

22 May 2023

Ms Michelle Kumarich  
Executive General Manager Jurisdiction  
Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001  
Email: [consultation@afca.org.au](mailto:consultation@afca.org.au)

Dear Ms Kumarich

### Consultation on proposed amendments to AFCA Rules and Operational Guidelines

The Financial Advice Association of Australia<sup>1</sup> (FAAA) welcomes the opportunity to provide feedback to the Australian Financial Complaints Authority (AFCA) on its proposed changes to the AFCA Rules and Operational Guidelines.

The FAAA supports and welcomes the changes that strengthen and clearly state AFCA's ability and intention to reject complaints that lack merit or where no consumer loss or no provider error has occurred.

*"Where there is no merit to the complaint, no loss by the Complainant or no error by the Financial Firm, the Complainant does not have a basis for a remedy. In these circumstances, there is no point the complaint continuing through AFCA's process, with the attendant resourcing costs for AFCA and the parties. Accordingly AFCA may decide not to continue to consider the complaint."<sup>2</sup>*

For many years, the FAAA's predecessor organisations, the FPA and AFA, have raised concerns about complaints with no merit being allowed to proceed through the AFCA process, even if AFCA staff think they should not. This could have resulted in significant cost being incurred by the financial planner/adviser party to the complaint and the licensee which typically manages the complaint with AFCA and the insurer, even though the complaint was unfounded. We support this change as drafted in Attachment 5: Proposed Operational Guidelines to the Rules (in Markup).

The Operational Guidelines includes a list of examples of complaints that AFCA may decline to consider on the basis of no merit, no loss or no error.<sup>3</sup> The FAAA appreciates that the proposed

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<sup>1</sup> The Financial Advice Association of Australia (FAAA) was formed in April 2023, out of a merger of the Financial Planning Association of Australia Limited (FPA) and the Association of Financial Advisers Limited (AFA), two of Australia's largest and longest-standing associations of financial planners and advisers. The FPA was a professional association formed in 1992 as a merger between The Australian Society of Investment and Financial Advisers and the International Association of Financial Planning. In 1999 the CFP Professional Education Program was launched. As Australia's largest professional association for financial planners, the FPA represented the interests of the public and (leading into the merger) over 10,000 members. Since its formation, the FPA worked towards changing the face of financial planning, from an industry to a profession that earned consumer confidence and trust, and advocated that better financial advice would positively influence the financial wellbeing of all Australians. The AFA was a professional association for financial advisers that dated back to 1946 (existing in various forms and under various names). The AFA was a national membership entity that operated in each state of Australia and across the full spectrum of advice types. The AFA had a long history of advocating for the best interests of financial advisers and their clients, through working with the government, regulators and other stakeholders. The AFA had a long legacy of operating in the life insurance sector, however substantially broadened its member base over a number of decades. The AFA had a strong focus on promoting the value of advice and recognising award winning advisers over many years. The AFA had strong foundations in believing in advocacy for members and creating events and other opportunities to enable members to grow and share best practice.

<sup>2</sup> Attachment 5: Proposed Operational Guidelines to the Rules (in Mark-up), pg 45

<sup>3</sup> Pg 46

change in the Guidelines is not limited to situations included in this list, rather the intent of this measure is much broader. We understand that this list is illustrative only of the type of complaints that AFCA may reject, and that this list will be updated over time.

The FAAA also supports the following proposed changes:

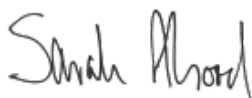
- Paid representatives - proposals to exclude Paid Representatives who are not acting in their client's best interests or are not cooperative.
- Complainants - proposal to discontinue a complaint and exclude a Complainant where the Complainant's conduct to AFCA staff is threatening, intimidating, abusive, bullying, discriminatory or otherwise unreasonable, or abuse of AFCA's processes.
- Discontinuing a complaint – changes to include discontinuing a complaint where the Financial Firm has appropriately compensated the Complainant for their loss, or has offered the Complainant an appropriate remedy or compensation which has been rejected by the Complainant.
- Binding decisions – changes to clarify that if a Complainant does not accept a Determination within 30 days, neither a complainant nor the Firm is bound by a Determination.
- Exclusion of settled complaints - exclusion of complaints where the Complainant reached a full and final settlement with the Financial Firm about the subject matter of the complaint, unless the Complainant can show that the settlement was obtained by fraud, duress or misleading and deceptive or unconscionable conduct.

