

# Mapping of FOS Terms of Reference (TOR), CIO Rules and AFCA Rules

Description	FOS TOR 1 January 2018	CIO Rules 15 August 2016	AFCA Rules v3.7	Comments
Purpose and cost of the service (including free of charge for complainants)	1.1	1.1-1.4	A.1.1, 1.3	
Underpinning principles	1.2, (& 8.2 for decision making)	independence - 2.1; other principles - 1.5, 12.1, 12.3	A.2.1, A.14 (decision making)	CIO Rules refer to the CIO rule 1.5 principles as a broad aim, but CIO rule 12.1 principles as mandatory; FOS TOR and SRC Act make the relevant principles mandatory.
Scope of the TOR, binding nature for FSPs and operational guidelines	1.3 (and the FOS membership/ application form make Constitution and TOR part of the Member contract)	1.4	A.1.2	
Appointment and powers/duties of Ombudsmen,	2.1-2.6	4.1-4.3	A.13.1-a.13.3	Appointment of decision makers are also covered in AFCA Constitution.

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Adjudicators & Panel Members				
Transitional provisions	3.1-3.3	5.1-5.2	A.1.2 and A.23.5 (which version of the Rules applies to a complaint); C.1.2 (d) and C.2.2 (b) exclusion of complaints dealt with by predecessor schemes)	
<b>Disputes within scope</b>				
Complainant eligibility (parties that can lodge disputes)	4.1 a) - g) & 20.1 Defined terms (Applicant)	45.1 Defined terms (Consumer and Complainant)	A.4.1 and Section E - Defined Terms ('Eligible person'; Complainant)	
Types of disputes that can be considered	4.2a) - d)	6.1.b, 7.1, 10.1	A.4.3, B.2.1 (a) – (h), B.3.1 (a) – (c)	
Contract or obligation arising under Australian law	4.2 a)(i)	10.1g, 10.1.h	B.3.1 (a)	
Offer to invest in recognised foreign	4.2 a)(ii)	n/a	B.3.1 (b)	

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collective investment scheme				
Investment through a platform offered in Australia	4.2 a)(iii)	n/a	B.3.1 (c)	
Financial Service provided to complainant	4.2 b)(i)	6.1.b, definition of financial service, 7.1	B.2.1 (a)	
Guarantee or security provided by complainant	4.2 b)(ii)	6.1.b, definition of financial service, 7.1	B.2.1 (b)	
Entitlement under life insurance cover that extends to complainant	4.2 b)(iii)	n/a	B.2.1 (c)	
Entitlement under general insurance cover that extends to complainant	4.2 b)(iv)	n/a	B.2.1 (d)	
Legal or beneficial interest arising out of financial investment/facility to manage financial risk	4.2 b)(v)	n/a	B.2.1 (e)	

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Uninsured third party claim on motor vehicle insurance policy	4.2 b)(vi)	n/a	B.2.1 (f)	
Investment offered under foreign recognition scheme (some exceptions)	4.2 b)(viii)	n/a	B.2.1 (g)	
TTCS - complainant entitled to request annual information return	4.2 b)(ix)	n/a	B.2.1 (h)	
Financial Firm to be a member at time of lodgement	4.2 c)	10.1(b)	A.4.2	
If dispute is otherwise within jurisdiction	4.2 d)	n/a	n/a	This is implicitly covered in the AFCA Rules.
General insurance policies/products that can be considered	4.3 a) - d)	n/a	C.1.4 (a) (i) - (iv)	

