

13 June 2025

By email: consultation@afca.org.au

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

Dear Executive General Manager Jurisdiction

AFCA consultation – Proposed AFCA Rules changes to expand jurisdiction over receiving banks in scams

Thank you for the opportunity to provide our comments to the AFCA Rules – Proposed amendments consultation paper¹. This is a joint submission made on behalf of:

- Consumer Action Law Centre
- The Australian Communications Consumer Action Network
- Financial Rights Legal Centre
- Financial Counselling Australia
- Westjustice
- Consumer Credit Legal Service WA
- Redfern Legal Centre
- Mob Strong Debt Help
- Victorian Aboriginal Legal Service
- COTA Australia
- Consumer Credit Law Centre SA
- Care ACT
- David Niven, Scams Solicitor

¹ See: <https://www.afca.org.au/news/consultation/Rules-consultation-2025/afca-Rules-proposed-amendments-consultation-paper>

We welcomed this year's Federal Government announcement² and Authorisation to expand AFCA's jurisdiction to enable AFCA to consider complaints against banks for scam matters where an AFCA complainant does not have a customer relationship with the bank, including receiving banks. We hope the proposed changes to the AFCA Rules (Rules) will significantly expand AFCA's capabilities to investigate and make adverse findings against banks who do not do all they can to stop scam activity, including through mule bank accounts, which has significantly contributed to scammers being so effective in stealing \$2.03 billion last year from Australians³. At the same time, banks have deliberately pushed people online to undertake all their banking but without implementing the proper safeguards.

This change will provide greater bank accountability and transparency, both under existing laws and under the Scams Prevention Framework (SPF) and serve as an incentive for banks to adequately monitor and disrupt scam activity. This expansion of jurisdiction also has the potential to improve the effectiveness and efficiency of AFCA external dispute resolution (EDR) service, including for victims of scams.

We expect AFCA will support the proposed changes to the AFCA Rules with clear and easy to understand direction through its operational guidelines⁴, and other public AFCA guidance documents,⁵ including AFCA Approach Guides, EDR response guides and fact sheets (Guidance Materials) to assist parties understand and comply with the changes.

Furthermore, we support AFCA publishing the names of financial firms who do not comply with AFCA determinations and the other Rule changes to assist AFCA and complainants when dealing with paid representatives, including the ability for AFCA to cease dealing with paid representatives who are required to be members of AFCA but are not.

² See: <https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/scam-losses-slashed-over-1-billion-under-labors-anti#:~:text=Scam%20losses%20slashed%20by%20over%20%24.1%20billion%20under%20Labor's%20anti%20scam%20agenda,-Note&text=The%20Albanese%20Government's%20targeted%20crackdown,in%20the%20last%20two%20years.>

³ ACCC, 'Targeting Scams': Report of the National Anti-Scam Centre on scams data and activity 2024, March 2025.. See: <https://www.nasc.gov.au/system/files/targeting-scams-report-2024.pdf>

⁴ See: <https://www.afca.org.au/about-afca/Rules-and-guidelines>

⁵ See: <https://www.afca.org.au/about-afca/publications>

Recommendations

We make the following recommendations:

1. **Recommendation:** AFCA must implement the proposed scam Rule changes before the end 2025.
2. **Recommendation:** Amend proposed Rule B.2.1 to allow AFCA to deal with all complaints about scammed funds involving receiving banks, which should not be limited in any way beyond the scope of the Government Authorisation.
3. **Recommendation:** AFCA should prohibit the use or limit the scope of non-disclosure agreements (NDAs) and other similar agreements once an AFCA scam complaint is lodged by a complainant to stem poor conduct by financial firms that our organisations continue to hear about. This includes AFCA publishing aggregate data on offers made for different classes of dispute. If this requires legislative change, AFCA should prioritise working with Government to secure such changes.
4. **Recommendation:** AFCA should be working with Government to increase its jurisdiction to cover other non-bank financial service providers.
5. **Recommendation:** AFCA should prepare strong supporting Guidance Materials on how banks are expected to interact with AFCA's expanded jurisdiction, including clear timeframes of when they need to respond to AFCA's investigations, and the method and format banks need to provide information and data to AFCA.
6. **Recommendation:** AFCA Guidance Materials should make it clear to banks that adverse inference will be made against them if they are any way on notice of potential mule accounts and yet fail to take the diligent action to prevent customer loss.
7. **Recommendation:** AFCA Guidance Materials should make it clear that adverse inferences will be made against banks who do not provide AFCA with sufficient information that it needs to investigate suspected bank account scam activity, including details of fraud alerts, and transfers and dealings with other third parties.
8. **Recommendation:** The proposed AFCA Rule changes or AFCA Guidance Materials should make it clear that AFCA will be able to hear receiving bank complaints, including in relation to bank accounts opened or for transactions that occurred, within a reasonable timeframe, before the date the proposed Rules come into effect.

9. **Recommendation:** The AFCA compensation cap for financial and non-financial loss to be sufficiently increased for scam matters.
10. **Recommendation:** AFCA Guidance Materials should require that all complainants from culturally and linguistically diverse backgrounds (CALD) are offered free interpreters for all scam matters due to the on-going business to consumer information asymmetries and scam matters' extremely complex interaction with the law.
11. **Recommendation:** AFCA should use its expanded jurisdiction to create a 'De-banking guide.' This should be developed in consultation with the consumer sector to strike an appropriate balance and AFCA approach to address bank's responsibilities to vulnerable consumers and their other obligations to prevent scams and money laundering activities.
12. **Recommendation:** AFCA Guidance Materials should make it clear that AFCA can use its discretion to waive the preferred communication channel requirement for Paid Representatives, as future scenarios, that genuinely assist scam victims, might arise that warrant an alternative process.
13. **Recommendation:** We would support AFCA making further amendments as part of the proposed Rule changes to extend the exclusion period of Paid Representatives from AFCA's external dispute resolution service from 12 months to up to 5 years.
14. **Recommendation:** We would support AFCA committing to naming all firms who engage in systemic poor practice or conduct, who are subject to disproportionate consumer complaints, and whose data show business interests regularly being put ahead of their customers. In a scams context this could include conduct such as banks regularly offering low-ball settlement offers to scam victims, or be based the number of times they require NDAs to settle scam matters.

Proposed Rule B.2.1: Consideration of a receiving bank in a scam transaction

Q.1 Do you think that the proposed Rules amendments appropriately address the requirements of the Authorisation?

The proposed changes to Rule B.2.1 to broaden AFCA's jurisdiction to handle complaints about receiving banks relating to scams aligns with the desired goals of the SPF, including to prevent, protect and provide consumers with fair redress when impacted by scams. Currently, if there is no contract between an AFCA complainant and a bank, or the bank did not provide a financial service to the complainant, then AFCA's jurisdictional requirement in Rule B.2.1 (a) is not met. As a result, AFCA has been unable to investigate or consider a wide range of crucial elements to scams complaints brought by victims, including about the role of receiving bank mule accounts.

There is one respect in which we do not think the proposed Rule amendments appropriately address the requirement of the Authorisation. The Authorisation does not limit AFCA complaints to those where the complainant has an account or credit facility in their name; proposed Rule B.2.1(k) does. All the Authorisation requires is that the funds with which the receiving bank is dealing "relate to the complainant". For example, there is no apparent reason for AFCA not to be able to consider complaints where the complainant's funds have been transferred into the receiving bank account from a non-bank entity, or even in cash.