In addition, the FAAA requests AFCA undertake an urgent review of its classification of complaints involving financial advice to ensure it is reflective of the financial service consumers seek and are provided. The issue of AFCA's complaint categorisation has become critical with the pending establishment of and proposed model for the Compensation Scheme of Last Resort (CSLR). Complaint classification that is unclear and inconsistent with consumer and industry understanding and expectations, and regulatory definitions, will impact the effectiveness of the CSLR.

The FAAA offers the following submission in response to the questions raised by AFCA in its consultation paper.

We would welcome the opportunity to discuss with AFCA the matters raised in our submission. If you have any questions, please contact me on [REDACTED].

Yours sincerely



**Sarah Abood**  
Chief Executive Officer  
Financial Advice Association of Australia

# CONSULTATION ON PROPOSED AMENDMENTS TO AFCA RULES AND OPERATIONAL GUIDELINES

Prepared for Australian Financial Complaints Authority  
22 May 2023

## FAAA RESPONSE TO CONSULTATION QUESTIONS

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*AFCA Proposal 1: AFCA proposes to amend its Rules to define the term “Paid Representative” following recent law reform, and to allow AFCA to exercise discretion not to consider a complaint in certain circumstances due to inappropriate conduct. The proposed amendments would also provide AFCA discretion to exclude a Paid Representative due to their inappropriate conduct for a period of up to 12 months.*

*Additional amendments will be made to the Operational Guidelines to explain how the discretion will be exercised and to provide examples of its use.*

*These changes are designed to give effect to Recommendation 4 of the Treasury Review Report regarding poor conduct by Paid Representatives.*

**AFCA Question 1:** *Do you think that the proposed Rules amendments in relation to Paid Representatives appropriately respond to Recommendation 4?*

### **FAAA Response:**

Recommendation 4 of the Review states:

*AFCA should address poor conduct by paid advocates affecting the efficiency of the scheme, such as by amending its Rules to allow it to exclude certain paid advocates from involvement in the complaints process. The Government could also consider an amendment to AFCA’s authorisation conditions to support such changes.*

The issue of Paid Representative conduct was raised in our submission to the AFCA Independent Review. A Paid Representative who is not acting in the Complainant’s best interest, is not cooperative, or is demonstrating poor conduct, can negatively and unfairly impact the progress and outcome of the complaint and the efficiency of the Scheme. The FAAA welcomes and supports the intent of this change however, given the impact of this misconduct on consumers, we suggest the proposed changes regarding Paid Representatives should be strengthened by:

- reconsidering the limit of “an exclusion of a Paid Representative .....[to] only operate for a continuous period of up to 12 months” (Rule B6.2). The FAAA seeks clarity as to why the exclusion period for misconduct is capped and recommends this be reconsidered with a view to allowing longer exclusion periods in the circumstances of particularly poor and/or repeated conduct.
- requiring AFCA to report Excluded Paid Representatives to ASIC as licensed/unlicensed professionals failing to meet AFCA’s requirements. ASIC and AFCA should consider appropriate means of ensuring a list of Excluded Paid Representatives is available for consumers seeking a Paid Representative to assist them with a financial services dispute.
- requiring the Excluded Paid Representative to undertake training and demonstrate that steps have been taken to address the inappropriate conduct, prior to being reinstated by AFCA and permitted to represent a Complainant in an AFCA complaint.

- restricting AFCA's discretion to reconsider a complaint involving an Excluded Paid Representative to circumstances where the Excluded Paid Representative is no longer directly or indirectly involved in the complaint or with the Complainant.

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*AFCA Proposal 2: AFCA proposes that its Rules provide a more comprehensive ability to address unreasonable Complainant conduct.*

*AFCA Question 2: Do you think that the proposed new provisions in relation to Complainant conduct are appropriately drafted and achieve the right balance in their application?*

**FAAA Response:**

The FAAA supports the proposal to discontinue a complaint where the Complainant's conduct to AFCA staff is threatening, intimidating, abusive, bullying, discriminatory or otherwise unreasonable, or an abuse of AFCA's processes. This is appropriate and reasonable as it is in line with the provisions in the AFCA Engagement Charter, which "shares AFCA's values and outlines the behaviour it expects from Financial Firms, Complainants and AFCA employees when resolving disputes"<sup>4</sup>.

