



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

20 June 2019

Mr Mike D'Argaville
Australian Financial Complaints Authority

By email: submissions@afca.org.au

Dear Mr D'Argaville

SUBMISSION IN RESPONSE TO AFCA RULES CHANGE CONSULTATION

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide the attached Submission in response to the Consultation Paper: *AFCA Rules Change Consultation* issued by Australian Financial Complaints Authority (AFCA) on 31 May 2019.

If any additional information is required in respect to this Submission please don't hesitate to contact the writer.

Yours sincerely,

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

Alan Harries

CEO

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AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

ACDBA SUBMISSION TO AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY:

AFCA Rules Change Consultation

June 2019

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 members of ACDBA (refer Appendix 1) represent the majority of the collection market in Australia.

Our members which purchase debt, each hold an Australian Credit Licence and are members of the Australian Financial Complaints Authority (AFCA).

ACDBA is pleased to provide for AFCA's consideration this submission in response to the Consultation Paper: AFCA Rules Change Consultation (Consultation Paper). The scope of the Consultation Paper is limited to a proposal by AFCA to amend its Rule A.14.5 so as to allow AFCA to identify financial firms in published determinations.

Response

Before responding to the three specific questions raised in the Consultation Paper, it is appropriate to make some observations around the proposed Rules amendment:

The Consultation Paper is brief and fails to provide appropriate background and reasoning for the proposed Rules amendment. It would be helpful to stakeholders to be able to review a clear statement from AFCA on the purpose of the change and articulation of the evidence suggesting the present approach is problematic and requires amendment.

It is appropriate to acknowledge the Ramsay Review undertook a thorough investigation and consultation on EDR and made a number of recommendations relating to the rules which should apply to a consolidated single EDR scheme. We note the rules for both predecessor industry ombudsman schemes (FOS and CIO) provided for the publication of only de-identified determinations and the Ramsay Review process did not identify the need for any change in this area.

Given the very comprehensive Ramsay Review process, it is concerning that although AFCA has not even been operating for 12 months, it is without any proper reasoning or evidence advocating a rule change to allow it to identify financial firms in published determinations.

In the Consultation Paper, it is suggested that the change is part of AFCA's commitment to transparency. Whilst accepting the publication of determinations is an accountability measure for the scheme, the naming of financial firms we submit would not in any way enhance accountability of the scheme.

We submit the proposed naming of AFCA members in determinations will not make the scheme more transparent.

Measures which would promote transparency around the accountability of the scheme would include AFCA publishing such matters as:

- Details of the feedback and complaints it receives about its own conduct and how these are resolved; and
- Details of any complaints escalated to the Independent Assessor, including the Assessor's determination in respect to each such complaint.

It is not at all clear from the Consultation Paper that the proposed naming AFCA members in individual determinations will add anything to the current publication of complaint statistics for each member.

The publication of complaint statistics, we submit provides a fairer and more balanced view of the standards and culture within an AFCA member's business than the proposed publication of identified individual determinations. The statistics allow consumers to assess the incidence of complaints against the size of the organisation so as to provide a more complete picture for comparative purposes.

The statistics also provide an indication of a member's approach to dealing with complaints, by identifying those complaints resolved by way of agreement.

We are concerned that in many ways, the proposed publication of identified individual determinations may create a misleading impression of an individual member's overall approach, culture and system of internal control.

Determinations will only present material relating to a single interaction without placing what may be an isolated incident in the context of the size of the organisation, its overall record and compliance approach. A determination will not show the efforts the AFCA member has taken to resolve the matter in favour of the complainant and any consequential action taken by the member to prevent recurrence.

An organisation may make an error which produces a poor consumer outcome. A good organisation will rectify the problem and promptly compensate the customer. We submit the proposed publication of identified individual determinations without this additional context will unfairly damage the reputation of the named organisation and will only present a very partial picture of the member firm to the public.

Specifically, debt buyers are likely to be the only group of financial firms named by AFCA in an identified determination where the alleged issue most often arises at the hands of another party (being the original credit provider) – in such circumstances, given the proposed identification is for reason of transparency around what consumers might expect if dealing with a particular firm, such a desired outcome would not necessarily be achieved or be wholly relevant or informative as to what the consumer might expect when dealing with a member debt buyer.

