

12 June 2025

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

By Email:

Dear Executive General Manager Jurisdiction

Arca submission to the 2025 AFCA Rules change consultation

Thank you for the opportunity to provide feedback on the 2025 AFCA Rules change consultation (**the Rules change consultation**).

As you are aware, Arca is an industry association focussed on the use of credit reporting and consumer data. We bring together Australia's leading credit providers and credit reporting bodies to improve data protection and use and also to make credit more visible, accessible and easily understood. Our vision is to make credit work for all Australians. Arca has also acted as the CR Code Developer since the commencement of the CR Code framework in 2014.

Whilst the Rules change consultation deals with a number of proposed changes to the Rules, many of which are designed to give effect to a recent change by the Federal Government to AFCA's authorisation condition, our feedback relates specifically to the following three proposed changes:

- Rules changes which would require the use of appropriate communication channels by Paid Representatives,
- Rules changes which deal with Paid Representatives who are not AFCA members, and
- Rules changes which would allow for the publication of Financial Firms who have unpaid AFCA determinations (collectively, the **Proposed Changes**).

Our feedback on the Proposed Changes is set out below.

Our feedback – Paid Representatives

Arca supports the Proposed Changes relating to Paid Representatives: In particular, we agree with AFCA's position that:

- It is necessary for the efficient operation of AFCA that Paid Representatives such as Debt Management Firms (**DMFs**) use appropriate communication channels such as the online channels offered to Complainants, and
- It is appropriate for AFCA to be able to cease considering complaints from Paid Representatives who are not complying with a legal obligation to be an AFCA Member.

We agree with AFCA's view that these requirements are designed to safeguard fair access to external dispute resolution and as such, warrant explicit recognition of AFCA's ability to take appropriate action where the Paid Representatives has not complied.

Arca's response to the question for stakeholders set out at section 3.4, question 4, page 9 of the [AFCA Rules – Proposed amendments Consultation paper](#) dated 19 May 2025 (**the Consultation Paper**) is therefore 'yes', we do think that the Proposed Changes are appropriate and will assist AFCA to provide a more timely, efficient and effective dispute resolution process for Complainants.



However, we believe that in addition to the Proposed Changes, AFCA should also provide guidance and clarification about its approach to complaints involving Paid Representatives under AFCA Rules A.8.4 and B.6.5; In doing so, this will further assist AFCA to provide a more timely, efficient and effective dispute resolution process for Complainants as well as address potential harm to consumers and industry that can arise as a result of certain conduct by Paid Representatives such as DMFs.

Suggested AFCA guidance – Paid Representatives

Arca is very supportive of the right of AFCA to cease to consider an individual complaint and/or exclude a Paid Representative in the circumstances outlined at AFCA Rules A.8.4 and B.6.5; However, we believe that there would be great benefit from AFCA providing clear and explicit guidance in relation to how these Rules operate in practice, including providing examples of the types of conduct which would be deemed by AFCA to amount to:

- *'not acting in the Complainant's best interest'*, and
- *'acting in a way which prevents AFCA from achieving a cooperative, fair, efficient and timely resolution'* of a complaint (as these terms are referred to in the Rules)

Conduct which we believe should be explicitly deemed as *'not acting in the Complainant's best interest'* includes the following:

- **Where AFCA is aware that the Paid Representative has, or intends to, charge the Complainant an excessive or unreasonable fee or charge for their services when dealing with AFCA**

Given that access to AFCA is free of charge and that a Complainant may also be eligible to the services of free specialist support organisations such as financial counsellors, Legal Aid, etc., we consider that a Paid Representative is not acting in the Complainant's best interest, when the Complainant is required to pay excessive or unreasonable fees or charges for their services dealing with AFCA.

Whether a fee or charge is 'excessive' or 'unreasonable' should be determined on a case by case basis, taking into account factors relevant to the specific complaint such as the complexity of the complaint, the number of Firms involved, any extra assistance the particular Complainant might require when dealing with a Firm, etc., An example of a fee which is excessive or unreasonable, could include the charging of an amount in excess of \$5,000 for the services of the Paid Representative in relation to an AFCA complaint seeking the modification of a single item of enquiry information, recorded on the individual's credit report in circumstances which do not raise multiple or complex issues.

- **Where an identification of current or previous domestic abuse has been made by a Paid Representative and the Paid Representative has not met certain notification requirements**

In our view, where an individual Complainant has been identified by a Paid Representative as currently experiencing domestic abuse or as having previously experienced domestic abuse, it is appropriate for AFCA to be satisfied that the Complainant has been made aware of specialist support services which may be available to assist them with their dealings with AFCA, free of charge.

Based on our experience, DMFs in particular are not equipped with the personnel or resources appropriate to provide victims or victim-survivors of domestic abuse with the support they warrant or need. For example, it is unclear what specialist training, qualifications or experience DMFs require their staff to possess prior to responding to and assisting victims or victim-survivors. This can be contrasted with specialist legal and financial counselling services, which are often staffed with individuals who are sufficiently trained and experienced in recognising and assisting victims and victim-survivors of domestic abuse.