The proposed change to C.2.2h) permits AFCA to use its discretion to exclude a complaint where:

*The nature and subject matter of the complaint is substantively the same as a previous complaint that was 'discontinued' by AFCA under rule A.8.4b)*

A.8.4b) refers to Complainant conduct. A Complainant may be excluded from the Scheme for a period of up to 12 months, during which time AFCA cannot consider a complaint by or on behalf of the Excluded Complainant.

The FAAA supports the following AFCA policy in relation to an Excluded Complainant resubmitting a complaint to the Scheme, as propose in the Operational Guidelines (in Markup):

*"If a Complainant substantially repeats a complaint discontinued under rule A.8.4b) in a new complaint submitted to AFCA, AFCA will normally exercise its discretion to exclude the new complaint. An exception to this may be if the Complainant is to be represented in the new complaint by someone who was not involved in the discontinued complaint, so that all AFCA dealings are with that representative rather than the Complainant."*

The FAAA seeks clarity on how the 12 month exclusion would work in cases where the complaint is reaching its time limit as set in the AFCA Rules. For example, financial advice complaints fall under the following time limit set in the AFCA Rules:

*B.4.3.1 In other situations, AFCA will generally not consider a complaint unless it was submitted to AFCA before the earlier of the following time limits:*

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<sup>4</sup> <https://www.afca.org.au/about-afca/engagement-charter>

- a) *within six years of the date when the Complainant first became aware (or should reasonably have become aware) that they suffered the loss; and*
- b) *where, prior to submitting the complaint to AFCA, the Complainant was given an IDR Response in relation to the complaint from the Financial Firm - within two years of the date of that IDR Response.*

*B.4.4.2 AFCA may deal with a complaint submitted after the time limits set out in rules B.4.1.5, B.4.2 and B.4.3 if AFCA considers that special circumstances apply.*

AFCA's Proposed Operational Guidelines (in Markup) states that "For the duration of their exclusion, an Excluded Complainant is not able to submit a complaint to AFCA".

The FAAA seeks clarity as to how a complaint will be treated if the Complainant is excluded due to their own poor behaviour and the exclusion commences 5 years and 6 months from the date when the Complainant first became aware that they suffered the loss (for example). That is, the complaint will not meet the six year time limit set in B.4.3.1 at the end of a 12 month exclusion period and will therefore fall outside of AFCA's jurisdiction at that time.

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*AFCA Proposal 3: AFCA proposes to amend Rule A.8.3b) and to introduce a new Rule A.8.3d) to provide AFCA with the discretion to close a complaint if an appropriate offer of settlement has been made but has not been accepted by a Complainant.*

*AFCA Question 3: Do you think that the proposed change to Rule A.8.3 is appropriately drafted and will assist in delivering early and fair resolution of complaints?*

**FAAA Response:**

The FAAA supports the intent of this change as a matter of fairness. It is a positive change that offers to enhance the efficiency of the Scheme.

The FAAA seeks clarity as to the intent and application of this proposed change. For example, does this relate to offers made via IDR and remediation programs, or only offers made within the AFCA complaints process?

The FAAA would support this change including offers made via IDR and remediation programs as it serves the same intent as the General Exclusions in the AFCA Rules that the Scheme "exclude complaints that have already been dealt with by a court, dispute resolution tribunal established by legislation or a Predecessor Scheme".

The Corporations Act sets obligations for licensees to investigate, notify and remediate retail consumers under certain circumstances, as well as IDR requirements. Sections 912EA and 912 EB of the Act set record keeping requirements and response timeframes for the investigate, notify and remediate obligations under the reportable situations regime. Similarly, ASIC regulatory guidance RG271 details the timeframes in for IDR purposes.

The FAAA encourages AFCA to consider these requirements to ensure its processes for examining settlements can draw on the records required under the above obligations. This will facilitate regulatory efficiencies and minimise complexity for Complainants, Financial Firms, regulators, and AFCA.

