



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

20 November 2017

Head of Secretariat
AFCA Transition Team
Financial Services Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: afca@treasury.gov.au

Dear Sir/Madam,

Consultation Paper: Establishment of the Australian Financial Complaints Authority

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide the attached Submission in response to the Consultation Paper: *Establishment of the Australian Financial Complaints Authority* issued by the Australian Treasury on 3 November 2017.

Yours sincerely,

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

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AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

ACDBA SUBMISSION TO AUSTRALIAN TREASURY:

Establishment of the Australian Financial Complaints Authority

November 2017

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Introduction

The Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009, for the benefit of companies who collect, buy and/or sell debt - the members¹ of ACDBA represent the majority of the collection market in Australia. ACDBA is pleased to provide for consideration by the Transition Team this submission in response to the Consultation Paper: *Establishment of the Australian Financial Complaints Authority (Consultation Paper)*.

The purpose of the Consultation Paper issued by the Transition Team appointed by the Minister for Revenue and Financial Services (**the Minister**) is understood to be for the gathering of feedback from stakeholders to inform the Transition Team's advice to the Minister on certain matters including advice as to the conditions which should be imposed on authorisation of the Australian Financial Complaints Authority (**AFCA**).

Although the AFCA reform arguably lacks wide industry support for and endorsement of a "one stop shop" external dispute resolution scheme, ACDBA recognises it is critical for all stakeholders that the now well advanced reform agenda succeed. However, ACDBA respectfully submits that the ultimate success of AFCA will be highly dependent upon cornerstone provisions for the effective governance and ongoing & independent review of AFCA's operations. AFCA should not be operational until these matters are adequately addressed.

In this submission, ACDBA makes comments and provides responses to questions and matters detailed only in:

- Part 1 – Terms of Reference;
- Part 3 – Governance; and
- Part 4 – Funding.

Shared concerns

ACDBA has had the benefit of reading draft submissions on the Consultation Paper from Australian Finance Industry Association (AFIA), Australian Retail Credit Association (ARCA) and National Insurance Brokers Association (NIBA). All four industry associations (the Joint Associations) share common significant concerns in relation to AFCA's implementation. These shared significant concerns are summarised in the matrix in Appendix 2.

¹ Refer Appendix 1: Listing of members of Australian Collectors & Debt Buyers Association

Part 1 – Terms of Reference

The establishment of AFCA as a monopoly external dispute resolution scheme potentially creates risk for the members of the scheme with regard to the future behaviour of AFCA including its fee structure and its operational performance.

ACDBA identified in its earlier submissions² to the EDR reform process, various matters which should be carefully and appropriately addressed to ensure the fair, equitable, transparent and efficient workings of the proposed monopoly scheme.

Ongoing governance for and the effective regulation and review of AFCA are key to what ACDBA regards as essential cornerstone considerations for any approval by the Minister of an application to operate AFCA.

The proposed operation of AFCA is undoubtedly as a monopoly providing an essential service, namely external dispute resolution services to the financial services industry being entities holding an Australian Credit Licence and/or an Australian Financial Services Licence with the conditions of such licences mandating membership of AFCA.

Historically, organisations with a monopoly market advantage are characterised by the avoidance of governance founded upon principles of transparency and accountability and with the resultant consequences for their respective market being aberrations such as excessive and unreasonable pricing/fees and the absence of adequate and timely regulatory controls.

The Consultation Paper details³ the Transition Team “*will not develop AFCA’s terms of reference, funding or governance arrangements – these are matters that are the responsibility of the AFCA Board, subject to the legislation and any conditions imposed as part of the authorisation process*”.

AFCA developing its own arrangements for its terms of reference, funding and governance effectively amounts to a “blank canvas”. As many industry participants are presently quite anxious and concerned as to how AFCA will operate and impact upon industry, to provide assurance this is not a situation of blindly trusting AFCA to be fair, equitable and transparent in determining its own arrangements, the conditions of the Minister’s approval must include appropriate protections.

Such protections, we respectfully submit should include the following conditions and/or considerations:

I. AFCA to adopt and meet governance standards equivalent to what would apply for an equivalent sized ASX listed organisation⁴

Such standards are well known and importantly are a well understood governance framework aimed at helping organisations to set reasonable and appropriate governance structures and standards, accountability and transparency. These standards should apply to AFCA given its likely size, social and industry impact. If after consideration by AFCA, there are any specific standards which do not have application for AFCA, these should be explained with supporting reasons to ASIC for its approval.

² Submission to Ramsay Review: *Review of the financial system external dispute resolution framework* – October 2016; Response to Interim Report of Ramsay Review – 27 January 2017; Submission to Treasury: *Improving dispute resolution in the financial system* – 14 June 2017; Submission to Senate Economics Legislation Committee: *Inquiry into the Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Bill 2017* and Position Paper: *A Fair & Equitable AFCA* – September 2017 – all available at www.acdba.com

³ Consultation Paper, page 2

⁴ *Corporate Governance Principles and Recommendations*, 3rd Edition published by ASX Corporate Governance Council

II. The reviews of AFCA should be truly independent, both in practice and perception. (Issue 4)

This requirement noted at p12 of the Consultation Paper is a critical condition to ensure credibility for AFCA and its operations - this is particularly the case given its status as a monopoly scheme operator. Although intended to build and maintain public and industry confidence in the scheme operator, such confidence potentially will be undermined where the scheme operator commissions the independent reviews itself and determines the terms of reference for the reviews.

An alternative and improved condition would be to require AFCA to provide complete and irrevocable authority to the scheme's independent assessor, who should be appointed by the Minister, to act as its agent to commission the independent reviews.

