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**Attachment to Westpac Submission:**

AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY (AFCA)

Rules of Complaint Resolution Scheme

June 2018 (with suggested tracked changes from Westpac)

This draft of the proposed rules of the Australian Financial Complaints Authority (the scheme) has been prepared by Australian Financial Complaints Authority Limited (ACN 620 494 340), a company limited by guarantee which has been authorised by the Minister for Revenue and Financial Services to establish, maintain and promote the scheme.

References to AFCA in this draft document may mean the scheme or the company operating the scheme as the context requires.

## Quick Guide

The AFCA Rules set out the rules and processes that apply to all complaints submitted to the AFCA scheme, including superannuation complaints. The aim of this 'quick guide' is to assist understanding of some key features of the AFCA Rules and should be read in the context of the whole document.

### Sections of AFCA Rules

A	Complaint resolution processes	B	Preconditions	C	Exclusions
		D	Remedies	E	Defined terms

A complaint is within AFCA's jurisdiction provided it meets the preconditions (as set out in section B) unless it is outside jurisdiction (as set out in section C). Remedies that AFCA can award are set out in section D. All definitions are set out in section E.

A complaint is made by an Eligible Person about a Financial Firm who is a member of AFCA, including its employees and agents

A.4

The complainant must have a certain type of relationship with the Financial Firm

B.1 Super

B.2 Other

### What other requirements must be met?

There must be sufficient connection to Australia

B.3

The complaint must be made within relevant time limits

B.4.1 Super

B.4.2 Other

There are additional requirements for complaints about a Traditional Trustee Company Service

B.5

### What types of complaints are excluded?

AFCA must exclude some complaints regarding credit, insurance, investments (including superannuation) and Traditional Trustee Company Services

C.1

AFCA may exclude some other complaints

C.2

### What remedies can be awarded?

There is no monetary limit on the amount that may be awarded to the Complainant in a Superannuation Complaint

D.1

For most other complaints a limit per claim applies

D.3

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## Section A – Complaint Resolution Processes

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Section A provides an overview of the AFCA complaint resolution scheme and how complaints are handled. Reference should be made to section E for the meanings of terms that are capitalised.

### A.1 Introduction to AFCA complaint resolution scheme

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- A.1.1 AFCA is an external complaint resolution scheme established to resolve complaints by Complainants about Financial Firms. AFCA is operated by an independent not-for-profit company that has been authorised to do so by the Minister under the Corporations Act.
- A.1.2 These rules form part of a contract between AFCA and Financial Firms and Complainants. AFCA may develop Operational Guidelines setting out how AFCA interprets and applies these rules.
- A.1.3 AFCA’s complaint resolution scheme is free of charge for Complainants. Complainants do not generally need legal or other paid representation to submit or pursue a complaint through AFCA.
- A.1.4 A person is not obliged to use the AFCA complaint resolution scheme to pursue a complaint against a Financial Firm and instead may institute court proceedings or use any other available dispute resolution forum. A Complainant who submits a complaint to AFCA may withdraw their complaint at any time.
- A.1.5 These rules apply to complaints submitted to AFCA from 1 November 2018, and complaints treated as being submitted to AFCA under rule B.4.5.1.

### A.2 Principles that underpin the scheme

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- A.2.1 AFCA will:
- a) promote awareness of the scheme, including by undertaking outreach to vulnerable and disadvantaged communities
  - b) make the scheme appropriately accessible to a person dissatisfied with a Financial Firm’s response to their complaint including by:
    - (i) providing a range of ways by which to submit a complaint
    - (ii) helping Complainants submit a complaint, and
    - (iii) using translation services and providing information in alternative formats, as appropriate
  - c) handle complaints submitted to it in a way that is:
    - (i) independent, impartial, fair

- (ii) in a manner which provides procedural fairness to the parties
  - (iii) efficient, effective, timely, and
  - (vi) cooperative, with the minimum of formality;
- d) support consistency of decision-making, subject to its obligations both under section 1055 of the Corporations Act and to do what is fair in all the circumstances
- e) have appropriate expertise and resources to handle complaints submitted to it
- f) be as transparent as possible, whilst also acting in accordance with its confidentiality, privacy and secrecy obligations
- g) support regulators of Financial Firms by:
- (i) reporting matters to them in accordance with the Corporations Act, the Privacy Act and any other relevant legislation, and
  - (ii) complying with any ASIC regulatory requirements and directions
- h) account for its operations by publishing Determinations and information about complaints and reporting systemic issues
- i) consult regularly with AFCA's stakeholders, and
- j) promote continuous improvement of its effectiveness, including by commissioning regular independent reviews of the complaints handling scheme's operations.

### **A.3 How a complaint may be submitted to AFCA**

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- A.3.1 A person may submit a complaint by using AFCA's online form, writing to AFCA or by contacting AFCA by telephone. By submitting a complaint, the Complainant is deemed to have agreed to having the complaint handled under the rules.
- A.3.2 AFCA may assist Complainants to submit a complaint.

## A.4 Complaints that AFCA handles

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- A.4.1 The Complainant must be an Eligible Person.
- A.4.2 A complaint must be about a Financial Firm that is an AFCA Member at the time that the complaint is submitted to AFCA (even if not an AFCA Member at the time of the events giving rise to the complaint).
- A.4.3 There are some additional requirements that must be met in order for AFCA to be able to handle a complaint:
- a) The complaint must arise from a customer relationship or other circumstance that brings the complaint within AFCA's jurisdiction.
  - b) There must be a sufficient connection with Australia.
  - c) Generally, there is a time limit within which the complaint must be submitted to AFCA.
  - d) If the complaint is about a Traditional Trustee Company Service that involves Other Affected Parties, the Complainant must get the consent of all Other Affected Parties.
- Section B sets out these requirements.
- A.4.4 There are some types of complaints that AFCA must exclude and some situations in which AFCA can decide to exclude a complaint. Section C sets this out.
- A.4.5 If AFCA excludes a complaint, AFCA will give written reasons to the Complainant and specify the timeframe within which the Complainant may object to this decision.
- A.4.6 If the Complainant objects within the specified timeframe, AFCA will review the decision if AFCA is satisfied that the objection has substance. If this is the case, AFCA will inform the Financial Firms involved in the complaint and provide them with an opportunity to make submissions before AFCA makes a final decision as to whether to handle the complaint.
- A.4.7 Despite other rules, AFCA may handle a complaint if all parties to the complaint consent in writing and AFCA agrees to this. This does not apply to complaints about payment of a death benefit excluded under the time limits in rule B.4.1.3.

## A.5 Notifying the Financial Firm of the complaint

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A.5.1 When AFCA receives a complaint, AFCA will notify the relevant Financial Firm in writing of the complaint.

A.5.2 AFCA will refer the complaint back to the Financial Firm and set a timeframe for the Financial Firm to either resolve the complaint or to provide its position in relation to the complaint.

This opportunity will not normally be provided:

- a) if AFCA considers it appropriate to commence investigating or otherwise progressing the complaint immediately, or
- b) for a Superannuation Complaint relating to the payment of a death benefit.

A.5.3 — AFCA will specify the time allowed for a Financial Firm to resolve the complaint, having regard to any applicable regulatory guidance.

A.5.4 If a Superannuation Complaint is about payment of a death benefit, the Financial Firm must inform AFCA:

- a) when it has complied with the obligation in section 1056A of the Corporations Act to notify each person believed to have an interest in the death benefit, and
- b) of the names and contact details of those persons.

A.5.5 If the complaint is about Traditional Trustee Company Services that involve Other Affected Parties, AFCA will ask the Financial Firm to provide the following information within the timeframe set by AFCA:

- a) the names of all Other Affected Parties and their contact details to the extent possible, and
- b) if any of this information cannot be provided, an explanation as to why this is the case.

## A.6 Joining other parties

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A.6.1 For a Superannuation Complaint, AFCA may, either at the request of a party or in its own discretion, join another person:

- a) who applies to become a party to the complaint in accordance with section 1056A(2) of the Corporations Act after receiving a notice under section 1056A(1) of the Corporations Act, or
- b) as permitted or required by section 1054 and section 1056A(3)(b) of the Corporations Act.

A.6.2 For other complaints, AFCA may at any time, either at the request of a party or in its own discretion, decide that it is appropriate to join another Financial Firm as a

party to the complaint. A joined Financial Firm has all the rights and duties under these rules as if they were the original Financial Firm under the complaint.

## A.7 Restrictions on Financial Firms during a complaint

A.7.1 While AFCA is handling a complaint, the Financial Firm is subject to the following restrictions:

- a) The Financial Firm must not begin legal proceedings against the Complainant, anyone else joined as a party to the complaint or Other Affected Party about any aspect of the subject matter of the complaint, except:
  - (i) to protect any assets securing the debt;
  - (ii) to protect any rights it may have to freeze, preserve or sell the assets the subject of the complaint; and/or
  - (iii) where the legal limitation period for the proceedings is due to expire.provided that those steps are the minimum steps necessary to preserve the Financial Firm's legal rights.
- b) The Financial Firm must not seek judgment or take other action to pursue debt recovery legal proceedings that the Financial Firm began before the Complainant submitted the complaint to AFCA, other than to the minimum extent necessary to preserve the Financial Firm's legal rights.
- c) The Financial Firm must not take any action to:
  - (i) recover a debt the subject of the complaint, including enforcement of a default judgment obtained in court, or
  - ~~(ii) protect any assets securing that debt, or~~
  - (iii) assign any right to recover that debt.

