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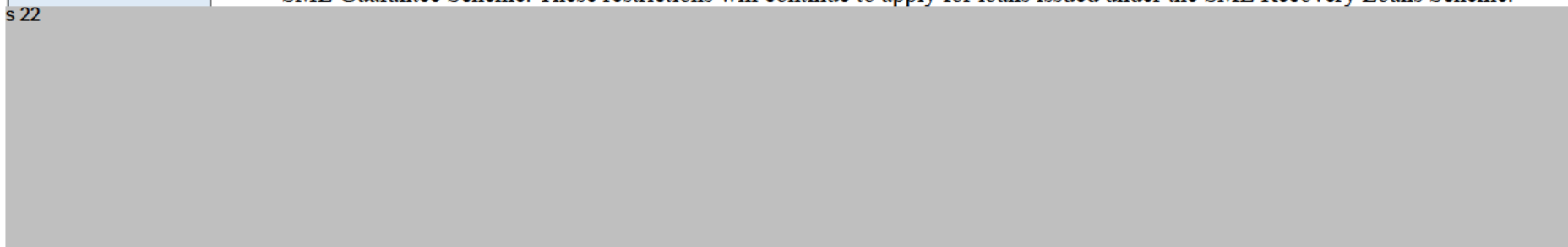


Other Issues

Lending standards

- Lending standards will be determined commercially by lenders in accordance with their usual credit assessment processes.
- The Government will not set specific lending standards. However, lenders will be expected to continue to look through the cycle to sensibly take into account the uncertainty of the current economic conditions.
- The AFCA Scheme Rules have been amended to limit AFCA's ability to consider complaints relating to loans made under the SME Guarantee Scheme. These restrictions will continue to apply for loans issued under the SME Recovery Loans Scheme.

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Limited Exposure Draft



AFCA Scheme (Additional Condition) Amendment Authorisation 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*, hereby make the following notifiable instrument.

Dated 2020

Josh Frydenberg **[DRAFT ONLY—NOT FOR SIGNATURE]**
Treasurer

Limited Exposure Draft

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Limited Exposure Draft

Part 1—Preliminary

1 Name

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

2 Commencement

- (1) Each provision of 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. Sections 1 to 3 and anything in this instrument not elsewhere covered by this table	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Note: This table relates only to the provisions of this instrument as originally made.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 section 1050 of the *Corporations Act 2001*.

4 Schedules

Each notifiable instrument that is specified in a Schedule to this notifiable 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 notifiable instrument has effect according to its terms.

Limited Exposure Draft

Schedule 1 – amendments

AFCA Scheme Authorisation 2018

1 At the end of the instrument

Add:

[Option 1

10 Additional condition

(1) *It is an additional condition relating to the authorisation of the AFCA scheme that, if:*

- (a) *a loan is made which is subject to a guarantee (either at the time the loan is made or at any later time) given under the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020; and*
- (b) *there is a dispute between the borrower and the lender in relation to that loan; and*
- (c) *the borrower submits a complaint to the Australian Financial Complaints Authority, in accordance with its rules;*

then, when considering the complaint, the AFCA Decision Maker must consider whether the loan was fair and reasonable without taking into account the impact of the Coronavirus (known as COVID-19) on the borrower's ability to repay the loan.]

[Option 2

10 Additional condition

(2) *It is an additional condition relating to the authorisation of the AFCA scheme that if:*

- (a) *a loan is made which is subject to a guarantee (either at the time the loan is made or at any later time) given under the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020; and*
- (b) *there is a dispute between the borrower and the lender in relation to that loan; and*
- (c) *the borrower submits a complaint to the Australian Financial Complaints Authority in accordance with its rules;*

then, when considering the complaint, the AFCA Decision Maker must not take into account any decision made by the lender in relation to either of the following:

- (d) *the decision to provide the loan to the borrower;*
- (e) *the amount of the loan provided to the borrower.]*

Limited Exposure Draft

Section 4

[Drafter's note – the Options above are drafted for discussion purposes only and the final form of the authorisation amendments may change.]