The consultation paper does not explain why new Rule B.2.1(k) is, at least on its face, more limited than paragraph 9B(a)(ii) of the Authorisation. If there is a good reason for this more limited drafting, that should be clearly and explicitly explained, to avoid confusion. If there is no good reason for the Rules to be so limited, we would recommend redrafting Rule B.2.1(k) as follows:

Amended proposed Rule B. 2.1

A complaint (other than a Superannuation Complaint) must arise from or relate to:

...

j) an account opened, or credit facility made available, by a Bank in the name of the Complainant where the complaint is that the account was opened or credit facility was made available:

- (i) without the Complainant's consent; and
- (ii) as part of an attempt by someone to deceive the Bank or the Complainant, or

k) ~~an account or credit facility in~~ the receipt of funds, internal movement of funds or external transfer of funds by a Bank (**either with Bank A or another Bank**) that involves whether directly or indirectly:

- (i) ~~an account or credit facility in~~ **funds that relate to the Complainant's name either with Bank A or another Bank**, and
- (ii) an attempt by someone to deceive a bank (whether Bank A or another Bank), or the Complainant, and whether or not successful.

Recommendation: Amend proposed Rule B.2.1 to allow AFCA to deal with all complaints about scammed funds involving receiving banks, which should not be limited in any way beyond the scope of the Government Authorisation

The problem is urgent: AFCA must implement the proposed scam Rule changes before the end 2025

The Authorisation requires implementation of the Rule change by March 2026 at the latest but leaves open scope for the change to be implemented earlier. AFCA has indicated that the 'estimated' implementation date for these changes to take effect is March 2026. This date should be brought forward to occur the earlier of designation of the banking sector under the SPF or before the end of the second half of 2025. The proposed implementation date is unacceptably too long while Australians bear most of scam losses. Australians will continue to suffer significant financial and non-financial consequences in the meantime with little recourse or right to complain about receiving bank conduct that has contributed to their scam losses.

On our frontlines, it is not uncommon to hear about scam victims' money being easily transferred to a large number of separate mule Australian bank accounts, with limited consequences for either the receiving or sending banks, due to the gaps in AFCA's current investigatory powers⁶. There have been cases where AFCA has been unable to assist scam victims even after scammers have been detected and funds frozen by the receiving bank, only for the funds to be released to scammers after they filed a complaint with AFCA and threatened legal action against the bank⁷. Scammers are highly sophisticated and innovating every day to exploit the extremely weak current bank protections. If large organisations like banks and AFCA continue to be exploited in this way, it is unreasonable that we continue to expect ordinary Australians to carry this burden and the losses well past 2026.

Our services are regularly being approach by scam victims whose lives have been devastated and turned upside down by scams.

Consumer Action Financial Counsellor Case – “We were recently approached by an extremely vulnerable and traumatised person who lives alone with an acquired brain injury, who lost their entire superannuation savings of approx. \$200,000 across 2024 to a scammer after their Australian bank and superannuation provider easily facilitated the transfers, including in amounts over \$10,000 at a time. As part of the highly sophisticated romance scam, the person was emotionally and psychologically manipulated by the scammer who requested to transfer the funds to many different Australian bank accounts. The person was also coached by the scammer to take out personal loans and credit cards which were drawn out and lost to the scammer leaving them with approx. \$100,000 of debt that they are being forced to pay interest on to those financial institutions. The person's credit record has been tarnished, and they are relying on their credit cards to survive, being unable to afford and pay for food.”

Receiving banks have benefited, both financially and reputationally for not being held accountable for scam losses. From our experience, receiving banks have often been very quick to offer no assistance⁸ to desperate scam victims to assist them with their investigations about their lost scammed funds that have been easily laundered through their platforms⁹. For far too long receiving banks been able to hide behind blanket assertions that they are prevented from releasing any helpful information, including to AFCA due to privacy and confidentiality¹⁰ or AUSTRAC rules. The lack of incentive on Australian banks with respect to monitoring mule activity has fuelled the large-scale scam losses, 96% of which are borne by victims¹¹.

⁶ See: <https://www.theage.com.au/national/no-id-necessary-accounts-make-australians-an-easy-target-for-cash-mules-20250515-p5lzd3.html>

⁷ See: <https://www.afr.com/wealth/personal-finance/i-lost-2-5m-of-my-super-to-scammers-20240423-p5flzp>

and <https://www.news.com.au/finance/money/costs/disgusted-bank-returns-money-to-scammers/news-story/4ae047e195cf27fb3fcd0d0dbd268a6>

and <https://www.choice.com.au/money/financial-planning-and-investing/stock-market-investing/articles/st-george-capital-investment-scam>

⁸ See: <https://podcasts.apple.com/au/podcast/g-one-bad-sms-later/id1778876499?i=1000704534309>

⁹ See: <https://www.contentrenegade.com/scam-support-for-victims/v/everything-to-sell-anything-427ge-88xsk-xd8pf> and

<https://www.contentrenegade.com/scam-support-for-victims/v/7-liquidated-lies-why-older-australians-are-really-being-scammed>

¹⁰ AFCA's submission on Scams – Mandatory Industry Codes consultation paper - 8 February 2024. See: <https://www.afca.org.au/about-afca/submissions>

¹¹ See: <https://consumeraction.org.au/report-one-year-on-and-asic-report-again-reveals-banks-shirking-responsibility-when-customers-have-been-scammed/>

In the United Kingdom (UK), the UK Financial Ombudsman Service has been able to look at the conduct of receiving banks since 2019¹² and legislation provides that the liability for consumer scam losses will be shared 50/50% by the sending and receiving banks. In contrast, Australian banks remain largely unaccountable for most of the millions that continue to be lost through their platforms every month despite the initiatives and protections of the Scams Safe Accord¹³ that have already been implemented. This persistent narrative by Australia's banking industry is at odds with the most recent National Anti-Scam Centre (NASC) Scamwatch data reporting Australians have already reported approximately \$120 million in scam losses in the first four months of 2025, a 28% increase from last year.¹⁴ In contrast, the banking industry in the UK has recently reported a 2% decrease in scams, with customers being reimbursed for 86% of their losses¹⁵.

"With the reimbursement cost split 50/50 between the sending and receiving financial institutions, the incentive for financial institutions to identify money mules in real time has gained importance. In many cases, that risk was identified prior to receipt of fraudulent funds." UK Finance

If AFCA requires more time to operationalise the Rule changes, there is the option that the Rule change can take effect e.g. when the sectors are designated under the SPF this year, but consumers could be offered the option to have their complaints paused for consideration on or after March 2026. While not ideal for a scam victim struggling to afford living costs as a direct consequence of the scam, this would more broadly benefit more scam victims and serve as an incentive for improved monitoring of mule activity by banks much sooner. There is precedent for this staged approach, e.g. with the commencement of the Compensation Scheme of Last Resort.