A.7.2 Despite rule A.7.1, the Financial Firm may with AFCA's consent (which cannot be unreasonably withheld):

- ~~a) — begin legal proceedings if the legal limitation period for the proceedings is about to expire — but the Financial Firm may not pursue those legal proceedings other than to the minimum extent necessary to preserve the Financial Firm's legal rights~~
- ab) begin legal proceedings if AFCA agrees to allow the Financial Firm to treat the complaint as a test case and the Financial Firm meets the requirements set out in rule C.2.2(f)
- be) exercise any rights it might have to ~~freeze, preserve or~~ sell assets the subject of the complaint

- cd) continue with legal proceedings if the Complainant, anyone else joined as a party to the complaint or Other Affected Party took a step in defending those legal proceedings that went beyond lodging a defence or a defence and counterclaim
- de) continue with legal proceedings about a Small Business (including Primary Producer) credit facility of more than \$5 million, where such action is directly related to the complaint, or
- ef) enforce a default judgment obtained in court.

In each case, the Financial Firm must comply with any conditions that AFCA imposes.

A.7.3 For a Superannuation Complaint, AFCA may decide that a Financial Firm may not implement a decision that is the subject of a complaint submitted to AFCA, while AFCA is handling the complaint. AFCA must not make a decision of this type unless:

- a) AFCA has received a request by the Complainant to halt the operation of the Financial Firm's decision; and
- b) AFCA has provided the Financial Firm with a reasonable opportunity to make submissions and taken any submissions into account.

A.7.4 Apart from the restrictions in rules A.7.1 and A.7.3, a Superannuation Complaint neither:

- a) affects the operation of the decision of the Financial Firm, nor
- b) prevents the Financial Firm from implementing the decision

while AFCA is handling the complaint.

A.7.5 If a complaint submitted to AFCA is resolved by agreement between the parties or is determined by an AFCA Decision Maker and the Determination becomes binding upon the Financial Firm, the Financial Firm must not begin or continue with legal proceedings against the Complainant, anyone else joined as a party to the complaint or Other Affected Party that are inconsistent with the agreed resolution or the Determination. This does not prevent a Financial Firm from pursuing any appeal rights available to it under the Corporations Act in respect of determinations about Superannuation Complaints.

A.7.6 A Financial Firm must not instigate defamation action of any kind in relation to allegations about the Financial Firm made to AFCA by the Complainant, anyone else joined as a party to the complaint or Other Affected Party, to the extent the alleged defamatory statements are contained in communications to AFCA and are not published elsewhere.

## A.8 Complaint resolution approach

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A.8.1 AFCA will generally try to resolve a complaint by informal methods. This includes, for example, by:

- a) facilitating negotiations between the parties
- b) conciliating a complaint, for example, by conducting a conciliation conference.

If reasonable attempts to resolve a complaint by these methods do not succeed, AFCA may then:

- c) provide a preliminary assessment in accordance with rule A.12
- d) proceed to determine the complaint.

A.8.2 Alternatively AFCA may proceed immediately to determine a complaint, for example, if it thinks the complaint is unlikely to be resolved by other means.

A.8.3 At any stage, AFCA may decide that it is not appropriate to continue to handle a complaint, in circumstances such as:

- a) the complaint is without merit
- b) the Complainant has suffered no loss (or has been appropriately compensated for such loss and AFCA would not award any further amount)
- c) the Financial Firm has committed no error
- d) for other reasons in line with rule C.2.1.

If so, AFCA will follow the process for excluding a complaint set out in rules A.4.5 and A.4.6.

## A.9 Gathering relevant information

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A.9.1 AFCA will often need to obtain information from the parties. A party to a complaint must comply with AFCA requirements to provide information within the timeframe specified by AFCA (which must be reasonable) unless they satisfy AFCA that:

- a) to provide information would breach a duty of confidentiality to a third party, other than an agent or contractor, and despite best endeavours, the third party's consent to the disclosure of the information has not been able to be obtained
- b) to provide the information would breach a Court order or prejudice a current investigation by the police or other law enforcement agency, or

- c) the information does not or no longer exists or cannot reasonably be obtained.

For the avoidance of doubt, under rule A.9.1, AFCA cannot require a party to do anything that would cause the party to waive legal professional privilege.

A.9.2 A party to a complaint relying on rule A.9.1 to refuse an AFCA requirement for information must (if requested by AFCA) provide AFCA with a statutory declaration setting out the steps taken to try to comply with AFCA's request for the information and detailing the reasons they were unable to do so. AFCA may then decide if it is satisfied with those steps and reasons.

A.9.3 AFCA may require a party to a complaint to do anything else that AFCA reasonably considers may assist AFCA's consideration of the complaint. This may include requiring:

- a) a party to a complaint to attend an interview
- b) the Financial Firm to investigate the complaint further or to appoint an independent expert to report back to AFCA on something relating to the complaint.

For the avoidance of doubt, AFCA cannot require a party to do anything that:

- (i) would cause the party to breach legal obligations of that party; or
- (ii) would breach a Court order or prejudice a current investigation by the police or other law enforcement agency; or
- (iii) would waive legal professional privilege; or
- (iv) the party is unable to do.

A.9.4 For a Superannuation Complaint, AFCA has additional powers to obtain information and require attendance at conciliation conferences as set out in sections 1054A and 1054B of the Corporations Act.

A.9.5 If a party to a complaint without reasonable excuse fails to provide information, or to take any other step required by AFCA, within the AFCA specified timeframe, AFCA may take whatever steps it considers reasonable in the circumstances:

- a) If the information requested by AFCA is of material importance, AFCA will proceed with the resolution of the complaint on the basis that an adverse inference will generally be drawn from that party's failure to comply with AFCA's requirement, unless special circumstances apply.
- b) If the Complainant fails to comply with an AFCA requirement, AFCA may refuse to continue handling the complaint.

A.9.6 AFCA may seek expert advice including from an AFCA appointed legal expert, industry expert, medical practitioner or building expert. AFCA may require the Financial Firm to pay or contribute to the cost provided that:

- a) the fees of the expert are reasonable, having regard to the complexity of the complaint and usual market rates
- b) the person has in the reasonable opinion of AFCA (such opinion to be informed by the views of the parties to the complaint), the necessary expertise.

Unless special circumstances apply, AFCA will not require a Financial Firm to contribute more than \$5,000 per complaint to the cost of expert advice obtained by AFCA.

## A.10 Information sharing and opportunity to make submissions

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A.10.1 Subject to rule A.10.4, AFCA will generally share information provided by a party to a complaint with the other parties to the complaint, ~~even after the complaint has been closed.~~

A.10.2 Before a complaint is determined by an AFCA Decision Maker, AFCA must provide the parties to the complaint:

- a) with access to relevant information, unless special circumstances apply such as health and safety issues, and
- b) an opportunity to make submissions.

A.10.3 Despite rule A.10.1, AFCA need not provide the parties with any memoranda, analysis or other documents prepared by AFCA's employees or contractors unless required by law.

A.10.4 Despite rule A.10.1:

- a) AFCA must not disclose to a party to a complaint information provided by another party to the complaint where the party supplying the information has not provided consent to do so (and, in the absence of a clear statement to the contrary, AFCA is entitled to assume that consent is given to the material in its entirety being provided to the other parties to the complaint); and
- b) if a party to a complaint does not consent to provide information to another party to the complaint, AFCA is not entitled to use that information to reach a decision adverse to the party to whom confidential information is denied unless AFCA determines that it is appropriate to do.

## A.11 Confidentiality

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A.11.1 AFCA operates on a “without prejudice” basis. This means that information obtained through AFCA may not be used in any subsequent court proceedings unless required by an appropriate court process.

A.11.2 The parties must maintain the confidentiality of all information provided to them through the course of a complaint except:

- a) to the extent reasonably necessary to resolve the complaint
- b) to the extent reasonably necessary to discuss the complaint with their lawyer, adviser, accountant or insurer, or
- c) as required by law.

If any information is disclosed by a party for the purposes in (a) and (b) above, that party must ensure the recipient is subject to the same confidentiality restrictions as the party disclosing the information and that the recipient agrees to not use the information for any other purpose.

A.11.3 For a Superannuation Complaint, AFCA has additional powers to give directions to parties prohibiting or restricting disclosure of documents or information relating to that complaint and affecting who may be present at any meeting relating to that complaint as set out in section 1054BA of the Corporations Act.

A.11.4 AFCA must maintain the confidentiality of all information provided to it except:

- a) to the extent reasonably necessary to carry out AFCA’s responsibilities including under these rules or for any incidental purpose, or
- b) as required or permitted by law.

Where AFCA receives protected information provided to it under statutory authority by a regulator or government agency, AFCA will take all reasonable steps to maintain the protected nature of that information.

A.11.5 AFCA may provide information obtained from the parties to a complaint to:

- a) any regulator such as ASIC, the Office of the Australian Information Commissioner or a regulated securities exchange
- b) a disciplinary or professional standards body, industry code compliance committee or other external dispute resolution scheme that AFCA has a written agreement with for the release of such information
- c) any insolvency practitioner duly appointed to manage the insolvency of a Financial Firm
- d) any compensation mechanism with jurisdiction over the types of complaints handled by AFCA.

In providing information to these third parties, AFCA will comply with its obligations under the Corporations Act, the Privacy Act and any other relevant legislation.