LIMITED EXPOSURE



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*, hereby make the following notifiable instrument.

Dated 2020

Josh Frydenberg [DRAFT ONLY—NOT FOR SIGNATURE]
Treasurer

LIMITED EXPOSURE

LIMITED EXPOSURE

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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.

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*.

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) and (5) 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 covered by the guarantee granted by the Commonwealth under the SMEG Act (**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 related loan (to the extent that the loan is covered by the guarantee granted by the Commonwealth under the SMEG Act).
- (3) When considering the complaint, the AFCA Decision Maker 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 considerations in paragraphs (a) and (b) must be given priority by the AFCA Decision Maker over other matters when making any preliminary assessment or determination.
- (4) When considering the complaint, the AFCA Decision Maker must not take into account any decision made by the lender, which relates to:
 - (a) a decision to provide the loan to the borrower; or
 - (b) the amount of the loan.
- (5) The AFCA scheme must not consider systemic issues relating to SMEG Loans in relation to the issues referred to in paragraphs (4)(a) or (b), unless the issues relate to allegations of serious misconduct or egregious behaviour by the lender.

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) and (4) of this section.
- (2) Subsection (3) applies if:
 - (a) an existing business 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 because the borrower has advised the lender that their business has been impacted by COVID-19 (*Repayment Deferral*); and
 - (c) the borrower accepts 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 under the Deferral Loan or the duration of the loan.
- (4) The AFCA scheme must not consider any systemic issues relating to decisions in relation to Repayment Deferrals in subsection (3), unless the issues relate to allegations of serious misconduct or egregious behaviour by the lender.

TREASURY MINISTERIAL SUBMISSION

8 April 2020

PDR No. MS20-000618

Treasurer

cc:

LIMITING THE REMIT OF AFCA WITH RESPECT TO LOANS UNDER THE SME GUARANTEE SCHEME AND DECISIONS TO OFFER REPAYMENT DEFERRALS TO BUSINESSES IMPACTED BY COVID-19

TIMING: By Tuesday, 14 April 2020 to start the process of implementation and provide certainty to lenders under the Coronavirus SME Guarantee Scheme.

Recommendation

- That you **approve** the text of, and **sign and date**, the *AFCA Scheme Authorisation (Additional Condition) Amendment 2020* (the Instrument), at Attachment A.

Approved/Not Approved

Signature:/...../2022

KEY POINTS

- The Government has implemented the Coronavirus SME Guarantee Scheme (SMEG Scheme) with the express policy objective to push lenders to move higher up their risk curve and extend unsecured credit to SMEs in the current uncertain economic environment.

s 47G(1)(b)



- To provide clarity and certainty to lenders, we recommend that you vary AFCA’s authorisation conditions to:
 - limit AFCA’s ability to consider decisions made by the lender about whether to provide a loan (and how much to lend) under the SMEG Scheme and ensure that when making assessments or determinations, AFCA considers the complaint in the context of the impact of COVID-19 on the economy and the intent of the SMEG Scheme;
 - exclude from AFCA’s remit complaints in relation to decisions to offer repayment deferrals to businesses impacted by COVID-19, and any consequential change to the amounts payable under the loan or the duration of the loan; and
 - limit AFCA’s investigations of systemic issues with respect to loans under the scheme and decisions to offer repayment deferrals, except where AFCA becomes aware that a serious contravention of the law may have occurred.

s 34(3)



s 47G(1)(b)

- We do not recommend further limiting AFCA’s remit as it is important that consumers and SMEs retain access to redress for issues such as hardship and that guarantors, where they have provided an additional guarantee under the SMEG Scheme, are able to continue to make complaints through AFCA.
- The Instrument as drafted, in our view, provides a balance of targeted regulatory cover for lenders but retains important safeguards and ensures that AFCA retains the ability to consider complaints in areas of high vulnerability.

ss 45 and 47G(1)(b)

- We have not consulted with broader stakeholder groups, particularly those that represent SMEs (such as the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) or the Council of Small Business Organisations Australia (COSBOA)) or consumer groups.
 - Further information on key sensitivities is in the **Additional Information**.

