

## EXPLANATORY STATEMENT for

### ASIC Corporations and Credit (Transition to AFCA) Instrument 2018/814

Prepared by the Australian Securities and Investments Commission

The Australian Securities and Investments Commission (ASIC) makes *ASIC Corporations and Credit (Transition to AFCA) Instrument 2018/814* under subsection 109(3) of the *National Consumer Credit Protection Act 2009* (**National Credit Act**) and subsection 926A(2) of the *Corporations Act 2001* (**Corporations Act**).

Subsection 109(3) and subsection 926A(2) relevantly provide that ASIC may exempt a class of persons from specified provisions of Pt 2-6 of the **National Credit Act** and Pt 7.6 (other than Divisions 4 and 8) of the **Corporations Act** and declare that those parts apply as if modified or varied in the declaration.

#### 1. Background

The *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority Act) 2018* (the **AFCA Act**) establishes a single financial services external dispute resolution scheme: the Australian Financial Complaints Authority (**AFCA**). AFCA will replace the two existing ASIC-approved external dispute resolution (EDR) schemes: the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO); and the statutory Superannuation Complaints Tribunal. The AFCA scheme will commence on 1 November 2018.

In accordance with s912A of the *Corporations Act* and s47, s64 and s65 of the *National Credit Act*, Australian financial services licensees (AFSL) and Australian credit licensees (ACL) and authorised credit representatives (ACR) must be members of the AFCA scheme by 21 September 2018.

It is a condition on the licences of AFSLs and ACLs that they notify ASIC of changes to information on an ASIC register including details of membership of an EDR scheme. The authorisation and sub-authorisation of credit representatives must also be notified to ASIC. Unlicensed carried over instrument lenders must also notify ASIC if they are a member of an EDR scheme.

Under the **National Credit Act** and National Consumer Credit Protection Regulations 2010 (**Credit Regulations**), as amended by the AFCA Act and AFCA regulations, ASIC's registers must include information about the EDR membership of authorised credit representatives.

#### 2. Purpose of this instrument

ASIC Corporations and Credit (Transition to AFCA) Instrument 2018/814 is intended to provide transitional relief from the requirement for AFSLs and ACLs, corporate authorised representatives and unlicensed carried over instrument lenders to notify ASIC of their AFCA membership details. It extends the statutory notification periods from 10 or 15 days to 30 days (1 November to 30 November 2018). The purpose of this relief is to support the effective transition to AFCA—by providing additional time to make the requisite notification. This does not affect the obligation to become a member of the AFCA scheme by 21 September 2018.

#### 3. Operation of the instrument

*Corporations Act 2001*

Declarations at s5 of the instrument provide that if an AFSL would have an obligation under s912A(1)(b) to update ASIC about its AFCA membership in the prescribed form before 1 November 2018, they do not have to comply with that obligation, provided they lodge with ASIC, in the prescribed form the details of AFCA scheme membership between 1 November 2018 and 30 November 2018.

Nothing in this section affects the licensee's obligation to become a member of the AFCA scheme.

#### ***National Consumer Credit Protection Act 2009***

Declarations at s6 of the instrument provide that if an ACL would have an obligation under s47(1)(c) to update ASIC about its AFCA membership, in the approved form, before 1 November 2018, they do not have to comply with that obligation, provided they lodge with ASIC, in the approved form, details of AFCA scheme membership between 1 November 2018 and 30 November 2018.

Nothing in this section affects the licensee's obligation to become a member of the AFCA scheme.

Declarations at s7 of the instrument provide that if an unlicensed carried over instrument lender had an obligation under s45(2) to update ASIC about its AFCA membership before 1 November 2018, they do not have to comply with that obligation provided that they lodge with ASIC, in the approved form details of AFCA scheme membership between 1 November 2018 and 30 November 2018.

Nothing in this section affects the licensee's obligation to become a member of the AFCA scheme.

Under s71 of the National Credit Act, an ACL that gives an authorisation, or a credit representative that gives a sub-authorisation, is required to notify ASIC of details of the EDR scheme to which the person who has been authorised is a member. Declarations at s8(a) of the instrument removes a notice requirement in s71(3)(c) for a credit licensee or credit representative that gives an authorisation or sub-authorisation to notify ASIC of the details of the ASIC approved EDR scheme of which the authorised credit representative is a member.

Declarations at 8(b) insert a requirement into s71(3) that credit licensees and credit representatives that have given an authorisation or a sub-authorisation notify ASIC of the details of a relevant credit representative's membership of the AFCA scheme.

Declarations at 8(c) provides that if a person authorises or sub-authorises a credit representative under subsection 64(1) or 65(1) and they had an obligation to notify ASIC before 1 November 2018 under s71(1) or 71(4), they do not need to notify provided they do so in the approved form between 1 November 2018 and 30 November 2018.

Under s9 of the instrument, the declaration at 8(a)—to omit the current requirement to include in the notice the details of the external dispute resolution scheme of which the credit representative is a member—applies on and after the day, Item 72 of Part 5 of Schedule 1 of the AFCA Act applies. That day cannot be earlier than the Part 4 application day (1 November 2018); or later than 12 months after the Part 4 application day.

#### **4. Consultation**

No consultation has been undertaken as the amendments are minor and technical in nature and designed to support an efficient transition to the commencement of the AFCA scheme on 1 November 2018.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **ASIC Corporations and Credit (AFCA scheme notification) Instrument 2018/814**

*ASIC Corporations and Credit (AFCA scheme notification) Instrument 2018/814* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview**

The *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018* establishes a single financial services external dispute resolution (**EDR**) scheme: the Australian Financial Complaints Authority (**AFCA**).

From 21 September 2018, firms must be members of the AFCA scheme. In *ASIC Corporations and Credit (AFCA scheme notification) Instrument 2018/814*, ASIC granted transitional relief from compliance with certain notification requirements until 30 November 2018.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Australian Securities and Investments Commission**