## **A.12 Preliminary assessment**

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- A.12.1 After collecting relevant information and obtaining submissions from the parties to a complaint, AFCA may choose to provide the parties with a preliminary assessment of the complaint with a recommendation as to how the complaint should be resolved.
- A.12.2 AFCA must inform the parties to the complaint that they can either accept the preliminary assessment or request a Determination and the time they have to make a choice. If they all accept AFCA's recommendation within that time, the complaint is settled on this basis.
- A.12.3 The complaint must proceed to a Determination by an AFCA Decision Maker:
- a) if the complaint is about Traditional Trustee Company Services that involves Other Affected Parties – unless all parties accept AFCA's recommendation within the timeframe specified by AFCA
  - b) for all other complaints, if:
    - (i) the Financial Firm fails to accept AFCA's recommendation within the timeframe specified by AFCA, or
    - (ii) either a Complainant or Financial Firm requests that the complaint proceeds to Determination, and provides reasons for disagreeing with the preliminary assessment, within the time specified by AFCA.
- A.12.4 If the Financial Firm accepts AFCA's recommendation but the Complainant does not respond within the time specified by AFCA, the complaint may be closed. If the Complainant does not respond or does not accept the recommendation, it will not bind the parties.
- A.12.5 When determining a complaint at the request of a party, the AFCA Decision Maker must consider the party's reasons for disagreeing with the preliminary assessment, but is not limited to those reasons.

## **A.13 Decision makers**

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- A.13.1 A complaint may be determined by an Ombudsman, an Adjudicator or an AFCA Panel. AFCA's Chief Ombudsman or his or her delegate allocates complaints to AFCA Decision Makers as they consider appropriate taking into account:
- a) the complexity of the complaint
  - b) the amount of loss as well as other potential consequences of the complaint

- c) whether the complaint raises a systemic issue
- d) whether the complaint raises new issues for AFCA of law or good industry practice
- e) considerations of efficiency
- f) whether a party has requested that an AFCA Panel determine the complaint.

A.13.2 When forming an AFCA Panel to determine a complaint, AFCA's Chief Ombudsman or his or her delegate must consider the Panel Members' expertise and experience and whether as a group they will be able to determine the complaint fairly and impartially.

A.13.3 When allocating an Ombudsman or Adjudicator to determine a complaint, AFCA's Chief Ombudsman or his or her delegate must consider the Ombudsman's or Adjudicator's expertise and experience and whether they will be able to determine the complaint fairly and impartially.

## **A.14 Decision making approach**

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- A.14.1 When determining a Superannuation Complaint, the AFCA Decision Maker:
- a) may refer a question of law to the Federal Court in accordance with section 1054C of the Corporations Act
  - b) must apply the approach specified in section 1055 of the Corporations Act.
- A.14.2 When determining any other complaint, the AFCA Decision Maker must do what the AFCA Decision Maker considers is fair in all the circumstances having regard to:
- a) legal principles
  - b) applicable industry codes or guidance
  - c) good industry practice, and
  - d) previous relevant Determinations of AFCA or Predecessor Schemes.
- A.14.3 An AFCA Decision Maker is not bound by rules of evidence or previous AFCA or Predecessor Scheme decisions.
- A.14.4 A Determination must be in writing with reasons. Any remedy must be within AFCA's scope as set out in Section D.
- A.14.5 AFCA will publish its Determinations in a form which does not identify the parties to the complaint. A Determination will not be published if to do so would risk identifying the parties, or there are other compelling reasons not to publish it.

## **A.15 Effect of Determinations**

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- A.15.1 In the case of a Superannuation Complaint, a Determination by an AFCA Decision Maker has effect and comes into operation as prescribed by sections 1055B, 1055D and 1057A of the Corporations Act. AFCA must give each party a written notice informing the party that they may appeal its decision to the Federal Court on a question of law under section 1057 of the Corporations Act.
- A.15.2 In the case of a complaint about Traditional Trustee Company Services that involves Other Affected Parties, a Determination by an AFCA Decision Maker:
- a) has effect and comes into operation on the date specified by the AFCA Decision Maker; and
  - b) is binding upon the Financial Firm from that date.
- A.15.3 In the case of any other complaint, a Determination by an AFCA Decision Maker is binding on the Financial Firm if accepted by the Complainant within 30 days of the Complainant's receipt of the Determination. The Financial Firm may ask the Complainant to provide it with a binding release from liability in respect of the matters resolved by the Determination, provided the release:

- a) is limited to the matters dealt with in the Determination, and
- b) is consistent with the Determination.

A.15.4 If a Complainant does not accept a Determination under rule A.15.3 within 30 days of the Complainant's receipt of the Determination, the Complainant and the Financial Firm are not bound by the Determination and may bring an action in the courts or take any other available action to that party.

## **A.16 Complaints about AFCA's service**

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- A.16.1 Where a party to a complaint expresses dissatisfaction to AFCA about its complaints handling service, AFCA must respond to the person within a reasonable timeframe. If that person remains dissatisfied after receiving that response, they may refer their concerns to the Independent Assessor within the timeframe specified in the Independent Assessor's Terms of Reference.
- A.16.2 The Independent Assessor is appointed by AFCA's Board. The Independent Assessor's role is to consider whether AFCA provided an appropriate standard of complaints handling service. The Independent Assessor does not have power to re-open a complaint submitted to AFCA or to consider the merits of a complaint or the substantive outcome of a complaint.
- A.16.3 If the Independent Assessor finds that AFCA has not provided an appropriate standard of complaints handling service, the Independent Assessor must recommend in writing to AFCA the action that AFCA should take. This may include AFCA paying compensation if an unusual degree of distress or inconvenience has been incurred by the person who escalated the complaint to the Independent Assessor (capped at the maximum amount that may be awarded under these rules for non-financial loss). The Independent Assessor cannot make a recommendation that AFCA give consideration to re-opening, changing or correcting a determination or other finding issued by AFCA about the merits of a complaint, or AFCA's jurisdiction.
- A.16.4 The Independent Assessor must provide a copy of their recommendation to the person who referred the matter to the Independent Assessor.
- A.16.5 An Independent Assessor's recommendation is not binding on AFCA.

## **A.17 Systemic issues**

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- A.17.1 A systemic issue is an issue that is likely to have an effect on consumers or Small Businesses in addition to any Complainant.
- A.17.2 AFCA will investigate potential systemic issues. In doing so, it:
  - a) must raise the potential systemic issue with the relevant Financial Firm and give it a reasonable time period ~~n-opportunity~~ to respond

- b) can require the Financial Firm to provide any information and documents AFCA reasonably considers necessary and relevant to an investigate investigation of the issue, unless they satisfy AFCA that:-
- (i) to provide information would breach a duty of confidentiality to a third party, other than an agent or contractor, and despite best endeavours, the third party's consent to the disclosure of the information has not been obtained;
  - (ii) to provide the information would breach a Court order or prejudice a current investigation by the police or other law enforcement agency;
  - (iii) the information does not or no longer exists or cannot reasonably be obtained; or
  - (iv) to provide the information or documents would create an unreasonable burden on the Financial Firm.
  - (v) For the avoidance of doubt, under rule A.17.2, AFCA cannot require a party to do anything that would cause the party to waive legal professional privilege.

For the avoidance of doubt, under rule A.17.2, AFCA cannot require a party to do anything that would cause the party to waive legal professional privilege.

A.17.3 If AFCA identifies a systemic issue as a result of its investigation, it will:

- a) refer the issue to the relevant Financial Firm for remedial action
- b) obtain a report from the Financial Firm as to the remedial action undertaken, and
- c) continue to monitor the matter until a resolution has been achieved that is acceptable to AFCA.

A.17.4 As part of investigating and referring a systemic issue to the Financial Firm for remedial action, AFCA can require the Financial Firm to do or refrain from doing any act which AFCA considers reasonably necessary to achieve any one or more of the following objectives:

- a) facilitating AFCA's investigation of the systemic issue
- b) improving industry practice and communication
- c) remedying loss or disadvantage suffered by consumers or Small Businesses (whether or not where they have complained about the systemic issue)

- d) preventing foreseeable loss or disadvantage to consumers or Small Businesses
- e) minimising the risk of the systemic issue recurring
- f) efficiently dealing with multiple complaints related to the systemic issue.

A.17.5 Despite the requirements in A.17.4, a Financial Firm is not required to do or refrain from doing any act which:

- a) would cause the Financial Firm to breach legal obligations of the Financial Firm; or
- b) the Financial Firm (in its reasonable opinion) considers that it is unable to comply with; or
- c) would waive legal professional privilege; or
- d) would create an unreasonable burden on the Financial Firm or its customers.

A.17.56 In accordance with the Corporations Act, the Privacy Act and any other relevant obligations, after identifying a systemic issue AFCA must report the issue to any body, including:

- a) ASIC
- b) the Australian Prudential Regulation Authority
- c) the Commissioner of Taxation
- d) the Office of the Australian Information Commissioner.

## **A.18 Serious contraventions and other breaches**

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A.18.1 In accordance with the Corporations Act and any other relevant obligations, AFCA must refer certain matters to the relevant regulatory body any body (including ASIC, the Australian Prudential Regulation Authority, or the Commissioner of Taxation), such as:

- a) the particulars of a settlement under section 1052E(3) of the Corporations Act if AFCA thinks the settlement may require investigation
- b) serious contraventions by Financial Firms.

A.18.2 In addition to AFCA's reporting obligations under rule 18.1, AFCA may report to ASIC other serious breaches including non-compliance with these rules.

