



AUSTRALIAN COLLECTORS &  
DEBT BUYERS ASSOCIATION

20 April 2021

Ms Shannyn Carty  
Senior Legal Research Analyst  
Deputy Chief Ombudman's Group  
Australian Financial Complaints Authority

By email: [submissions@afca.org.au](mailto:submissions@afca.org.au)

Dear Ms Carty,

**Submission in response to Consultation Paper: AFCA's Engagement Charter**

The Australian Collectors & Debt Buyers Association is pleased to provide the attached Submission in response to AFCA's above consultation.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely

**AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION**

A handwritten signature in black ink, appearing to read 'Alan Harries', written over a circular stamp or seal.

Alan Harries  
CEO  
Email: [akh@acdba.com](mailto:akh@acdba.com)



AUSTRALIAN COLLECTORS &  
DEBT BUYERS ASSOCIATION

***Submission to  
Australian Financial Complaints Authority:  
AFCA's Engagement Charter***

**April 2021**

## Introduction

Australian Collectors & Debt Buyers Association (ACDBA) welcomes this opportunity to respond to the Consultation Paper issued by the Australian Financial Complaints Authority (AFCA) on 24 March 2021, in respect to AFCA's Engagement Charter (Charter).

Established in 2009 for the benefit of companies who collect, buy and/or sell debt - ACDBA's members (refer Appendix 1) represent the majority of the collection market in Australia.

The core business of our members within the financial services industry is in the credit impaired consumer segment, whether as collectors or debt purchasers, working with consumers who for various reasons, have found themselves in default of their credit obligations.

ACDBA members purchasing debt, each hold an Australian Credit Licence and are members of AFCA. Our members do not provide financial advice.

We welcome the development of the Charter - the need for its adoption by AFCA is understood and appreciated. Our members support the concept of "zero tolerance for behaviour or conduct that causes harm to another".

The Charter in seeking to hold complaint participants to reasonable standards of behaviour is entirely prefaced upon AFCA as a values-based organisation always delivering its services in accordance with its statement<sup>1</sup> that:

*"We are fair and independent to ensure all parties are properly heard. We are honest, respectful and treat everyone with dignity. We are transparent and accountable for what we do. We are proactive and customer-focused to be accessible to diverse audiences. AFCA operates the complaint resolution scheme in line with our published and practiced values."*

To be successful the Charter requires AFCA to be aware of and responsive to deficiencies in its service delivery, directly impacting adversely upon complaint participants. In our view, the Charter does not, in its current form, sufficiently focus on achieving efficiencies for the AFCA scheme.

As an industry pays scheme, AFCA must serve the needs of both industry users and complainants, by providing predictable decisions and cost efficiencies to promote the wide availability of financial services at the lowest prices.

ACDBA members identify the costs of EDR complaints have increased significantly since the commencement of the AFCA scheme. They consider this is largely due to a failure by AFCA to leverage its existing Rules and Operational Guidelines so as to prevent the escalation of complaints to later and more expensive stages of the AFCA process, even in given circumstances where the fairest outcome would be to close the complaint at an earlier, less expensive stage.

As financial firms and parties to complaints lodged with AFCA, our members understand that from time to time, the frustrations of the AFCA complaints resolution process can seem overwhelming for all participants. For financial firms in particular, frustrations are experienced due to process related issues including but not limited to:

- failure by AFCA to make use of their discretionary rules to promptly resolve complaints at an early and cost effective stage
- perceptions of a lack of fairness for all parties
- excessive time delays
- requests to provide documentation already provided

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<sup>1</sup> Consultation paper: *AFCA's Engagement Charter*, March 2021, p3

- the inexperience of some AFCA staff
- non-responses to concerns raised that a complaint is outside AFCA's jurisdiction
- the escalation of complaints where the complainant and/or representative is not responding to communication from the financial firm or AFCA

Presumably, complainants will be frustrated by similar issues.

AFCA's Rules and Operational Guidelines provide a number of tools<sup>2</sup> to manage scheme efficiencies and the escalation of disputes, however feedback from our members point to a significant reluctance by AFCA staff to rely upon those available rules, to the detriment of fair and efficient outcomes.

This current failure to leverage the rules presents a significant and unreasonable cost impost on industry and fails to encourage the acceptance by complainants of reasonable offers made by financial firms to resolve the real issues in dispute.

The Charter should promote early resolution of complaints by strongly encouraging AFCA staff to actively engage with complainants early in the complaints process to manage complainant expectations, to promote productive engagement between the parties so as to focus on resolution, rather than escalation of complaints.

In adopting the Charter, AFCA must be vigilant to the performance of its systems and people, ensuring genuine opportunities are afforded to complaint participants to explain any issues giving rise to frustrations and then seeking to resolve those issues whilst maintaining its aspirational standards as a values-based organisation.

## Responses to consultation questions

### 1. Are there any changes that may improve the Charter's scope, content or framework or additional matters that should be addressed?

Here are some changes we suggest would improve the Charter, namely:

An important starting point is to ensure all aspects of the Charter clearly apply to all parties to a complaint including AFCA and its people, as the document is inconsistent as to who is bound by various Charter obligations.

For example, under the heading "**All parties are expected to cooperate**" on page 2 the following sentence appears:

*"Parties are expected to engage with each other and AFCA in a way that is:"*

Whilst the intention appears to be to include AFCA and its people in the standards of behaviour, the wording is potentially ambiguous as to whether AFCA is always included.

