

29 June 2018

Mr Mike D'Argaville  
Australian Financial Complaints Authority  
GPO Box 3  
Melbourne Victoria 3001

By email – [submissions@afc.org.au](mailto:submissions@afc.org.au)

Dear Mr D'Argaville

### Consultation on the proposed Australian Financial Complaints Authority Rules

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide feedback on the proposed Australian Financial Complaints Authority (AFCA) Rules.

We support the design principles that underpin AFCA's complaint resolution scheme, and the legislative requirement to provide an accessible, independent, fair, accountable, efficient and effective dispute resolution service to consumers and the financial services industry.

Our responses to the consultation questions are in **Appendices A** and **B**.

Further information about Chartered Accountants Australia and New Zealand is in **Appendix C**.

Should you require clarification on any of the points made in this submission, please contact Government Affairs and Financial Advisory Services Leader, Sarah Davidson, at [sarah.davidson@charteredaccountantsanz.com](mailto:sarah.davidson@charteredaccountantsanz.com) or on +61 2 9290 5639 or Superannuation Leader, Tony Negline, at [tony.negline@charteredaccountantsanz.com](mailto:tony.negline@charteredaccountantsanz.com) or on +61 2 8078 5404.

Yours faithfully



**Simon Grant FCA**  
**Group Executive, Advocacy and Professional Standing**  
**Chartered Accountants Australia and New Zealand**

## Appendix A

### Structure and ordering of the AFCA Rules

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

The AFCA Rules generally achieve a good balance between user-friendliness and detail.

To assist users to submit a complaint to AFCA, a reference to AFCA's contact details (or minimally AFCA's website address) could be included in rule A.3.

To assist users to express a complaint about AFCA's service, and refer their concerns to the Independent Assessor, a reference to the Independent Assessor's contact details could be included in include in rule A.16.

Please refer to our further comments below.

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

Yes. The quick guide and its location on page 2 of the Rules, before the Table of Contents, is helpful.

We recommend the following minor amendments to clarify and correct the quick guide:

##### Section A – Complaints resolution process

- Include a new heading at the top of the quick guide that says, "What types of complaints does AFCA handle?"
- Amend the words in the first text box below this new heading, to say that "AFCA handles complaints made by an Eligible Person about a Financial Firm that is a member of AFCA at the time the complaint is submitted to AFCA."

##### Section B - Preconditions

- Change the name of the heading from "What other requirements must be met?" to "What preconditions must be met?". This aligns with the heading of Section B on preconditions.
- Include under this heading the text boxes and reference to rule B.1 "Superannuation complaints, rule B.2 Other complaints, as well as rules B.3, B4.1, B4.2, B4.3 and B4.5.
- Note that the quick guide currently refers to rule B.4.2 incorrectly as "Other complaints". Therefore, please clarify that rule B.4.1 refers to "Superannuation complaints", rule B.4.2 refers to "National Credit Code Complaints" and rule B.4.3 refers to "Other complaints."

##### Section C - Exclusions

- Under the heading "What types of complaints are excluded?":
  - In the box that refers to rule C.1, please clarify that insurance complaints include superannuation i.e. "AFCA must exclude some complaints regarding credit, insurance (including superannuation), investments (including superannuation) and Traditional Trustee Company Services."
  - In the box that refers to rule C.2, please correct the wording by saying that "AFCA may exercise its discretion to exclude a complaint."

## Section D - Remedies

- Under the heading “What remedies can be awarded?”:
  - In the box that refers to rule D.1, please revise the wording to say “ AFCA can award different types of remedies depending on the nature of the complaint. There is no monetary limit on the amount that may be awarded to the Complainant in a Superannuation Complaint. D.1 Superannuation Complaints D.2 Other complaints”
  - In the box that refers to rule D.3, please revise the wording to say that “Most complaints other than Superannuation Complaints are subject to a limit on the compensation amount per claim and a monetary restriction on AFCA’s jurisdiction. D.3 and D.4”

### 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?

The tables provide helpful explanations. Our proposed improvements to the tables are as follows:

- For ease of reference, provide table numbers and descriptions under each table and refer to the table number in the relevant rules. For example:
  - In rule B.4.5.2, refer to Table 1 and include under the table the description, “**Table 1:** Types of complaints and time limits for submitting a complaint to AFCA.”
  - In rules D.4.1 and D.4.2, refer to Table 2 and include under the table the description, “**Table 2:** Maximum amounts awarded for complaints other than Superannuation Complaints and monetary restrictions on AFCA’s jurisdiction.”
- In table 1 in rule B.4.5.2, under the references to NCC facility (B.4.2.1) and Other (B.4.3.1), it would be more correct to say that the complaint must be submitted “*before* the later of” the specified date, rather than “*by* the later of” the specified date.
- Table 2 in rule D.4 refers to the “Compensation amount limit per claim.” This could be clarified in the Rules by adding the words “per claim” where relevant. For example:
  - Rule D.3.1 – “D.4 sets out the maximum amount that an AFCA Decision Maker can award per claim for direct financial loss.”
  - Rule D.3.2 – “D.4 sets out the maximum amount that an AFCA Decision Maker can award per claim for indirect financial loss.”
  - Rule D.4.1 - “Table 2 below specifies the maximum amounts that may be awarded per claim by an AFCA Decision Maker for complaints other than Superannuation Complaints, not including costs awarded under rule D.5 or interest under rule D.6.”

## Superannuation complaints

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

Chartered Accountants ANZ believes that the AFCA Rules appear to appropriately incorporate the provisions of the Superannuation (Resolution of Complaints) Act 1993 (Cth) and Regulations.

## Reporting obligations

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

AFCA's reporting obligations are set out clearly in section 1052E of the Corporations Act and ASIC's draft Regulatory Guide (RG) 139: Oversight of the Australian Financial Complaints Authority in RG 139.37 to RG 139.69.

We recommend that the AFCA Rules be amended as follows, to better reflect AFCA's legal and regulatory reporting requirements:

- For ease of reference, AFCA Rules A.17 to A.20 could be grouped together as reporting requirements, and re-named, re-numbered and re-ordered as outline below:
  - **A.17 Reporting obligations**
  - A.17.1 Serious contraventions and other breaches
  - A.17.2 Systemic issues
  - A.17.3 Collection of information
  - A.17.4 Publication of information
- Re-number the rules within A.17.1 to A17.4, to reflect the changes proposed above. For example, the existing rule A.17.1 would become A.17.1.1.
- Amend the existing rule A.17.4 (a) to say "a) facilitating AFCA's investigation, identification and reporting of the systemic issue within a reasonable timeframe, and no later than 30 days after AFCA becomes aware of the systemic issue."
- Amend the existing rule A.17.5 to say that AFCA must report the issue to "one or more of" (instead of "any body, including") a) ASIC b) APRA c) the Commissioner of Taxation, or d) the Office of the Australian Information Commissioner.
- Re-word and re-number the existing rule A.18.1 as follows:
 

**"A.17.1 Serious contraventions and other breaches**

A.17.1.1 In accordance with the Corporations Act and any other relevant obligations, AFCA must refer certain matters to one or more of ASIC, the Australian Prudential Regulation Authority, or the Commissioner of Taxation, such as:

  - a) serious contraventions of law by Financial Firms (including licensees and representatives or employees), where there are sufficient facts or information that a reasonable person would objectively believe that it is serious and expect AFCA to report the matter to ASIC
  - b) the particulars of a settlement under section 1052E(3) of the Corporations Act if AFCA thinks the settlement may require investigation."
- Add a new rule A.17.1.2 that says "AFCA must report within a reasonable timeframe, and no later than 30 days after AFCA becomes aware of the serious contravention or forms a belief that a settlement may require investigation.
- Renumber the existing rule 18.2 as A.17.1.3, and amend the wording of this rule to say, "In addition to AFCA's reporting obligations under rules 17.1.1 and 17.1.2, AFCA may report to ASIC other serious breaches, including non-compliance with these rules."

The amendments proposed above are marked up and set out in full in **Appendix B**.

## General

### 6. Are there any other issues that require consideration?

We believe that the AFCA Rules should be updated to reflect any amendments made to RG 139, once ASIC finalises this regulatory guide. In particular, key terms such as 'serious contraventions' (rule A.18, A.18.1 and A.18.1.2) and 'special circumstances' (rules A.9.5, A.9.6, A.10.2, B.4.4.2 and D.5.2) should be defined.

Clarification should be provided in regard to whether AFCA will require a Financial Firm to contribute no more than \$5,000 *per complaint* towards the cost of pursuing a complaint other than a superannuation complaint (rule A.9.6), or no more than \$5,000 [in total] to these costs (rule D.5.2).