## **A.19 Collection of information**

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A.19.1 AFCA must collect and record comprehensive information about its complaint resolution, for example:

- a) the number of complaints and enquiries, including the number of complaints referred to a Financial Firm to resolve through internal dispute resolution
- b) demographics of the Complainants
- c) details of complaints that AFCA excluded and why
- d) the outcome of complaints that were resolved by AFCA
- e) the current caseload including the age and status of open cases
- f) the time taken to resolve complaints
- g) a profile of complaints that identifies:
  - (i) type and purpose of Financial Service
  - (ii) type of Financial Firm
  - (iii) issues raised in complaints
  - (iv) any systemic issues or other trends.

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## **A.20 Publication of information**

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- A.20.1 To facilitate public reporting, AFCA must produce a report at least every twelve months and provide this to ASIC, the Financial Firms and the public via AFCA's website. This report must be a comprehensive summary and analysis of the data collected. Amongst other things, it must include statistical information about:
- a) the number of complaints submitted to AFCA per Financial Firm
  - b) the number of complaints closed per Financial Firm
  - c) the outcome of those complaints.
- A.20.2 AFCA will also provide quarterly reports to ASIC in respect of its operations.

## **A.21 How AFCA operates**

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- A.21.1 The Board of Directors of AFCA appoints the Ombudsmen, Adjudicators and Panel Members.
- A.21.2 The Chief Ombudsman is responsible for the operations of AFCA and is able to authorise an employee or contractor to AFCA to carry out any responsibility of AFCA other than making a Determination.
- A.21.3 These rules specify some timeframes that apply to parties to a complaint. Unless a rule expressly states otherwise, AFCA may extend a timeframe if it considers this appropriate (even if the original period has ended).

## **A.22 Immunity from liability**

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- A.22.1 AFCA, the Chief Ombudsman, Ombudsmen, Adjudicators, Panel Members, someone authorised by the Chief Ombudsman to carry out any responsibilities or exercise any powers or discretions of AFCA and AFCA employees, contractors and agents shall not be liable to a party to a complaint for any loss or damage arising directly or indirectly in the course of carrying out AFCA functions.

## A.23 Change to AFCA rules

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- A.23.1 AFCA must periodically consider the adequacy of the monetary limits that are set out in Section D for complaints other than Superannuation Complaints.
- A.23.2 These rules, including the monetary limits set out in Section D, may be changed to meet any regulatory requirements or directions given to AFCA by ASIC under the Corporations Act.
- A.23.3 AFCA must consult with stakeholders including Financial Firms, key consumer, community and industry organisations and ASIC, before making an amendment to the rules. This does not apply if the amendment is to comply with an ASIC regulatory requirement or direction under the Corporations Act.
- A.23.4 AFCA will not make a material change to the rules without the approval of ASIC under section 1052D of the Corporations Act.
- A.23.5 AFCA must handle a complaint applying the rules as in existence at the date that the complaint was submitted to AFCA. If AFCA decides that a previously submitted complaint should be re-opened, AFCA will handle the complaint by applying the rules as in existence at the date that the complaint was first submitted.

## Section B – Preconditions

Section B sets out requirements that must be met in order for AFCA to be able to handle a complaint that is submitted to it by a Complainant.

The following table sets out which rules apply according to type of complaint.

Type of complaint	Applicable rules
Superannuation Complaint	B.1, B.3, B.4.1, B.4.5
Complaint about Traditional Trustee Company Services	B.2, B.3, B.4.3, B.4.4, B.4.5, B.5
Other complaints	B.2, B.3, B.4.2, B.4.3, B.4.4, B.4.5

### B.1 Relationship giving rise to the complaint – Superannuation Complaints

B.1.1 A Superannuation Complaint must be submitted by:

- a) a member or former member of a Regulated Superannuation Fund, other than a Self Managed Superannuation Fund
- b) a beneficiary or former beneficiary of an Approved Deposit Fund
- c) a person acting for the estate of a person referred to in paragraphs (a), (b) or (g)
- d) in the case of a complaint about a death benefit payable from a Regulated Superannuation Fund, an Annuity Policy or a RSA, a person with an interest in the benefit
- e) a person who has, or claims to have, an interest in an Annuity Policy
- f) a person in respect of whom a superannuation provider has set out an amount in a statement referred to in section 1053(2) of the Corporations Act
- g) a person who is, or claims to be, the holder or former holder of an RSA, or
- h) a person who is, or claims to be, a member of a life policy fund.

B.1.2 The persons described in section 1053A of the Corporations Act are taken to be members of a Regulated Superannuation Fund or an Approved Deposit Fund or holders of an RSA (as applicable).

## B.2 Relationship giving rise to the complaint – other complaints

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- B.2.1 A complaint (other than a Superannuation Complaint) must arise from or relate to:
- a) the provision of a Financial Service by the Financial Firm to the Complainant
  - b) the provision by the Complainant of a guarantee or security for, or repayment of, financial accommodation provided by the Financial Firm to an Eligible Person
  - c) an entitlement or benefit under a Life Insurance Policy that specifies or refers to the Complainant, whether by name or otherwise, as a person to whom the insurance cover extends or to whom money becomes payable under the Life Insurance Policy
  - d) an entitlement or benefit under a General Insurance Policy that specifies or refers to the Complainant, whether by name, or otherwise, as a person to whom the policy extends
  - e) a legal or beneficial interest of the Complainant arising out of:
    - (i) a financial investment (such as life insurance, a security or an interest in a managed investment scheme or a superannuation fund), or
    - (ii) a facility under which the Complainant seeks to manage financial risk or to avoid or limit the financial consequences of fluctuations in, or in the value of, an asset, receipts or costs (such as a derivatives contract)
  - f) a claim by the Complainant under another person's Motor Vehicle Insurance Product for:
    - (i) property damage to an Uninsured Motor Vehicle caused by a driver of the insured motor vehicle
    - (ii) non-financial loss as a result of claims handling by the Financial Firm that insured the motor vehicle

but only where a valid claim has been submitted by the owner of the insured motor vehicle (unless the claim is being made pursuant to section 51 of the Insurance Contracts Act 1984)
  - g) an investment made by the Complainant that was offered by a Financial Firm under a foreign recognition scheme to Australian resident investors, unless expressly excluded from access to AFCA or a Predecessor Scheme by the investment offer document, or
  - h) a Traditional Trustee Company Service where:

- (i) the Complainant is entitled to request an Annual Information Return from the trustee, and
- (ii) at least one co-trustee was at that time a current AFCA Member and all co-trustees that are not AFCA Members have consented to AFCA handling the complaint.

## **B.3 Sufficient connection with Australia**

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B.3.1 A complaint must arise from:

- a) a contract or obligation arising under Australian law, including but not limited to privacy obligations
- b) an offer to invest that was received in Australia by a Complainant in relation to a recognised Foreign Collective Investment Scheme, or
- c) a direct or indirect investment in a product through a platform which was offered in Australia.

## **B.4 Time limits for complaints**

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### **B.4.1 Superannuation Complaints**

B.4.1.1 For complaints about a decision of a trustee of a Regulated Superannuation Fund or an Approved Deposit Fund, an RSA Provider, or an insurer (where the premiums under the policy have been paid from an RSA), relating to the payment of a disability benefit because of total and permanent disability:

- a) if the Complainant permanently ceased employment because of the physical or mental condition that gave rise to the claim for the disability benefit, the Complainant must have made a claim to the Financial Firm for the payment of a disability benefit within two years of permanently ceasing employment and the Complainant must have submitted the complaint to AFCA within four years of the Financial Firm's decision about the disability claim
- b) if the Complainant did not permanently cease employment because of the physical or mental condition that gave rise to the claim for the disability benefit, the Complainant must have submitted the complaint to AFCA within six years of the Financial Firm's decision about the disability claim.

B.4.1.2 A reference to a decision in rule B.4.1.1 is to the original decision of the trustee, RSA Provider or insurer (decision maker) in relation to the matter and if, as a result of a complaint to the decision maker about the original decision, the original decision was confirmed or varied, or another decision was substituted for the original decision:

- a) the decision as so confirmed or varied, or the substituted decision, is taken to be the original decision, and

- b) the decision as so confirmed or varied, or the substituted decision, is taken to have been made at the time when the original decision was made.

B.4.1.3 For complaints relating to the payment of a death benefit to which neither rule B.4.1.5a) nor B.4.1.5b) applies, the Complainant must have, consistent with section 1056 of the Corporations Act:

- a) objected to the payment of the death benefit proposed by the Financial Firm within 28 days of being given notice of the proposed decision, and
- b) submitted the complaint to AFCA within 28 days of being given a notice from the Financial Firm of its decision in relation to the payment of the death benefit.

B.4.1.4 For complaints about a statement referred to in section 1053(2) of the Corporations Act, the complaint to AFCA must have been submitted within 12 months of notice being given by the Financial Firm of the time period to complain with a copy of the statement.

B.4.1.5 AFCA will generally not handle other types of Superannuation Complaint ~~unless it was submitted to AFCA within two years of the date of the IDR Response. This includes including~~ a complaint relating to the payment of a death benefit where AFCA is satisfied that the Complainant has an interest in the death benefit but:

- a) the Complainant was not notified by the Financial Firm of the proposed payment of the death benefit and the failure to notify was unreasonable, or
- b) the Complainant was notified of the proposed payment of the death benefit but was not notified of the 28 day period to object.

unless it was submitted to AFCA within two years of the date of the IDR Response.