It is also unclear from the proposed changes in the Rules (in Markup) and Operational Guidelines (in Markup) if this proposal would create obligations for the Financial Firm or the Complainant. For example, would:

- the Firm be obliged to 're-offer' the settlement offer?
- the Firm be required to 'review' its settlement offer and provide a new settlement offer?
- the Complainant be asked to reconsider the Firm's offer of settlement?

The FAAA request that the Operational Guidelines make it clear that, in circumstances where AFCA find the previous offer made to the Complainant to be appropriate, the Financial Firm may be provided the opportunity (not obliged) to 're-offer' its previous offer for the Complainant to accept, or for the complaint to be closed by AFCA. However, if AFCA finds the previous offer was inappropriate, the complaint should be considered by AFCA as per its standard complaints process.

As suggested in the consultation paper, the proposed changes intend to permit AFCA to "consider whether a Financial Firm offer of settlement or compensation payment is appropriate in all of the circumstances of the complaint and represents an appropriate outcome to the complaint should it proceed to a determination".

A.8.3 of the Operational Guidelines (in Markup) states that:

*"We will make sure that there is enough information about the facts of a complaint and the issues involved, before making a decision about whether to decline to consider the complaint further. All decisions to decline to consider complaints are made by experienced AFCA staff at the earliest opportunity to avoid unnecessary costs and delays."*

The consultation paper suggests that an appropriate offer will represent an appropriate outcome to the Complaint should it proceed to a Determination. However, the experience of some FAAA members demonstrates that AFCA is hesitant to offer feedback on how it is likely to consider a complaint until shortly before a Preliminary Assessment is provided. It is, therefore, difficult to see how AFCA could reasonably assess whether an offer of settlement made at an early stage in the EDR process, or via IDR or a Firm's remediation program, is "appropriate", unless it then considers the merits of the complaint at that early stage. Based on our members' experiences, in practice AFCA may need to consider the likely outcome at earlier stage (than Determination) of the EDR process to determine if an offer of settlement was "appropriate compensation given the circumstances of the complaint". We raise this as a procedural matter and ask AFCA to ensure the Operational Guidelines create realistic expectations of the process, timeframes and potential costs associated with this measure.

The FAAA also suggests that AFCA make it clear to the Complainant in writing that it is considering the appropriateness of the Firm's offer, and, if found to represent a fair outcome of the complaint, the options and consequences for accepting and declining the offer.

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**AFCA Proposal 4:** *AFCA proposes to amend Rule C.2.2 to include previously settled disputes as a ground for AFCA to consider in the exercise of its discretion to exclude a complaint.*

**AFCA Question 4:** *Do you think that the proposed new Rule C.2.2g) and the Operational Guidelines discussion of settlement agreements is appropriately drafted?*

**FAAA Response:**

The FAAA supports the changes proposed in Rule C.2.2.g) and the associated discussion in the Operational Guidelines (in Markups) as a matter of procedural fairness.

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**AFCA Proposal 5:** *AFCA proposes to clarify how its existing discretion under Rule C.2.2j) to exclude complaints in respect of wholesale clients will be applied in regards to sophisticated or professional investors. The changes are to the Operational Guidelines and give effect to, Review Recommendation 6.*

**AFCA Question 5:** *Do you think that the proposed amendment to the Operational Guidelines appropriately responds to the Review Recommendation 6?*

**FAAA Response:**

Review Recommendation 6 states:

*AFCA should exclude complaints from sophisticated or professional investors, unless there is evidence that they have been incorrectly or inappropriately classified.*

Yes. The FAAA supports Proposal 5 amendments to the Operational Guidelines in regards to sophisticated or professional investors, that appropriately give effect to, Review Recommendation 6.