Further, it is possible the proposed publication of determinations identifying the financial firm actually might be counterproductive to the objective of promoting improved standards within AFCA members - if a member's business can be damaged by the publication of a single determination without regard to the member's overall approach and record, there is less incentive for members to improve standards.

Our members report their experience has been that a significant proportion of their AFCA disputes have centred on relatively minor and non-material matters relating to misunderstandings or minor clerical errors.

Changing the Rules to allow the public naming of a financial firm in circumstances where the basis of a complaint was relatively minor would be inappropriate and potentially could contribute to the further undermining of trust in the financial services industry at a time when industry and regulators are genuinely working towards the restoration of consumer trust and confidence.

An example of where the publication of the identity of a financial firm in a determination would be inappropriate is provided by an ACDBA member which responded to a complaint lodged with AFCA where some 10 issues were alleged by the consumer.

The member in responding to the complaint established and conceded that the consumer's identification of a minor clerical error regarding a fee was correct and agreed to make an appropriate and immediate account adjustment but did not agree with the basis of the other 9 allegations raised. The matter was subsequently dealt with by a determination against the member despite its concession to correct the fee and in circumstances where the other 9 issues were dismissed in the determination.

Identifying this complaint as a determination against the member when it corrected the minor clerical error relating to the fee in the early stage of the complaint and where all other allegations by the consumer were found to be without foundation, would be inappropriate.

We submit the proposed publication of identified individual determinations is beyond the scope of AFCA as articulated in the relevant legislation and explanatory memorandum. The purpose of AFCA is noted as being to provide "fast and fair resolution of financial complaints in a way which is binding on Financial Firms" (see Explanatory Memorandum at 1.4).

The proposed publication of identified individual determinations is entirely beyond the scope of such purpose and with respect, is a regulatory function which ought to be subject to more rigorous accountability.

The named identification of conduct by a financial firm should be reserved to the relevant regulator, being the Australian Securities & Investments Commission (ASIC).

ASIC as the regulator is subject to greater accountability measures than AFCA, specifically by way of government oversight, Freedom of Information scrutiny and importantly for any aggrieved financial firms the option to seek review and redress through the government ombudsman and the Administrative Appeals Tribunal. There are no such accountability measures in place for AFCA.

The proposed rule change to allow for the publication of identified individual determinations is inconsistent with the general requirements for AFCA's approval under the relevant Act.

The proposed measure we submit will do nothing to enhance the Accessibility, Independence, Accountability, Efficiency and Effectiveness of the scheme and will be contrary to Fairness.

The proposed publication of identified individual determinations is unfair to AFCA members, for a number of reasons including:

- The publication of an individual complaint can have a significant impact on the reputation and financial sustainability of a member;
- Only one party to the complaint is named;
- Evidence and argument within AFCA processes is not tested in the same way as a transparent and robust court process and so conclusions are potentially more likely to be unsound;
- Determinations don't provide a complete picture of the member's efforts to resolve the complaint and deal with any issues identified;
- Larger members are more likely to receive a determination simply because they have a much larger number of consumer interactions; and
- Members have no right of appeal for an erroneous determination and there is no mechanism to restore any adverse reputational impacts.

For the above reasons ACDBA is not in favour of the proposed publication by AFCA of identified individual determinations.

The consultation questions

1. Does the proposed change satisfy AFCA's transparency requirements?

No, we are not convinced the proposed amendment improves AFCA's transparency principally for the reason that the identification of a financial firm in a published determination will not necessarily provide useful and reliable information for any stakeholder including consumers.

A compelling and irrefutable argument against the identification of a financial firm in a published determination is the scheme principle that members have no right of appeal for an AFCA determination.

In this Submission, we have detailed observations challenging the utility and objective of AFCA introducing the proposed change to the Rules. Additionally, we identified some alternative measures which AFCA could adopt to better meet its transparency objectives.

2. Do the Operational Guidelines adequately explain how the Rules as amended will apply?

Yes, although as noted earlier we do not support the need for or implementation of the proposed amendment to identify financial firms in published determinations.

3. Do you have any other comments about the proposed change?

No, we have nothing further to add and are happy to discuss any aspect of this Submission.

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 Collectors & Debt Buyers Association

- Axxess 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
- illion Australia Pty Ltd
- PF Australia Pty Ltd
- Prushka Fast Debt Recovery Pty Ltd
- Shield Mercantile Pty Ltd