## **B.4.2 Complaints to which the National Credit Code applies**

- B.4.2.1 Where a complaint relates to a variation of a credit contract as a result of financial hardship, an unjust transaction or unconscionable interest and other charges under the National Credit Code, AFCA will generally not handle the complaint unless it was submitted to AFCA before the later of the following time limits:
- a) within two years of the date when the credit contract is rescinded, discharged or otherwise comes to an end, or
  - b) where, prior to lodging the complaint with AFCA, the Complainant was given an IDR Response in relation to the Complaint from the Financial Firm – within two years of the date of that IDR Response.

## **B.4.3 Other complaints**

- B.4.3.1 In other situations, AFCA will generally not handle a complaint unless it was submitted to AFCA before the earlier of the following time limits:
- a) within six years of the date when the Complainant first became aware (or should reasonably have become aware) that they suffered the loss, and
  - b) where, prior to submitting the complaint to AFCA, the Complainant was given an IDR Response in relation to the complaint from the Financial Firm – within two years of the date of that IDR Response.

## **B.4.4 Extension of time limits**

- B.4.4.1 AFCA will not extend any of the time limits set out in rules B.4.1.1 to B.4.1.4.
- B.4.4.2 AFCA may handle a complaint submitted after the time limits set out in rules B.4.1.5, B.4.2 and B.4.3 if AFCA considers that special circumstances apply.

## **B.4.5 Time limits generally**

- B.4.5.1 (a) For the purposes of AFCA's time limits, a complaint submitted to:
- (i) a Predecessor Scheme that are then referred to AFCA will be treated as submitted to AFCA on the date it was received by the Predecessor Scheme
  - (ii) AFCA before 1 November 2018 will be treated as submitted to AFCA on the date it was first received by AFCA.
- (b) For purpose of the rest of AFCA's Rules, a complaint submitted to a Predecessor Scheme that is then referred to AFCA, and a complaint submitted to AFCA before 1 November 2018, will be treated as received by AFCA when these rules become operational (or such later date when the complaint was referred to AFCA), and these rules will apply.

B.4.5.2 The table below summarises the time limits within which a Complainant must submit a complaint with AFCA. For avoidance of doubt, rules B.4.1 to B.4.4 prevail.

Type of complaint				Time limit within which an AFCA complaint must be submitted		
Superannuation	TPD decision by trustee, RSA provider or insurer (see B.4.1.1)	Has the Complainant permanently ceased employment because of the condition that gave rise to the claim for the disability benefit?	Yes.	Yes	4 years from TPD decision	No extension of time limits (see B.4.4.1)
			Was the claim made with Financial Firm within 2 years of permanently ceasing employment?	No	Out of time	
			No. The Complainant ceased employment for other reasons		6 years from TPD decision	
	Payment of a death benefit (see B.4.1.3)	Has the Complainant objected to the Financial Firm within 28 days of being given notice of the proposed decision?	Yes	28 days from final decision		
			No	Out of time		
Statement given to the Commissioner of Taxation under s.1053(2) of the Corporations Act (see B.4.1.4)				12 months from notice		
NCC facility	Financial hardship, unjust transaction or unconscionable interest and other charges under the National Credit Code (see B.4.2.1)	Complaint must be submitted by the later of:	when the credit contract is rescinded, discharged or otherwise come to an end		2 years from contract end	Special circumstances may extend time limits (see B.4.4.2)
			when an IDR response was provided		2 years from IDR response	
			when the Complainant was aware or should reasonably have become aware of the loss claimed		6 years from (reasonable) awareness	
Other	All other complaints including: • unregulated loans (see B.4.3.1)	Complaint must be submitted by the earlier of:	when the Complainant was aware or should reasonably have become aware of the loss claimed		6 years from (reasonable) awareness	
			when an IDR response was provided		2 years from IDR response	

## B.5 Additional requirements for Traditional Trustee Company Services complaints

B.5.1 If the complaint is about Traditional Trustee Company Services and AFCA considers that a favourable outcome would be unlikely to benefit the estate or trust as a whole (and therefore all beneficiaries), the following requirements must be met in order for AFCA to handle the complaint:

- a) the beneficiaries of the estate or trust must form a closed class
- b) all Other Affected Parties must have been identified
- c) AFCA must explain to the Complainant the process for AFCA handling the complaint and their right to obtain independent legal advice – and within 28 days of receiving this information from AFCA the Complainant must consent in writing to AFCA handling the complaint and agree to be bound by the outcome
- d) AFCA must send a notice to each Other Affected Party informing them that the complaint has been submitted, that if AFCA handles the complaint their interests may be affected by the outcome and that they have a right to obtain independent legal advice before deciding whether to consent to AFCA handling the complaint – and within 28 days of receiving this information from AFCA, all Other Affected Parties must consent in writing to AFCA handling the complaint and agree to be bound by the outcome.

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## Section C – Exclusions

Section C sets out when AFCA will exclude a complaint.

### C.1 Mandatory exclusions

#### AFCA must exclude certain categories of complaints

C.1.1 Rules C.1.2 to C.1.6 specify categories of complaints that AFCA must exclude unless all parties to the complaint and AFCA agree to AFCA handling the complaint.

#### Exclusions applying generally

C.1.2 AFCA must exclude:

- a) A complaint about the level of a fee, premium, charge or interest rate – unless:
  - (i) the complaint concerns non-disclosure, misrepresentation or incorrect application of the fee, **rebate**, premium, charge or interest rate by the Financial Firm having regard to any scale or practices generally applied by that Financial Firm or agreed with that Complainant
  - (ii) the complaint concerns a breach of any legal obligation or duty on the part of the Financial Firm, or
  - (iii) the Complainant's complaint is with a medical indemnity insurer and pertains to the level of medical indemnity insurance premium or the application of a risk surcharge (as defined in the Services Contract between the Health Insurance Commission, and the Commonwealth of Australia represented by the Department of Health and Ageing, and medical indemnity insurers).
- b) A complaint that relates to a decision by a Financial Firm as to how to allocate the benefit of a Financial Service between the competing claims of potential beneficiaries, unless the complaint relates to a Superannuation Complaint or a Traditional Trustee Company Service.
- c) A complaint that raises the same events and facts and is brought by the same Complainant as a complaint previously dealt with by AFCA and there is insufficient additional events and facts raised in the new complaint to warrant AFCA handling the new complaint.
- d) A complaint that has already been dealt with by a court, dispute resolution tribunal established by legislation or a Predecessor Scheme, unless the Complainant has requested a stay on the execution of a default judgment on the basis of financial difficulty, the Financial Firm has declined the

Complainant's financial difficulty assistance request, and the request has not previously been dealt with.

For the avoidance of doubt, AFCA may handle a complaint by a Primary Producer about issues unresolved after a mediator has tried to resolve them in a farm debt mediation.

- e) A complaint where the value of the Complainant's claim:
- (i) in the case of a claim on a Life Insurance Policy dealing with income stream risk, if the total potential value of the Complainant's claim in accordance with the terms of the Life Insurance Policy; or
  - (ii) in all other cases, when the complaint is submitted to AFCA;
- exceeds \$1 million or higher amount that applies as a result of an adjustment in accordance with rule D.4.3~~when the complaint is submitted to AFCA exceeds \$1 million or higher amount that applies as a result of an adjustment in accordance with rule D.4.3.~~

-This jurisdictional limit does not apply to:

- (i) a Superannuation Complaint
  - (ii) a complaint by a borrower arising from a credit facility provided to a Small Business (including Primary Producer)
  - (iii) a complaint to set aside a guarantee supported by security over the guarantor's primary place of residence.
- f) A complaint where the Complainant is a member of a group of Related Bodies Corporate and that group has 100 employees or more.
- g) A complaint that would require review of a trustee's exercise of discretion but this does not exclude:
- (i) a complaint to the extent that an allegation is made of bad faith, failure to give fair and proper consideration to the exercise of the discretion, or failure to exercise the discretion in accordance with the purpose for which it was conferred, or
  - (ii) a Superannuation Complaint
- h) A complaint about professional accountancy services provided by an Accountant unless they are provided in connection with one of the following:
- (i) a financial service within the meaning of section 766A of the Corporations Act or section 12BAB of the ASIC Act
  - (ii) credit activity within the meaning of the National Consumer Credit Protection Act 2009, or

- (iii) tax (financial) advice services within the meaning of the Tax Agent Services Act 2009.
- i) A complaint about a Privacy Act Participant that does not relate to a right or obligation arising under the Privacy Act.

### **Exclusions applying specifically to credit complaints**

#### **C.1.3 AFCA must exclude:**

- a) A complaint about the Financial Firm's assessment of the credit risk posed by a borrower or the security to be required for a loan unless the complaint is about:
  - (i) Maladministration in lending, loan management or security matters, or
  - (ii) the variation of a credit contract as a result of the Complainant being in financial hardship
- b) A complaint about a Small Business (including Primary Producer) credit facility:
  - (i) of more than \$5 million or higher amount that applies as a result of an adjustment in accordance with rule D.4.3, and
  - (ii) where the complaint is submitted by the borrower or a guarantor of the borrower's debt.

### **Exclusions applying specifically to insurance complaints including Superannuation Complaints**

#### **C.1.4 AFCA must exclude:**

- a) A complaint about a General Insurance Policy other than a:
  - (i) Retail General Insurance Policy
  - (ii) Residential Strata Title Insurance Product
  - (iii) Small Business Insurance Product
  - (iv) Medical Indemnity Insurance Product or
  - (v) Title Insurance Policy.
- b) A complaint about underwriting or actuarial factors leading to an offer of a Life Insurance Policy on non-standard terms.
- c) A complaint about rating factors and weightings an insurer under a General Insurance Policy applies to determine the insured's or proposed insured's base premium that is commercially sensitive information.