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**AFCA Proposal 6:** *The Operational Guidelines regarding the Forward-Looking Review Mechanism will be amended to enhance its visibility, accessibility and independence. The Operational Guidelines changes will:*

- *Remove the requirement that external legal advice showing an error of law must accompany the review request*
- *Provide more guidance about how to apply for a review*
- *Outline the stakeholder consultation model AFCA will adopt to assess whether there are significant issues that warrant review*

**AFCA Question 6:** *Are the proposed changes to the Operational Guidelines appropriately drafted and in keeping with Recommendation 9 of the Review Report?*



**FAAA Response:**

Review Recommendation 9 states that:

*AFCA determinations should continue to not be subject to merits review, but the substance of a determination should be reviewable with respect to its application to future cases. To this end, AFCA should enhance the visibility, accessibility and independence of its existing forward-looking review mechanism.*

*AFCA should amend its Operational Guidelines to remove the requirement for an applicant to demonstrate an error of law to access the formal forward-looking review mechanism. Applicants should be able to access it if they are able to demonstrate that the AFCA determination adopts an approach that could have a significant impact across a class of consumers, businesses or transactions.*

The Operational Guidelines (in Markup) permit Financial Firms, industry bodies or consumer organisations to use informal and formal AFCA review mechanisms to raise any significant concerns about the underlying approach taken by the Scheme in one or more Determinations, and make it clear that:

*Because of the final and binding nature of individual Determinations, these review mechanisms are not available to be used by Complainants or Financial Firms to reopen an individual Determination or change its outcome.<sup>5</sup>*

AFCA's revised review process states:

*A request for a formal review must be in writing and clearly identify:*

- *the Determination of concern,*
- *the reasons for their concern,*
- *the class of consumers, businesses or transactions that they think the issue raised in the Determination is likely to significantly impact in the future and why;*
- *what the significant impact is likely to be on them, together with supporting information, and*
- *what approach would in the requester's view have been more consistent with the scheme principles.*

*AFCA will undertake a formal review if satisfied that the request raises a significant issue that warrants this. Stakeholder views will be sought as part of this process.*

*The outcome will be made public.*

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<sup>5</sup> Operational Guidelines (in Markup), pg 83.

The FAAA supports the clarification in the proposed Operational Guidelines (in Markup) regarding AFCA's Forward-Looking Review Mechanism as drafted and suggest it is in keeping with Review Recommendation 9. We welcome the removal of the requirement to demonstrate an error of law given the impact a Determination can have on consumers, businesses and transactions. AFCA Determinations are often a key consideration for governments, licensees and professional indemnity insurers, in particular, when accessing risk.

The FAAA notes that the proposal includes:

*The organisation requesting the review may be asked to contribute to the cost for AFCA of undertaking the review.*

The FAAA is concerned about the impact this may have on accessibility of AFCA's Forward-Looking Review Mechanism for many stakeholders, particularly given the important function this mechanism plays in consumer protection. It may also serve to discourage smaller financial firms from seeking a formal review. Consideration should be given to excluding SMEs (as defined by the ATO) and consumers from making a contribution to a formal review.

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*AFCA Proposal 7: AFCA proposes to replace Rule A.15.4 with A.15.3b), to clearly specify that, if a Complainant does not accept a Determination made by AFCA, neither the Complainant nor the Financial Firm is bound by the Determination.*

*AFCA Question 7: Do you think that proposed new Rule A.15.3b) is appropriately worded and provides clarity about the effect of a Determination not being accepted by a Complainant?*

**FAAA Response:**

AFCA's proposed changes require that if a Complainant does not accept a Determination within 30 days of receipt of the Determination, neither a Complainant nor the Financial Firm is bound by a Determination. Importantly, the changes retain the right for the Complainant to bring an action in the courts or take any other available action against the Financial Firm.

The FAAA supports this change as a matter of procedural fairness.

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*AFCA Proposal 8: AFCA proposes to introduce a new Rule A14.6 to govern when a Determination may be re-issued because of an accidental slip or omission. This change mirrors the current wording with what is already in AFCA's Operational Guidelines.*

*AFCA Question 8: Do you think the Rules wording is appropriately drafted and provides clearer guidance and transparency about the existing slip rule?*

**FAAA Response:**

The FAAA supports the proposed change to Rule A14.6 and wording in the Operational Guidelines (in Markup) regarding an accidental slip or omission in a Determination.

