

2022–2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

[HOUSE OF REPRESENTATIVES/SENATE]

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2023

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
AFCA	Australian Financial Complaints Authority
AFCA Rules	Australian Financial Complaints Authority Complaint Resolution Scheme Rules
Corporations Act	<i>Corporations Act 2001</i>
<i>MetLife</i>	<i>MetLife v AFCA</i> [2022] FCAFC 173

Chapter 1: AFCA jurisdiction to hear superannuation matters

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Outline of chapter

- 1.1 Schedule # to the Bill amends the Corporations Act to reinstate AFCA’s jurisdiction to hear complaints relating to superannuation, whether or not they meet the definition of superannuation complaint in the Corporations Act. This reinstates the original policy intent, following the *MetLife* decision.

Context of amendments

- 1.2 Part 7.10A of the Corporations Act established the AFCA scheme to resolve disputes about products and services provided by financial firms. The AFCA scheme replaced several other dispute resolution bodies, including the Superannuation Complaints Tribunal.
- 1.3 The AFCA scheme is an external dispute resolution scheme for consumers unable to resolve complaints with member financial services organisations. All Australian financial services licensees, Australian credit licensees, authorised credit representatives and superannuation trustees are required to be members of AFCA.
- 1.4 The AFCA Scheme is largely governed by the AFCA Rules, which form part of a contract between AFCA and participating financial firms. However,

Division 3 of Part 7.10A of the Corporations Act provides AFCA with certain statutory powers to allow it to manage superannuation complaints effectively. These mirror the former powers of the Superannuation Complaints Tribunal. The statutory powers are required because some superannuation complaints cannot be resolved by relying on contractual obligations – for example, they may involve third parties.

- 1.5 On 27 October 2022, the Full Federal Court found in *MetLife* that, due to the operation of section 1053 of the Corporations Act, a complaint relating to superannuation could only be brought under the AFCA scheme if it fell within one of the categories identified in subsection 1053(1). That is, a complaint relating to superannuation could only be brought to AFCA if it met the definition of **superannuation complaint**.
- 1.6 This is contrary to the original policy intent. The policy intent of Division 3 of Part 7.10A of the Corporations Act is to provide AFCA with additional statutory powers to manage superannuation-related complaints effectively. It is not intended to limit the complaints that may be brought under the AFCA scheme.
- 1.7 The *MetLife* decision has led to AFCA being unable to consider certain complaints about insurance policies held inside superannuation which it would otherwise be able to determine.
- 1.8 Schedule # reinstates the original intent of Division 3 of Part 7.10A of the Corporations Act, allowing people to bring superannuation-related complaints to AFCA.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law	Current law
A complaint relating to superannuation may be made to AFCA even if the complaint does not meet the definition of a superannuation complaint . Special rules apply to superannuation complaints .	A complaint relating to superannuation may only be made to AFCA if it meets the definition of a superannuation complaint . Special rules apply to superannuation complaints .

Detailed explanation of new law

- 1.9 Section 1053 of the Corporations Act defines **superannuation complaint** as a complaint made under the AFCA scheme that:
 - the trustee of a regulated superannuation fund or approved deposit fund has made a decision relating to a particular member or beneficiary (or

particular former member or beneficiary) that was unfair or unreasonable;

- a decision by a trustee maintaining a life policy to admit a member to the life policy fund was unfair or unreasonable;
- the conduct of an insurer, or of a representative of an insurer, in relation to the sale of an annuity policy was unfair or unreasonable;
- a decision of an insurer under an annuity policy is or was unfair or unreasonable;
- a decision of a superannuation provider in relation to certain information provided to the Commissioner of Taxation was unfair or unreasonable;
- the conduct or decision of a retirement savings account provider, or of a representative of a retirement savings account provider, relating to the opening of a retirement savings account was unfair or unreasonable;
- a decision of a retirement savings account provider relating to a particular retirement savings account holder or former retirement savings account holder is or was unfair or unreasonable;
- the conduct of an insurer, or of a representative of an insurer, relating to the sale of insurance benefits in relation to a contract of insurance where the premiums are paid from a retirement savings account, was unfair or unreasonable;
- a decision of an insurer relating to a contract of insurance where the premiums are paid from a retirement savings account is or was unfair or unreasonable; or
- a decision by a death benefit decision-maker relating to the payment of a death benefit is or was unfair or unreasonable.