- d) A complaint about a decision to refuse to provide insurance cover except where:
  - (i) the complaint is that the decision was made indiscriminately, maliciously or on the basis of incorrect information
  - (ii) the complaint is that the Complainant was misinformed about the insurance cover, or
  - (iii) the complaint relates to a Medical Indemnity Insurance Product.

For the avoidance of doubt, rules C.1.4 (b), (d)(i), and (d)(ii) apply to a Superannuation Complaint to the extent that the insurance policy is issued to either the trustee of a Regulated Superannuation Fund or an Approved Deposit Fund or an RSA provider.

### **Exclusions applying specifically to investment complaints including Superannuation Complaints**

C.1.5 AFCA must exclude:

- a) A complaint solely about the investment performance of a financial investment, other than a complaint concerning non-disclosure or misrepresentation.
- b) A complaint relating to the management of a fund or scheme as a whole.
- c) A complaint against the trustee of a Self Managed Superannuation Fund in respect of their conduct as trustee of that fund.
- d) A complaint relating to the management as a whole of a RSA Provider or insurer, the RSA Provider's or insurer's business or the RSA Provider's or insurer's investments.

For the avoidance of doubt, rules C.1.5 (a), (b), and (d) apply to a Superannuation Complaint.

## Exclusions applying specifically to Traditional Trustee Company Service complaints

C.1.6 AFCA must exclude:

- a) A complaint about a Traditional Trustee Company Service where:
  - (i) at least one beneficiary is a minor or lacks mental capacity
  - (ii) the service may be made under any of the laws listed in Schedule 8AC of the Corporations Regulations, or
  - (iii) the service is provided to a person lacking mental capacity and the trustee was appointed by a court.
- b) A complaint about the alleged capacity of the testator to make a valid will.
- c) A complaint relating to the management of a common fund.

## C.2 AFCA's discretion not to handle complaints

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C.2.1 AFCA may in its discretion exclude a complaint, if AFCA considers this course of action is appropriate.

AFCA will not exercise its discretion to exclude a complaint lightly. The discretion will only be used in cases where there are compelling reasons for deciding that AFCA should not handle the complaint.

C.2.2 Examples where AFCA may consider excluding a complaint include:

- a) If there is a more appropriate place to deal with the complaint, such as a court, tribunal, another dispute resolution scheme, or the Office of the Australian Information Commissioner.
- b) If the subject matter of the complaint has already been adequately dealt with by AFCA or a Predecessor Scheme.
- c) If the complaint relates to a Financial Firm's practice or policy and does not involve any allegation of either Maladministration or inappropriate application of the practice or policy.
- d) If the complaint being made is frivolous, vexatious, misconceived or lacking in substance.

- e) If the Complainant has commenced legal proceedings in relation to the subject matter of the complaint unless:
  - (i) the Complainant discontinues the legal proceedings, or
  - (ii) the relevant statute of limitation period will shortly expire and the Complainant undertakes in writing to AFCA not to take any further steps in the proceedings while AFCA is handling the complaint.
- f) If AFCA agrees to allow the Financial Firm to treat the complaint as a test case and the Financial Firm:
  - (i) undertakes within six months to institute proceedings in any superior court or tribunal which has the ability to make a binding decision of the issue or point of law in respect of the complaint
  - (ii) undertakes to pay the Complainant's costs and disbursements (if not otherwise agreed, on a solicitor and own client basis) of the proceedings at first instance and any subsequent appeal proceedings commenced by the Financial Firm (except by way of respondent's notice, cross appeal or other similar procedure)
  - (iii) undertakes to make interim payments of account of such costs and disbursements if and to the extent that it appears reasonable to do so
  - (iv) undertakes to meet any other requirements of AFCA, and
  - (v) complies with these undertakings.
- g) If the Complainant is represented or assisted by an agent who may receive remuneration for this service and AFCA considers that:
  - (i) the agent is engaging in inappropriate conduct which is not in the best interest of the Complainant, or
  - (ii) the complaint is not accompanied by information required by AFCA.
- h) If the Complainant is represented or assisted by an agent who may receive remuneration for this service and the agent has previously submitted complaints that have been excluded under rule C.2.2(g), or
- i) AFCA considers that the complaint involves (or may involve) another complainant who has not consented to the submitting of the complaint to AFCA and without that person's consent it would not be appropriate for AFCA to handle the complaint.

## Section D – Remedies

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Section D sets out the remedial action that an AFCA Decision Maker has the power to decide upon. In the case of a Superannuation Complaint, there is no monetary limit on the amount that may be awarded to the Complainant. For most other complaints, a limit per claim applies as set out in the table in this Section.

### D.1 Types of remedies for a Superannuation Complaint

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- D.1.1 To the extent permitted by section 1055 of the Corporations Act, the AFCA Decision Maker for a Superannuation Complaint may:
- a) affirm, vary or set aside and substitute the decision or conduct the subject of the complaint, and/ or
  - b) set aside and remit part or all of the decision to the trustee, insurer or other decision maker with directions, or
  - c) in the case of a life policy, annuity policy, contract of insurance or RSA, set aside or vary the terms of the governing rules in relation to the Complainant or order the repayment of money, or
  - d) in the case of a life policy fund, determine that the Complainant's membership of the fund is cancelled.
- D.1.2 To the extent required by section 1055 of the Corporations Act, the AFCA Decision Maker for a Superannuation Complaint must affirm a decision or conduct if satisfied it is fair and reasonable in all the circumstances.
- D.1.3 To the extent permitted by section 1055 of the Corporations Act, there is no monetary limit on the remedies under rule D1.1.
- D.1.4 The remedies in rules D.2 to D.5 do not apply to a Superannuation Complaint.

### D.2 Types of remedies for a complaint other than a Superannuation Complaint

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- D.2.1 An AFCA Decision Maker may decide that the Financial Firm or the Complainant must undertake a course of action to resolve the complaint including:
- a) the payment of a sum of money
  - b) the forgiveness or variation of a debt
  - c) the release of security for debt
  - d) the repayment, waiver or variation of a fee or other amount paid to or owing to the Financial Firm or to its representative or agent including the variation in the applicable interest rate on a loan
  - e) the reinstatement or rectification of a contract
  - f) the meeting of a claim under an insurance policy by, for example, repairing, reinstating or replacing items of property

- g) in the case of a complaint involving a privacy issue with an individual – that the Financial Firm should not repeat conduct on the basis that it constitutes an interference with the privacy of an individual or that the Financial Firm should correct, add to or delete information pertaining to the Complainant
- h) in relation to a default judgment, not enforcing the default judgment
- i) in relation to privacy-related complaints, to make an order that is generally consistent with the declarations available to the Information Commissioner when he or she makes a decision under section 52 of the Privacy Act
- j) an apology.

## **D.3 Compensation for complaints other than Superannuation Complaints**

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D.3.1 An AFCA Decision Maker may decide that the Financial Firm is to compensate the Complainant for direct financial loss. When calculating the value of such a remedy, monetary compensation and any remedy where the value can readily be calculated, such as the waiving of a debt, are included.

D.4 sets out the maximum amount that an AFCA Decision Maker can award for direct financial loss.

D.3.2 In addition or instead, an AFCA Decision Maker may decide that the Financial Firm is to compensate the Complainant for indirect financial loss. This is not the case if the complaint arises as a result of a claim:

- a) on a General Insurance Policy that expressly excludes such liability, or
- b) by the Complainant under another person's Motor Vehicle Insurance Product.

D.4 sets out the maximum amount that an AFCA Decision Maker can award for indirect financial loss.

D.3.3 An AFCA Decision Maker may decide that the Financial Firm is to compensate the Complainant for non-financial loss:

- a) for a complaint relating to an individual's privacy rights – injury has occurred to the Complainant's feelings or humiliation has been suffered by the Complainant
- b) for other complaints – an unusual degree or extent of physical inconvenience, time taken to resolve the situation or interference with the Complainant's expectation of enjoyment or peace of mind has occurred.

However, this type of compensation is not permitted if the complaint arises as a result of a claim on a General Insurance Policy that expressly excludes such liability.

D.4 sets out the maximum amount that an AFCA Decision Maker can award for non-financial loss.

D.3.4 Punitive, exemplary or aggravated damages cannot be awarded.

## D.4 Monetary limits for complaints other than Superannuation Complaints

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D.4.1 The table below specifies the maximum amounts that may be awarded by an AFCA Decision Maker for complaints other than Superannuation Complaints, not including costs awarded under rule D.5 or interest under rule D.6.

D.4.2 The table below also sets out monetary restrictions on AFCA's jurisdiction as at 1 November 2018.

D.4.3 The amounts set out in the table below are subject to change:

- a) AFCA must adjust those amounts on 1 January 2021, and every three years thereafter, by the higher of the percentage increase in:
  - (i) the Consumer Price Index, weighted average of eight capital cities, for the three year period ending with the September quarter in the previous year, and
  - (ii) the Male Total Average Weekly Earnings for the three year period ending with the September quarter in the previous year.

AFCA must round maximum compensation amounts to the nearest \$100 for rows 1, 3, 7 and 8; and to the nearest \$500 for rows 2, 4, 5, and 6. AFCA must round monetary restriction amounts to the nearest \$1000, regardless of row.