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**AFCA Proposal 9:** *Rule D.4 sets out the monetary limits (compensation caps and monetary restrictions on AFCA's jurisdiction) for complaints other than Superannuation Complaints. The existing wording around monetary limits in Rule D.4.1 and the heading in the table are inconsistent in the language used.*

*AFCA proposes to amend Rule D.4.1 to remove this inconsistency and align the table content with Rule D.4. This means that both the Rule and the table will state that compensation amount limits apply per claim.*

**AFCA Question 9:** *Are there other areas in the AFCA Rules that you consider require similar administrative or minor changes?*

**FAAA Response:**

The FAAA support this clarification and request AFCA's consideration of the following concern.

Section A.17 of the AFCA Operational Guidelines sets out AFCA's role and response to identifying systemic issues.

It is unclear how these Guidelines interact with the 'investigate, notify and remediate' obligations for personal financial advice licensees under the Reportable Situation regime in the Corporations Act. In particular, the following steps that AFCA may require a Financial Firm to take:

- Financial Firm advertisements in newspapers at agreed intervals to promote contact with all affected customers/fund members
- Financial Firm establishing a dedicated toll-free number to take calls relating to the systemic issue
- Financial Firm sending a letter to affected customers/fund members explaining the issue and resolution that has been agreed with AFCA
- Financial Firm posting updates about the issue and its resolution on its website
- Agreeing on a formula or approach to calculate and reimburse the financial loss of the affected customer group.

The FAAA supports the vital consumer protection role AFCA plays in identifying systemic issues, however, we are concerned about the potential regulatory overlap and duplication with the financial advice remediation obligations in the Act.

The FAAA recommend AFCA and ASIC review the systemic issues section of the AFCA Rules and Operational Guidelines to minimise the potential risk of regulatory overlap, confusion and inefficiency.

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**AFCA Proposal 10:** *AFCA proposes to amend Rule A.8 to include details of the objection process that is available to a Complainant where AFCA decides under Rule A.8 not to continue to consider their complaint. Currently this is only outlined in Rules A.4.5 and A.4.6*

**AFCA Question 10:** *Do you think that the proposed Rules A.8.5 and A.8.6 are appropriately drafted and replicate the existing provisions under A.4.5 and A.4.6?*

**FAAA Response:**

Proposed Rule A.8.5 and A.8.6 state:

*A.8.5 If so, either rule A.8.3 or A.8.4 applies, AFCA will inform the Complainant in writing that it intends to close the complaint, setting out its reasons and the timeframe within which the Complainant may object to this decision. follow the process for excluding a complaint set out in rules A.4.5 and A.4.6.*

*A.8.6 If the Complainant objects within the specified timeframe, AFCA will review its decision under rule A.8.3 or A.8.4 if AFCA is satisfied that the Complainant's objection may provide reasonable grounds to change the decision. If rule A.8.3 applies, AFCA will inform the Financial Firms involved in the complaint and provide them with an opportunity to make submissions before AFCA makes a final decision as to whether to continue to consider the complaint.*

The FAAA supports the wording of proposed Rule A.8.5 and A.8.6 and section A.8 in the proposed Operational Guidelines (in Markup).

We note that these requirements do not set an actual timeframe for a Complainant to object to a decision to exclude a complaint. In relation to an accidental slip or omission under Rule A.14.6, the Guidelines state that normally AFCA would:

*“... expect a correction request to be made within 30 days of the date the Determination is issued.”*

The FAAA suggests consideration be given to the application of a consistent timeframe of 30 days for the Complainant to object to an AFCA notification to close a complaint under Rule A.8.5 and A.8.6.

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**AFCA Proposal 11:** *AFCA proposes to amend the Operational Guidelines to include examples of banking and finance complaints or small business complaints that might be decided by an AFCA Panel.*

**AFCA Question 11:** *Are there additional assessment criteria that AFCA should consider adopting to meet the stated objective?*

**FAAA Response:**

The FAAA supports this proposal. We are not aware of any additional assessment criteria that should be adopted.

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**AFCA Proposal 12:** AFCA proposes to amend the Schedule E definition of “Financial Service” to include debt management assistance and credit reporting assistance.

**FAAA Response:**

The FAAA supports this proposal.

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**AFCA Proposal 13:** AFCA proposes to amend Rule A.20.1 to specify that AFCA’s annual public reporting must meet AFCA’s obligations to regulators.

**FAAA Response:**

The FAAA supports this proposal.