Recommendation: AFCA must implement the proposed scam Rule changes before the end 2025

¹² AFCA's submission on Scams – Mandatory Industry Codes consultation paper - 8 February 2024. See: <https://www.afca.org.au/about-afca/submissions>

¹³ See: <https://www.ausbanking.org.au/scam-safe-accord/>

¹⁴ See: https://www.accc.gov.au/media-release/national-anti-scam-centre-calls-for-stronger-business-role-to-disrupt-scams?utm_source=ACCC+media+alerts&utm_campaign=fcf4882328-EMAIL_CAMPAIGN_2025_06_01_10_30&utm_medium=email&utm_term=0_ob94b1dddb-fcf4882328-97425680

¹⁵ See: <https://www.ukfinance.org.uk/news-and-insight/press-release/fraud-report-2025-press-release>

Q.2 Do you think that there are any unintended consequences of the proposed Rules amendments?

AFCA has 47,500 financial firm members¹⁶ and must be adequately resourced to give the required attention to all future scam disputes, which will significantly grow in number and complexity after the proposed Rules come into force. Efficiency in resolving disputes cannot come at the expense of fair and just consumer outcomes.

With an expanded initial caseload of receiving bank matters and without knowing the design or scope of the SPF Codes of Practice at this stage, AFCA needs to be ready to take the lead in developing clearer guidance and direction to businesses to help it effectively operate with a very high and unusually complex and changing volume of complaints, while being prepared to be more inquisitorial on behalf of scam victims. AFCA will need to have a clear but also flexible approach to vulnerability, apportionment, and the vast information asymmetry that prevent many scam victims from putting together any coherent case – they simply won't have access to sensitive information to firstly, prove that regulated entity/s such as banks breached their obligations, and secondly, that the breach caused the loss, which seems is what will be expected from scam victims in every case under the SPF¹⁷.

The 2025 NASC Targeting Scams report states scams have been significantly under reported by 30%¹⁸. Approximately 2 million mule accounts were detected in 2024 by UK bank customers¹⁹ versus approximately 10,000 being reported by Australia's major banks during the 2024 financial year²⁰, identifying the lack of positive steps Australian banks continue to take to identify mules accounts. These figures indicate the tip of the iceberg of issues that AFCA may soon uncover and have to deal with.

Additionally, considering many individual scam victims are losing hundreds of thousands or millions at a time through highly sophisticated and convincing scams²¹, scam victims are also set to lose out on just compensation for breaches by multiple banks if the AFCA compensation cap for financial and non-financial loss are not significantly increased for scams.

Recommendation: The AFCA compensation cap for financial and non-financial loss to be sufficiently increased for scam matters

AFCA Guidance Materials

To avoid any doubt or misunderstanding about the significantly higher standard that banks will need to conduct themselves after the proposed Rule change comes into force, it is vital that AFCA prepare strong supporting Guidance Materials on how banks are expected to interact with AFCA's expanded jurisdiction, including clear timeframes of when they need to respond to AFCA's investigations, and the method and format banks need to provide information and data to AFCA. This should be developed with a consumer-focused lens to avoid AFCA scam complaints unnecessarily dragging on for many months or years as can be the case currently.

The SPF is ambitious in its proposal that regulated entities will be able to operate their own during internal dispute resolution (IDR) despite there possibly being several entities relevant to the decision of liability at IDR. A real

¹⁶ See: <https://www.afca.org.au/news/consultation/Rules-consultation-2025/afca-Rules-proposed-amendments-consultation-paper>

¹⁷ See: <https://consumeraction.org.au/scams-laws-passing-a-relief-but-victims-to-face-an-uphill-battle-for-redress/> and <https://consumeraction.org.au/opinion-in-this-david-and-multiple-goliath-battle-scam-victims-must-win/> and Scams Prevention Framework Bill 2024 – Senate Economics Legislation Committee Joint Consumer Submission. Consumer Action Law Centre. 9 January 2025. See: <https://consumeraction.org.au/submission-scams-prevention-framework-bill-2024/>

¹⁸ ACCC, 'Targeting Scams': Report of the National Anti-Scam Centre on scams data and activity 2024, March 2025. Pg 34. See: <https://www.nasc.gov.au/system/files/targeting-scams-report-2024.pdf>

¹⁹ See: <https://www.ukfinance.org.uk/news-and-insight/press-release/fraud-report-2025-press-release>

²⁰ See: <https://www.itnews.com.au/news/australias-big-4-banks-exit-thousands-of-suspected-mule-accounts-614079>

²¹ See: <https://www.abc.net.au/news/2024-09-18/act-woman-who-lost-over-1-million-to-scammers-federal-protection/104361712>

possibility will be that a large number of cases are simply referred up to EDR because e.g. the sending bank can't adjudicate on the digital platform's liability – if the platform even responds to the bank during the IDR period.

In its February 2024 submission²², AFCA noted "there should be more detail about appropriate responses to high-risk transactions e.g., when should they be blocked (for example when the ADI has received notification of a mule account) as opposed to subject to a consumer warning", with AFCA also expressing support for live data around mule accounts. We therefore would support future AFCA Guidance Materials making it clear to banks that adverse inference will be made against them if they are in any way on notice of potential mule accounts and yet fail to take the diligent action to prevent customer loss.

Additionally, regardless of privacy or confidentiality arguments from banks, AFCA Guidance Materials should state that adverse inferences will be made against banks who do not provide AFCA with sufficient information that it needs to investigate suspected bank account scam activity. The proposed AFCA Rule changes or AFCA Guidance Materials should also make it clear that AFCA will be able to hear receiving bank complaints, including in relation to bank accounts opened or for transactions that occurred, within a reasonable timeframe, before the date the proposed Rules come into effect.

A particular problem uncovered throughout assistance provided to HSBC scam victims included bank's failure to disclose whether the scam transaction triggered any fraud alert, which was not initially disclosed by the bank²³, but only discovered in response to allegations put forward during a protracted dispute. Despite the encouraging consumer and victim-centred approach taken by AFCA in HSBC determination 12-00-101669²⁴, we still see cases where scam victims are being disadvantaged and not being given the benefit of doubt, including where AFCA finds a victim has authorised or voluntarily contributed to a scam, despite there being an absence of clear evidence of the victim actually 'voluntarily' authorising payment or providing a passcode²⁵.

Furthermore, AFCA Guidance Materials should require that all complainants from culturally and linguistically diverse backgrounds (CALD) are offered free interpreters for all scam matters due to the on-going business to consumer information asymmetries and scam matters' extremely complex interaction with the law. We have heard on many occasions from vulnerable scam complainants that banks, and even AFCA on occasion, have failed to provide interpreters to assist them with their scam complaints. Consumer advocates around the country are also reporting concern with the lag time in educating and disseminating accessible information about scams (including through Auslan) to CALD and vulnerable communities targeted by scammers, including in some Deaf communities where scammers are increasingly targeting Deaf people on social media.

