

27 June 2018

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

By email: submissions@afc.org.au

Dear Mr D'Argaville

Subject: Consultation on Proposed Australian Financial Complaints Authority (AFCA) Rules

CPA Australia represents the diverse interests of more than 163,000 members working in 125 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia supports the objective of the Australian Financial Complaints Authority (AFCA) of ensuring consumers and small business have access to the practical benefits of free, fast and fair dispute resolution. The proposed AFCA rules provide a solid framework for AFCA to operate effectively, while providing guidance to stakeholders on the key information such as jurisdiction, process and possible outcomes.

CPA Australia recommends:

- AFCA develop a series of one-page fact sheets that clearly articulate key elements to support the AFCA rules - for example, fact sheets by services such as consumer credit, small business lending, financial planning advice and superannuation will assist potential users of the scheme understand key information
- the layout of the 'quick guide' be amended and that the revised version be tested with key stakeholders such consumers including small business owners, to ensure it achieves its objective of summarising the key aspects of the Rules and their location
- key information be separated into different standalone tables to ensure relevant information is clear for each factor, while also making it easier to read
- the proposed Rules are updated to clearly define the potential costs a member may be required to pay, including how different costs may interact, and
- that AFCA provide examples of what 'special circumstances' may include, so it is clear to a Financial Firm when further costs above \$5,000 may also be incurred.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller, Policy Adviser – Financial Planning on +613 9606 9816 or keddie.waller@cpaaustralia.com.au

Yours faithfully



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CPA Australia responses to Consultation on Proposed AFCA Rules

Structure and ordering of the AFCA Rules

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

CPA Australia acknowledges that the Rules have been drafted in line with the guiding principles, as outlined in the supporting consultation paper. We also acknowledge that it is important to use defined terms consistently and include a relevant level of details, given that the Rules will ultimately define the operations and scope of AFCA.

However, as drafted the Rules may still appear complex or even confusing to those with literacy difficulties or English as a second language.

CPA Australia recommends that AFCA develop a series of one-page fact sheets that articulate key elements to support the AFCA rules. For example, fact sheets by services such as consumer credit, small business lending, financial planning advice and superannuation.

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

We support the intention of including a ‘quick guide’ to highlight and summaries key aspects of the Rules and their location. As drafted though, we believe the content is compressed and as a result, not easy to follow.

For example, the ‘Sections of the AFCA Rules’ in the Quick Guide on page 2 is confusing and may be better tied to the follow diagram as follows:

Sections of AFCA Rules

- A. The compliance resolution process
- B. Preconditions – when a complaint is within AFCA’s jurisdiction
- C. Exclusions – when a complaint will be outside of AFCA’s jurisdiction
- D. Remedies – types of remedies that AFCA can award
- E. Defined terms – key terms and their meanings used in the Rules

The following diagram highlights key information from each of these sections of the AFCA Rules.

This would make it clear to the reader the purpose of each section and key information from each section highlighted in the following diagram.

We also feel the diagram itself could be also be improved through simplified language and font use within boxes.

CPA Australia recommend that the AFCA engage different stakeholders such as AFS licensees, and consumers including small business owners and people from non-English speaking backgrounds, to test the effectiveness and understanding of the revised ‘quick guide’.

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?

Tables are an effective mechanism to summarise and explain key information within the Rules.

However, CPA Australia recommend separating key information into different standalone tables. This will ensure that the relevant information is clear for each relevant factor, while also making it easier to read and allowing a larger font to be used consistent with text content of the document.

For example, the Table in B.4.5.2 could be separated into:

- Superannuation
- NCC facility, and
- Other

An example of how the Superannuation information could be presented:

