



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

28 June 2018

Mike D'Argaville
Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001
By email: submissions@afc.org.au

Mike
Dear Mr D'Argaville

AFCA RULES AND INDEPENDENT ASSESSORS TERMS OF REFERENCE

We welcome the establishment of AFCA and support the majority of content in the Rules. We consider the draft Independent Assessors Terms of Reference generally align with the Ramsay recommendations so focus our response on the Rules consultation. Our responses are made in the context of ASIC Regulatory Guide 267 Oversight of the Australian Financial Complaints Authority released on 20 June 2018.

We respond to the scoped consultation on the Rules using your question numbers:

1. The AFCA Rules achieve a high level of balance between user friendliness and detail.
2. The "Quick Guide" is a very helpful ready reckoner but could be expanded.
3. The tables are helpful summaries that assist with finding appropriate rules.
4. At this stage, the superannuation rules are outside the scope of our response.
5. We support the proposed reporting regime with a good balance between quarterly reporting of AFCA functions and outcomes and annual reporting to ASIC.
6. We would raise two other issues. First, the need for some express guidance on time limits. Second, the need for detailed guidance within the rules on the 'refer back' mechanism.

Quick Guide

From a complainants view the key things they wish to know are what complaints can be lodged and how long the process will take. Accordingly, we suggest adding the value limits within AFCA's jurisdiction for a complaint to be submitted D.4. This could be an additional box under *What other requirements must be met?*. We also recommend a section on time limits with cross referencing to key stages. Key stages would be review of complaint, refer back, resolution and enforcement of any determination. We appreciate these would enlarge the table and suggest that the wording above the table is not required.

We further suggest that you consider changing the reference the first box re *Eligible Person* to direct readers to defined terms at E.1. The current reference A.4 does not explain the terms and a reader would need to go to E.1 to gain any further insight as to the meanings.

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Other Issues

Timelines

To achieve principle three - procedural fairness and 'efficient, effective, timely'¹ complaints handling - express guidance on time limits is needed in the rules.

Time limits in the AFCA Rules will:

- provide clarity for all parties involved in the process
- allow small business complainants to make informed decisions to manage cash flow during the resolution process knowing when it will conclude
- require Financial Firms to align their own processes to AFCA best practice.

Rules that require time limits include:

- **A4.5** Time limit for AFCA to refuse, or accept, a complaint e.g. no more than 5 days from lodgement
- **A5.3** The maximum time a Financial Firm has to resolve a complaint referred back by AFCA e.g. not more than 5 business days (see below)
- **A8.1** Time limit for reasonable attempts for informal resolution e.g. no more than 21 days from lodgement
- **A9.3 b)** Time limit for external expert appointed by AFCA to provide a report e.g. no more than 28 days from date of referral
- **A12** Time limits for each step in the preliminary assessment process
- **D3** Add a time limit for the Financial Firm to action AFCAs decision in a preliminary assessment or its determination.

Refer back

We understand that Regulatory Guide 267 retains the 'refer back' mechanism. It allows 'refer back' when complaints have completed IDR (RG 267.197). We continue to strongly advocate to ASIC for a Financial Firms' IDR decision to be taken as their position at AFCA. This avoids duplication and overcomes further delays.

However as a next best solution, where IDR was completed the maximum timeframe for the Financial Firm to either resolve the complaint or give its final response (RG 267.197(a)) should be set at no more than 5 working days.

Thank you for the opportunity to provide feedback which we would be happy to discuss further. Please contact myself or Jill Lawrence on 02 6263 1558 or at jill.lawrence@asbfeo.gov.au.

Yours sincerely,



Kate Carnell AO

Australian Small Business and Family Enterprise Ombudsman

¹ A.2.1 c)(iii) AFCA Rules June 2018