



AFCA Scheme Authorisation (Additional Condition) Amendment 2020

I, Josh Frydenberg, Treasurer, being satisfied that the mandatory requirements in section 1051 of the *Corporations Act 2001* will be met, and after taking into account the general considerations for an external dispute resolution scheme under section 1051A of the *Corporations Act 2001*, make the following notifiable instrument.

Dated 21 April 2020

Josh Frydenberg
Treasurer

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Part 1—Preliminary

1 Name

This instrument is the *AFCA Scheme Authorisation (Additional Condition) Amendment 2020*.

2 Commencement

The day after this instrument is registered.

3 Authority

This instrument is made under section 1050 of the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

AFCA Scheme Authorisation 2018

1 Section 4

Insert:

AFCA Decision Maker has the same meaning as in the scheme rules.

Business Loan means a loan provided to a small business (as defined in the scheme rules) which was not regulated under Chapter 3 of the *National Consumer Credit Protection Act 2009* at the time the loan was made.

scheme rules means the Australian Financial Complaints Authority (AFCA) Complaint Resolution Scheme Rules.

SMEG Act means the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020*.

SMEG Loan means a loan covered by a guarantee granted by the Commonwealth under the SMEG Act.

2 Subsection 9(4) (definition of *scheme rules*)

Repeal the definition.

3 At the end of the instrument

Add:

10 COVID-19 economic response—guarantee of lending to small and medium enterprises

- (1) It is an additional condition relating to the authorisation of the AFCA scheme that the AFCA scheme rules must include provisions consistent with subsections (2), (3), (4), (5) and (6) of this section.
- (2) Subsections (3) and (4) apply if:
 - (a) a loan is made by a lender to a borrower and:
 - (i) the loan is a SMEG Loan; or
 - (ii) the lender believes in good faith that the loan is a SMEG Loan; and
 - (b) the borrower makes a complaint to the AFCA scheme in accordance with the AFCA scheme rules in relation to any of the following:
 - (i) the SMEG Loan;
 - (ii) any other loan (to the extent that the loan is related to, or connected with, the SMEG Loan).
- (3) When considering the complaint, AFCA and the AFCA Decision Maker must not take into account any decision made by the lender which relates to:

- (a) a decision to provide the SMEG Loan to the borrower; or
 - (b) the amount of the SMEG Loan.
- (4) In relation to decisions which AFCA and the AFCA Decision Maker can consider, they must consider the complaint on the basis that:
- (a) the lender was permitted to disregard the impact of COVID-19 when determining the financial situation of the borrower; and
 - (b) the purpose of the SMEG Act is to encourage the quick and efficient provision of loans to borrowers as a response to the economic impact of COVID-19 on individuals, businesses and the Australian economy; and
 - (c) the lender is required to comply with the terms of the SMEG Act (and any instruments, rules or conditions made as a consequence of that Act) in providing SMEG Loans to borrowers; and
 - (d) the considerations in paragraphs (a) to (c) must be given priority by AFCA and the AFCA Decision Maker over other matters when making any preliminary assessment or determination.
- (5) The AFCA scheme must not consider systemic issues relating to SMEG Loans in relation to the decisions referred to in subsection (3), unless it becomes aware, in connection with a complaint under the AFCA scheme, that a serious contravention of a law may have occurred.
- (6) Any amendments to the AFCA scheme rules that are made as a result of this section must apply from the day after this instrument is registered.

11 COVID-19 economic response—deferral of loan repayments

- (1) It is an additional condition relating to the authorisation of the AFCA scheme that the AFCA scheme rules must include provisions consistent with subsections (2), (3), (4) and (5) of this section.
- (2) Subsection (3) applies if:
- (a) a Business Loan (other than a SMEG Loan) was made by a lender to a borrower on or before 1 January 2020 (*Deferral Loan*); and
 - (b) the lender agrees to provide the borrower with a deferral of loan repayments in relation to the Deferral Loan, at any time in the period of 12 months after the date of commencement of this instrument, because the borrower has advised the lender that their business has been impacted by COVID-19 (*Repayment Deferral*); and
 - (c) the borrower accepts, and makes use of, the Repayment Deferral; and
 - (d) the borrower, or a person who was a guarantor in relation to the loan on or before 1 January 2020, makes a complaint to the AFCA scheme in accordance with the AFCA scheme rules in relation to a decision about a Repayment Deferral for the Deferral Loan.
- (3) The AFCA scheme must exclude any complaint, or part of a complaint, in relation to the decision to provide a Repayment Deferral and any consequential change to the amounts payable or guaranteed under the Deferral Loan or the duration of the loan or any guarantee of the Deferral Loan.

Schedule 1

Section 4

- (4) The AFCA scheme must not consider any systemic issues relating to decisions in relation to Repayment Deferrals referred to in subsection (3), unless it becomes aware, in connection with a complaint under the AFCA scheme, that a serious contravention of a law may have occurred.
- (5) Any amendments to the AFCA scheme rules that are made as a result of this section must apply from the day after this instrument is registered.