

13 June 2025

Executive General Manager Jurisdiction  
Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001

Via Email: [consultation@afca.org.au](mailto:consultation@afca.org.au)

Dear AFCA,

### **AFCA Rules – Proposed amendments**

Chartered Accountants ANZ, CPA Australia, the Financial Advice Association Australia (FAAA), the Institute of Public Accountants and the SMSF Association welcome the opportunity to provide feedback to AFCA in response to the Consultation paper on the proposed amendments to the AFCA Rules.

We appreciate that some of these changes are being made to reflect changes to the law or to address the historical nature of the Legacy complaints provisions. We also recognise that some of these changes are sensibly being done to provide AFCA with additional powers to deal with AFCA members and third parties who are not complying with the expectations of AFCA. These are relevant matters that we believe should be addressed.

We offer the following feedback on each of these elements.

### **Proposal 1: Scams**

We support the proposal that receiving banks can be held accountable where they have negligently facilitated the receipt and onward transfer of funds obtained as a result of the actions of a scammer.

The application of the AFCA regime in the banking sector is not part of our core focus. Thus, we lack the expertise to fully respond, however we are concerned about the lack of specificity in proposed Rule B.2k). It is not clear to us how this will capture receiving banks. We are also unclear how AFCA will use this new power and in what circumstances a receiving bank will be held accountable in the circumstances of the loss of funds as a result of a scam and the use of an intermediate banking account.

**Q1-3.** We are not in a position to provide further input on this proposed Rules amendment.

## **Proposal 2: Paid Representatives**

We support the proposed Rules amendments to force paid representatives to use approved AFCA processes and for AFCA to refuse to deal with a third party where they are not a member of AFCA, despite being required to be by their AFS licence. We also support the ability for AFCA to exclude a paid representative from the AFCA service where they have repeatedly failed to comply with the AFCA requirements.

We firmly support the ability for complainants to access AFCA without the need to incur fees being paid to third parties to assist in the submission of complaints, however we accept that in some cases a complainant may wish to seek the support of a third party. With respect to paid representatives, this does not come without impact, including the prospect, in some cases, of losing a very substantial proportion of any monetary benefit obtained as a result of achieving a determination. That is a decision for the complainant to make, however we do not accept that paid representatives should have the ability to circumvent AFCA processes and procedures or to cause excessive additional cost by failing to follow efficient and approved processes.

Where a claims handler or third party claims service is required to be licenced and a member of AFCA, this is a measure to protect the consumer. We believe that these protections are appropriate to avoid complainants being exposed to unscrupulous third parties. Enforcing this element of the regime is very important.

The cost of AFCA's complaints handling services are already very high. We do not accept that they should be pushed higher by paid representatives refusing to follow approved processes and procedures. This is unfair to Financial Firms, who are paying for AFCA's costs.

With respect to the consultation on this matter, we believe that it would be beneficial for AFCA to share more information with respect to the scale of these issues. Whilst we recognise the inclusion of the statement on page 6 that AFCA receives thousands of complaints from paid representatives each year, it would be helpful to understand the scale of non compliance with requirements and an estimate of the number of paid representatives who are operating without the necessary AFCA membership. We would be keen to understand the likely impact this is having on AFCA's costs.

**Q4.** We believe that the proposed Rules amendments are appropriate and if implemented in a consistent manner should assist AFCA to provide more timely, efficient and effective dispute resolution services. We firmly believe that these proposed Rules amendments are fair for all parties, to help promote an efficient EDR service.

We do however question the extent of discretion that has been built into proposed rules A.8.4 and B.6.5. In both cases the rule states that AFCA 'may' exercise the power, but then goes on to say that this is also dependent upon the paid representative having the opportunity of "providing justification that AFCA considers fair and reasonable". In our view, if the paid representative has failed to provide justification that AFCA considered fair and reasonable, then they should be excluded. The inclusion of the word "may" is unnecessary. The current drafting provides too much discretion to AFCA and it is unclear how this discretion would be used. Without a firm position, it is likely that paid representatives will continue to refuse to comply with AFCA requirements.