- b) AFCA may change those amounts at any time to meet any regulatory requirements or directions given by ASIC under the Corporations Act.

Row	Type of claim			Compensation amount limit per claim	Monetary restriction on AFCA's jurisdiction	
1	Claim on a Life Insurance Policy or a General Insurance Policy dealing with income stream risk or advice about such a contract. If the claim is in excess of this monthly limit, the monthly limit will apply unless: <ul style="list-style-type: none"> <li>the total amount payable under the policy can be calculated with certainty by reference to the expiry date of the policy and/ or age of the insured, and</li> <li>that total amount is less than the amount specified in row 6.</li> </ul> If this is the case, then the limit will be the amount in row 6.			\$13,400 per month	Amount claimed by Complainant must not exceed \$1 million	
2	Claim against a General Insurance Broker except where the claim solely concerns its conduct in relation to a Life Insurance Policy (in which case row 1 or 6 applies, as the case may be).			\$250,000	Amount claimed by Complainant must not exceed \$1 million	
3	Claim under another person's Motor Vehicle Insurance Product for property damage to an Uninsured Motor Vehicle caused by a driver of the insured motor vehicle – see B.2.1 f)(i)			\$15,000	Amount claimed by Complainant must not exceed \$1 million	
4	arising from a credit facility provided to a Small Business or Primary Producer – see C.1.2e) and C.1.3b)	by a borrower	of a Small Business loan	\$1 million	Credit facility must not exceed \$5 million	
			of a Primary Producer loan	\$2 million		
		by a guarantor to set aside a guarantee supported by security over	the guarantor's principal place of residence	unlimited	Credit facility must not exceed \$5 million	
			other security	for a Small Business loan	\$1 million	Credit facility must not exceed \$5 million
for a Primary Producer loan	\$2 million					
5	Claim for direct financial loss	arising from a credit facility that was provided to someone other than a Small Business or Primary Producer	by a borrower	\$500,000	Amount claimed by Complainant must not exceed \$1 million	
			by a guarantor to set aside a guarantee supported by security over	the guarantor's principal place of residence –see C.1.2e)	unlimited	unlimited
				other security	\$500,000	Amount claimed by Complainant must not exceed \$1 million
6	in any other circumstance	by any Complainant (whether or not a Small Business or Primary Producer)		\$500,000	Amount claimed by Complainant must not exceed \$1 million	
7	Claim for indirect financial loss			\$5,000	not applicable	
8	Claim for non-financial loss			\$5,000	not applicable	

## **D.5 Costs of pursuing complaint other than a Superannuation Complaint**

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- D.5.1 An AFCA Decision Maker may decide that the Financial Firm is to contribute to the legal or other professional costs or travel costs incurred by the Complainant in the course of the complaint.
- D.5.2 Unless special circumstances apply, AFCA will not require the Financial Firm to contribute more than \$5,000 to these costs.
- D.5.3 A contribution to the Complainant's costs of pursuing a complaint is not taken into account for the purposes of the maximum value of remedy under D.4.

## **D.6 Interest**

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- D.6.1 An AFCA Decision Maker may decide that the Financial Firm is to pay interest on a payment to be made by the Financial Firm to the Complainant. Subject to the terms of the Determination, any interest accrues until the payment is made.
- D.6.2 When deciding an award of interest:
- a) if the Insurance Contracts Act 1984 applies – AFCA will calculate interest in accordance with that Act
  - b) otherwise:
    - (i) AFCA will calculate interest from the date of the cause of action or matter giving rise to the claim, and
    - (ii) AFCA may have regard to any factors it considers relevant, including the extent to which either party's conduct contributed to delay in the resolution of the matter.
- D.6.3 An award of interest is not taken into account for the purposes of the maximum value of remedy under rule D.4.

## Section E – Defined Terms

This Section defines terms that are used in the rules and explains how the rules should be interpreted.

### E.1 Defined terms

E.1.1 For the purposes of these rules, the terms below have the following meanings:

<b>Accountant</b>	means a member of one of the following professional associations: a) CPA Australia b) Chartered Accountants Australia and New Zealand c) Institute of Public Accountants
<b>Adjudicator</b>	means someone appointed to the position of Adjudicator under paragraph 12.2 of AFCA's Constitution
<b>AFCA</b>	means Australian Financial Complaints Authority Limited ACN 620 494 340 while authorised to operate the AFCA scheme as defined in the Corporations Act
<b>AFCA Decision Maker</b>	means an Ombudsman, Adjudicator or AFCA Panel
<b>AFCA Member</b>	means a person who is a Member of AFCA as defined in AFCA's Constitution
<b>AFCA Panel</b>	means a panel of two or three individuals, comprised either of Panel Members or Panel Members and an Ombudsman, who have been allocated responsibility for making a Determination in relation to a complaint
<b>Annual Information Return</b>	has the meaning in the Corporations Regulation 5D
<b>Annuity Policy</b>	has the meaning in the Corporations Act
<b>Approved Deposit Fund</b>	has the meaning in the Corporations Act
<b>ASIC</b>	means the Australian Securities and Investments Commission
<b>ASIC Act</b>	means the Australian Securities and Investments Commission Act 2001
<b>Australia</b>	includes the external territories

<b>Chief Ombudsman</b>	means the person appointed by the Board of Directors of AFCA to be the Chief Ombudsman in accordance with AFCA's Constitution
<b>Complainant</b>	means a person who has submitted, or has applied to join, a complaint to AFCA
<b>Corporations Act</b>	means the Corporations Act 2001
<b>Determination</b>	means a decision made by an AFCA Decision Maker about a complaint in accordance with rule A.14
<b>Eligible Person</b>	means: <ul style="list-style-type: none"> <li>a) an individual or individuals (including those acting as a trustee, legal personal representative or otherwise)</li> <li>b) a partnership comprising of individuals – if it carries on a business, the business must be a Small Business</li> <li>c) the corporate trustee of a Self Managed Superannuation Fund or a family trust – if it carries on a business, the business must be a Small Business</li> <li>d) a Small Business (whether a sole trader or constituted as a company, partnership, trust or otherwise)</li> <li>e) a not-for-profit organisation or club – if it carries on a business, the business must be a Small Business unless the not-for-profit organisation or club is also a charity registered with the Australian Charities and Not-for-profits Commission</li> <li>f) a body corporate of a strata title or company title building which is wholly occupied for residential or Small Business purposes, or</li> <li>g) the policy holder of a group life or group general insurance policy, where the complaint relates to the payment of benefits under that policy.</li> </ul>
<b>Excluded Product</b>	means a product that is not a financial product for the purposes of Part 7.1, Division 3 of the Corporations Act
<b>Financial Firm</b>	means: <ul style="list-style-type: none"> <li>a) an AFCA Member</li> <li>b) for the purposes of a Superannuation Complaint, 'Financial Firm' also includes a person whose decision or conduct (or the conduct of whose representatives) is referred to in section 1053 of the Corporations Act whether or not an AFCA Member</li> <li>c) for the purposes of a complaint relating to a Traditional</li> </ul>

	<p>Trustee Company Service, 'Financial Firm' also includes all co-trustees whose joint conduct is the subject of the complaint and who have consented to AFCA handling the complaint</p> <p>d) for the purposes of rule B.2 and A.7.1, A.7.2 and A.7.6 in relation to a complaint other than a Superannuation Complaint, 'Financial Firm' also includes any employee, representative, agent or contractor of the Financial Firm including any person who has actual, ostensible, apparent or usual authority to act on behalf of the Financial Firm or authority to act by necessity in relation to a financial service</p>
<b>Financial Service</b>	<p>means:</p> <p>a) a custodial service, or</p> <p>b) a product or service that is financial in nature including a product or service which is or is in connection with:</p> <ul style="list-style-type: none"> <li>(i) a loan or any other kind of credit transaction (including a credit card used overseas) and guarantees or charges to secure any moneys owing</li> <li>(ii) a deposit including a term deposit, a fund management deposit or a retirement savings account</li> <li>(iii) credit reporting</li> <li>(iv) equity release product</li> <li>(v) debt administration and credit repair</li> <li>(vi) non-monetary default of a credit facility</li> <li>(vii) an insurance policy</li> <li>(viii) a financial investment (such as life insurance, a security, an Annuity Policy, a RSA, an interest in a registered managed investment scheme or a superannuation fund)</li> <li>(ix) a facility under which a person seeks to manage financial risk or to avoid or limit the financial consequences of fluctuations in, or in the value of, an asset, receipts or costs (such as a derivatives contract or a foreign currency contract)</li> <li>(x) a facility under which a person may make, or cause to be made, a non-cash payment (such as a direct debit arrangement or a facility relating to cheques, bills of exchange, travellers cheques or a stored value card)</li> <li>(xi) leasing and hire purchase arrangements</li> <li>(xii) financial or investment advice, or</li> <li>(xiii) Traditional Trustee Company Services</li> </ul>
<b>Foreign Collective</b>	<p>means either:</p>

