



ASIC

Australian Securities & Investments Commission

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

About this compilation

Compilation No. 1

This is a compilation of *ASIC Corporations and Credit (Transition to AFCA) Instrument 2018/814* as in force on 21 September 2018. It includes any commenced amendment affecting the legislative instrument to that date.

This compilation was prepared by the Australian Securities and Investments Commission.

The notes at the end of this compilation (the *endnotes*) include information about amending instruments and the amendment history of each amended provision.

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations and Credit (Transition to AFCA) Instrument 2018/814*.

3 Authority

This instrument is made under:

- (a) subsection 109(3) of the *National Consumer Credit Protection Act 2009*; and
- (b) subsection 926A(2) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

Corporations Act means the *Corporations Act 2001*.

credit representative has the same meaning as in subsection 5(1) of the NCCP Act.

financial services licensee has the same meaning as in section 761A of the Corporations Act.

licensee has the same meaning as in subsection 5(1) of the NCCP Act.

NCCP Act means the *National Consumer Credit Protection Act 2009*.

unlicensed carried over instrument lender has the same meaning as in subsection 5(1) of the NCCP Act as modified by item 2.4 of Schedule 2 to the *National Consumer Credit Protection Regulations 2010*.

Part 2—Declaration

5 Notice of AFCA membership—financial services licensees

Part 7.6 (other than Divisions 4 and 8) of the Corporations Act apply in relation to financial services licensees as if Division 3 of Part 7.6 were modified or varied by, in the appropriate position, inserting:

“912AI Deferral of notice of AFCA scheme membership

- (1) A financial services licensee does not have to comply with paragraph 912A(1)(b) to the extent that it would require the licensee to lodge with ASIC, in the prescribed form and before 1 November 2018, details of its membership of the AFCA scheme.
- (2) A financial services licensee that relies on subsection (1) must lodge with ASIC, in the prescribed form and between 1 November 2018 and 30 November 2018, details of its membership of the AFCA scheme.
- (3) Nothing in this section affects an obligation to become a member of the AFCA scheme.”

6 Notice of AFCA membership—credit licensees

The provisions to which Part 2-6 of the NCCP Act applies apply in relation to licensees as if Division 5 of Part 2-2 of the NCCP Act were modified or varied by, after section 47, inserting:

“47A Deferral of notice of AFCA scheme membership

- (1) A licensee does not have to comply with paragraph 47(1)(c) to the extent that it would require the licensee to lodge with ASIC, in the approved form and before 1 November 2018, details of its membership of the AFCA scheme.
- (2) A licensee that relies on subsection (1) must lodge with ASIC, in the approved form and between 1 November 2018 and 30 November 2018, details of its membership of the AFCA scheme.
- (3) Nothing in this section affects an obligation to become a member of the AFCA scheme.”

7 Notice of AFCA membership—unlicensed carried over instrument lenders

The provisions to which Part 2-6 of the NCCP Act applies apply in relation to unlicensed carried over instrument lenders as if Schedule 2 to the

National Consumer Credit Protection Regulations 2010 were modified or varied by, after item 2.19, inserting:

“2.19A After section 47

Add

47AA Deferral of notice of AFCA scheme membership

- (1) An unlicensed carried over instrument lender does not have to comply with subsection 45(2) to the extent that it would require the lender to lodge with ASIC, in the approved form and before 1 November 2018, details of its membership of the AFCA scheme.
- (2) A lender that relies on subsection (1) must lodge with ASIC, in the approved form and between 1 November 2018 and 30 November 2018, details of its membership of the AFCA scheme.
- (3) Nothing in this section affects an obligation to become a member of the AFCA scheme.”.

8 Notice of AFCA membership—credit representatives

The provisions to which Part 2-6 of the NCCP Act applies apply in relation to licensees and credit representatives as if the following provisions were modified or varied:

- (a) omit paragraph 71(3)(c);
- (b) in subsection 71(3), insert:
 - “(ca) details of the credit representative’s membership of the AFCA scheme;”
- (c) after section 71, insert:

“71A Deferral of notice of AFCA scheme membership

- (1) A person that authorises a credit representative under subsection 64(1) or 65(1) does not have to comply with subsection 71(1) or (4) to the extent that it would require the person to lodge with ASIC, in the approved form and before 1 November 2018, details of the credit representative’s membership of the AFCA scheme.
- (2) A person that relies on subsection (1) must lodge with ASIC, in the approved form and between 1 November 2018 and 30 November 2018, details of the credit representative’s membership of the AFCA scheme.

- (3) Nothing in this section affects an obligation to become a member of the AFCA scheme.”.

8A Credit representative authorisations—AFCA membership

The provisions to which Part 2-6 of the NCCP Act applies apply in relation to licensees and credit representatives as if, after section 65, the following section was inserted:

“65A Transitioning to AFCA membership

- (1) This section applies in relation to an authorisation given to a credit representative who:
 - (a) as at 21 September 2018—is not a member of the AFCA scheme; and
 - (b) between 21 September 2018 to 31 October 2018—is a member of an approved external dispute resolution scheme.
- (2) Paragraphs 64(5)(c) and 65(6)(c) do not apply to the authorisation.”

9 Application

- (1) The declaration made by paragraph 8(a) of this instrument applies on and after the day, under item 72 of Schedule 1 to the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018*, on and after which the amendments made by Part 5 of Schedule 1 to that Act apply.
- (2) The declaration made by section 8A of this instrument ceases to have effect on 1 November 2018.

Endnotes

Endnote 1—Instrument history

Instrument number	Date of FRL registration	Date of commencement	Application, saving or transitional provisions
2018/814	20/9/2018 (<i>see</i> F2018L01325)	21/9/2018	
2018/836	20/9/2018 (<i>see</i> F2018L01326)	21/9/2018	-

Endnote 2—Amendment history

ad. = added or inserted am. = amended LA = *Legislation Act 2003* rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Section 2	rep. s48D LA
Section 8A	ad. 2018/836
Subsection 9(2)	ad. 2018/336