



5 June 2023

Michelle Kumarich

Executive General Manager Jurisdiction

Australian Financial Complaints Authority

GPO Box 3

MELBOURNE VIC 3001

via email: [consultation@afca.org.au](mailto:consultation@afca.org.au)

Dear Ms Kumarich,

### **Suggestions to refine AFCA rules and operational guidelines**

We welcome the opportunity to participate in the consultation on amendments to the Australian Financial Complaints Authority (AFCA) rules and operational guidelines, noting that the proposed amendments are in response to recommendations made by AFCA's Independent Review in 2021.

We support the action that AFCA has already taken to implement the review's recommendations, including the introduction of a new funding model allowing members to more easily understand the fees incurred by complaints at different stages of the process.

In 2021-22, AFCA received 3,490 small business complaints, of which 64% regarded business loans and transaction accounts.<sup>1</sup> To ensure the rules remain able to support small and family businesses in a challenging environment of rising interest rates and increased operating costs, we provide the following comments for consideration.

#### **1. Proposal 1: Paid representatives**

We support the proposed rule amendments regarding the conduct of paid representatives who engage in inappropriate conduct and welcome the intent for AFCA to provide any affected complainants with the opportunity to pursue their complaint with a new representative or to act on their own behalf.

We also suggest AFCA consider mechanisms to publish the names of excluded paid representatives whose conduct has warranted their exclusion under the rules. This would minimise instances of complainants unknowingly engaging an excluded paid representative to help them pursue a complaint.

#### **2. Proposal 11: AFCA Banking and Finance Panels**

We recommend AFCA consider 'A complaint where the opinion of more than one ombudsman is in the interest of the financial firm or consumer' as an additional assessment criterion – or example of banking/finance complaint or small business complaint – that might be decided by an AFCA panel.

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<sup>1</sup> Australian Financial Complaints Authority Limited (AFCA), *Small business complaints, Annual Review 2021–22*, viewed 10 May 2023.



Such a criterion would provide an additional level of assurance to financial firms and their customers, that AFCA decision-making is in the best interest of all parties through minimising risks of potential bias or limited scope that might attach to a single ombudsman.

### 3. Proposal 3: Appropriate settlement offers

The majority of small business complaints AFCA resolved in 2021-22 were resolved prior to the decision stage, suggesting that most complainants withdraw their complaint or accept an earlier settlement.<sup>2</sup> While a settlement offer may be considered substantial by small business customers, high rates of settlement may also be a burden for smaller financial firms.

As such, it is important that complaints against financial firms are triaged as to their urgency and validity, and essential that the rules and complaint-fee models discourage unmeritorious complaints and unwarranted settlement processes.

Stakeholders have stressed the importance of unmeritorious complaints being excluded from the system before resulting in any unnecessary burden, including complaints that are lodged simply with the intention of receiving a settlement offer.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman

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<sup>2</sup> AFCA, *Small business complaints, Annual Review 2021–22*, accessed 10 May 2023. Complaints resolved: 36% (1,316) at registration and referral, 28% (1,008) at case management, 629 (18%) at rules review, 261 (7%) at preliminary assessment and 439 (12%) reached the decision stage.