Type of complaint: SUPERANNUATION					
				Time limit to submit a complaint to AFCA	
TPD decision by trustee, RSA provider or insurer (see B.4.1.1)	Has the Complainant permanently ceased employment because of the condition that gave rise to the claim for the disability benefit?	Yes	Was the claim made with the Financial Firm within 2 years of permanently ceasing employment?	Yes	4 years from TPD decisions*
				No	Out of time*
		No	The Complainant ceased employment for other reasons		
Payment of a death benefit (see B.4.1.3)	Has the Complainant objected to the Financial Firm within 28 days of being given notice of the proposed decision?			Yes	28 days from final decision*
				No	Out of time*
Statement given to the Commissioner of Taxation under s.1053(2) of the Corporations Act (see B.4.1.4)					12 months from notice*
*There are no extensions to the above stated time limits for these types of complaints (see B.4.4.1)					
Other superannuation Complaints, including where the Complainant: <ul style="list-style-type: none"> • was not notified by the Financial Firm of the proposed payment of the death benefit and the failure to notify was unreasonable • was notified of the proposed payment of the death benefit, but was not notified of the 28 day period to object (see B.4.1.5)					2 years from IDR response <i>Special circumstances may extend time limits (see B.4.4.2)</i>

Superannuation complaints

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

CPA Australia believe the Rules as drafted adequately replicate the Superannuation (Resolution of Complaints) Act 1993 and Regulations.

Reporting obligations

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

CPA Australia believe the Rules as drafted adequately provide for AFCA to meet its reporting obligations while ASIC are finalising its direction and guidance in Regulatory Guide 139.

However, once ASIC has finalised specific details such as relevant timeframes and definitions, such as 'serious contraventions', that these details are also reflected in the AFCA Rules.

General

6. Are there any other issues that require consideration?

Role of the Independent Assessor

We acknowledge that the consultation paper is only covering a limited number of issues and that some issues have been specifically excluded. However, CPA Australia believe it is important to restate our recommendations regarding the function and role of the independent assessor.

Importantly, we believe that a complaint should be able to be lodged by any party involved in a previous or existing complaint including the consumer, small business owner, financial firm or a representative of a financial firm. This is necessary to ensure a fair, balanced, unbiased and wholistic approach to an independent review and must be clear in both the AFCA Rules and Independent Assessor Terms of Reference.

Draft AFCA Rule A.16.1 refers to a 'party to a complaint', while the Independent Assessor Terms of Reference refers to 'any person or business'. For clarity, we recommend Rule 16.1 is amended to:

Where a party to a complaint, which may include a Complainant or Financial Firm, expresses dissatisfaction to AFCA about its complaints handling service, AFCA must respond to the person within a reasonable timeframe. If that person remains dissatisfied after receiving that response, they may refer their concerns to the Independent Assessor within the timeframe specified in the Independent Assessor's Terms of Reference.

This will ensure it is clear in the AFCA Rules who can escalate a complaint to the independent assessor, while also ensuring a fair, balanced, unbiased and wholistic approach to complaints resolution process.

CPA Australia also acknowledge that while the role of the independent assessor should be to assess processes by which AFCA makes its decisions, it should not be limited to considering complaints and handling of operations in its assessment. Rather it must extend to evaluating the performance of AFCA which would include considering the merits of an AFCA decision.

Excluding this element from its scope significantly limits the value of the independent assessor's role and limits its ability to undertake a comprehensive independent review. It also fails to address ongoing concerns around the consistency of how current determinations are reached.

External dispute resolution decisions can have a significant impact on Professional Indemnity Insurance costs. While a review of a decision should not result in a consumer having to repay any compensation received, a reviewed outcome may have a positive impact on a financial firm's ability to access or the cost of Professional Indemnity Insurance. This is an important consideration given the increasing costs faced by this sector, especially for small to medium independent firms.

Including the review of AFCA decisions should also lead to more consistency in complaint determinations, which will build trust and confidence in the framework

Costs of pursuing complaint other than a Superannuation Complaint

Draft Rule D.5.2 states that unless there are special circumstances, AFCA will not require the Financial Firm to contribute more than \$5,000 to the costs of pursuing a complaint.

In Draft Rule A.9.6 it also states that AFCA may seek expert advice and that it may require a Financial Firm to contribute no more than \$5,000 per complaint towards the cost.

As drafted, is not clear whether these costs are mutually exclusive or whether the maximum cost a Financial Firm could pay is \$5,000 in total.

CPA Australia recommends that AFCA describe in the Rules how these costs interact.

We also recommend that AFCA provide examples of what 'special circumstances' may include, so it is clear to a Financial Firm when further costs above \$5,000 may also be incurred.