Next steps and implementation

ss 45 and 47G(1)(b)

- Further information on the implementation process is in the **Additional Information**.
- A draft media release has been developed for your consideration at Attachment B.

Mohita Zaheed

Principal Adviser

Financial System Division

Ext: 02 6263 2844

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Consultation: Within Treasury: LDO. Externally: s 47G(1)(b)

ADDITIONAL INFORMATION

Implementation and amendment process

ss 45 and 47G(1)(b)

- After signing the Instrument there will be no further steps required from you or your office. Treasury will continue to engage as necessary to ensure that the rules are implemented as quickly as possible.

ss 45 and 47G(1)(b)

- The Instrument has been drafted by the Treasury's LDO and settled by Tom Reid (Chief Adviser, LDO).

Sensitivities and risks related to the Instrument

ss 45 and 47G(1)(b)

- We have addressed these issues by targeting the exclusions to the decision to lend and the level of credit offered, while retaining the ability for AFCA to investigate and report systemic issues to ASIC where they become aware a serious contravention of the law may have occurred.

s 47G(1)(b)

ss 45 and 47G(1)(b)

- Given the policy intent for SMEG loans is for loans to be unsecured we consider the exclusion of personal guarantees from the changes to AFCA's remit is appropriate. This will further minimise the incentives for lenders to seek to require personal guarantees in offering these loans.



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 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.



THE HON JOSH FRYDENBERG MP
Treasurer

MEDIA RELEASE

April 2020

PROVIDING CERTAINTY TO LENDERS TO SUPPORT THE FLOW OF CREDIT TO SMALL AND MEDIUM BUSINESSES

The Morrison Government has today taken additional steps to provide certainty and clarity to lenders offering loans under the Government's Coronavirus SME Guarantee Scheme and to support the flow of credit to small and medium-sized businesses to help them manage the impacts of the coronavirus pandemic.

Banks and lenders are taking up the Government's call to action to support affected businesses. Recognising that lenders are making these decisions in an uncertain economic environment, the Treasurer, the Hon Josh Frydenberg MP, has today varied the authorisation conditions for the Australian Financial Complaints Authority (AFCA) to provide clarity for lenders and small businesses on how the impacts of coronavirus are to be taken into account in AFCA's assessment of complaints in relation to certain lending decisions.

Taking these steps today ensures that lenders have the necessary clarity to make timely decisions to offer loans to businesses under the Coronavirus SME Guarantee Scheme, and to continue to offer repayment deferrals to businesses impacted by the coronavirus. This step also ensures that small businesses are clear on how any complaints in relation to such decisions by lenders will be considered in the future.

Consistent with all of the steps we have taken in response to the coronavirus pandemic, we have ensured that these changes to the AFCA scheme are targeted and time bound. AFCA will continue to play its crucial role in providing avenues for redress for consumers and businesses.

To give effect to this change, AFCA will now begin amending its Scheme Rules and provide further guidance for businesses on the changes.

Further information about the Coronavirus SME Guarantee Scheme and how the Government is supporting the flow of credit to affected businesses can be found on the Treasury website: www.treasury.gov.au/coronavirus.

Ends

SME Guarantee Scheme

Current as at: 7/31/2022

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SMERLS: As at 31 July 2022, around 27,600 loans worth around \$8.6 billion were made under the SME Recovery Loans Scheme. This Scheme has now closed.

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SMERLS (80% or 50% guarantee)	27,624	\$	8,664,084,212
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s 22

SMERLS		
	Loans - number	Loans - value
		\$ 22
Total	27,624	8,664,084,212

s 22

s 22