



3 July 2018

Mr Mike D'Argaville
Legal Counsel
Australian Financial Complaints Authority
GPO Box 3
MELBOURNE VIC 3001

By email: submissions@afc.org.au

Dear Mr D'Argaville

Consultation on Proposed AFCA Rules of Complaint Resolution Scheme, June 2018

Thank you for the opportunity to provide comments on the proposed Australian Financial Complaints Authority (AFCA) Rules of Complaint Resolution Scheme (the rules).

The Australian Financial Markets Association (AFMA) is a member-driven and policy-focused industry body that represents participants in Australia's financial markets and providers of wholesale banking services. AFMA's membership reflects the spectrum of industry participants including banks, stockbrokers, dealers, market makers, market infrastructure providers and treasury corporations.

AFMA promotes the conditions that enable financial markets to enhance Australia's economic performance by:

- advocating policies and regulation that support development of the financial markets and user confidence in them;
- encouraging responsible conduct and efficient markets through industry codes, conventions, guides and preparing and maintaining standard documentation; and
- promoting high professional standards through education and accreditation programs.

AFMA members who hold Australian Financial Services Licenses and provide financial services to retail clients are required to be members of one of the existing EDR schemes that will transition to become AFCA later this year.

AFMA is strongly supportive of the Government's objectives to create a one-stop shop for financial complaints through the establishment of AFCA, and to provide consumers and small businesses with access to fast and binding dispute resolution at low/no cost.

We make the following limited comments in relation to the proposed rules.

1. Access to the scheme

The consultation paper notes at page 12 that in accordance with the Minister's announcement following the passage of the AFCA Act, the definition of a small business to be applied by AFCA has been redefined and expanded so that any business with fewer than 100 staff can access AFCA, including primary producers as defined in the *Income Tax Assessment Act 1997*.

In Section E of the draft AFCA rules, 'Small Business' is defined as a Primary Producer or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint.

We also note that this aspect of the aspect of the draft rules is not open for consultation, as the Government has already made a decision about access to the scheme.

As access to the scheme will not be limited to retail clients as currently defined under the *Corporations Act 2001*, and there is no clear carve out for non-retail clients, there may be an increased incidence of confusion for small business in identifying and pursuing remedies, and consequent increases in complexity, cost and uncertainty. We urge AFCA to closely monitor the usage of the scheme by small business to identify whether there are any issues related to access to the scheme that could be addressed through further review. This might include, for example, further clarification of the definition of eligible persons.

2. Notifying the financial firm of a complaint, specifying timeframes for actions

Section A of the draft rules provides, among other things, that:

- AFCA will refer a complaint back to the financial firm and set a timeframe for the financial firm to either resolve the complaint or provide its position in relation to the complaint (see A.5.2);
- AFCA will specify the time allowed for a financial firm to resolve the complaint (see A.5.3);
- If the complaint is about traditional trustee company services that involve other affected parties, AFCA will ask the financial firm to provide the specified information within the timeframe set by AFCA (see A.5.5);
- AFCA can take whatever steps it considers reasonable in the circumstances where a party to the complaint fails to provide information or take steps within the AFCA specified timeframe (see A.9.5);
- AFCA will provide the parties to the complaint an opportunity to make submissions (see A.10.2(b));
- AFCA will inform the parties to a complaint about the amount of time they have to accept a preliminary assessment or request a determination (see A.12.2); and

- The complaint may proceed to a determination if a financial firm fails to accept AFCA's recommendation with the timeframe specified by AFCA.

Acknowledging all of the above, we suggest that the rules should provide all parties including the financial firm with reasonable notice and reasonable opportunity to respond to systemic issues, potential significant contraventions or breaches, and preliminary assessments in relation to complaints within a timeframe that is appropriate to the complexity and circumstances of each matter.

3. Remediation of systemic issues

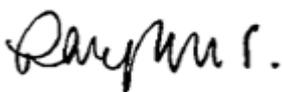
It would be helpful if the rules can clarify how the broad powers over remediation of systemic issues in A.17.4 could interact with ASIC's powers in relation to remediation, particularly in the context of ASIC Regulatory Guide 256 *Client review and remediation conducted by advice licensees*.

4. Privacy-related complaints

It would be helpful to clarify how AFCA's remit over privacy-related complaints might operate alongside the Office of the Australian Information Commissioner – for example, in terms of minimising duplication of complaints across bodies.

Please contact me on 02 9776 7997 or tlyons@afma.com.au if you have any queries in relation to this submission.

Yours sincerely



Tracey Lyons
Head of Policy