<b>Investment Scheme</b>	<p>a) a managed investment scheme under section 9 of the Corporations Act</p> <p>b) a foreign investment company, or</p> <p>c) an investment offered under the Asia Region Funds Passport arrangement,</p> <p>where the operator is incorporated (or is a foreign company that is formed) in a foreign jurisdiction and is regulated in that jurisdiction for the operation of the scheme or company</p>
<b>General Insurance Broker</b>	means the holder of an Australian financial services licence granted pursuant to section 913B of the Corporations Act whose licence has a condition authorising them to assume or use the expression 'insurance broker' or 'insurance broking' or 'general insurance broker' in relation to general insurance products
<b>General Insurance Policy</b>	means a contract of general insurance within the meaning of that expression in the <i>Insurance Contracts Act 1984</i> or part of such a contract
<b>IDR Response</b>	<p>means a communication in writing from the Financial Firm to a Complainant advising:</p> <p>a) the Financial Firm's final position in relation to the Complainant's complaint (or, in the case of a complaint relating to a Traditional Trustee Company Service, a complaint by the Complainant or by an Other Affected Party) after the conclusion of the Financial Firm's internal dispute resolution process, and</p> <p>b) the Complainant's right to take the complaint to AFCA (or Predecessor Scheme), the time limit for doing so and the contact details of AFCA (or Predecessor Scheme)</p>
<b>Incorporated</b>	means being registered under the Corporations Act or under the incorporated associations legislation of a jurisdiction within Australia
<b>Independent Assessor</b>	means a person appointed to the position of Independent Assessor under paragraph 12.4 of AFCA's Constitution
<b>Life Insurance Policy</b>	<del>has the meaning given to it in the Life Insurance Act 1995 (Cth) includes any product or service offered by a life insurance company</del>
<b>Maladministration</b>	means an act or omission contrary to or not in accordance with a duty or obligation owed at law or pursuant to the terms (express or implied) of the contract between the Financial Firm and the Complainant

<b>Medical Indemnity Insurance Product</b>	is an insurance product to which Section 8 of the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 and Regulation 4 of the Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003 applies
<b>Motor Vehicle Insurance Product</b>	has the meaning in the Corporations Regulation 7.1.11
<b>Ombudsman</b>	means a person appointed to the position of Ombudsman under paragraph 12.1 of AFCA's Constitution and includes the Chief Ombudsman
<b>Operational Guidelines</b>	means the Guidelines developed by AFCA in relation to these rules and made publicly available via AFCA's website
<b>Other Affected Party or Parties</b>	means a person (other than the Complainant) who is entitled under the Corporations Regulations Part 5D.2 to request an Annual Information Return in respect of the trust which is the subject of a complaint
<b>Panel Member</b>	means a person appointed to the position of Panel Member under paragraph 12.3 of AFCA's Constitution
<b>Predecessor Scheme</b>	means the Banking and Financial Services Ombudsman Limited, the Financial Industry Complaints Service Limited, the Insurance Ombudsman Service Limited, Credit Union Dispute Resolution Centre Pty Limited, Insurance Brokers Dispute Limited, Financial Ombudsman Service Limited, Credit and Investments Ombudsman Limited and the Superannuation Complaints Tribunal
<b>Primary Producer</b>	means a primary production business within the meaning of s 995.1(1) of the Income Tax Assessment Act 1997 – the Primary Producer must also be a Small Business
<b>Privacy Act</b>	means the Privacy Act 1988
<b>Privacy Act Participant</b>	means a Financial Firm that: <ul style="list-style-type: none"> <li>a) is a credit provider within the meaning of section 6G(1)(c), 6G(2) and 6G(3) of the Privacy Act, and</li> <li>b) is not required to be a member of the AFCA scheme under the Corporations Act or the National Consumer Credit Protection Act 2009</li> </ul>
<b>Regulated Superannuation Fund</b>	has the meaning in the Corporations Act
<b>Related Body Corporate</b>	has the meaning in the Corporations Act

<b>Residential Strata Title Insurance Product</b>	<p>means an insurance policy insuring the body corporate of a strata title or company title building that is wholly occupied for residential or small business purposes including:</p> <ul style="list-style-type: none"> <li>a) Strata Building</li> <li>b) Common Contents</li> <li>c) Personal Accident or Sickness for voluntary workers in or about the strata building or common property</li> </ul> <p>but excluding:</p> <ul style="list-style-type: none"> <li>a) Professional Indemnity</li> <li>b) Public Liability</li> <li>c) Workers Compensation</li> </ul>
<b>Retail General Insurance Policy</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) an insurance product specified in section 761G(5)(b) of the Corporations Act</li> <li>b) where a Complainant (other than a Small Business) has a complaint with a General Insurance Broker pertaining to a product that includes an insurance product specified in section 761G(5)(b) of the Corporations Act – also includes any other insurance cover provided by that product, with the exception of cover under an Excluded Product</li> </ul>
<b>RSA</b>	<p>has the meaning in the Corporations Act</p>
<b>RSA Provider</b>	<p>has the meaning in the Corporations Act</p>
<b>Self Managed Superannuation Fund</b>	<p>has the meaning in the Superannuation Industry (Supervision) Act 1993</p>
<b>Small Business</b>	<p>means a Primary Producer or other business that had less than 100 employees <u>and had a turnover of \$10 million or less in the previous financial year</u> at the time of the act or omission by the Financial Firm that gave rise to the complaint</p>
<b>Small Business Insurance Product</b>	<p>means:</p> <ul style="list-style-type: none"> <li>a) where the complaint is between a Small Business and a General Insurance Broker – a General Insurance Policy other than an Excluded Product</li> <li>b) for other types of complaints involving a Small Business – a policy or part of a policy that provides insurance cover (whether or not the cover is limited or restricted in any way)</li> </ul>

	<p>in respect of one of more of the following:</p> <ul style="list-style-type: none"> <li>(i) Computer and Electronic Breakdown</li> <li>(ii) Fire or Accidental Damage – but, in a complaint about an insurance claim that has been made by the Complainant, only to the extent that the insurance cover relates to a Specified Defined Event</li> <li>(iii) Loss of Profits/Business Interruption</li> <li>(iv) General Property</li> <li>(v) Glass</li> <li>(vi) Land Transit</li> <li>(vii) Machinery Breakdown</li> <li>(viii) Money, and</li> <li>(ix) Theft,</li> </ul> <p>but excluding cover in relation to any of the following:</p> <ul style="list-style-type: none"> <li>(x) Contractors All Risks</li> <li>(xi) Fidelity Guarantee</li> <li>(xii) Legal Liability (including Public Liability and Products Liability)</li> <li>(xiii) Professional Indemnity, and</li> <li>(xiv) Industrial Special Risks</li> </ul>
<p><b>Specified Defined Event</b></p>	<p>means events (however described) as follows:</p> <ul style="list-style-type: none"> <li>a) Fire/Lightning/Explosion</li> <li>b) Storm/Tempest/Rainwater, Flood</li> <li>c) Water from leaking pipes/water systems</li> <li>d) Impact</li> <li>e) Earthquake</li> <li>f) Riot and Civil Commotion or Industrial Disputes</li> <li>g) Malicious Damage</li> <li>h) Fusion</li> <li>i) Spoilage of refrigerated goods</li> </ul>
<p><b>Superannuation Complaint</b></p>	<p>has the meaning set out in section 1053 of the Corporations Act Accordingly:</p> <ul style="list-style-type: none"> <li>a) a complaint about an insurer's decision under an insurance policy held by the trustee of a Regulated Superannuation Fund or an Approved Deposit Fund will: <ul style="list-style-type: none"> <li>(i) if all of the time limits in rule B4.1.1 have been met, be handled as a Superannuation Complaint, by joining the insurer to a complaint against the trustee's decision</li> </ul> </li> </ul>

	<p>(ii) otherwise, be handled as a non-superannuation complaint against the insurer, and</p> <p>b) a complaint about financial product advice relating to superannuation is not a Superannuation Complaint unless it is provided by:</p> <p>(i) the trustee of a Regulated Superannuation Fund or Approved Deposit Fund, an RSA provider or a life company as issuer of an Annuity Policy, or</p> <p>(ii) an employee or representative of the trustee of a Regulated Superannuation Fund or Approved Deposit Fund, an RSA provider or a life company as issuer of an Annuity Policy,</p> <p>to a member of the Regulated Superannuation Fund, a beneficiary of the Approved Deposit Fund, a holder of the RSA or a person with an interest in the Annuity Policy.</p> <p>Otherwise a complaint about financial product advice relating to superannuation will be handled as a non-superannuation complaint against the Financial Firm providing the advice.</p>
<b>Superannuation Provider</b>	has the meaning in the Corporations Act
<b>Title Insurance Policy</b>	means an indemnity insurance product that manages financial risk or loss arising from defects in the title of real property
<b>Traditional Trustee Company Service or Services</b>	has the meaning in the Corporations Act
<b>Uninsured Motor Vehicle</b>	means a motor vehicle that is not covered by current comprehensive insurance

## E.2 Interpretation of AFCA's rules

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- E.2.1 A reference to the doing of an act includes, where the context allows, a reference to a refusal or failure to do or cessation of the act. Accordingly a reference to the provision of Financial Services includes, where the context allows, a reference to their non-provision and to their cancellation.
- E.2.2 A reference to a person includes a natural person, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority.
- E.2.3 A reference to the singular includes the plural and vice versa.
- E.2.4 The words 'including', 'such as' or 'for example', when introducing an example, does not limit the meaning of the words to which the example relates, that example or examples of a similar kind.
- E.2.5 Where a term is used in these rules that is not defined, the term is to be interpreted as having its everyday meaning and usage, unless the context otherwise requires.
- E.2.6 References to rules are to paragraphs of these rules.
- E.2.7 A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- E.2.8 — Hyperlinks in this document are provided for ease of reference only and do not form part of the rules, unless otherwise specified.