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Submission to the Australian Financial Complaints Authority Re: Proposed Amendments to AFCA Rules – Consultation Paper.

The Australian Securities Dealers and Advisers Association (ASDAA), representing smaller Financial Service Providers (FSPs), welcome the opportunity to respond to AFCA's proposed Rules amendments.

Our members, often resource-constrained compared to larger institutions, rely on AFCA's commitment to fairness, accessibility, and efficiency (Rule A.2.1). While the proposals aim to strengthen consumer protections, they risk disproportionate impacts on smaller FSPs, who face unique challenges in compliance and reputational management.

Below, we address each proposal, emphasizing the need for clear guidelines, proportional measures, and equitable protections to maintain trust in AFCA's dispute resolution process. We draw on the 2021 AFCA Rules, the consultation paper's data (e.g., $2.03 billion in 2024 scam losses, 64 non-compliant firms), and member experiences, including a 2020 defamation threat, to underscore our concerns.

ASDAA has a strong desire to raise professional standards and improve investor protection. ASDAA members rely on the ongoing trust of their clients and on the integrity of the Australian financial markets for their livelihood. Without both, clients wouldn't participate in the markets and trade in shares, exchange traded options and other listed financial products.

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Proposal 1: Scams

Proposal 1's expansion of AFCA's jurisdiction to include scam-related complaints against banks, even without a customer relationship (Rules B.2j–k), responds to the $2.03 billion in reported scam losses and 494,732 scam reports in 2024, aiming to empower victims (Rule A.2.1(b)).

While well-intentioned, ASDAA views this as an unworkable power grab by AFCA to inflate its relevance in a domain far outside its expertise and jurisdiction, risking mission creep with negligible impact on scam prevention.

The vast majority of scams are perpetrated by overseas bad actors who are not AFCA members, operating beyond Australian law.

AFCA lacks not only the legal authority to enforce remedies against these non-members but also the skilled personnel, specialized training, and technological infrastructure required to investigate sophisticated cyber-fraud.

AUSTRAC, with its dedicated financial crime analysts, global intelligence networks, and transaction-monitoring systems, is uniquely equipped to tackle cross-border scams, a challenge even AUSTRAC finds daunting.

AFCA's belief that it can manage scams while delivering on existing responsibilities is unrealistic in the extreme, diverting resources from core dispute resolution and creating false expectations for victims, eroding trust in the process.

AFCA's long history of accepting non-client complaints, often contrary to Rule B.2, exacerbates this overreach, exposing members to frivolous claims.

The **complexity of verifying scam complaints could overwhelm** AFCA's resources, which handled 104,203 complaints in 2023–24, straining its capacity to fulfill other duties. This may justify increased funding requests, raising membership fees for compulsory members, particularly smaller FSPs already burdened by AFCA's funding model, threatening their viability.

Investigating scams involving offshore banks is further limited by barriers to accessing international financial data, a task requiring expertise AFCA does not possess. Without international cooperation or AUSTRAC's investigative prowess, AFCA's efforts risk burdening all members with higher fees and operational costs, with no tangible reduction in scam activity.

The proposal's inclusion of non-customer entities is rife for abuse, unfairly targeting innocent smaller third parties while scammers escape accountability.

The broad "Bank" definition (Schedule E) includes smaller authorised deposit-taking institutions, lacking major banks' resources for disputes.

Consider an extreme example: a person, not an FSP client, watches a YouTube video on the FSP channel on Bitcoin's portfolio benefits. The video is general advice with appropriate disclaimers. Inspired, they Google a crypto exchange, open an account, and lose money to a scam exchange. Alternatively, they click a YouTube ad for a fraudulent Ukrainian dating site during the video and are scammed. The person lodges an AFCA complaint against the FSP, an AFCA member, claiming their video or ad on their video channel led to their loss.

Despite no client relationship, AFCA's history of accepting non-client complaints could implicate the FSP, exposing them to absurd liabilities for actions beyond their control.

This power, initially for "Banks," risks mission creep to all AFCA members, as jurisdictional expansions historically broaden, potentially devastating smaller FSPs with frivolous claims.

This precedent could cripple broader industries. For example, a client subscribing to an AFSL-holder's (ABC Pty Ltd) research model portfolio could trigger a complaint implicating a third-party provider (XYZ Pty Ltd) with no client relationship, burdening smaller FSPs.