On this basis, where AFCA is aware that the individual Complainant has not been notified of the matters referred to below, then we consider it is not in the best interests for the DMF to continue to deal with AFCA on behalf of the Complainant, until such time as the Complainant is notified of these matters:

- (i) Information about support services that may be available to them, such as specialist consumer financial counselling, legal or abuse support services. This information should be notified to individual Complainant's in a manner similar to the current requirement for licensed DMFs to notify potential clients of the availability of AFCA.
- (ii) Building upon the notice requirement that we have proposed above, we consider that Paid Representatives should also have a requirement to offer a victim or victim-survivor of domestic abuse assistance with obtaining the services of a specialist legal or financial support services. Such assistance could include being required to offer to make telephone or email contact with an organisation, or any other reasonable assistance.

- **Where the DMF has included reference to the Complainant's experience of domestic abuse without the Complainant's explicit consent**

In our view, AFCA should provide specific guidance that a Paid Representative cannot include within the AFCA complaint and related documentation, a reference to a Complainant being a victim or victim survivor of domestic abuse, without the Complainant's explicit consent to such a reference being made. Where a reference to domestic abuse has been made to either AFCA and/or the relevant Firm without the Complainant's explicit consent then we consider it is not in the best interests for the Paid Representative to continue to deal with AFCA on behalf of the Complainant.

We already know of one instance where this has occurred, and we believe that a prohibition on this practice is necessary to ensure this practice does not become widespread. We also note that there may be potential safety risks which arise as a result of a Paid Representative informing a Firm or AFCA of the existence of a domestic abuse situation without the Complainant's knowledge: For example, if a Complainant has not notified the Firm of their experience of abuse and they are unaware that is being communicated by the Paid Representative, there may be the potential for information to be provided to the Perpetrator and/or a joint account holder by AFCA/the Firm and which gives rise to a potential trigger for harm

Conduct which we believe should be treated by AFCA as *'acting in a way that prevents AFCA from achieving a cooperative, fair, efficient and timely resolution of the Complainant's complaint'* includes the following

- **Utilising template or pro-forma letters of complaint approach in which the same, or largely similar, allegations and/or statements are made across a number of complaints, with little reference to individual circumstances.**

In our view, the use of template or pro-forma complaints by Paid Representatives creates a significant hurdle for AFCA to achieve a cooperative, fair, efficient and timely resolution of individual complaints, because of the resources and costs needed to appropriately resolve these complaints.

The experience of our Members has been that some Paid Representatives rely upon a template laundry list of dispute grounds. Many of these grounds can be contradictory, and often do not identify how the grounds are relevant to the individual complaint or why they mean resolutions such as the removal of credit reporting information are warranted ¹[\[OBJ\]](#).

¹ See [Arca's submission](#) to the Review of Australia's credit reporting framework, page 78.



It appears that some Paid Representatives engage in conduct like this in the hope that the effort and cost of responding will incentivise the Firm to agree to a request to remove or amend credit reporting information even where the underlying information is valid². This type of conduct hampers AFCA's ability to achieve a cooperative, fair, efficient and timely resolution of the complaint (and other complaints given the diversion of AFCA's resources).

While it is outside the scope of this consultation, we note that Arca also supports more stringent regulation of DMFs, including specific conduct-based obligations to reduce the harms those firms present to consumers, the credit industry and the credit reporting system generally.

Our feedback – Publication of Financial Firms who have unpaid AFCA determinations

We note the proposal to insert within the Rules a new Rule A.11.6 which will enable AFCA to publicise the names of Firms who fail to comply with an AFCA Determination. It is unclear from the wording of the proposed new Rule A.11.6, what if any, procedural requirements or processes will need to be complied with prior to the public naming of a Firm in these circumstances.

For instance, it is unclear from the discussion set out in the Consultation Paper in relation to the new Rule A.11.6;

- if there will be an opportunity for a Firm to remedy a failure to comply with an AFCA Determination before being publicly named,
- how long a Firm will have to remedy a failure to implement an AFCA Determination before it is publicly named for failing to do so,
- if a Firm will receive notification from AFCA prior to being publicly named, and if so, when will this notice be provided and what information will be included, and
- how unintentional failures to comply with an AFCA Determination, or failures which are due to circumstances beyond the control of the Firm, will be treated by AFCA under the new Rule 11.6.

We consider that these and other procedural and process matters should be addressed within either the Rules and/or the Operational Guidelines prior to the introduction of the proposed new Rule A.11.6 to ensure that the intended operation of the proposed Rule change is clearly understood by AFCA Members.

Thank you once more for the opportunity to make this submission. If you have any questions, please feel free to contact me.

Yours sincerely,

Mary Vancea

General Manager – Legal & Policy

² [ASIC's submission](#) to the Review of Australia's Credit Reporting Framework, pages 5-6 and the [Final Report of the Review of Australia's Credit Reporting Framework](#), page 80.