

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Taxation Administration Act 1953

54 Subsection 133-120(2) in Schedule 1 (note)

Repeal the note, substitute:

Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

55 Subsection 133-140(1) in Schedule 1 (note)

Repeal the note, substitute:

Note: If a person is dissatisfied with a notice given to the Commissioner under this subsection, the person may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

56 Section 155-90 in Schedule 1 (note)

Repeal the note, substitute:

Note: If an individual is dissatisfied with a statement given to the Commissioner by a superannuation provider under section 390-5 in this Schedule, the individual may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

57 Subsection 390-5(1) in Schedule 1 (note 2)

Repeal the note, substitute:

Note 2: If a person is dissatisfied with a statement given to the Commissioner by a superannuation provider under this section, the person may make a complaint under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*).

58 Application of amendments

(1) The amendments made by this Part apply on and after the day that is:

(a) the day specified under subitem (2); or

(b) if no such day is specified—the day that is 12 months after the day (the ***Part 3 application day***) on and after which the amendments made by Part 3 apply.

Note: For the application of the amendments made by Part 3: see item 44.

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(2) The Minister may, by notifiable instrument, specify a day for the purposes of paragraph (1)(a). The day must not be:

(a) earlier than the Part 3 application day; or

(b) later than 12 months after the Part 3 application day.

(3) If the day specified under subitem (2) is the Part 3 application day, the amendments made by this Part apply on and from the time immediately after the start of the Part 3 application day.

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Part 5—Amendments relating to no longer requiring membership of existing external dispute resolution schemes

Corporations Act 2001

59 Paragraph 912A(2)(b)

Repeal the paragraph.

60 Subsection 912A(3)

Omit "or (2)(b)(i)".

61 Paragraph 1017G(2)(b)

Repeal the paragraph.

62 Subsection 1017G(3)

Omit "or (2)(b)(i)".

National Consumer Credit Protection Act 2009

63 Subsection 5(1) (definition of *approved external dispute resolution scheme*)

Repeal the definition.

64 Section 11

Repeal the section.

65 Paragraphs 47(1)(i), 64(5)(c) and 65(6)(c)

Omit "an approved external dispute resolution scheme and".

66 Section 245 (heading)

Repeal the heading, substitute:

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245 Operator of AFCA scheme may give information to ASIC

67 Section 245

Omit "an approved external dispute resolution scheme or".

68 Subsection 204(1) of the *National Credit Code* (definition of *approved external dispute resolution scheme*)

Repeal the definition.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009

69 Paragraph 12(1)(b) of Schedule 2

Omit "an approved external dispute resolution scheme and".

70 Subitem 16(1) of Schedule 2 (heading)

Repeal the heading, substitute:

Obligation to be a member of the AFCA scheme

71 Subitem 16(1) of Schedule 2

Omit "an approved external dispute resolution scheme and".

72 Application of amendments

(1) The amendments made by this Part apply on and after the day that is:

(a) the day specified under subitem (2); or

(b) if no such day is specified—the day that is 12 months after the day (the ***Part 4 application day***) on and after which the amendments made by Part 4 apply.

Note: For the application of the amendments made by Part 4: see item 58.

(2) The Minister may, by notifiable instrument, specify a day for the purposes of paragraph (1)(a). The day must not be:

(a) earlier than the Part 4 application day; or

(b) later than 12 months after the Part 4 application day.

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(3) If the day specified under subitem (2) is the Part 4 application day, the amendments made by this Part apply on and from the time immediately after the start of the Part 4 application day.

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Schedule 2—Internal dispute resolution

Australian Securities and Investments Commission Act 2001

1 After section 243B

Insert:

243C ASIC may publish internal dispute resolution data

(1) ASIC may publish information relating to internal dispute resolution that is:

(a) information given to ASIC under any of the following:

(i) subparagraph 912A(1)(g)(ii) or paragraph 1017G(1)(d) of the *Corporations Act 2001*;

(ii) paragraph 47(1)(ha) of the *National Consumer Credit Protection Act 2009*;

(iii) paragraph 47(1)(c) of the *Retirement Savings Accounts Act 1997*;

(iv) paragraph 101(1)(c) of the *Superannuation Industry (Supervision) Act 1993*; or

(b) information derived from information of a kind referred to in paragraph (a).

(2) Information published under this section may relate to a particular entity, or may be information from which a particular entity may be identified, but must not be personal information within the meaning of the *Privacy Act 1988*.

Corporations Act 2001

2 Paragraph 912A(1)(g)

Repeal the paragraph, substitute:

(g) if those financial services are provided to persons as retail clients:

(i) have a dispute resolution system complying with subsection (2); and

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(ii) give ASIC the information specified in any instrument under subsection (2A); and

3 After subsection 912A(2)

Insert:

(2A) ASIC may, by legislative instrument, specify information that financial services licensees must give ASIC relating to their internal dispute resolution procedures and the operation of their internal dispute resolution procedures.