III. AFCA to have an independent assessor, appointed by the Minister. (Issue 5)

Q12 The assessor's charter should be developed by way of a separate consultative project and could be detailed by ASIC as a Regulatory Guide.

Q13 The Minister in making the appointment, effectively will ensure the appointment of the independent assessor is truly independent of AFCA and this should facilitate confidence with the scheme's stakeholders.

Q14 The independent assessor should have guaranteed access to the AFCA Board.

Q15 In the event of serious misconduct or a systemic issue, the independent assessor should be required to refer those matters to ASIC for appropriate action given its oversight responsibilities.

Q16 ASIC should mediate any disagreement between the independent assessor and AFCA.

Q17 A review of the functions and operations of the independent assessor should be undertaken in the first instance 3 years from the date of appointment and thereafter at least once every 5 years.

Part 2 – Superannuation

No comment.

Part 3 – Governance

As noted earlier, ACDBA submits an appropriate key condition of approval is that AFCA adopt and meet governance standards equivalent to what would apply for an equivalent sized ASX listed organisation.

With respect to Issue 11, it will be important for the AFCA Board to be seen by all stakeholders (and specifically by the financial service sector which will fund the operations of AFCA) as including genuine and appropriate industry representation.

Whether a director represents consumer or industry interests, the underlying key principle for appointment is the need for independence and the ability to put the interests of AFCA first and not to act as advocates and representatives of sectional interests. Equally important for each director's appointment is that the appointee understand and be capable of diligently discharging the role, its duties and meeting its responsibilities.

Part 4 – Funding

With respect to Issue 12 and the requirement that the AFCA model “will seek to minimise direct cross-subsidisation” we submit this requirement does not go far enough and the model should be required to confirm that there will be no cross sectoral subsidisation and to detail how this will be achieved.

Funding arrangements must accommodate the significant differences in how complaints are considered and determined. There are differences beyond just a simple breakdown of superannuation and non-superannuation complaints – there should be arrangements in place for appropriate and fair scale fees to apply for complaints from each of the financial services sectors including for example complaints relating to banking, insurance, investment products and debt purchasing.

There will be significant and presumably one-off costs for the establishment of AFCA, its systems and processes. Given the need for the reform creating AFCA and disbanding the roles of CIO and FOS are questioned by many finance service providers, it seems inappropriate and unreasonable for any establishment costs of AFCA to be borne by industry members and accordingly the interim funding arrangements should be carefully scrutinised to ensure the funding arrangements are for the handling and resolution of complaints received from consumers and not to recover the investment to create the “business” of AFCA.

Similarly, it is appropriate to also note the curtailment of business for both CIO and FOS will necessarily give rise to costs relating to their various capital investments ending prematurely and possibly might also be factored into the fees which those schemes charge to their members in the remaining period of operation.

Industry did not seek the EDR reform. The reform process was initiated by Government. Accordingly, the investment of establishment/set up costs for AFCA should not be borne by industry and must be quarantined from all calculations for AFCA’s initial and ongoing funding arrangements.

Part 5 – Other Issues

No comment.

Contact

Enquiries in respect to this Submission should be directed in the first instance to:

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APPENDIX 1 - Listing of Members of Australian Debt Buyers & Collectors Association

- ACM Group Ltd
- Australian Receivables Ltd
- Axess Australia Pty Ltd
- Baycorp (Aust) Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Credit Four Pty Ltd
- Credit Solutions Pty Ltd
- Dun & Bradstreet (Australia) Pty Ltd
- National Credit Management Limited
- Panthera Finance Pty Ltd
- Prushka Fast Debt Recovery
- Professional Recovery Services Pty Ltd
- Shield Mercantile Pty Ltd

APPENDIX 2 - Joint Associations shared significant concerns with AFCA Implementation

Issue	ACDBA	AFIA	ARCA	NIBA
<p>1. Truly Independent Reviews</p> <p>True independence requires that reviews be independent in appearance and actuality. True independence requires that an entity separate from, and not subordinate to, AFCA commission the independent reviews of AFCA.</p> <p>The Joint Associations recommend that the terms of reference require AFCA to grant full and irrevocable authority to the independent assessor appointed by the Minister as its agent to commission independent reviews on its behalf.</p>	✓	✓	✓	✓
<p>2. Truly Independent Assessor</p> <p>True independence requires that the assessor be independent in appearance and actuality. True independence requires that an entity separate from, and not subordinate to, AFCA appoint the independent assessor.</p> <p>The Joint Associations recommend that the Minister appoint the independent assessor and that its charter be established via a separate consultation process with relevant stakeholders including industry.</p>	✓	✓	✓	✓
<p>3. Best Practice Governance</p> <p>AFCA will be a large institution with likely revenue of between \$75 to \$100 million per annum.</p> <p>The Joint Associations recommend that the Minister require AFCA as a condition of its appointment to adhere to the best practice governance requirements of an equivalent ASX-listed organisation and that any departures from those standards be publicly stated with supporting reasons and approved by ASIC.</p>	✓	✓	✓	✓
<p>4. Genuine Industry Representation on the Board</p> <p>Compliance with best practice governance principles requires all directors upon appointment to the Board to act in the best interests of direct stakeholders, both consumers and members. Members operate in a diverse range of industry sub-sectors.</p> <p>The Joint Associations recommend that all directors be chosen based on competence and knowledge and that industry-based directors be persons with current or near current industry experience in the types of businesses operated by members of the scheme.</p>	✓	✓	✓	✓