



Treasury Laws Amendment (AFCA Cooperation) Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 04 April 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument 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. The whole of this instrument	The day after this instrument is registered.	6 April 2019

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the following:

- (a) the *Corporations Act 2001*;
- (b) the *National Consumer Credit Protection Act 2009*;
- (c) the *Retirement Savings Accounts Act 1997*;
- (d) the *Superannuation Industry (Supervision) Act 1993*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Corporations Regulations 2001

1 After regulation 7.6.03B

Insert:

7.6.03C Financial services licensee must cooperate with AFCA

- (1) For the purposes of paragraph 912A(1)(j) of the Act, a financial services licensee that is required by paragraph 912A(1)(g) of the Act to be a member of the AFCA scheme must comply with the obligation in subregulation (2).
- (2) The licensee must take reasonable steps to cooperate with AFCA in resolving any complaint under the AFCA scheme to which the licensee is a party, including by:
 - (a) giving reasonable assistance to AFCA in resolving the complaint; and
 - (b) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and
 - (c) giving effect to any determination made by AFCA in relation to the complaint.
- (3) Subregulation (2) does not apply to superannuation complaints.

Note: For provisions relating to superannuation complaints, see Division 3 of Part 7.10A of the Act.

2 After regulation 7.9.77

Insert:

7.9.77A Dispute resolution requirement—obligation to cooperate with AFCA

For the purposes of paragraph 1020G(1)(c) of the Act, Part 7.9 of the Act applies as if subsection 1017G(1) of the Act were modified by inserting the following paragraph after paragraph 1017G(1)(d):

- ; and (e) take reasonable steps to cooperate with AFCA in resolving any complaint (other than a superannuation complaint) under the AFCA scheme to which the issuer or regulated person is a party, including by:
- (i) giving reasonable assistance to AFCA in resolving the complaint; and
 - (ii) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and
 - (iii) giving effect to any determination made by AFCA in relation to the complaint.

3 In the appropriate position in Chapter 10

Insert:

Part 10.32—Application provisions relating to the Treasury Laws Amendment (AFCA Cooperation) Regulations 2019

10.32.01 Application—obligation to cooperate with AFCA

The amendments made by items 1 and 2 of Schedule 1 to the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019* apply on and after the commencement of that item in relation to complaints made under the AFCA scheme before, on or after that commencement.

National Consumer Credit Protection Regulations 2010

4 Subregulation 3(1)

Insert:

AFCA (short for the Australian Financial Complaints Authority) has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

5 After regulation 11

Insert:

11A Obligations of licensees—cooperation with AFCA

- (1) For the purposes of paragraph 47(1)(m) of the Act, a licensee must comply with the obligations in subregulation (2).
- (2) The licensee must take reasonable steps to cooperate with AFCA in resolving any complaint under the AFCA scheme to which the licensee is a party, including by:
 - (a) giving reasonable assistance to AFCA in resolving the complaint; and
 - (b) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and
 - (c) giving effect to any determination made by AFCA in relation to the complaint.
- (3) Subregulation (2) does not apply to superannuation complaints (within the meaning of Chapter 7 of the *Corporations Act 2001*).

Note: For provisions relating to superannuation complaints, see Division 3 of Part 7.10A of the *Corporations Act 2001*.

6 At the end of regulation 23B (after the notes)

Add:

- (4) This regulation ceases to apply in relation to the fund raising special purpose entity and does not again apply in relation to the entity (subject to subregulation (6)) if:
 - (a) the entity is a party to a complaint under the AFCA scheme (other than a superannuation complaint within the meaning of Chapter 7 of the *Corporations Act 2001*); and

- (b) ASIC is satisfied that the entity has failed to comply with subregulation (5) in relation to the complaint; and
- (c) ASIC gives the entity written notice that it is so satisfied; and
- (d) 28 days have passed since the notice was given.

Note: For provisions relating to superannuation complaints, see Division 3 of Part 7.10A of the *Corporations Act 2001*.

- (5) For the purposes of paragraph (4)(b), the fund raising special purpose entity must take reasonable steps to cooperate with AFCA in resolving the complaint, including by:
 - (a) giving reasonable assistance to AFCA in resolving the complaint; and
 - (b) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and
 - (c) giving effect to any determination made by AFCA in relation to the complaint.
- (6) For the purposes of paragraph 327(1)(i) of the Act, an application may be made to the Administrative Appeals Tribunal for review of a decision of ASIC under subregulation (4).

Note: For notice requirements relating to reviewable decisions, see section 328 of the Act.