We also believe that AFCA could increase the amount of costs that can be reimbursed for superannuation complainants (currently \$5,000) and other complaints (currently \$5,000).

## A.17 Reporting obligations

### A.17.1 Serious contraventions and other breaches

- A.17.1.1 In accordance with the Corporations Act and any other relevant obligations, AFCA must refer certain matters to ~~any body (including one or more of~~ ASIC, the Australian Prudential Regulation Authority, or the Commissioner of Taxation), such as:
- a) serious contraventions of law by Financial Firms (including licensees and representatives or employees), where there are sufficient facts or information that a reasonable person would objectively believe that it is serious and expect AFCA to report the matter to ASIC
  - b) the particulars of a settlement under section 1052E(3) of the Corporations Act if AFCA thinks the settlement may require investigation.
- A.17.1.2 AFCA must report within a reasonable timeframe, and no later than 30 days after AFCA becomes aware of the serious contravention or forms a belief that a settlement may require investigation.
- A.17.1.3 In addition to AFCA's reporting obligations under rule ~~48-4~~ 17.1.1 and 17.1.2, AFCA may report to ASIC other serious breaches, including non-compliance with these rules.

### A.17.2 Systemic issues

- A.17.2.1 A systemic issue is an issue that is likely to have an effect on consumers or Small Businesses in addition to any Complainant.
- A.17.2.2 AFCA will investigate potential systemic issues. In doing so, it:
- a) must raise the potential systemic issue with the relevant Financial Firm and give it an opportunity to respond
  - b) can require the Financial Firm to provide any information and documents AFCA considers necessary to investigate the issue.
- A.17.2.3 If AFCA identifies a systemic issue as a result of its investigation, it will:
- a) refer the issue to the relevant Financial Firm for remedial action
  - b) obtain a report from the Financial Firm as to the remedial action undertaken, and
  - c) continue to monitor the matter until a resolution has been achieved that is acceptable to AFCA.
- A.17.2.4 As part of investigating and referring a systemic issue to the Financial Firm for remedial action, AFCA can require the Financial Firm to do or refrain from doing any act which AFCA considers necessary to achieve any one or more of the following objectives:
- a) facilitating AFCA's investigation, identification and reporting of the systemic issue within a reasonable timeframe, and no later than 30 days after AFCA becomes aware of the issue
  - b) improving industry practice and communication
  - c) remedying loss or disadvantage suffered by consumers or Small Businesses (whether or not they have complained about the systemic issue)

- d) preventing foreseeable loss or disadvantage to consumers or Small Businesses
- e) minimising the risk of the systemic issue recurring
- f) efficiently dealing with multiple complaints related to the systemic issue.

**A.17.2.5** In accordance with the Corporations Act, the Privacy Act and any other relevant obligations, after identifying a systemic issue AFCA must report the issue to **any body, including one or more of:**

- a) ASIC
- b) the Australian Prudential Regulation Authority
- c) the Commissioner of Taxation, **or**
- d) the Office of the Australian Information Commissioner.

### **A.17.3 Collection of information**

**A.17.3.1** AFCA must collect and record comprehensive information about its complaint resolution, for example:

- a) the number of complaints and enquiries, including the number of complaints referred to a Financial Firm to resolve through internal dispute resolution
- b) demographics of the Complainants
- c) details of complaints that AFCA excluded and why
- d) the outcome of complaints that were resolved by AFCA
- e) the current caseload including the age and status of open cases
- f) the time taken to resolve complaints.
- g) a profile of complaints that identifies:
  - (i) type and purpose of Financial Service
  - (ii) type of Financial Firm
  - (iii) issues raised in complaints
  - (iv) any systemic issues or other trends.

### **A.17.4 Publication of information**

**A.17.4.1** To facilitate public reporting, AFCA must produce a report at least every twelve months and provide this to ASIC, the Financial Firms and the public via AFCA's website. This report must be a comprehensive summary and analysis of the data collected. Amongst other things, it must include statistical information about:

- a) the number of complaints submitted to AFCA per Financial Firm
- b) the number of complaints closed per Financial Firm
- c) the outcome of those complaints.

**A.17.4.2** AFCA will also provide quarterly reports to ASIC in respect of its operations.

## Appendix C

### About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 117,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.