

Attachment 2 – Summary list of questions for stakeholders

Proposals and questions set out in AFCA’s Rules consultation paper	Consultation paper reference
<p>Proposal 1: AFCA proposes to amend its Rules to define the term “Paid Representative” following recent law reform, and to allow AFCA to exercise discretion not to consider a complaint in certain circumstances due to inappropriate conduct. The proposed amendments would also provide AFCA discretion to exclude a Paid Representative due to their inappropriate conduct for a period of up to 12 months.</p> <p>Additional amendments will be made to the Operational Guidelines to explain how the discretion will be exercised and to provide examples of its use.</p> <p>These changes are designed to give effect to Recommendation 4 of the Treasury Review Report regarding poor conduct by Paid Representatives.</p>	Page 6
<p>Question 1: Do you think that the proposed Rules amendments in relation to Paid Representatives appropriately respond to Recommendation 4?</p>	Page 10
<p>Proposal 2: AFCA proposes that its Rules provide a more comprehensive ability to address unreasonable Complainant conduct.</p>	Page 10
<p>Question 2: Do you think that the proposed new provisions in relation to Complainant conduct are appropriately drafted and achieve the right balance in their application?</p>	Page 13
<p>Proposal 3: AFCA proposes to amend Rule A.8.3b) and to introduce a new Rule A.8.3d) to provide AFCA with the discretion to close a complaint if an appropriate offer of settlement has been made but has not been accepted by a Complainant.</p>	Page 13
<p>Question 3: Do you think that the proposed change to Rule A.8.3 is appropriately drafted and will assist in delivering early and fair resolution of complaints?</p>	Page 14
<p>Proposal 4: AFCA proposes to amend Rule C.2.2 to include previously settled disputes as a ground for AFCA to consider in the exercise of its discretion to exclude a complaint.</p>	Page 15

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<p>Question 4: Do you think that the proposed new Rule C.2.2g) and the Operational Guidelines discussion of settlement agreements is appropriately drafted?</p>	Page 16
<p>Proposal 5: AFCA proposes to clarify how its existing discretion under Rule C.2.2j) to exclude complaints in respect of wholesale clients will be applied as regards sophisticated or professional investors. The changes are to the Operational Guidelines and give effect to, Review Recommendation 6.</p>	Page 16
<p>Question 5: Do you think that the proposed amendment to the Operational Guidelines appropriately responds to the Review Recommendation 6?</p>	Page 16
<p>Proposal 6: The Operational Guidelines regarding the Forward Looking Review Mechanism will be amended to enhance its visibility, accessibility and independence. The Operational Guidelines changes will:</p> <ul style="list-style-type: none"> • Remove the requirement that external legal advice showing an error of law must accompany the review request • Provide more guidance about how to apply for a review • Outline the stakeholder consultation model AFCA will adopt to assess whether there are significant issues that warrant review 	Page 17
<p>Question 6: Are the proposed changes to the Operational Guidelines appropriately drafted and in keeping with Recommendation 9 of the Review Report?</p>	Page 17
<p>Proposal 7: AFCA proposes to replace Rule A.15.4 with A.15.3b), to clearly specify that, if a Complainant does not accept a Determination made by AFCA, neither the Complainant nor the Financial Firm is bound by the Determination.</p>	Page 18
<p>Question 7: Do you think that proposed new Rule A.15.3b) is appropriately worded and provides clarity about the effect of a determination not being accepted by a Complainant?</p>	Page 18
<p>Proposal 8: AFCA proposes to introduce a new Rule A14.6 to govern when a Determination may be re-issued because of an accidental slip or omission. This change mirrors the current wording with what is already in AFCA's Operational Guidelines.</p>	Page 18

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<p>Question 8: Do you think the Rules wording is appropriately drafted and provides clearer guidance and transparency about the existing slip rule?</p>	Page 19
<p>Proposal 9: Rule D.4 sets out the monetary limits (compensation caps and monetary restrictions on AFCA's jurisdiction) for complaints other than Superannuation Complaints. The existing wording around monetary limits in Rule D.4.1 and the heading in the table are inconsistent in the language used.</p> <p>AFCA proposes to amend Rule D.4.1 to remove this inconsistency and align the table content with Rule D.4. This means that both the Rule and the table will state that compensation amount limits apply per claim.</p>	Page 19
<p>Question 9: Are there other areas in the AFCA Rules that you consider require similar administrative or minor changes?</p>	Page 20
<p>Proposal 10: AFCA proposes to amend Rule A.8 to include details of the objection process that is available to a Complainant where AFCA decides under Rule A.8 not to continue to consider their complaint. Currently this is only outlined in Rules A.4.5 and A.4.6</p>	Page 20
<p>Question 10: Do you think that the proposed Rules A.8.5 and A.8.6 are appropriately drafted and replicate the existing provisions under A.4.5 and A.4.6?</p>	Page 21
<p>Proposal 11: AFCA proposes to amend the Operational Guidelines to include examples of banking and finance complaints or small business complaints that might be decided by an AFCA Panel.</p>	Page 22
<p>Question 11: Are there additional assessment criteria that AFCA should consider adopting to meet the stated objective?</p>	Page 22
<p>Proposal 12: AFCA proposes to amend the Schedule E definition of "Financial Service" to include debt management assistance and credit reporting assistance.</p>	Page 22
<p>Proposal 13: AFCA proposes to amend Rule A.20.1 to specify that AFCA's annual public reporting must meet AFCA's obligations to regulators.</p>	Page 23