7 At the end of regulation 23C (after the notes)

Add:

- (4) This regulation ceases to apply in relation to the securitisation entity and does not again apply in relation to the entity (subject to subregulation (6)) if:
 - (a) the entity is a party to a complaint under the AFCA scheme (other than a superannuation complaint within the meaning of Chapter 7 of the *Corporations Act 2001*); and
 - (b) ASIC is satisfied that the entity has failed to comply with subregulation (5) in relation to the complaint; and
 - (c) ASIC gives the entity written notice that it is so satisfied; and
 - (d) 28 days have passed since the notice was given.

Note: For provisions relating to superannuation complaints, see Division 3 of Part 7.10A of the *Corporations Act 2001*.

- (5) For the purposes of paragraph (4)(b), the securitisation entity must take reasonable steps to cooperate with AFCA in resolving the complaint, including by:
 - (a) giving reasonable assistance to AFCA in resolving the complaint; and
 - (b) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and
 - (c) giving effect to any determination made by AFCA in relation to the complaint.
- (6) For the purposes of paragraph 327(1)(i) of the Act, an application may be made to the Administrative Appeals Tribunal for review of a decision of ASIC under subregulation (4).

Note: For notice requirements relating to reviewable decisions, see section 328 of the Act.

8 In the appropriate position in Part 6-3

Insert:

49H Transitional—Schedule 1 to the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019*

The amendments made by items 5, 6 and 7 of Schedule 1 to the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019* apply on and after the commencement of those items in relation to complaints made under the AFCA scheme before, on or after that commencement.

Retirement Savings Accounts Regulations 1997**9 Subregulation 1.03(1)**

Insert:

AFCA (short for the Australian Financial Complaints Authority) has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

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

10 After Division 6.3 of Part 6

Insert:

Division 6.3A—Cooperation with AFCA**6.10A Cooperation with AFCA**

- (1) For the purposes of subsection 38(1) of the Act, the requirement set out in subregulation (2) is a standard applicable to the operation of RSAs.
- (2) An RSA provider that is required to be a member of the AFCA scheme by paragraph 47(1)(a) of the Act must take reasonable steps to cooperate with AFCA in resolving any complaint under the AFCA scheme to which the RSA provider is a party, including by:
 - (a) giving reasonable assistance to AFCA in resolving the complaint; and
 - (b) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and
 - (c) giving effect to any determination made by AFCA in relation to the complaint.
- (3) Subregulation (2) does not apply to superannuation complaints (within the meaning of Chapter 7 of the *Corporations Act 2001*).

Note: For provisions relating to superannuation complaints, see Division 3 of Part 7.10A of the *Corporations Act 2001*.

11 In the appropriate position in Part 7

Insert:

7.8 Amendments made by the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019*

The amendment made by item 10 of Schedule 1 to the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019* applies on and after the commencement of that item in relation to complaints made under the AFCA scheme before, on or after that commencement.

Superannuation Industry (Supervision) Regulations 1994

12 Subregulation 1.03(1)

Insert:

AFCA (short for the Australian Financial Complaints Authority) has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

13 At the end of Division 13.2 of Part 13

Add:

13.17D Cooperation with AFCA

- (1) For the purposes of subsection 31(1) of the Act, the requirement set out in subregulation (3) is a standard applicable to the operation of regulated superannuation funds (other than self managed superannuation funds).
- (2) For the purposes of subsection 32(1) of the Act, the requirement set out in subregulation (3) is a standard applicable to the operation of approved deposit funds.
- (3) A trustee of such a fund that is required to be a member of the AFCA scheme by paragraph 101(1)(a) of the Act must take reasonable steps to cooperate with AFCA in resolving any complaint under the AFCA scheme to which the trustee is a party, including by:
 - (a) giving reasonable assistance to AFCA in resolving the complaint; and
 - (b) identifying, locating and providing to AFCA any documents and information that AFCA reasonably requires for the purposes of resolving the complaint; and
 - (c) giving effect to any determination made by AFCA in relation to the complaint.
- (4) Subregulation (3) does not apply to superannuation complaints (within the meaning of Chapter 7 of the *Corporations Act 2001*).

Note: For provisions relating to superannuation complaints, see Division 3 of Part 7.10A of the *Corporations Act 2001*.

14 In the appropriate position in Part 14

Insert:

**Division 14.20—Transitional arrangements arising out of the
Treasury Laws Amendment (AFCA Cooperation)
Regulations 2019**

14.20 Arrangements

The amendment made by item 13 of Schedule 1 to the *Treasury Laws Amendment (AFCA Cooperation) Regulations 2019* applies on and after the commencement of that item in relation to complaints made under the AFCA scheme before, on or after that commencement.