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Consent to consider a dispute with all parties agreement (where otherwise outside jurisdiction)	4.4	6.5; 10.1.m.ii; CIO power to exempt a party from aspect of the Rules - 34.1	A.4.7	
<b>Disputes outside scope</b>				
<b>Mandatory exclusions</b>	<b>5.1</b>	<b>10</b>	<b>C.1</b>	
Exclusion - about whether an FSP has met confidentiality or privacy obligations unless dispute is part of a broader dispute or arises out of credit provision, debt collection, credit reporting and/or banker/customer relationship	5.1 a)	10.1 (u) – Privacy Act Participant	Not excluded; B.3.1 (a) countenances AFCA considering such complaints.  In addition, C.1.2 (i) permits AFCA to consider complaints about a right or obligation arising under the Privacy Act against Privacy Act Participants (defined in E1.1).	AFCA Rules provide for consideration of all privacy/confidentiality complaints, regardless of whether it's part of a broader complaint, unless otherwise excluded. Accordingly, no comparable exclusion. This is subject to the OAIC approving AFCA to consider privacy complaints.  A new class of members (known as Privacy Act Participants) who provide

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				credit will also be subject to AFCA's jurisdiction.
Exclusion - level of fee premium or charge (some exceptions - nondisclosure, breach of obligation, medical indemnity insurance)	5.1 b)	10.1.d; 10.1.e.ii.C	C.1.2 (a)	
Exclusion - assessment of credit risk (some exceptions)	5.1 c)	10.1.e.ii; 10.1.f	C.1.3 (a)	The exclusion in CIO Rules cover a broader range of credit provider discretions than FOS TOR and haven't been reflected in the AFCA Rules.
Exclusion - life insurance - underwriting/actuarial factors leading to non-standard offer	5.1 d)	n/a	C.1.4 (b)	
Exclusion - general insurance - rating factors to determine base premium	5.1 e)	n/a	C.1.4 (c)	

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Exclusion - insurance - refusal to provide cover (some exceptions)	5.1 f)	n/a	C.1.4 (d)	
Exclusion - investment performance (some exceptions)	5.1 g)	10.1.r	C.1.5 (a)	
Exclusion - trustee decisions of approved deposit funds and regulated superannuation funds	5.1 h)	n/a	No provision	AFCA Rules do not exclude these complaints as they form a significant part of AFCA's superannuation jurisdiction.
Exclusion - management of fund or scheme as a whole, including management of a common fund	5.1 i)	10.1.s	C.1.5 (b), (d) & C.1.6 (c)	
Exclusion - competing claims for the financial service (some exceptions relating to superannuation)	5.1 j)	n/a	C.1.2 (b)	

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and traditional trustee company services)				
Exclusion - complaint previously dealt with by AFCA, or predecessor scheme (exception for new events and facts)	5.1 k)	10.1.l	C.1.2 (c) & (d), C2.2 (b)	
Exclusion - complaint dealt with in court or dispute resolution tribunal established by legislation. Exception for default judgment disputes	5.1 l)	10.1.m	C.1.2 (d)	AFCA Rules have merged FOS TOR and CIO Rules, to provide an exception to this exclusion for complaints about execution of default judgments relating to financial difficulty. This has the effect of preserving the CIO jurisdiction under the AFCA scheme.
Exclusion - Complainant has commenced legal proceedings. Exception if proceedings discontinued/stayed	5.1 m)	n/a	C.2.2 (e)	The AFCA Rules make this a discretionary exclusion, due to merging FOS paragraphs 5.1 m) (legal proceedings



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				commenced before lodgement) and 5.2 e) (legal proceedings commenced after lodgement), as it is more appropriate to have as a discretion to exclude regardless of whether complainant legal proceedings are issued before or after the AFCA complaint is lodged.
Exclusion - complaint lodged with/being dealt with another ASIC approved EDR scheme	5.1 n)	10.1.m	n/a	AFCA Rules do not have this exclusion due to single EDR scheme (AFCA) under the legislative reforms.
Exclusion - value of claim exceeds \$500,000	5.1.o)	10.1.c	C.1.2 (e) - claim value limit increased to \$1m and does not apply to all complaints	AFCA Rules amend this exclusion to account for the increase in limits for consumer (\$1M) & small business & primary producer complaints, and no limit for