### **Proposal 3: Financial Firm failure to comply with an AFCA Determination**

We strongly support the addition on a new rule to enable AFCA to publicise the failure of Financial Firms to comply with AFCA Determinations.

It is concerning to see that 64 financial firms have failed or refused on at least one occasion to give effect to a Determination, in the year to 31 March 2025. The failure of Financial Firms to pay AFCA Determinations and the resultant impact on the Compensation Scheme of Last Resort (CSLR) is a particularly important issue for our organisations and our members. Financial advisers are evidently covering more than 75% of the cost of the CSLR and the cost is expected to increase substantially over the next couple of years. The cost of the CSLR is a major threat to the financial advice sector. We strongly support greater publicity with respect to those who fail to pay, enabling other participants in the financial services industry to see those entities that have contributed to the cost of the CSLR.

Since the CSLR was established in April 2024, ASIC have, on a number of occasions, announced the cancellation of AFSLs as a result of the payment of a claim with respect to that AFSL by the CSLR. Very little additional detail is made available, which is a suboptimal outcome. We believe that greater awareness of these unpaid determinations is both important and a strong disincentive to those responsible for businesses that put clients in this position.

In terms of publication of information on unpaid determinations, we would like to see the following:

- Reporting at firm level, for each relevant sector, the total number of unpaid determinations and gross amount payable for both the current year and on a cumulative basis across all years.
- Whilst we do not want to cause excessive additional work for AFCA, we would like to see this information updated on a monthly basis (or if this is not possible, then at least quarterly).

We also consider that it may be appropriate for AFCA to issue media releases with respect to specific firms, once the number of unpaid determinations reaches a certain threshold (such as 25 or 50). This would be an important message for the clients or former clients of this Financial Firm.

The publication of information on unpaid determinations will help the financial advice sector to understand where these problems are arising and be better able to project the likely impact on future CSLR levies. This would be a form of early warning system for emerging issues.

**Q5.** We do believe that this proposed Rules amendment is appropriate and will assist in making the dispute resolution process more effective and transparent. Consumers of financial services should have visibility of firms that have failed to meet their obligations, particularly where related entities of those failed firms are continuing to operate. It will also help Financial Firms to hold other firms accountable and facilitate the reporting of phoenixing activity.

The threat of publication of this information provides an additional incentive for Financial Firms to pay their determinations on time and without delay or refusal. We would expect that the consequences of being named by AFCA would be an important motivator.

**Q6.** We consider it particularly unfair for clients of financial service providers who have been exposed to conduct that results in the award of a determination, who have needed to go through the full complaints process, and obtain a determination, to not end up getting paid. In certain cases, depending upon the sector that the firm belongs to (such as financial advice), this will be addressed (either fully or partially) through the payment of compensation by the CSLR. In other cases (such as Managed Investment Schemes), it will not, due to the limitations of the CSLR and the exclusion of that specific sector. AFCA was established to ensure the fair payment of compensation to those clients/consumers who have suffered as a result of misconduct and mistakes. The fact that some clients/consumers do not get paid (or are paid via the CSLR), is a reflection on the system as a whole and should be publicly available information. This can be a useful trigger to highlight the need for further reform or other action by the Government or other authorities and delivering this outcome provides the benefit of increased transparency. Where this results in additional reforms, this should better enable overall fairness.

#### **Proposal 4: Legacy Complaints**

Whilst we note that AFCA is not seeking feedback on this proposal, we are happy to confirm that we believe that this is an appropriate amendment to the Rules in the context of the historical and out-of-date nature of the Legacy Complaints provisions.

#### **Conclusion**

We are supportive of these proposed Rules amendments, which we believe are sensible and will improve accountability and transparency.

Please contact Phil Anderson, General Manager, Policy, Advocacy & Standards, FAAA on 0417 280 270 or [phil.anderson@faaa.au](mailto:phil.anderson@faaa.au) if you have any questions or if we can provide further information on any of the points raised.

Yours sincerely,

**Tony Negline**

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