Domestic FSPs striving to prevent scams are scapegoated for overseas frauds, undermining fairness (Rule A.2.1(c)). Smaller FSPs, unlike major banks, lack resources to defend against such complaints, and fee hikes could force some out of business.

Human Error and the Need for Education

Data confirms that scams predominantly exploit human vulnerability, not FSP failings, making education the key to prevention.

95% of Data Breaches Tied to Human Error in 2024

Research from **JumpCloud** indicates 95% of data breaches, including scams, are financially motivated, often via phishing attacks triggered by human error, such as clicking malicious email links or responding to urgent requests.

Verizon's 2023 Data Breach Investigations Report (DBIR) notes phishing is implicated in 36% of breaches, with 74% involving human factors like social engineering or mistakes.

An X post from 2023 claims 90% of breaches stem from human error, such as opening phishing emails impersonating trusted brands (e.g., Microsoft, 51.7% of malicious emails). For example, the 2024 Change Healthcare ransomware attack began with an employee's credentials compromised via a phishing email, costing over $870 million.

AI-driven phishing, surging 1,265% since 2022 per **Spacelift**, uses convincing content to exploit trust, as seen in 2025 **Twilio** and **Petya** attacks targeting businesses via phishing.

Education campaigns—teaching consumers to verify emails, avoid suspicious links, recognize urgency tactics, and use multi-factor authentication reduce scam success by up to 90% (**Keepnet**).

AFCA's complaint-focused approach fails to address this root cause, burdening FSPs with liability for consumer errors. Redirecting resources to public awareness, in collaboration with

AUSTRAC and cybersecurity experts, would prevent scams more effectively, aligning with Rule A.2.1's fairness principle.

False Hope and Unfair Liability

AFCA's proposal will not reduce scam incidence, as it targets FSPs rather than scammers, offering false hope to victims while creating a grossly inequitable liability framework that victimizes innocent FSPs.

Validating a scam complaint implies AFCA can deliver restitution, yet without direct FSP linkage to the scam, imposing liability is fundamentally illogical and defies basic principles of justice.

How can an FSP, with no involvement beyond a tangential connection (e.g., a YouTube video), be held accountable for a victim's loss to an overseas scammer? This perverse outcome creates a second victim - the FSP - burdened with financial and reputational harm for actions beyond its control. For example, if a FSP general advice video prompts a non-client to engage with a scam exchange, AFCA's validation could force the FSP to compensate the victim, despite no role in the scam.

Smaller FSPs, lacking resources to absorb such costs, face existential threats, while victims gain no real remedy against non-member scammers, as AFCA cannot enforce restitution from overseas actors.

ASIC's 2023 report noted only 5% of scam victims are reimbursed by major banks, suggesting limited FSP liability, yet AFCA's proposal risks expanding this unfairly, creating a lose-lose scenario. AFCA's pretense of providing restitution without clear linkage is a flawed overreach, diverting focus from prevention (e.g., AUSTRAC's investigations, ACCC's education) and penalizing FSPs striving to comply with anti-scam measures.

Prioritizing education and AUSTRAC-led investigations would address scam roots without this unjust burden, protecting both victims and FSPs

AFCA's lack of AUSTRAC's expertise and specialized staff, forensic tools, and international networks makes its scam-handling ambition unfeasible.

We urge AFCA to abandon this proposal or strictly limit it to scams, define liability thresholds (e.g., evidence of gross negligence), collaborate with AUSTRAC for investigations and exempt smaller FSPs from non-customer complaints unless misconduct is proven, avoiding false expectations, protecting market integrity, and preventing financial harm to ASDAA members.

Proposal 2: Paid Representatives

Proposal 2's requirements for Paid Representatives (Rules A.3.3, A.8.4, B.6.5) enhance efficiency for thousands of annual complaints. ASDAA supports mandatory use of AFCA's consumer portal, a simple online form accessible to all.

Paid Representatives, compensated for expertise, should comply effortlessly; failure offers no value, burdening FSPs with costs.

Technological concerns for smaller representatives are overstated, as their role demands competence. Ineffective representation disadvantages complainants, who pay fees without benefit, increasing costs for FSPs funding AFCA's scheme.