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				superannuation and some guarantor complaints.
Exclusion - complainant's corporate group is not a 'small' business	5.1.p)	n/a	C.1.2 (f)	Definition of small business broadened to be less than 100 employees, regardless of whether they are manufacturers in line with Government's decision.
Exclusion - trustee discretion (some exceptions)	5.1.q)	n/a	C.1.2 (g)	
Exclusion - small business credit facility of more than \$2 million	5.1.r)	10.1.t	C.1.3 (b) - increased to \$5m	AFCA Rules amend this exclusion to account for the increase in small business (including primary producer) credit facility limit (\$5M).
Exclusion - certain traditional trustee dispute exclusions, relating to minor beneficiaries or	5.1.s)	n/a	C.1.6 (a)	

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those lacking mental capacity				
Exclusion - dispute about capacity of testator to make a valid will	5.1.t)	n/a	C.1.6 (b)	
Exclusion - professional accountancy services (some exceptions relating to financial, credit and tax advice services)	5.1.u)	6.1.b, definition of financial services (exclusions a-b)	C.1.2 (h)	
<b>Discretionary exclusions</b>	<b>5.2</b>	<b>10</b>	<b>A.8.3 and C.2.1</b>	
Discretion to exclude - more appropriate place	5.2.a)	10.1.o (mandatory); consent to transfer to another EDR scheme - 3.6	C.2.2 (a)	
Discretion to exclude - not a retail client	5.2.b)	45.1, consumer definition (e)	No provision	This is a mandatory exclusion in CIO Rules but is a discretionary exclusion in the FOS TOR. As a result of discussions with ASIC

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				and Treasury, this has been removed from the AFCA Rules.
Discretion to exclude - complaint relating to FSP's practice/policy (some exceptions - maladministration, inappropriate application)	5.2.c)	10.1 .f	C.2.2 (e)	
Discretion to exclude - including due to complaint being frivolous, vexatious, misconceived or lacking substance	5.2.d)	10.1.v (lacking substance/improper purpose - mandatory); 10.1.i (remedy not within CIO's power - mandatory); 10.1.q (no breach of obligations/unfairness - mandatory); 20.1-3 (complainant rejects reasonable offer)	C.2.2 (d), A.8.3	The word 'misconceived' has been added to Rule C.2.2 (d) to be consistent with s.22(3)(b) SRC Act.
Discretion to exclude - Applicant commences legal proceedings after lodgement	5.2.e)	n/a	C.2.2 (e)	

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Process for exclusion of disputes, including opportunity to object to assessment	5.3.a)-b)	36.1-36.2	A.4.5-A.4.6	
<b>Application process</b>				
Lodging of disputes including FOS providing assistance & consent of applicant required if an FSP is lodging a dispute	6.1.a)-c)	14.2-3	A.3.1-A.3.2	Predecessor scheme experience is that Financial Firms rarely seek to lodge a complaint against themselves, but are not prevented from doing so under the AFCA Rules, as the complainant's consent is required in any event.
Discretion to decline to accept dispute in certain circumstances if complainant represented by paid agent (inappropriate agent conduct)	6.1.d	31.1-3 (right to have a representative) and 10.1.v (complaint excluded if pursued for improper purpose)- and see Guidelines 18, 39, 42, 43	C.2.2 (g) and C2.2 (h)	

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Time limits to lodge disputes	6.2a)-b)	6.3, 6.4, 10.1.k	B.4	Existing time limits of FOS & CIO have been replicated in AFCA Rules under B.4. Exception to consider particular complaints notwithstanding expiration of time limits is on basis of 'special circumstances' in AFCA Rules, rather than 'exceptional circumstances' in FOS & CIO Rules.
Opportunity for FSP IDR before dispute is considered (referred to FSP IDR by Scheme)	6.3, 6.4	13.1-2 (IDR); 40.1	A.5.2-A.5.3	
Applicable time limit when dispute lodged with another ASIC approved EDR scheme	6.5	15.1	n/a	No longer required due to the EDR reforms under the AFCA scheme. B.4.5.1, however, covers if a complaint is lodged with a predecessor