Westjustice Lawyer – *"We had a large number of culturally and linguistically diverse clients harmed by the Hope and Wonderful World scams during 2021. This scam took the form of an investment app, but preyed on unsophisticated users of digital technology and was claiming victims would increase their returns by making directed APP transactions into accounts with Australian banks. These accounts were frequently in the names of real limited liability companies. While best sending bank practice should mandate confirmation of payee before transfer, this will not assist if the receiving bank has permitted the establishment of an account with these details. A receiving bank that set up a 'mule' account without the necessary credentials or identification, and without monitoring unusual patterns of transactions, should therefore bear responsibility for enabling such a scam."*

²² AFCA's submission on Scams – Mandatory Industry Codes consultation paper - 8 February 2024. See: <https://www.afca.org.au/about-afca/submissions>

²³ See: <https://www.smh.com.au/national/losses-will-continue-to-mount-bank-staff-s-security-warnings-before-massive-scam-cost-customers-millions-20250602-p5m49r.html>

²⁴ See: <https://my.afca.org.au/searchpublisheddecisions/kb-article?id=f9f8941f-7379-ef11-ac20-000d3a6acbb4>

²⁵ See: <https://my.afca.org.au/searchpublisheddecisions/kb-article?id=9c6359e0-5347-f011-8779-002248931757>

Recommendation: AFCA should prepare strong supporting Guidance Materials on how banks are expected to interact with AFCA's expanded jurisdiction, including clear timeframes of when they need to respond to AFCA's investigations, and the method and format banks need to provide information and data to AFCA

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Recommendation: AFCA Guidance Materials should make it clear that adverse inferences will be made against banks who do not provide AFCA with sufficient information that it needs to investigate suspected bank account scam activity, including details of fraud alerts, and transfers and dealings with other third parties

Recommendation: The proposed AFCA Rule changes or AFCA Guidance Materials should make it clear that AFCA will be able to hear receiving bank complaints, including in relation to bank accounts opened or for transactions that occurred, within a reasonable timeframe, before the date the proposed Rules come into effect

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Non-bank money transfer services and payment platforms

There is a risk that due to an expanded AFCA jurisdiction that solely focuses on banks, scammers will innovate and shift more efforts to take advantage of the growing list of fintech sectors operators²⁶ that offer similar services to banks to perpetrate scams. The UK already captures many of these types of firms through its reimbursement model²⁷.

Already a growing number of Australians are falling victim to scams using these platforms who are key players in transferring scammed funds overseas. AFCA will be hampered by the inability to thoroughly investigate scams in the absence of a regulatory framework that captures all these entities. AFCA needs full and clear oversight of transactions made through these services when involved in scam activity, regardless of whether the complainant holds a requisite account, to better assist complainants trace their scammed funds. A number of these services are already involved in a high number of AFCA scam complaints, including Wise and PayPal, reporting scams losses even higher than some Australian banks²⁸.

²⁶ See: <https://moneytransfer.com.au/guides/best-international-money-transfer/>

²⁷ UK Payment Systems Regulator. 'Authorised push payment (APP) scams performance report'. July 2024. Available at: <https://www.psr.org.uk/information-for-consumers/app-fraud-performance-data/>

²⁸ AFCA's submission on Scams – Mandatory Industry Codes consultation paper - 8 February 2024. See: <https://www.afca.org.au/about-afca/submissions>

Chart 5: Top 25 financial firms who had scam complaints lodged with AFCA⁹

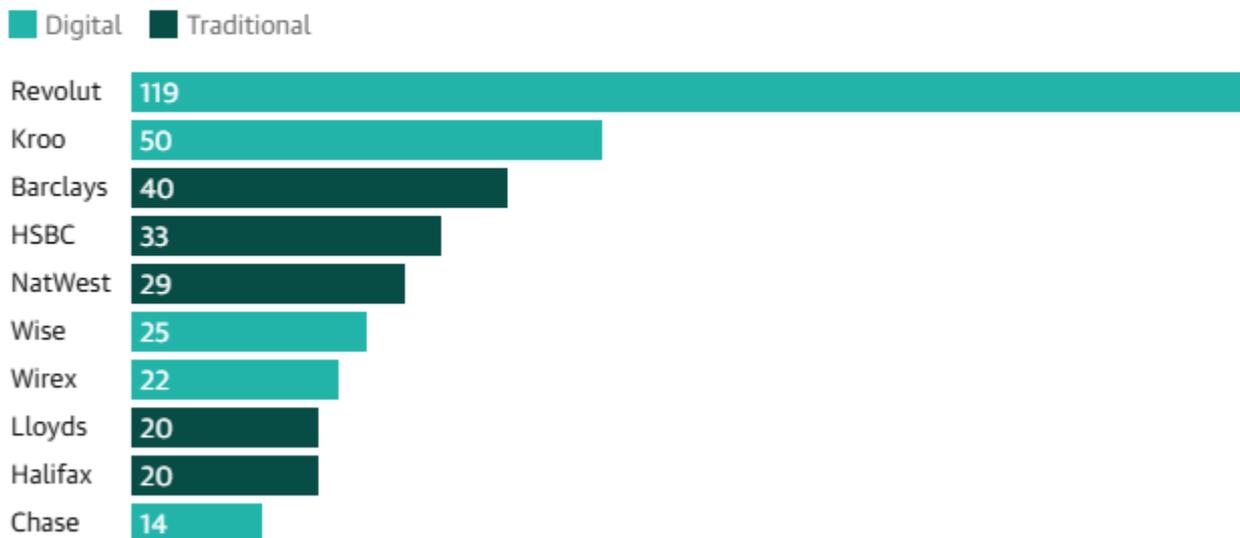
MemberName	Complaints received	Claimed Fin Loss	Complaints accepted	% Accepted	Claimed Fin Loss (Accepted)	Complaints closed	Avg of Outcome Rate % (accepted/closed)
Commonwealth Bank of Australia	4,596	\$125.7M	1460	32%	\$74.4M	4,223	17%
National Australia Bank Limited	2,343	\$83.1M	900	38%	\$56.3M	2,210	13%
Westpac Banking Corporation	1,707	\$74.5M	773	45%	\$54.4M	1,622	13%
Australia and New Zealand Banking Group Limited	2,064	\$73.6M	786	38%	\$46.5M	1,951	9%
Bendigo and Adelaide Bank Limited	820	\$26.4M	535	65%	\$18.5M	668	13%
St George Bank	478	\$16.0M	177	37%	\$12.4M	459	11%
Suncorp-Melway Limited	308	\$12.9M	159	52%	\$8.4M	285	16%
ING Bank (Australia) Limited	538	\$12.0M	362	67%	\$9.5M	493	15%
Bank of Western Australia Limited	305	\$10.8M	175	57%	\$6.5M	288	16%
HSBC Bank Australia Limited	302	\$10.2M	225	75%	\$6.2M	206	19%
Citicgroup Pty Limited	771	\$9.5M	258	33%	\$7.6M	739	40%
Macquarie Bank Limited	285	\$8.2M	191	67%	\$5.2M	233	20%
Casey Block Services	108	\$7.3M	74	69%	\$5.3M	100	7%
Bank of Melbourne	149	\$6.5M	67	45%	\$4.9M	143	24%
Bank of Queensland Limited	132	\$3.8M	87	66%	\$3.0M	115	10%
Wise Australia Pty Ltd	76	\$3.1M	66	87%	\$2.4M	57	6%
PayPal Australia Pty Limited	198	\$2.6M	64	32%	\$2.3M	184	26%
BankSA (a division of Westpac Banking Corporation)	96	\$2.5M	37	39%	\$1.6M	92	16%
Beyond Bank Australia Limited	123	\$2.5M	72	59%	\$1.9M	110	24%
Heritage and People's Choice Limited	119	\$1.7M	88	74%	\$0.9M	86	19%
Great Southern Bank	115	\$1.4M	59	51%	\$1.2M	103	17%
Members Equity Bank Limited	119	\$1.4M	47	39%	\$0.8M	114	22%
Newcastle Greater Mutual Group Ltd	74	\$1.3M	56	76%	\$1.0M	62	13%
Latitude Finance Australia	95	\$0.8M	27	28%	\$0.3M	86	20%
American Express Australia Limited	163	\$0.3M	24	15%	\$0.2M	158	29%
Total	16,064	\$497.8M	6769	42%	\$332.0M	14,785	15%