However, AFCA’s annual public reporting must be ‘true to label’. Rule A.19.1 requires AFCA to 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; and
- g) a profile of complaints that identifies:
  - i. type and purpose of Financial Service;
  - ii. type of Financial Firm;
  - iii. issues raised in complaints; and
  - iv. any systemic issues or other trends

The Operational Guidelines for Rule A.19.1 state:

*We classify complaints according to the product or service they relate to, the issues they raise, and the sales or service channel through which the consumer purchased the products or services in dispute. This information assists us to select the most appropriate way to help*

*the parties resolve complaints. It also enables us to report accurately and thoroughly about the complaints we have dealt with.*

AFCA has proposed amending the wording in the Operational Guidelines for Rule A.20.2:

*In carrying out these reporting responsibilities, including deciding what minimum number of complaints should constitute the reporting threshold, we aim to provide information that is accurate and useful and to operate transparently as required by rule A.2.1f).*

*Accordingly, we present the information in the appropriate context, for example, by categorising AFCA Member information according to industry sector and the size of business and, in a superannuation context, by fund.*

The FAAA suggests the information AFCA presents should be in the appropriate context for all stakeholders.

The availability of information about complaints involving financial services providers can assist consumers to make an informed decision about a potential (or existing) product or provider, and plays an important role in ensuring industry training programs address any issues that impact consumer outcomes.

The FAAA believes AFCA's product classification system is a key component to ensuring its complaints are categorised appropriately and an assessment for proportionate liability purposes can be undertaken effectively. It is also vital to enable the reporting of complaints data in a manner that is user-friendly and makes sense to all stakeholders, particularly consumers.

We are concerned about how financial advice is classified under AFCA's classification system. Consumers do not seek out 'wealth management' or 'investment services', rather consumers seek financial advice. Similarly, financial advice may or may not include the provision of wealth management or investment services. From a consumer's perspective, the "*channel through which the consumer purchased the products or services*" (as per the Operational Guidelines wording) is not wealth management or investment services; it is financial advice.

ASIC's Financial Adviser Register (FAR) and information on its consumer website, MoneySmart, refers to financial advice and planning. It does not use the term 'wealth management' or refer to financial advice as 'investment services'. Similarly, the AFSL issued by ASIC authorises the licensee to 'carry on a financial services business to...provide financial product advice'. It does not authorise the licensee to provide wealth management or investment services. Representatives are also authorised to provide general or personal financial advice.

The use of different definitions and language by different oversight bodies (that is, ASIC's FAR listing and AFCA product classification system) creates confusion for both consumers and industry.

For example, the wording in the Proposed Operation Guidelines (in Markup) refers to investment advice, superannuation advice, advice and financial advice.

Consistency is key to enhancing consumer understanding and navigation of Australia's complex financial system and the protections within it. Adopting the existing financial advice definitions

commonly used within the industry (processes and systems) and by ASIC can assist with simplifying the system for consumers, government and industry.

The issue of AFCA's complaint categorisation has become critical with the pending establishment of and proposed model for the Compensation Scheme of Last Resort (CSLR). The following three Bills to establish a CSLR are currently before Parliament:

- Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023 (the TLAB Bill)
- Financial Services Compensation Scheme of Last Resort Levy Bill 2023 (the Levy Bill)
- Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023 (the Collection Bill).

Under the legislation, the CSLR will provide compensation to consumers as a last resort when AFCA has made a determination in favour of the consumer and the financial institution has not paid in accordance with the AFCA determination (typically because of insolvency). The limited scope of the proposed scheme means the CSLR will only apply to unpaid AFCA determinations involving financial misconduct in relation to the following four types of financial products and services:

- personal advice on relevant financial products to retail clients;
- credit intermediation;
- securities dealing for retail clients; and
- credit provision.

Complaint classification that is unclear and inconsistent with consumer and industry understanding and expectations, and other regulatory categorisations, will impact the effectiveness of the CSLR.

The FAAA recommends AFCA undertake a review of its complaints classification system. We suggest the classification included in the ASIC Cost Recovery model and include specific and separate complaint classifications for financial advice should be considered. This should include separate categories for personal financial advice and general financial advice. This will ensure that a complaint about a product provider who is authorised to provide general advice will be appropriately categorised, even in instances where personal advice is provided outside the authorisation or the licensee.