Description	FOS TOR 1 January 2018	CIO Rules 15 August 2016	AFCA Rules v3.7	Comments
				scheme on or after 1 November 2018.
dispute resolution methods - non-exhaustive list	7.1	19.1-3, 22.1-4	A.8.1-A.8.3	
Provision of information by parties and power to require information	7.2	16.1-3, 19.1.a-c, 33	A.9.1 - A.9.2	
Other obligations of parties and power to direct parties to take other action	7.3	19.1.f (conciliation conference attendance)	A.9.3 – A.9.5	
Joining other parties to a dispute	7.4	14.4; 30.1-30.5	A.6.1, A.6.2	
Extension of timeframes	7.5	35.1	B.4.4.2 (time limit to submit a complaint); A.21.3 (generally)	
Consequences of non-compliance by either party with a request for information/action	7.6	27.1-2	A.9.5	

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Without prejudice nature of the Service	7.7	32.1	A.11.1	A.11.2 also outlines confidentiality requirements on the parties.
<b>Deciding disputes</b>	<b>8</b>	<b>23-26</b>	<b>A.12.3, A12.5, A.13-A.15</b>	
Not bound by rules of evidence	8.1	3.4	A.14.3	
Dispute resolution/decision making criteria	8.2.a)-d)	12.1, 12.3	A14.1 - 14.3	
Specialist input in decision making (consumer, industry advisors and expert advice), and cost of advice	8.3	19.1.g	A.9.6	
Obligation to provide information to parties, including procedural fairness obligation	8.4.a)-c)	3.4-5; 33.1-4 (withholding information from a party)	A.2.1 (c)(ii), A.10.1-A.10.3	



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Process for deciding disputes - provision of Recommendations	8.5.a)-c)	20.1, 22.1.e	A.12.1-12.5	
Expedited process for deciding disputes	8.6	21.1	A.8.2	
Format and content of Determination	8.7.a)	23.4	A.14.4	
Binding nature of Determination	8.7.b)	25.4	A.15.1-15.3	
Applicant acceptance of Determination - provision of binding release to FSP	8.8	26.2-26.5	A.15.3 (complaints other than superannuation, TTCS complaints)	
Consequences of Applicant not accepting Determination. Applicant able to pursue in another forum	8.9	20.3	A.15.1-15.3 (power to reject Determination limited to complaints other than superannuation and traditional trustee services complaints)	AFCA Rules provide for binding effect of superannuation and traditional trustee determinations, as well as non-binding effect for other complaints where a Complainant does not accept the Determination.

Description	FOS TOR 1 January 2018	CIO Rules 15 August 2016	AFCA Rules v3.7	Comments
<b>Remedies</b>	<b>9</b>	<b>9</b>	<b>D</b>	
Payment of sum of money	9.1.a)	9.6.a	D.2.1 (a)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.
Forgiveness or variation of a debt	9.1.b)	9.6.b	D.2.1 (b)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.
Release of security for debt	9.1.c)	9.6.d	D.2.1 (c)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.
Repayment, waiver or variation of a fee or other	9.1.d)	9.6.e	D.2.1 (d)	D.2.1 applies to non-superannuation complaints; remedies for superannuation

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amount owed, including interest rate variation				complaints are couched differently and are in D.1.
Reinstatement or rectification of a contract	9.1.e)		D.2.1 (e)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.
Variation of credit contract terms	9.1.f)	9.6.i	D.2.1 (b)-(e) (various types of variation)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.
The meeting of an insurance policy claim	9.1.g)	n/a	D.2.1 (f)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.