It is concerning that these types of non-bank service providers will not be subject to any obligations under the SPF, despite many of these platforms offering a wide range of financial related services including funds holding, payments, transfer and digital wallet options, replicating and replacing many traditional bank services and functions. They are increasingly being used by scammers to quickly launder money overseas or as an intermediary step within Australia, that will continue to be used to avoid scam detection if only bank to bank transfers are given full scrutiny. Scammers are already aware of this weakness, encouraging their victims to make transfers only through these service providers internationally²⁹.

²⁹ See: <https://www.theguardian.com/money/2025/mar/05/revealed-the-scammers-who-conned-savers-out-of-35m-using-fake-celebrity-ads#:~:text=An%20organised%20network%20operating%20ofrom,to%20outlaw%20three%20years%20ago>

The scammers often encouraged victims to transfer money via digital banks

Number of UK-based victims by financial institution, top 10



Guardian graphic. Source: Guardian/OCCRP analysis of leaked call centre data. Figures only include clients who made more than one transfer. Counts exclude listings that mentioned more than one bank/payment platform

Victorian Aboriginal Legal Service Solicitor – *“The client received money through the Stolen Generation Redress Scheme. The client believed she had found a stock trader, the scammer, on TikTok and made contact with him and then continued communications via Whatsapp. The scammer asked her to make payments via Revolut which she did. The scammer had also asked her to purchase and use a number of Prepaid VISA cards. The client has paid more money to ‘restart’ her account after it was closed, and ‘recover’ her earnings. The client has stopped sending money since contacting VALS, however, suspects she has transferred approximately \$20,000.”*

The push by banks to digitise all their services and encouraging their customers to change to their neo and app-only banking offerings is also encouraging many Australians, particular younger Australian, to unwittingly become more comfortable with using these types of services and platforms despite the increased risks and lack of relative protections.

Consumer Action Financial Counsellor Case - *“After the bank prevented a customer from transferring hundreds of dollars to an account after being told it was a scam, the customer who had been socially engineered as part of a romance scam just went to the nearest Western Union to transfer the money to the scammer.”*

Westjustice Legal Director - *“We have seen clients groomed on social media to transfer money through remittance services (ie., not via a banking app). Given the heavy reliance on these by diaspora communities and the lack of coverage of these services to date by the SPF, we are concerned that risk exposure through remittance services will increase. We note that in other jurisdictions such as the United States, the Federal Trade Commission has previously had to intercede and enforce consumer fraud prevention measures at Western Union.”*

AFCA should proceed on the assumption that its jurisdiction will be expanded in the future to include other sectors, including the plethora of emerging fintechs, crypto companies, as well as other online platforms and superannuation providers that hold and deal with consumers' money, but which have not been yet earmarked to for the SPF.

As AFCA is proposed to be the scam Ombudsman for telecommunications and digital platforms, AFCA must also be prepared to serve as the effective multi-industry co-ordinator and support a single 'no wrong door' approach to assist consumers and businesses, including any complaint and apportionment processes it may be assigned to help develop and facilitate during IDR and/or EDR under the SPF. As detailed in our Senate submission³⁰, the scams framework in Malta is an example of good practice by an Ombudsman in its role in handing scam disputes and apportioning liability, including between sending and receiving banks.

It would also make economic sense for AFCA to be given greater oversight over these non-bank entities' involvement in scam activity because if these platforms are not held to the same standards and accountability as banks, risk averse banks may refuse to transfer to them, lessening Australia's financial competitiveness in the international community.

Finally, we suggest that AFCA Guidance Materials make it clear that all banks should be required to disclose all relevant information about transfers and dealings with other third parties that a complainant's scammed funds have been transferred to or from. This includes information with all industry participants who are holding and dealing in transfer activities of large volumes of people's money, such as non-bank money transfer services and payment platforms and superannuation funds³¹ – but who have not been earmarked for SPF designation or reporting requirement to the SPF Regulator.³²

Recommendation: *AFCA should be working with Government to increase its jurisdiction to cover other non-bank financial service providers*

³⁰ Scams Prevention Framework Bill 2024 – Senate Economics Legislation Committee Joint Consumer Submission. Consumer Action Law Centre. 9 January 2025. See: <https://consumeraction.org.au/submission-scams-prevention-framework-bill-2024/>

³¹ See: <https://www.apra.gov.au/news-and-publications/apra-reinforces-expectations-on-authentication-controls-superannuation-sector>

³² See: <https://treasury.gov.au/sites/default/files/2025-01/p2025-623966.pdf>

Q.3 What should AFCA take into account in implementing these proposed Rules amendment

Additional Comments to the Consultation

General Comments

Although indirectly related to AFCA's specific Rule change and consultation, we believe it is important that we comment on the matters listed below to more clearly show what scam victims have been experiencing and what we are seeing through our casework to better assist AFCA and for AFCA to consider when implementing and operationalising the proposed Rule change.

For years banks have communicated to the public that their systems, technology and safeguards to support the shift to online banking has been sufficient to protect their customers from scams. During the 2023 public hearings for the Review of Australia's four major banks to The House of Representatives Standing Committee on Economics³³, banks even acknowledged that they would have likely been on 'special notice' if a scam transfer was facilitated via an 'over the counter transactions' made directly at a bank branch as it would have been in a position to obtain 'special knowledge' of the scam, therefore warranting an AFCA determination in favour of a scam victim complainant. However, from our experience, and as quantified by ASIC³⁴, banks appear to only reimburse victims on very rare occasions, such as after the scam victim goes to the extreme measures to have their story published or aired in the mainstream media³⁵.

"After appearing on a Current Affair, Sarah and Laine received notice by ANZ that they will receive full reimbursement for their \$252,000 scam loss. AFCA found no liability on behalf of the bank after a 9-month complaint process even though the couple attended the bank branch to make the transfer safer" - Scams Solicitor David Niven, quoting the Daylight Robbery Podcast hosted by Alex Brooks³⁶

The vast majority of overall AFCA determinations are found in favour³⁷ of financial providers (70%). This figure has been found to be significantly higher for scam cases³⁸, which is extremely concerning considering scam victims often endure many months or years of an AFCA complaint process before a final determination is made.

From what scam victims continue to tell us, banks aggressively deny liability in virtually all circumstances, regularly defaulting to victim blaming and inflicting incredible trauma on people who have already lost all their life savings. For example, when our legal services are able to obtain bank call recordings to assist the customer and put the bank on notice of potential media interest or further legal action, many banks almost immediately change their tune to protect their reputation and cover up their conduct. We have received recordings displaying horrifying customer service followed quickly with offers of compensation and a resolution our clients cannot refuse in their circumstances of hardship.

