

# AFCA Rules Change Consultation

31 May 2019

# Contents

<b>Overview</b> .....	<b>1</b>
<b>Background</b> .....	<b>1</b>
<b>The Rules change</b> .....	<b>1</b>
Change to Rule A.14.5.....	1
Operational Guidelines .....	1
<b>The consultation</b> .....	<b>2</b>
Scope of the consultation .....	2
Summary of consultation questions.....	2
The consultation process.....	2
How to make a submission.....	2
<b>Appendix: The proposed Rules change</b> .....	<b>3</b>
A.14 Decision making approach .....	3



## Overview

As outlined in the [April 2019 edition of the AFCA News](#), AFCA is committed to being open, transparent and accountable to the public. As part of this, AFCA proposes among other transparency measures to identify financial firms in our published decisions.

We have drafted changes to Rule A.14.5 that will enable us to identify financial firms in published determinations. This will apply to determinations issued after the changes take effect.

## Background

AFCA Limited operates the AFCA scheme. It is authorised to do this by the responsible Minister, and must meet the requirements of the Corporations Act, the authorisation conditions laid down by the Minister, and regulatory requirements issued by ASIC.

As part of its authorisation conditions AFCA is required to be open, transparent and accountable to the public. As explained in the 10 April 2019 edition of the AFCA News, AFCA proposes to introduce a range of transparency measures to augment those already in place.

One of these measures is to identify financial firms in our published decisions.

A range of other industry ombudsman schemes already do this, including AFCA's UK equivalent, the Financial Ombudsman Service (UK), and schemes such as the Energy and Water Ombudsman Queensland.

## The Rules change

### Change to Rule A.14.5

Currently, Rule A.14.5 requires AFCA to publish Determinations in a form that does not identify any of the parties. The proposed change would enable AFCA to identify the financial firm but not other parties.

A draft of the proposed change is set out in the Appendix at the end of this consultation paper.

### Operational Guidelines

AFCA's Operational Guidelines explain how AFCA interprets and applies its Rules. In the interests of transparency, AFCA has also drafted additional information to be included in the Operational Guidelines, explaining how AFCA intends to interpret and

apply the proposed Rules change. The new draft sections can be found on our [consultation webpage](#).

## The consultation

### Scope of the consultation

AFCA seeks the views of stakeholders on the proposed Rules change. The consultation is limited to this proposed change.

### Summary of consultation questions

- 1 Does the proposed change satisfy AFCA's transparency requirements?
- 2 Do the Operational Guidelines adequately explain how the Rules as amended will apply?
- 3 Do you have any other comments about the proposed change?

### The consultation process

We invite individual written submissions on the proposed Rules change (see below for how to make a submission).

All submissions will be considered before the Rules, as approved by the AFCA Board, are submitted to ASIC for review and approval.

Once finalised, the amended Rule A.9.5 will apply to determinations issued after the changes take effect.

### How to make a submission

Submissions can be emailed to [submissions@afca.org.au](mailto:submissions@afca.org.au) before close of business Thursday 20 June 2019. It will not be possible to extend this deadline for late submissions.

For more information refer to the AFCA website at [www.afca.org.au/consultation](http://www.afca.org.au/consultation) or contact Mike D'Argaville on 03 8623 2004 or [mdargaville@afca.org.au](mailto:mdargaville@afca.org.au).

## Appendix: The proposed Rules change

AFCA proposes to amend Rule A.14.5 to allow AFCA to name financial firms in published determinations.

This change will apply to all determinations issued after the changes take effect, whether the complaint was received before, on or after that date.

The proposed amendment is to Rule A.14.5, but the whole of Rule A.14 (including the proposed amendment) has been set out below, to give the context to the amendment.

### A.14 Decision making approach

- A.14.1 When determining a Superannuation Complaint, the AFCA Decision Maker:
- a) may refer a question of law to the Federal Court in accordance with section 1054C of the Corporations Act; and
  - b) must apply the approach specified in section 1055 of the Corporations Act.
- A.14.2 When determining any other complaint, the AFCA Decision Maker must do what the AFCA Decision Maker considers is fair in all the circumstances having regard to:
- a) legal principles,
  - b) applicable industry codes or guidance,
  - c) good industry practice and
  - d) previous relevant Determinations of AFCA or Predecessor Schemes.
- A.14.3 An AFCA Decision Maker is not bound by rules of evidence or previous AFCA or Predecessor Scheme decisions.
- A.14.4 A Determination must be in writing with reasons. Any remedy must be within AFCA's jurisdiction as set out in Section D.
- A.14.5 AFCA will publish its Determinations in a form which identifies the financial firm or firms but does not identify the other parties to the complaint. A Determination will not be published if to do so would risk identifying any party other than the financial firm or firms, or if there are other compelling reasons not to publish it.