



20 June 2019

AFCA

by email: submissions@afca.org.au

AFCA Rules Change Consultation

Thank you for the opportunity to comment on the AFCA Rules Change Consultation. The Financial Rights Legal Centre (**Financial Rights**) is strongly supportive of the proposed change to publish Determinations in a form which identifies the financial firm or firms that are party to a complaint. Financial Rights will address all three questions posed in the consultation paper.

1. Does the proposed change satisfy AFCA's transparency requirements?

We believe that the proposed change does satisfy AFCA's transparency requirements. The Rules state that AFCA will:

"A2.1(f) be as transparent as possible, whilst also acting in accordance with its confidentiality, privacy and secrecy obligations."

The proposed change to Rule A.14.5 is in line with the principle of being as transparent as possible. In our view, the prior position of retaining secrecy around which financial firm or firms are party to a given complaint fell short of appropriate levels of transparency. Public faith in financial institutions is low; one facet of rebuilding trust must be increased transparency on the part of AFCA. Following the systemic malpractice across the financial services industry exposed by the Royal Commission it is now more important than ever that the public are given adequate information about the behaviour of financial firms, and that those firms see consequences for their actions, including through their public identification in AFCA Determinations.

The change to make transparent the name of the financial firm or firms that are party to the complaint while clearly retaining the privacy of all other parties is appropriate. If a Determination has been made that the financial firm or firms party to a complaint were not in the wrong, then it should be no detriment to that firm for them to be identified. If a Determination is made that finds the firm or firms at fault then it is in the public's interest for the firm or firms to be identifiable. Consumers, on the other hand, regardless of the outcome of a given complaint, should retain their right to privacy; there is no clear public benefit in transparency relating to the identity of individuals party to complaints regarding financial institutions, while there is clear potential for harm.

2. Do the Operational Guidelines adequately explain how the Rules as amended will apply?

We are generally supportive of the amended Operational Guidelines. There is a slight contradiction, where it states: “we generally publish Determinations...on our website on a de-identified basis”, and then follows up with the clarification that financial firms are an exception to this de-identification. In our view this could be phrased in a way that is clearer from the outset that Determinations will identify financial firms.

The Operational Guidelines also state:

“It is open for the parties to request that:

- certain details be changed in the Determination, if those details can be used to identify a party other than the financial firm or firms (as long as the substance of the Determination remains unaffected), or*
- the Determination not be published (provided there are compelling reasons). Similarly, a party can request a Determination that has already been published to be further de-identified or removed.”*

We are concerned that the proposed Operational Guidelines state that parties may request a Determination not be published provided there are “compelling reasons”, however no further explanation or example is provided as to what might constitute compelling reasons. It is not clear whether this is intended to include financial firms, but the wording certainly does not exclude them. We are concerned that this opens the potential for a firm to claim potential reputational impact as a reason for not publishing a Determination that finds them at fault. Retaining an ambiguous option for firms to request Determinations not be published could result in firms making this request regularly once changes are implemented that identify firms party to a complaint. To ensure genuine accountability and transparency, it may be of benefit to provide some more specifics or parameters relating to the ability of firms to request that Determinations that reflect poorly on them not be published, or to make it clearer that this is not what is intended by the relevant clause.

Beyond these minor clarifications, the Operational Guidelines do adequately explain how the Rules as amended will apply.

3. Do you have any other comments about the proposed change?

We wish to reiterate our strong support for this change. We have long argued for greater transparency relating to reporting of misbehaviour of financial firms, particularly in the context of the Codes of Practice across several sectors of the financial services industry¹. This position extends to AFCA’s reporting of Determinations.

The identification of financial firms will serve several functions:

- It will provide a greater deterrence factor for firms from behavior that may result in a complaint against them and a published Determination against them, and thus improve the behavior of financial firms. It equally provides transparency where complaints against firms are not made out.

¹ See the Financial Rights Legal Centre submissions to the 2019 reviews of the Life Insurance Code of Practice and the Customer Owned Banking Code of Practice, for example.

- It will make for more fully informed consumers when it comes to making choices regarding which financial firm they engage. Consumers have a right to know which financial firms are attracting disputes, the nature of those disputes and the outcomes.
- It will assist the financial services industries and the consumer representative sector with more comprehensive information when it comes to analyzing trends, understanding patterns and addressing systemic issues. For instance, under the previous system, it would have been impossible to know if a recurring problem was present across many financial institutions or was particular to one firm. To solve the problem in either situation requires a very different approach, and the implementation of this change will allow for systemic problems to be most effectively addressed.

Recommendations

1. Financial Rights Legal Centre supports the proposed amendments to Rule A.14.5 such that AFCA will name the financial firm or firms that are party to complaints in published Determinations.
2. The Operational Guidelines should be clarified so as to preclude financial firms from requesting that Determinations not be published purely on the basis that they may result in reputational harm for the financial firm or firms named.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



Karen Cox
Chief Executive Officer
Financial Rights Legal Centre



About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.