



AFCA Scheme Amendment (2024 Measures No. 1) Authorisation 2024

I, Stephen Jones, Assistant Treasurer and Minister for Financial Services, being satisfied the mandatory requirements under section 1051 of the *Corporations Act 2001* have been met, make the following authorisation.

Dated 31 January 2024

Stephen Jones
Assistant Treasurer
Minister for Financial Services

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1 Name

This instrument is the *AFCA Scheme Amendment (2024 Measures No. 1) Authorisation 2024*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Australian credit licence has the meaning given by *National Consumer Credit Protection Act 2009*.

2 Section 4

Insert:

dealing has the meaning given by section 766C of the Act.

3 After section 9

Insert:

9A Condition on authorisation—external dispute resolution complaint not to be decided in certain circumstances

- (1) It is a condition relating to the authorisation of the external dispute resolution scheme that the AFC and AFCA Decision Maker must *not* make a decision in relation to a complaint made under the scheme where all of the following are satisfied:
 - (a) if a decision on the complaint was made in the complainant’s favour, both of the following would be satisfied:
 - (i) the decision would require a member of the scheme, who is the subject of the complaint, to pay an amount to a person (whether or not the member still exists); and
 - (ii) the AFC and AFCA Decision Maker reasonably believe, having regard to the member’s financial position (if the member still exists), that the member is unlikely to fully pay the amount in accordance with the decision;
 - (b) the complaint relates in whole or in any part to one or more of the following:
 - (i) engaging in a credit activity (within the meaning of the *National Consumer Credit Protection Act 2009*);
 - (ii) providing financial product advice that is personal advice provided to a person as a retail client about one or more products that include at least one relevant financial product (within the meaning of Part 7.6 of the Act);
 - (iii) dealing in securities for a person as a retail client, other than issuing securities;
 - (c) at the time the member of the scheme provided, engaged in, or dealt in one or more of the products or services covered by paragraph (b), the member was *not* authorised to provide, engage in, or deal in any of those products or services under any of the following:
 - (i) a financial services licence (as the licensee or as an authorised representative as the case requires);

- (ii) an Australian credit licence (as the licensee or as a credit representative as the case requires);
- (d) the AFC and AFCA Decision Maker do *not* reasonably believe that there are exceptional circumstances that require a decision in relation to a complaint being made.

Note 1: To avoid doubt, once the AFC or AFCA Decision Maker are satisfied the complaint is of a type for which they must not make a decision under this subsection, the AFC or AFCA Decision Maker need not take any further action in relation to the complaint.

Note 2: Where amendments to the scheme rules are needed as a result of this section, the amendments will need to be applied from the time this condition commences.

- (2) In determining under paragraph (1)(c) whether a member was authorised to provide, engage in, or deal in the product or service, disregard any limitations (other than those covered in a licence) placed on a representative by a licensee under an authorisation.
- (3) Subsection (1) applies to complaints made, but not decided, before this section commences and to complaints made after this section commences.