³³ ANZ responses to questions arising from public hearing of 12 July 2023, Review of Australia's four major banks, The House of Representatives Standing Committee on Economics to public hearings. See:

https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/Ausfourmajorbanks/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice

³⁴ See: <https://consumeraction.org.au/report-one-year-on-and-asic-report-again-reveals-banks-shirking-responsibility-when-customers-have-been-scammed/>

³⁵ See: <https://www.smh.com.au/national/losses-will-continue-to-mount-bank-staff-s-security-warnings-before-massive-scam-cost-customers-millions-20250602-p5m49r.html>

³⁶ See: <https://podcasts.apple.com/au/podcast/bonus-we-won-heres-how/id1778876499?i=1000710702789>

³⁷ See: October 2024 <https://www.afca.org.au/about-afca/annual-review>

³⁸ See: <https://consumeraction.org.au/scams-mandatory-industry-codes-consultation-paper/> - A Consumer Action Law Centre examination and analysis of 50 AFCA final determinations between 18 September 2023 to 12 December 2023 in relation to scams (or potentially fraud), found that consumers were successful in only 4 matters (approx. 8% of determinations).

Almost always, these settlements are on the condition of the customer signing a non-disclosure (NDA)/non-disparagement agreement³⁹. This has significantly hindered the ability to publicly expose such widespread poor systemic practices, which in turn makes it harder for AFCA, regulators and government to justify stronger action or the required regulatory change.

We note that AFCA's approach document on Terms of Settlement⁴⁰ states: "We may find the terms of settlement are not fair and/or require investigation where: ... it prevents the complainant from referring a complaint to the relevant regulator(s)". We would therefore support AFCA increasing its responsiveness in this respect with its expanded jurisdiction based on the experiences of scam victims and the services that support them. In one AFCA settlement matter described by a scam victim who approached us, the bank sought to introduce a broad confidentiality term that would have prohibited a complaint to a regulator. The bank also sought to include a very broad non-disparagement clause that not only prohibited the victim from making any adverse public statements, but required the retraction of any such statements made in the past. Although in that case AFCA chose not to intervene, the matter eventually finalised on the basis of no confidentiality.

From our experience, despite complaints initially being lodged with AFCA, many of these cases end up being settled or withdrawn out of sight and outside of AFCA. AFCA needs to advocate for greater jurisdiction over settlement agreements and needs to be able to scrutinise these agreements further to ensure scam victims are ultimately not left disadvantaged and to help lift the veil of NDAs, to stem poor conduct by financial firms that our organisations continue to hear about. This includes AFCA publishing aggregate data on offers made for different classes of dispute.

Recommendation: *AFCA should prohibit the use or limit the scope of NDAs and other similar agreements once an AFCA scam complaint is lodged by a complainant to stem poor conduct by financial firms that our organisations continue to hear about. This includes AFCA publishing aggregate data on offers made for different classes of dispute. If this requires legislative change, AFCA should prioritise working with Government to secure such changes*

The push to online banking and mule accounts

We have observed that major banks, including their online and app-based off-shoots and other online neo banks continue to require insufficient citing of identification verification documentation to open bank accounts to combat the opening of scam mule accounts. Of particular concern as recently reported, we often hear of online app-based bank accounts that have easily been opened in the names of vulnerable people with limited digital literacy, or in the names of aged pensioners without their knowledge. Currently there is no simple or effective pathway for complaint or redress, including through AFCA⁴¹ for the harm or significant inconvenience perpetrated on these victims. The unstoppable increase of mass data breaches has put millions of Australians' identification and personal information on the dark web for scammers' use. This is the reality that all banks must already be expected to adapt and adjust to, considering that many banks continue to widely advertise that their accounts can be opened up in minutes.

Banks' app-based account service offerings and brandings, such as ANZ Plus, are in many cases virtually identical to their bricks and mortar bank, with only minor differentiation. These services benefit from the brand and reputation of their parent brand. Despite this obvious and intentional connection, on our frontlines we are seeing

³⁹ See: [Joint Submission, Scams Prevention Framework – Exposure Draft Legislation](#), p 29

⁴⁰ See: <https://www.afca.org.au/about-afca/publications/approach-terms-of-settlement>

⁴¹ See: <https://www.theage.com.au/national/no-id-necessary-accounts-make-australians-an-easy-target-for-cash-mules-20250515-p5lzd3.html>

poorer assistance and responses by banks towards victims who have been scammed on these digital-only platforms. We are seeing people experiencing particular vulnerabilities, such as elderly bank customers who are digitally illiterate, who have been easily signed up to digital-only offerings by banks, often finding themselves with extra hurdles to overcome when devastated by a scam. It is not acceptable that app-based bank account holders receive a much lower standard of customer service, limited channels to access banking assistance, and clearly poor controls to prevent or respond to fraud, especially when these app-based banks are being marketed as having stronger scam protections for customers⁴².

In a recently reported case for a scam victim that a Consumer Action legal representative assisted to assess, the scam victim was told by their major bank that facilitated the scam both as the sending and receiving bank, that their much-lauded fraud detection system had not detected the loss of his life savings to the scam. The bank allowed \$58,000 to be scammed through 3 transactions and advised that this technology, that had been heavily marketed by the bank for years did not apply to his account, even though this technology was later used to detect a \$1 transaction made to the same account. The bank offered to refund to the scam victim the \$1, but unsurprisingly not the \$58,000, although the bank did offer to pay back \$6,000 they state they recovered after a protracted AFCA conciliation process, with no explanation or transparency on how or why they could not recover the rest of the laundered money sent to their own mule bank accounts⁴³.

Consumer Action Lawyer Case - "A caller recently lost more than \$50,000 to scammers after her major bank's app-based brand transferred her funds to another major Australian bank mule account, even though the receiving bank had flagged the transfer as a potential scam. The money was lost when the app-based bank failed to notify the client or respond to the receiving bank adequately, yet claimed no liability for the losses. The receiving bank also claimed no liability for releasing the funds to the scammer, because notice was not provided in the preferred/requested form/means that it had instructed to the app-based sending bank, even though the sending bank sent clear notice to the receiving bank to halt the transfer to the scammer within the receiving bank's stated timeframe."