In 2020, an ASDAA member faced a defamation threat from a Paid Representative for challenging frivolous complaints (case 686653), underscoring accountability needs.

To strengthen oversight, we propose a dedicated Paid Representative portal, requiring registration, agreement to a Code of Conduct, and AFCA Rules compliance, with all complaints submitted via this channel.

Representatives should verify complaints are not frivolous or vexatious (Rule C.2.2(d)), reducing abuse and protecting smaller FSPs from unwarranted fees.

Additionally, to ensure fairness, Rule A.7.6 should be amended to explicitly prohibit Paid Representatives, alongside Complainants, from initiating defamation actions related to AFCA proceedings, mirroring our recommendation in Proposal 3.

This aligns with Question 4 and Rule A.8.1's cooperative approach, ensuring timely dispute resolution while safeguarding FSPs from baseless claims and reputational harm.

Proposal 3: Financial Firm Failure to Comply with an AFCA Determination

Proposal 3's public naming of non-compliant firms (Rule A.11.6) is misguided, offering no benefit and risking severe reputational harm, particularly for smaller FSPs.

AFCA, not a regulator, should not tarnish licensees' reputations before ASIC completes investigations, as reported for 64 firms in 2024–25.

ASIC determines AFSL retention and issues media releases when licenses are canceled for non-compliance, which already includes non-compliance with AFCA determinations (e.g., ASIC releases 23-009MR, 24-225MR, 24-262MR, 25-067MR, 25-080MR). AFCA's role should be confined to listing firms on its website post-ASIC action, linking to ASIC's releases to ensure due process.

Naming prematurely undermines ASIC's authority and risks unfair damage, given AFCA's fallibility.

On 21 March 2025, AFCA erroneously issued a pre-expulsion notice to ASDAA Member ANDIKA Pty Ltd, threatening expulsion for a $19,137 invoice canceled in 2022, falsely claiming repeated contact attempts.

AFCA's apology on 3 April 2025 (CRef: 13-25-10810) admitted a 100% internal error due to outdated records and lack of engagement, noting notification to ASIC.

Had AFCA named ANDIKA publicly, the reputational harm to a smaller FSP would have been catastrophic highlighting Proposal 3's potential to amplify administrative errors.

Amend AFCA Rule A.7.6

Rule A.7.6's asymmetry, barring FSPs from defamation actions but not Complainants or Paid Representatives, amplifies risks.
In 2020, an ASDAA member faced a defamation threat from a Paid Representative for challenging frivolous AFCA complaints, showing how representatives exploit this imbalance.

Public naming could fuel defamatory social media campaigns, further harming smaller FSPs.

We recommend amending Rule A.7.6 to reciprocally prohibit defamation actions by all parties, including Complainants and Paid Representatives, with legal exceptions, and implementing pre-naming safeguards: a 14-day review, independent assessment, and compliance plans for smaller FSPs. These address Questions 5–6, ensuring transparency without disproportionate penalties.

Proposal 4: Legacy Complaints

ASDAA supports Proposal 4's removal of Section F, governing Legacy Complaints, which are obsolete since 30 June 2020 (Rule F.1.1). This administrative cleanup simplifies the Rules without affecting current complaints, aligning with AFCA's efficiency goals (Rule A.2.1(c)). We have no further concerns, as the change is non-material and enhances clarity for all stakeholders.

Conclusion

AFCA's proposals must balance consumer protection with fairness for smaller FSPs.

Proposal 1's overreach, offering false hope and unfair liability while ignoring human error as the scam driver, demands education-focused solutions, AUSTRAC collaboration, and liability limits to avoid mission creep and fee hikes.

Proposal 2's portal, verification duty, and Rule A.7.6 reform will curb abuse and ensure fairness.

Proposal 3's naming, evidenced by AFCA's 2025 error against ANDIKA, risks reputational harm and needs ASIC deferral and Rule A.7.6 reform.

Proposal 4 is uncontentious.

ASDAA urges AFCA to adopt these recommendations to ensure equitable, proportional dispute resolution, fostering trust across the financial services sector (Rule A.2.1).

ASDAA appreciates the opportunity to provide this Submission to AFCA on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Director of Communications, on (07) 5532 3930 or email brad@asdaa.com.au

Yours sincerely,

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