1.10 Schedule # to the Bill preserves this definition of ***superannuation complaint***. However, Schedule # clarifies the policy intent that other types of superannuation-related complaints may also be made under the AFCA scheme. That is, a person may make a superannuation-related complaint under the AFCA scheme even if it does not meet the definition of ***superannuation complaint*** in section 1053.

[Schedule #, items 1, 2, 6, 9 and 10, sections 9 (definition of superannuation complaint), 761A (definition of superannuation complaint), 1053 and 1053B of the Corporations Act]

1.11 Schedule # amends the headings for section 1053 and Subdivision A of Division 3 of Part 7.10A of the Corporations Act. This reflects that the purpose of section 1053 is to define ***superannuation complaint***, rather than restricting when complaints relating to superannuation may be made under the AFCA scheme.

[Schedule #, items 4 and 5, headings to Subdivision A of Division 3 of Part 7.10A and section 1053 of the Corporations Act]

- 1.12 While the substantive definition of **superannuation complaint** is at section 1053 of the Corporations Act, a signpost to that definition currently appears in a list of definitions at section 761A of the Act. Schedule # amends the definition of superannuation complaint in section 761A to reflect the amendments to the substantive definition in section 1053.
[Schedule #, item 2, section 761A (definition of superannuation complaint) of the Corporations Act]
- 1.13 Schedule 2 to the Treasury Laws Amendment (2023 Law Improvement Package No. 1) Bill 2023 relocates a number of definitions in the Corporations Act. If enacted, the list of definitions currently in section 761A will move to section 9. Schedule # to this Bill includes a contingent amendment, in the event that the definition of superannuation complaint has been relocated to section 9 before Schedule # to this Bill commences.
[Schedule #, item 1, section 9 (definition of superannuation complaint) of the Corporations Act]

Consequential amendments

- 1.14 Schedule # amends a note about the AFCA scheme's operational requirements to avoid confusion about the types of complaints that can be made to AFCA.
[Schedule #, item 3, subsection 1051(4) of the Corporations Act]
- 1.15 Schedule # also removes an unnecessary note to the definition of **superannuation complaint**.
[Schedule #, items 7 and 8, subsection 1053(1) of the Corporations Act]
- 1.16 Item 555 of Schedule 2 to the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* (if enacted) amends the note to subsection 1053(1). Schedule # to this Bill includes a contingent amendment, amending the heading for item 555 to reflect there is now only one note to subsection 1053(1).
[Schedule #, item 12, item 555 of the Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023]

Commencement, application, and transitional provisions

- 1.17 Other than the contingent amendments (amendments to the definition of superannuation complaint (items 1 and 2 in Schedule #) and the amendment to the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* (item 12 in Schedule #)), the amendments in Schedule # commence on the day after Royal Assent.
- 1.18 If Schedule # to this Bill commences before Schedule 2 to the Treasury Laws Amendment (2023 Law Improvement Package No. 1) Bill 2023, the contingent amendments at items 1 and 2 in Schedule # commence as follows:

- the amendment to the definition of superannuation complaint in section 761A of the Corporations Act (item 2) commences on the day after Royal Assent; and
 - the amendment to the definition of superannuation complaint in section 9 of the Corporations Act (item 1) never commences.
- 1.19 However, if Schedule 2 to the Treasury Laws Amendment (2023 Law Improvement Package No. 1) Bill 2023 commences before Schedule # to this Bill:
- the amendment to the definition of superannuation complaint in section 9 of the Corporations Act (item 1) commences on the day after Royal Assent; and
 - the amendment to the definition of superannuation complaint in section 761A of the Corporations Act (item 2) never commences.
- 1.20 The contingent amendment at item 12 in Schedule # commences immediately before commencement of Schedule 2 to the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023*. However, this amendment does not commence at all if Schedule 2 to the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* does not commence or if it commences on or before the day of Royal Assent.
- 1.21 The amendments apply to complaints made to AFCA on or after the date of commencement. They also apply to complaints made to AFCA before commencement, provided AFCA did not make (or purport to make) a determination of the complaint before commencement.
[Schedule #, item 11, Part 10.74 of the Corporations Act]