

Australian Financial Complaints Authority

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## Consultation on Proposed Australian Financial Complaints Authority Rules

The Baycorp Group of Companies (**Baycorp**) is a leading Australian receivables management Group providing services from receivables outsourcing, to debt collection and debt purchase. Baycorp holds an Australian Credit License and is a current member of the Credit and Investments Ombudsman (**CIO**).

Baycorp has over 60 years' experience in the Australian and New Zealand credit industry and is a credit provider under the *National Consumer Credit Protection Act 2009* and the *National Credit Code 2010* (**National Credit Legislation**), and a Financial Firm as per the Draft Australian Financial Complaints Authority (**AFCA**) Rules (**the AFCA Rules**). Baycorp takes an active interest in the development of the framework regulating the credit industry and is committed to ensuring that customer confidence and satisfaction in the industry, and expedient resolution of disputes, is employed and maintained.

Baycorp appreciates this opportunity to respond to the AFCA Rules.

### Structure and ordering of the AFCA Rules

#### 1. Do the AFCA Rules achieve a good balance between user-friendliness and detail?

While the AFCA Rules are user-friendly and easy to follow, without having access to the Guidelines on how the AFCA Rules will be interpreted and applied, or access to "Position Statements" outlining AFCA's stance on certain topics, it is difficult to know whether there is a good balance with the level of detail.

For example:

The CIO Rules cross-reference other documents, such as CIO Rules 9.6(g) and 17.4(a) which cross-references CIO Position Statement Issue 3 (**CIO PS3**). CIO PS3 outlines CIO's position on how it will handle complaints post default judgment.

Such cross-referencing should be employed with the AFCA Rules to keep the document on the whole easy to navigate and understand, while simultaneously providing the necessary location for more information on how the AFCA Rules will be interpreted and enforced.

2. Before the Table of Contents is a “quick guide” summarising the key aspects of the Rules and their location. Is this helpful?

The “Quick Guide” is very helpful and Baycorp welcomes such aspects in the AFCA Rules. Baycorp recommends putting a similar guide in the Guidelines to the Rules.

3. The Rules contain a number of tables (for example, summary tables of the time limits to submit a complaint to AFCA and of the monetary restrictions on AFCA’s jurisdiction and compensation powers). Are the tables helpful in explaining these areas? How could they be improved?

Baycorp welcomes such tables in the AFCA Rules, as it found them helpful in quickly determining any applicable limits.

### **Superannuation complaints**

4. Are there aspects of the Superannuation Complaints Tribunal’s jurisdiction that have not been incorporated into the AFCA Rules?

As we are not in the business of providing, or giving advice on, Superannuation products, Baycorp is unable to provide any relevant or meaningful comment.

### **Reporting obligations**

5. Do the AFCA Rules adequately provide for AFCA to meet its reporting obligations under the Corporations Act?

As with our submission under Question 1, it would be difficult to provide a submission as to whether the Rules adequately provide for AFCA to meet its reporting obligations without first having access to the Guideline to those Rules, and AFCA’s position on certain legal issues.

### **General**

6. Are there any other issues that require consideration?

As mentioned in our submission under Question 1, it is difficult to provide a meaningful submission on the AFCA Rules without first having access to the Guideline to those Rules, and AFCA’s position on certain legal issues. This is because the AFCA Rules are very broad and lack some necessary detail. This gives rise to concerns that the powers of AFCA have been expanded beyond any additional mandate required by legislation.

### ***Jurisdiction post-judgment***

Examples of the lack of necessary detail are as follows:

- Baycorp was unable to find details in the Rules that outline any jurisdictional limitations placed on AFCA if judgment had already been obtained, and instructions had already been given to enforce that judgment.

- Rule C.1.2 d) indicates the power to deal with hardship complaints post-judgment and stay the execution of a default judgment, which is consistent with the CIO Rules. However, there is no detail as to whether there will be limitations placed on those powers.

Baycorp submits that placing limitations on AFCA consistent with those in CIO PS3, which outlines the limited circumstances and powers in dealing with hardship complaints post-judgement, would be appropriate. This will ensure that the Complainant is afforded some financial hardship relief and consideration, whilst concurrently balancing the rights of the Financial Firm, and not infringing on the jurisdiction of the courts that handed down the judgment.

- Rule D.2.1 h) appears to give AFCA the power to require a Financial Firm not to enforce a default judgment against a Complainant. However, there is no mention as to the limitations (if any) of that power.

Baycorp submits that it is reasonable to place limitations on such a remedy.

For example:

Limiting the amount of time an AFCA Decision Maker can require a Financial Firm to hold the enforcement of a judgment, after which the Financial Firm can recommence with recovery action. The time limitation would also need to take into account the Financial Firms legal and equitable interests, so as to ensure they are protected.

If the Financial Firm were prevented from enforcing the judgment entirely, this could also infringe on independent jurisdiction of the court that handed down the judgment. If appropriate time limits were placed on such remedies, this could adequately balance the needs of the Complainant, the rights of the Financial Firm, and not infringe on the jurisdiction of the courts.

- Rule D.3.3 b) gives AFCA the power to award compensation if “injury has occurred to the Complainant’s feelings”. This is very subjective and there is no guideline as to how this will be interpreted.

Baycorp submits that such complaints and remedies should be considered, and decided in a consistent manner with precedents from predecessor schemes on somewhat similar topics, such as compensation for non-financial loss, including stress and inconvenience.

While Baycorp agrees that it is generally good practice to work with a customer who is experiencing financial difficulty, even if the court has handed down its judgment, it is public policy and the general public perception that the appropriate court would have a higher jurisdiction than an Ombudsman service. Baycorp will always work with AFCA and the customer to ensure a fair and reasonable outcome is agreed upon, with the utmost respect to all parties and the Australian judicial system.

### ***Legal and other costs incurred by the Complainant***

Another concern is AFCA Rule D.5.1, which gives an AFCA Decision Maker the power to decide that a Financial Firm contributes to the legal or other professional costs of the Complainant, or travel costs incurred by the Complainant in dealing with the complaint.

Baycorp submits that this Rule could unfairly prejudice the rights of Financial Firms given complaints are already at no cost to the Complainant, and there is no redress against a Complainant that makes a claim which is ultimately decided to have no merit. For this reason, Baycorp respectfully submits that this rule is either omitted entirely, or at the very least, have limitations placed on exercising this power, having regard to the following:

- The merits of the claim. It would seem unfair if a Financial Firm were required to contribute to the Complainant's costs at all if their claims were had no merit.
- The speed at which a Financial Firm resolves a complaint, regardless of whether the Complainant's claim had merit or not. If a Financial Firm had provided an appropriate response or resolution in a reasonable timeframe, having regard to the level of complexity and need to consult with appropriate third parties, it should not be further penalised by also contributing to the customer's legal and other professional costs.

Irrespective of the above, AFCA Rule A.1.3 says:

*AFCA's complaint resolution scheme is free of charge for Complainants. Complainants do not generally need legal or other paid representation to submit or pursue a complaint through AFCA.*

Therefore, AFCA is already designed to balance the power between customers who do not have professional representation and Financial Firms. Furthermore, there are many organisations that can, and do, provide free legal and professional advice to customers.

### **Contact Details**

Enquiries in respect to this Submission should be directed in the first instance to:

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