First Nations communities, scambling and micro-laundering

Our services and financial counsellors who service First Nation and remote communities are reporting concerning cases of 'scambling,' sometimes also referred to as 'ding ding', which are rapidly spreading through and targeting those communities.⁴⁴ Scambling is a form of unregulated online gambling that is advertised as giving customers a way to gamble online through their smart phones. People who participate in this activity risk losing deposited funds and are unlikely to recover any winnings. There's also a risk of identity theft, exposure to fraud, and unknowingly engaging in money laundering.⁴⁵

Often promoted online and via social media and messaging apps, people are being tricked into sending smaller payments to ever-changing mule accounts via OSKO and PayID for fake online gambling. These illegal gambling platforms promise quick wins – but are actually fake sites designed to steal and launder money, often through a complex network of Australian mule bank accounts. Reporting scambling as a reactionary measure is time-consuming and complex for anyone, let alone the people from these communities, often requiring contact with

⁴² See: <https://www.anz.com.au/newsroom/media/2025/may/anz-to-introduce-password-less-web-banking-for-anz-plus/#:~:text=Customers%20will%20instead%20be%20able,their%20secure%20ANZ%20Plus%20app> and <https://www.anz.com.au/plus/benefits/security/>

⁴³ See: <https://podcasts.apple.com/au/podcast/g-one-bad-sms-later/id1778876499?i=1000704534309>

⁴⁴ See: <https://www.austrac.gov.au/news-and-media/media-release/fintel-alliance-expand-after-intelligence-partnerships-prove-essential-fight-financial-crime>

⁴⁵ See: https://www.linkedin.com/posts/south-australian-financial-counsellors-association_scambling-have-you-heard-of-it-unregulated-activity-7320665277556281345-6vhQ/

multiple regulators and the ATO. This is far more complex for vulnerable consumers, including those acting as witnesses for ASIC enforcement actions. We would therefore support regulators working closer with AUSTRAC and AFCA to better determine areas with higher numbers of transactions related to scamming entities, or at least related areas identified in ASIC REP 785⁴⁶ so financial service providers better engage and educate local stakeholders on this practice.

Victims of other similar micro-laundering scams are also increasing on our frontlines across Australia. These scams often lure unsuspecting, unemployed or low-income people, say looking for employment online, after being contacted and enticed by a scammer, depositing or receiving amounts between the low hundreds up to \$10,000 through their bank accounts, and being asked to on-transfer money, including through crypto ATMs⁴⁷. Victims have told us, for example, that they have been made to believe they are helping people with no information technology skills to invest in crypto transfers. It is only later that they realise that they have been used by scammers to unknowingly laundered thousands through an elaborate set up of Australian mule bank and/or crypto ATM accounts.

Much of this mule bank account activity is done in amounts well below the \$10,000 threshold that would trigger a 'Threshold Transaction Report' report⁴⁸ from each bank to financial crime regulator AUSTRAC. Because new accounts are created using new victims' identities, there is sometimes not enough activity to lodge a 'Suspicious Matter Report'⁴⁹ either. Activity like this has contributed to \$billions being laundered through Australia's banks, recently resulting in record \$billion dollar fines by the regulator to a number of Australia major banks, including for the Commonwealth Bank in 2018 and Westpac in 2020⁵⁰. These record fines reflect how much banks have profited from this type of activity over many years.

Banks may also be profiting from the vast amount of unclaimed funds left in inactive mule accounts for amount less than \$500,⁵¹ another area where AFCA or regulators could be empowered to do more to investigate and publicly shed light for transparency

De-banking of scam victims and other cohorts by banks

Scam victims tell us their bank's response if unintentional mule activity is reported or detected through their accounts or under their name has often been to freeze their accounts for long periods, while others have been completely de-banked and refused future banking services by their bank, setting off a chain of negative consequences into the future. Banks must ensure they are adequately monitoring and disrupting mule account activity on their platforms and this must be far more nuanced than de-banking vulnerable or at-risk consumers.

Banks must be held to account when insufficient identity checks have not been conducted. However, banks should also be expected to make appropriate exceptions and allowances and find the right balance over and above current AUSTRAC guidance⁵² to ensure cohorts of vulnerable Australians who pose limited risks to perpetuating scam

⁴⁶ See: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-183mr-asic-acts-to-ensure-better-banking-outcomes-for-indigenous-consumers/> and <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-153mr-big-banks-to-refund-millions-in-fees-to-low-income-customers-following-asic-report/>

⁴⁷ See: <https://www.youtube.com/watch?v=aRae7eVV5RE> and <https://www.abc.net.au/news/2025-06-03/austrac-cracks-down-on-cryptocurrency-atm-scam-fraud-links/105351504>

⁴⁸ See: <https://www.austrac.gov.au/business/core-guidance/reporting/reporting-transactions-10000-and-over-threshold-transaction-reports-ttrs>

⁴⁹ See: <https://www.austrac.gov.au/business/core-guidance/reporting/suspicious-matter-reports-smrs>

⁵⁰ See: <https://www.smh.com.au/business/banking-and-finance/from-money-muling-to-micro-laundering-new-scams-grab-watchdog-s-attention-20250509-p5lxzy.html>

⁵¹ See: <https://asic.gov.au/regulatory-resources/financial-services/unclaimed-money/how-authorized-deposit-taking-institutions-lodge-unclaimed-money-returns/> and <https://www.abc.net.au/news/2024-11-05/how-to-search-for-unclaimed-money-and-superannuation/104557188> and <https://www.contentrenegade.com/scam-support-for-victims/v/7-liquidated-lies-why-older-australians-are-really-being-scammed>

⁵² See: <https://www.austrac.gov.au/business/core-guidance/customer-identification-and-verification/assisting-customers-who-dont-have-standard-forms-identification>

activity are not de-banked in the process⁵³. Our organisations see vulnerable people who have been locked or cancelled out of their bank accounts for months or years with no access to their money or face barriers accessing Centrelink payments to survive.

The de-banking of vulnerable and at-risk people – including some First Nations people, those leaving abusive relationships after experiencing trauma, those in or released from custody, and those affected by disabilities – continues to be a major problem in Australia and on our frontlines. This includes mental health hospital patients and other cohorts of people who are also finding it extremely difficult to access basic banking even when they try to approach their bank with their community case workers, due to often inflexible and pro forma identification check approaches by many banks towards these customers. Those affected are often left with no choice but to trust someone else to do their basic banking which exposed them to further scams risk and financial abuse. These problems have only increased because of banks' rapid acceleration to close their physical branches and ATMs and other avenues to access cash, leaving vulnerable customers too often by the wayside.

De-banking of vulnerable cohorts from essential banking services and access to their money has similarly been exacerbated by scams. However, existing AFCA guidance does not seem to expect stronger standards from banks in relation to de-banking complaints⁵⁴. AFCA decisions based on lack of jurisdiction arguments and where AFCA has used its discretion to determine that it cannot look further into a banks application of its practice or policies that prevent people from accessing essential banking services has further disadvantaged these cohorts.

The proposed AFCA expanded jurisdiction must be used to do more to direct focus and particular attention to scams and mule account activity exploiting the gaps to steal what little is left from the most disadvantaged in our society, including the welfare payment from already highly marginalised communities. This could be done through the expansion of AFCA's systemic work and investigatory abilities, and through AFCA's specific Guidance Materials to banks and industry. AFCA should also put banks on notice that they must do much more to stop the harms of de-banking, as from our experiences to date, banks rarely sufficiently address these types of issues unless a large amount of extra pressure is applied⁵⁵.

Recognising AFCA's limitation to compel banks to provide all information in certain circumstances, in addition to further law and policy reform, including through development of the SPF Banking Code and changes to Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) laws that may help to address this issue, AFCA could use its expanded jurisdiction create a 'De-banking guide.' This should be developed in consultation with the consumer sector to strike an appropriate balance and AFCA approach to address bank's responsibilities to vulnerable consumers and their other obligations to prevent scams and money laundering activities, as the most vulnerable in our society should not be punished because of bank's past and persisting failures to effectively deal with these issues.