One option would be for the Charter to include in the section headed "**There are expectations on all of us**" at the top of page 2, a clear definition of "*Parties*" as including AFCA, financial firms, commercial representatives of individuals and small businesses, individuals and small businesses and their informal representatives.

Alternatively, the relevant sentence could be reworded to more explicitly include AFCA as follows:

*"Parties including AFCA are expected to engage with each other in a way that is:"*

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<sup>2</sup> Complaint Resolution Scheme Rules: Rule A.8.3, Rule A.9.5, Rule C.2.1, Rule C.2.2

Under the heading ***“What you can expect from us”*** on page 2:

The first paragraph is aspirational as to the intent of AFCA's performance however its actual outcomes are reliant not only on AFCA's rules, procedures and processes but also upon the attitudes, behaviours and performance of the individuals working for AFCA.

We suggest the opening of the second paragraph would be enhanced and hold AFCA more accountable to the parties to a complaint by replacing:

*“We promise to demonstrate our values by:”*

*with*

*“All parties can expect us to demonstrate our values by our promises of:”*

Noting our earlier comments of frustrations that can at times be encountered by financial firms, we submit that in addition to the list of values AFCA proposes it will demonstrate, AFCA should be fair and consistent in its use of, as well as transparent in reporting the use of available discretionary rules to finalise complaints, in particular to:

- use its discretion under Rule A.8.3 to discontinue a complaint where the complainant has suffered no loss (or has been appropriately compensated for such loss and AFCA would not award any further amount)
- use its discretion under Rule A.9.5 to close off a complaint in circumstances where a complainant is non-responsive

Under the heading ***“Expectations for complainants”*** on page 4 in addition to the behaviour listed, we suggest the need to more fully detail the obligations on complainants by amending as highlighted below by underlining:

- *“co-operate with our investigations including providing within the set time frames information and evidence requested”*
- *“actively participate in the complaint resolution process including genuinely considering the possible remedies offered by a financial firm”*
- *“not contribute to delays in resolving a complaint including by unreasonably rejecting fair and appropriate remedies offered by a financial firm”*

Under the heading ***“Expectations for representatives”*** on page 5 in addition to the behaviour listed, we suggest the need to more fully detail the obligations on representatives by amending as highlighted below by underlining:

- *“support the reasonable negotiation of complaints including encouraging complainants to genuinely consider the possible remedies offered by a financial firm”*
- *“co-operate with our investigations including facilitating provision and exchange of information and evidence within the set time frames”*
- *“actively participate in the complaint resolution process and avoid unnecessary delays including encouraging complainants to genuinely consider the possible remedies offered by a financial firm”*
- *“not contribute to delays in resolving a complaint including by encouraging complainants to otherwise reject fair and appropriate remedies offered by a financial firm”*

Under the heading ***“What we will do if you are not meeting the Charter”*** on page 6 we submit the following sentence be deleted

*“We may stop engaging with a party in exceptional circumstances.”*

and replaced with

*“We may stop engaging with a party in certain circumstances.”*

The reason for this change is for AFCA to commit to complaint participants that it will use and apply available discretionary rules to close complaints where appropriate.

## **2. What if any additional guidance or documentation should AFCA publish in support of the Charter?**

To support the Charter, we recommend AFCA issue an approach document setting out the steps AFCA will take in assessing if a complaint is frivolous, vexatious or without merit. The document should cite actual examples of complaints illustrating how AFCA used its discretion under the rules and detailing its reasoning.

Such guidance would help to ensure all participants including AFCA staff will have an available reference setting out circumstances and reasons for which AFCA will or will not exercise its discretion to exclude complaints.

## **3. Will the Charter have any impact on the way in which your organisation engages with AFCA or impose any unintended burden?**

We consider that the Charter will be positive in supporting fairer and more cost effective outcomes, promoting the availability of financial products at the least cost and supporting AFCA in its journey to becoming a world-class ombudsman scheme, on the proviso AFCA concurrently and consistently maintains and achieves its aspirational standards as a values-based organisation.

## **4. How should AFCA engage with a party that does not meet the conduct standards under the Charter?**

AFCA should more consistently apply its existing rules including those that are discretionary so as to support the delivery of fair, efficient and transparent outcomes for all parties to a complaint.

Acknowledging it is not appropriate for AFCA to exercise discretion under the rules to exclude a party lightly, it must nevertheless ensure that those rules are applied in circumstances where exclusion is appropriate and would lead to the fairest outcome for all parties.

## **5. What reporting, if any, do you consider AFCA should undertake in relation to the operation of the Charter?**

AFCA should regularly report to stakeholders on at least a twice per year basis, the number of complaints which are adversely dealt with as a result of a failure by any party to meet Charter expectations and this should include statistics of complaints shut down for reasons of:

- being frivolous, vexatious or without merit – Rule C.2.2(d);
- failure by a party to engage within set time frames to a complaint – Rule A.9.5;

- discontinuation of a complaint where the complainant suffered no loss or was appropriately compensated for such loss and AFCA would not have awarded any further amount – Rule A.8.3; and
- where a reasonable offer has been made to the complainant and AFCA would not award any further amount – Rule C.2.1.

## Contact

For any enquiry in relation to this Submission, please contact:

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## Appendix 1 - Members of Australian Collectors & Debt Buyers Association

- Axxess Australia Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- CollectAU Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Lyndon Peak Pty Ltd t/as Access Mercantile Services
- PF Australia Pty Ltd
- PRA Australia Pty Ltd
- Prushka Fast Debt Recovery Pty Ltd
- Shield Mercantile Pty Ltd