(2B) An instrument under subsection (2A) must not specify any information that is personal information within the meaning of the *Privacy Act 1988*.

4 Subsection 1017G(1)

Repeal the subsection, substitute:

(1) If:

(a) particular financial products are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and

(b) the issue or sale of those products is not covered by an Australian financial services licence;

both the issuer, and any regulated person obliged under subsection 1012C(5), (6) or (8) to give a retail client a Product Disclosure Statement for one or more of those financial products, must each:

(c) have a dispute resolution system complying with subsection (2); and

(d) give to ASIC the same information as the issuer or regulated person would be required to give under subparagraph 912A(1)(g)(ii) of that Act if the issuer or regulated person were a financial services licensee.

Note 1: If the issue of particular financial products is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the products is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

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National Consumer Credit Protection Act 2009

5 After paragraph 47(1)(h)

Insert:

(ha) give to ASIC the same information it would be required to give under subparagraph 912A(1)(g)(ii) of the *Corporations Act 2001* if it were a financial services licensee (within the meaning of Chapter 7 of that Act); and

Retirement Savings Accounts Act 1997

6 Section 47 (heading)

Repeal the heading, substitute:

47 Dispute resolution systems

7 Subsections 47(1) and (2)

Repeal the subsections, substitute:

(1) An RSA provider:

(b) must have an internal dispute resolution procedure that complies with the standards, and requirements, mentioned in subparagraph 912A(2)(a)(i) of the *Corporations Act 2001* in relation to financial services licensees; and

(c) must give to ASIC the same information as the RSA provider would be required to give under subparagraph 912A(1)(g)(ii) of the *Corporations Act 2001* if the RSA provider were a financial services licensee; and

(d) must ensure that written reasons are given, in accordance with requirements specified under subsection (2A) of this section, for any decision of the RSA provider (or failure by the RSA provider to make a decision) relating to a complaint.

Note: Part 7.10A of the *Corporations Act 2001*, and the *Superannuation (Resolution of Complaints) Act 1993*, deal with situations where complaints are not resolved by the RSA provider.

(2) However, paragraphs (1)(a) to (c) do not apply to an RSA provider if the RSA provider is required under the *Corporations Act 2001* to

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have a dispute resolution system complying with subsection 912A(2) or 1017G(2) of that Act.

(2A) ASIC may, by legislative instrument, specify for the purposes of paragraph (1)(d) any or all of the following:

(a) the persons who must be given written reasons;

(b) the matters that must be included in those reasons;

(c) the times by which those reasons must be given;

(d) the circumstances that constitute a failure to make a decision.

Superannuation Industry (Supervision) Act 1993

8 Section 101 (heading)

Repeal the heading, substitute:

101 Dispute resolution systems

9 Subsections 101(1) and (1A)

Repeal the subsections, substitute:

(1) Each trustee of a regulated superannuation fund other than a self managed superannuation fund, or of an approved deposit fund:

(b) must have an internal dispute resolution procedure that complies with the standards, and requirements, mentioned in subparagraph 912A(2)(a)(i) of the *Corporations Act 2001* in relation to financial services licensees; and

(c) must give to ASIC the same information as the trustee would be required to give under subparagraph 912A(1)(g)(ii) of the *Corporations Act 2001* if the trustee were a financial services licensee; and

(d) must ensure that written reasons are given, in accordance with requirements specified under subsection (1B) of this section, for any decision of the trustee (or failure by the trustee to make a decision) relating to a complaint.

Note: Part 7.10A of the *Corporations Act 2001*, and the *Superannuation (Resolution of Complaints) Act 1993*, deal with situations where complaints are not resolved by the trustee.

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(1A) However, paragraphs (1)(a) to (c) do not apply to a trustee if the trustee is required under the *Corporations Act 2001* to have a dispute resolution system complying with subsection 912A(2) or 1017G(2) of that Act.

(1B) ASIC may, by legislative instrument, specify for the purposes of paragraph (1)(d) any or all of the following:

(a) the persons who must be given written reasons;

(b) the matters that must be included in those reasons;

(c) the times by which those reasons must be given;

(d) the circumstances that constitute a failure to make a decision.

10 Transitional provision for giving written reasons

Until the first time an instrument made under subsection 101(1B) of the *Superannuation Industry (Supervision) Act 1993* as amended by this Part comes into force, paragraph 101(1)(d) of that Act as so amended has effect as if:

(a) the requirements of paragraphs 101(1)(c) to (e) of that Act as in force immediately before the commencement of this Part were the requirements specified under subsection 101(1B) of that Act as so amended; and

(b) subsection 101(1A) of that Act as in force immediately before that commencement still had effect.

11 Subsection 101(3) (definition of *regulated superannuation fund*)

Repeal the definition, substitute:

regulated superannuation fund includes a scheme covered by paragraph (c) of the definition of ***regulated superannuation fund*** in section 761A of the *Corporations Act 2001*.