Recommendation: *AFCA should use its expanded jurisdiction to create a 'De-banking guide.' This should be developed in consultation with the consumer sector to strike an appropriate balance and AFCA approach to address bank's responsibilities to vulnerable consumers and their other obligations to prevent scams and money laundering activities.*

⁵³ See: <https://consumeraction.org.au/austrac-guidance-on-assisting-customers-who-dont-have-identification/>

⁵⁴ See: <https://www.afca.org.au/about-afca/publications/factsheet-accountclosure>

⁵⁵ See: <https://consumeraction.org.au/concerning-the-abas-application-to-remove-conditions-from-basic-bank-account-conduct/> and <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-183mr-asic-acts-to-ensure-better-banking-outcomes-for-indigenous-consumers/> and <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2024-releases/24-153mr-big-banks-to-refund-millions-in-fees-to-low-income-customers-following-asic-report/>

Paid Representatives

Q.4 Do you think that the proposed Rules amendments are appropriate and will assist AFCA to provide a more timely, efficient and effective dispute resolution process for Complainant?

We have no objection to these proposed Rule amendments in relation to Paid Representatives. We note that we would *not* support the extension of such a Rule to unrepresented consumers or unpaid representatives. Doing so would risk undermining AFCA's accessibility. It would also create difficulties community legal centres in complying with professional and risk management obligations. AFCA is aware of the various issues our organisations have raised elsewhere in relation to AFCA's consumer portal.

Requiring the use of appropriate communication channels by paid representatives

On our frontlines we regularly see cases of paid representatives, many unregulated, who also benefit from using AFCA's free service while profiting from their clients' misfortunes, which often leaves the consumer financially worst off. This type of harm led to the regulation of debt management firm sector in 2021⁵⁶, with licensing requirements to be members of AFCA introduced.

We support the requirement of preferred communication channels for these services by AFCA, including by AFCA portal, especially for non-AFCA member paid representatives. This would help streamline and improve process efficiencies for AFCA so it can have more personnel dedicated to complainants who cannot afford a paid representative, need to self-represent, or who have been merit assessed as high needs by free services like those provided by financial counsellors and community legal services.

As discussed further above, AFCA needs to ensure it allocates more of its scarce resources to greatest areas of harm, a need that will continue to significantly expand as it becomes the national scams ombudsman under the SPF. The proposed Rule changes strike an appropriate balance, as it gives due process under AFCA fairness obligation which will give paid representative the opportunity to give reasons when it fails to use AFCA's stated communication channel before AFCA decides whether to close a complaint. AFCA will also give the complainant the opportunity to pursue the complaint without the paid representative or to appoint another representative.

AFCA Guidance Materials should also make it clear that AFCA can use its discretion to waive this requirement as future scenarios, that genuinely assist scam victims, might arise that warrant an alternative process.

Recommendation: AFCA Guidance Materials should make it clear that AFCA can use its discretion to waive the preferred communication channel requirement for Paid Representatives, as future scenarios, that genuinely assist scam victims, might arise that warrant an alternative process

Dealing with paid representatives who are not AFCA members

For similar reasons stated above, we support the proposed Rule change that allows AFCA to refuse to deal with paid representatives for not being a member of AFCA.

In addition, further amendments could be made as part of this proposed Rule change to extend the exclusion period of paid representatives from AFCA's external dispute resolution service from 12 months to up to 5 years, including when they have been found to have engaged in poor systemic conduct. This could be supported by AFCA

⁵⁶ See: <https://consumeraction.org.au/consumer-groups-support-licensing-of-debt-vultures-but-reforms-must-go-further-to-stop-the-harm/>

working more closely with ASIC to combat phoenixing, as well as advocating to strengthen anti-phoenixing laws, including bans on directors and licensees and stronger reporting to ASIC in relation to paid representatives who may try to set up other entities.

This would send a strong consumer protection message as we have seen examples of debt management firms and other paid representatives perpetrate significant consumer harm over very short periods of non-compliance, including while operating outside their licence obligations⁵⁷.

In the UK, paid representatives are already seizing the opportunity under the new scam laws to take advantage of scam victim complainants, while clogging up external dispute resolution services, and often not acting in the best interest of their clients. Under the UK Financial Ombudsman scheme, almost half of complaints over the last six months of 2024 were lodged by a paid representative.⁵⁸

Recommendation: We would support AFCA making further amendments as part of the proposed Rule changes to extend the exclusion period of Paid Representatives from AFCA's external dispute resolution service from 12 months to up to 5 years

Introducing the ability for AFCA to name financial firms who do not comply with Determinations

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?

We support naming non-compliant firms to improve transparency and consumer protections, which should not be limited in any way by counter arguments of privacy or confidentiality when financial firms have breached their obligations. However, AFCA should work closely with ASIC to provide greater transparency and visibility to the public, as from our experience, vulnerable people will unlikely remain unaware of these firm's conduct if their names are just listed on AFCA's website or if these firms still market themselves as being able to take matters to AFCA, including through phoenixing.

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

Yes, as this will be sending a strong public message of deterrence for non-compliance. AFCA's past inability to publish the names of 64 financial firms⁵⁹ who did not act on AFCA determinations may have also resulted in preventable harm occurring to other consumers who engaged those firms' services who had no prior notice of those firms' non-compliance. However, transparency can only serve as a protective factor for consumers who are aware of AFCA and this data, which would hopefully promote a 'race to the top' by firms.

Finally, we would support AFCA improving transparency and fairness by committing to name all firms, including those who engage in systemic poor practice or conduct; those who are subject to disproportionate consumer complaints; and those whose data show business interests regularly being put ahead of their customers. In a

⁵⁷See: <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-212mr-asic-sues-debt-management-firm-solve-my-debt-now-and-its-director/>

⁵⁸ See: <https://www.financial-ombudsman.org.uk/news/financial-ombudsman-service-received-140000-complaints-second-half-2024>

⁵⁹ See: <https://www.afca.org.au/news/consultation/Rules-consultation-2025/afca-Rules-proposed-amendments-consultation-paper>

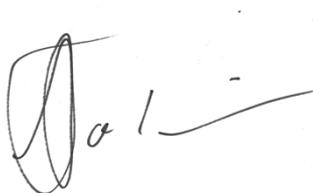
scams context this could include conduct such as banks regularly offering low-ball settlement offers to scam victims, or be based on the number of times they require NDAs to settle scam matters. Again, AFCA would need to work closely with ASIC on a communications strategy to provide greater overall transparency and visibility to the public.

Recommendation: *We would support AFCA committing to naming all firms who engage in systemic poor practice or conduct, who are subject to disproportionate consumer complaints, and whose data show business interests regularly being put ahead of their customers. In a scams context this could include conduct such as banks regularly offering low ball settlement offers to scam victims, or be based the number of times they require NDAs to settle scam matters*

Please contact Senior Policy Officers **David Hofierka** at david.h@consumeraction.org.au or **Rose Bruce-Smith** at rose@consumeraction.org.au at **Consumer Action Law Centre** or on 03 9670 5088 if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink, appearing to read 'Stephanie Tonkin', with a stylized flourish at the end.

Stephanie Tonkin | Chief Executive Officer

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.