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Privacy remedy - ceasing of conduct or correction, addition, deletion of information	9.1.h)	9.1	D.2.1 (g)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.
In relation to a default judgment, not enforcing the judgment	No existing provision	9.6.g	D.2.1 (h)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.
An apology	No existing provision		D.2.1 (i)	D.2.1 applies to non-superannuation complaints; remedies for superannuation complaints are couched differently and are in D.1.
Direct financial loss may be compensated	9.2	9.7.a	D.3.1	
Consequential loss compensation	9.3.a)	9.7(b)	D.3.2	

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Non-financial loss compensation	9.3.b)	9.8	D.3.3	
General Insurance limitations on consequential and non-financial loss compensation	9.3.c)	n/a	D.3.3	
Interest award not restricted by compensation cap	9.3.d)	9.4	D.6.3	
Applicant's cost in pursuing a complaint	9.4	22.3	D.5	
Payment of interest	9.5	9.4-5	D.6	
Punitive, exemplary, aggravated damages not awarded	9.6	9.9	D.3.4	
Cap on maximum value of remedy	9.7	9.1; 45.1 'monetary compensation limit' definition	D.4.1-D.4.3	

Description	FOS TOR 1 January 2018	CIO Rules 15 August 2016	AFCA Rules v3.7	Comments
Review of monetary caps	9.8	45.1 'monetary compensation limit'; 9.2	D.4.3	Rule D.4.3 also provide for indexation of the monetary limits, which is not currently included in FOS and CIO TOR/Rules.  This is in line with Ramsay Recommendation 4.4.
Test case procedures	10	10.1.n; 29	C.2.2.f)	
<b>Reporting to ASIC &amp; other bodies</b>	<b>11</b>	<b>41</b>	<b>A.11.5, A.17-A.18</b>	
Provision of reports and information to regulators and disciplinary bodies	11.1	41.3, 41.9, 41.10	A.11.5-A.11.5, A.20.2	
Identification and reporting of systemic issues	11.2	41.3-41.7	A.17	
Serious misconduct reporting	11.3	41.3.b	A.18, A. 11.4-A.11.5	
Data collection	12.1	41.1	A.19.1	

Description	FOS TOR 1 January 2018	CIO Rules 15 August 2016	AFCA Rules v3.7	Comments
Publication of data	12.2	41.2	A.19.2	
<b>Legal proceedings &amp; other matters</b>	<b>13</b>	<b>17</b>	<b>A.7</b>	
Prohibition on FSP legal or debt recovery proceedings	13.1.a)	17.1-7; see also 10.1.t	A.7.1	
Exception to prohibition on proceedings	13.1.b)	17.2	A.7.2	
Prohibition on proceedings inconsistent with a binding decision	13.1.c)	17.5	A.7.5	
Prohibition on proceedings not applicable to proceedings relating to small business debt recovery where facility is >\$2M	13.1.d)	17.6	A.7.2.d) (threshold increased to \$5m)	AFCA Rules permit legal proceedings to continue in relation to small business credit facility complaints >\$5M (including primary producers) with AFCA's consent.

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Prohibition on proceedings inconsistent with an agreed settlement	13.2	17.5	A.7.5	
Prohibition on defamation action	13.3	44.1	A.7.6	
Confidentiality obligations of scheme	13.4	33	A.11.2-A.11.3 (parties), A.11.4-A.11.5 (AFCA)	
Immunity from liability	13.5	43.1	A.22.1	
Change to Terms of Reference	13.6		A.23	
Non-compliance with Terms of Reference	13.7	27-28	A.9.5, A.18.2	Action taken due to non-compliance with AFCA Rules is also covered in the AFCA Constitution, including expulsion provision.  See Appendix A1.1.



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Process for Traditional Trustee Company Services (TTCS)disputes involving multiple affected parties	14-18	n/a	A.4.3.d), A.5.5, A.12.3, A.15.2, B.2.h), B.5.1	Provisions for dealing with TTCS matters involving multiple affected parties are now incorporated into the AFCA provisions and sections relating to all other non-superannuation complaints, except for the AFCA provisions relating to specific requirements and conditions for TTCS multiple parties complaints.
Test case procedures	19	29	C.2.2.f)	
Defined terms and interpretation	20	45	E	
Monetary caps tables	Schedules 1-3	45.1 'monetary compensation limit'; 9.2	D.4	