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Schedule 3—Repeal of the Superannuation (Resolution of Complaints) Act 1993

Part 1—Repeal of the Superannuation (Resolution of Complaints) Act 1993

Superannuation (Resolution of Complaints) Act 1993

1 The whole of the Act

Repeal the Act.

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Part 2—Consequential amendments

Australian Defence Force Superannuation Act 2015

2 Paragraph 29(1)(f)

Repeal the paragraph.

Australian Securities and Investments Commission Act 2001

3 Paragraph 12A(1)(d)

Repeal the paragraph.

4 Subparagraph 127(4)(aa)(ii)

Omit "or".

5 Subparagraph 127(4)(aa)(iii)

Repeal the subparagraph.

Insurance Act 1973

6 Section 129C

Repeal the section.

Life Insurance Act 1995

7 Division 3A of Part 7

Repeal the Division.

Retirement Savings Accounts Act 1997

8 Subparagraph 3(1)(c)(iii)

Repeal the subparagraph.

9 Paragraph 3(2)(d)

Omit "sections 183 and 184", substitute "section 183".

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10 Section 16 (definition of *Superannuation Complaints Tribunal*)

Repeal the definition.

11 Paragraph 38(2)(n)

Repeal the paragraph.

12 Subsection 47(1) (note)

Omit ", and the *Superannuation (Resolution of Complaints) Act 1993*, deal", substitute "deals".

13 Subsection 95(1A)

Repeal the subsection, substitute:

(1A) If it appears to ASIC that an RSA provider has refused or failed to give effect to a determination made under the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*), ASIC may, by written notice, tell the RSA provider that ASIC proposes to conduct an investigation of the whole or a part of the affairs of the RSA provider.

14 Subsection 163(12) (paragraph (a) of the definition of *do an act or thing*)

Omit "made by the Superannuation Complaints Tribunal, or".

15 Subsection 163(12) (at the end of paragraph (b) of the definition of *do an act or thing*)

Omit "with the directions of the Superannuation Complaints Tribunal, or".

16 Section 184

Repeal the section.

Superannuation Act 1976

17 Subsection 155C(3) (paragraph (c) of the definition of *eligible regulatory law*)

Repeal the paragraph, substitute:

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(c) Division 3 of Part 7.10A of the *Corporations Act 2001*; or

Superannuation Act 1990

18 Subsection 49(3) (paragraph (c) of the definition of *eligible regulatory law*)

Repeal the paragraph, substitute:

(c) Division 3 of Part 7.10A of the *Corporations Act 2001*; or

Superannuation Act 2005

19 Paragraph 46(1)(f)

Repeal the paragraph.

Superannuation Industry (Supervision) Act 1993

20 Subparagraph 6(1)(a)(iv)

Omit "sections 64A and 68A", substitute "section 68A".

21 Subparagraph 6(1)(c)(i)

Repeal the subparagraph, substitute:

(i) section 68A; and

22 Subsection 10(1) (definition of *Superannuation Complaints Tribunal*)

Repeal the definition.

23 Paragraph 58(2)(f)

Repeal the paragraph.

24 Section 64A

Repeal the section.

25 Subsection 101(1) (note)

Omit ", and the *Superannuation (Resolution of Complaints) Act 1993*, deal", substitute "deals".

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26 Paragraph 263(1)(c)

Repeal the paragraph.

27 Subsection 315(12) (paragraph (a) of the definition of *do an act or thing*)

Omit "made by the Superannuation Complaints Tribunal, or".

28 Subsection 315(12) (at the end of paragraph (b) of the definition of *do an act or thing*)

Omit "directions of the Superannuation Complaints Tribunal, or".

29 Paragraph 337A(a)

Before "Superannuation Complaints Tribunal", insert "former".

Superannuation (Unclaimed Money and Lost Members) Act 1999

30 Section 8 (definition of *Superannuation Complaints Tribunal*)

Repeal the definition.

Taxation Administration Act 1953

31 Subsection 355-65(3) in Schedule 1 (table item 3)

Repeal the item, substitute:

3	the operator of the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*)	(a) is of information that was obtained under or in relation to the *Superannuation (Unclaimed Money and Lost Members) Act 1999*; and (b) is for the purpose of the operator performing any of its functions or exercising any of its powers.

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Part 3—Application provisions

32 Existing determinations unaffected

(1) The repeal of the *Superannuation (Resolution of Complaints) Act 1993* by Part 1 of this Schedule, does not affect a determination made under that Act before the commencement of that Part.

(2) The amendments of Acts made by Part 2 of this Schedule do not apply in relation to such a determination, and those Acts continue to apply after the commencement of that Part in relation to such a determination as if those amendments had not been made.

[*Minister's second reading speech made in—*
Senate on 14 September 2017
House of Representatives on 13 February 2018]

(221/17)

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