



Finance Brokers Association of Australasia Limited  
(07) 3847 8119 | [fbaa.com.au](http://fbaa.com.au)  
Level 1, 1 Miles Platting Road, Eight Mile Plains QLD 4113  
PO Box 4792, Eight Mile Plains QLD 4113  
ABN: 22 094 784 040

Executive General Manager Jurisdiction  
Australian Financial Complaints Authority  
GPO Box 3 Melbourne Vic 3001

Email: [consultation@afca.org.au](mailto:consultation@afca.org.au)

13 June 2025

### **AFCA Rules – Proposed amendments**

The FBAA welcomes the opportunity to make a short submission to this consultation process.

The FBAA supports Proposals 1, 2 and 4 relating to Scams, Paid Representatives and Legacy Complaints.

We hold some reservations about the need for the reforms in Proposal 3 which is for AFCA to name financial firms that fail to comply with an AFCA determination. As the paper indicates, there are already serious ramifications for financial firms that do not meet the terms of any AFCA determination. Financial firms are reported to ASIC, may be expelled from AFCA and consequently face losing their licence where such is held on condition of remaining a member of AFCA. They may also be subject to further regulatory action from ASIC.

AFCA has enormous power to operate unfettered. Perhaps more than almost any other Authority in Australia. AFCA is not constrained by law, it is not bound by the rules of evidence and creates no precedent. Decisions by AFCA cannot be reviewed or appealed. Decision makers within AFCA can operate on any terms they deem appropriate and can reach any decision they deem fair irrespective of whether that decision is based on evidence or may be inconsistent with previously decided matters. AFCA is unique in this operating model.

AFCA having to report financial firms to another authority (ASIC) for that authority to then consider what further action is necessary provides at least some measure of external moderation to a process which is otherwise autocratic. The consultation paper does not explain how AFCA naming certain financial firms would improve transparency or fairness.

It is understood that public naming will usually cause reputational damage to the named party. A financial firm subjected to an AFCA determination that it cannot or will not comply with is likely to be ruined in any event. It may well be that in AFCA's eyes there can never be a justification for failing to comply with a determination but there is still some difference between wilful refusal and other reasons. Simply publishing a list of "offenders" offers no context to the circumstances behind a financial firm's failure to comply.

Undoubtedly there are financial firms subject to AFCA determinations that do not comply because they have no intention to comply or do not intend to continue to trade. There are also financial firms that feel they are subjected to grossly unfair determinations who have no power to respond.

We note the consultation paper identified 64 financial firms reported to ASIC between April 24 and March 25 for failing or refusing to give effect to a determination. We do not have any information about whether this is the total number of offending financial firms in that period or only a selection that were reported to ASIC. It is hard to believe there are financial firms that fail to comply with an AFCA determination but who are allowed to continue to operate without facing expulsion from AFCA or regulatory action from ASIC. Is the number even material? It is difficult to conceive of a situation where a financial firm can disregard an AFCA determination but continue to trade.

### **Timing of publication**

Another issue that arises with the proposal is the timing as to when any name would be published. What would be the trigger?

### **Discretion**

The proposed wording of the new rule A.11.6 gives AFCA discretion on when, who and how to publicise a financial firm's failure to comply with a determination. Why would it be necessary for AFCA to have discretion and how would this be exercised?

On balance we do not support this proposal. We believe it is unnecessary and potentially unfair. There are already sufficient, significant consequences for financial firms not complying with an AFCA determination, often life altering for those of the relevant firm. Public shaming is an unnecessary additional step.

In specific response to Questions 5 and 6 of the Consultation paper we say:

Q.5 Do you think that this proposed Rules amendment is appropriate and will assist AFCA to provide a more effective and transparent dispute resolution process for consumers, small businesses, industry and other stakeholders?

**No**

Q.6 Do you think that the proposed Rules amendment will assist to bring transparency and fairness to the financial services sector?

**No.**

Yours faithfully

Peter J White AM MAICD  
Managing Director of the FAMNZ  
& FBAA in Australia

Life Member – FBAA  
Life Member – Order of Australia Association

Advisory Board Member – Small Business Association of Australia (SBAA)  
Chairman of the Global Board of Governors – International Mortgage Brokers Federation (IMBF)