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Consultation on AFCA's proposed Rule changes for the Scams Prevention Framework

This is a joint submission prepared by the Consumer Action Law Centre (Consumer Action) and made on behalf of:

- Australian Communications Consumer Action Network (ACCAN)
- CHOICE
- Consumer Action
- Consumer Credit Legal Service WA (CCLSWA)
- Financial Counselling Australia (FCA)
- Financial Counselling Victoria (FCVic)
- Financial Counselling Western Australia (FCWA)
- Financial Rights Legal Centre (FRLC)
- Mob Strong Debt Help
- Westjustice

We welcome the opportunity to comment on AFCA's proposed Rules and Operational Guidelines for the Scams Prevention Framework (SPF). The SPF presents a significant opportunity to deliver fast, fair and straightforward redress for consumers who have experienced scam-related harm.

We broadly support the proposed framework including AFCA's approach to multi-party complaints, its information-gathering powers, the retention of its fairness jurisdiction, and the proposed systemic issues framework, and recognise the significant work undertaken by AFCA to prepare for the SPF.

However, greater ambition is needed in this new jurisdiction to give full effect to the SPF. Scam complaints involve unique challenges, including significant information asymmetry, evolving scam typologies and substantial power imbalances between consumers and regulated entities. In our view, several aspects of the proposal remain too cautious and do not yet go far enough to address these unique realities. Given all stakeholders are entering a new and untested framework, AFCA should equip itself with the strongest possible set of powers and tools from the outset. It will be easier to recalibrate the framework through future reviews than to undo settings that limit AFCA's ability to effectively resolve SPF complaints.

Finally, a central principle of the design and implementation of the scams jurisdiction at AFCA must be putting victims at the heart of the dispute resolution processes. The processes should seek to minimise the impact on scam victims, who are the victims of crime and likely experiencing hardship as a result.

A summary of recommendations is available at **Appendix A**.

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About Consumer Action Law Centre

Consumer Action Law Centre 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.

Use of Artificial Intelligence

Artificial Intelligence (AI) tools were used to assist with administrative and editorial tasks in the preparation of this submission, including formatting, document organisation, proofreading and language refinement. The analysis, legal and policy positions and substantive content of the submission were developed, reviewed and approved by Consumer Action Law Centre staff.

Responses to consultation questions

1. Is our proposed approach to refer-back appropriate for multiparty scam complaints?

We support AFCA's proposed flexible approach to refer-back and, in particular, the recognition that SPF complaints will often have already been subject to substantial IDR processes. We strongly support AFCA's power to commence consideration of the complaint immediately, where a regulated entity has already had the opportunity to consider and respond to a complaint through IDR.

However, where utilised, AFCA should ensure that refer-back processes do not create unnecessary delay in multiparty complaints, especially where additional parties are identified after a complaint is lodged. We are concerned that adding a further 30-day delay where new regulated entities are identified may have an unfair impact and strain on victims. In contrast, in the UK, financial firms resolve a significant majority of claims (84%) within 5 days and resolve nearly all (97%) within 35 days, with only a small percentage escalating to the Financial Ombudsman service for complaint resolution[1]. The overarching objective should be a timely and coordinated resolution process that minimises duplication and consumer burden.

RECOMMENDATION 1. Avoid repeated refer-back processes that could create unreasonable delay where multiple parties are involved.

2. Have you identified any unintended gaps or consequences in coverage of classes of consumers who may be inadvertently included or excluded by the proposed complaint eligibility settings?

We are concerned that legitimate complaints could be excluded if the jurisdiction is interpreted too narrowly. Consumers should not be required to distinguish between a failure to follow a policy and a situation where the policy, practice or system itself was inadequate. This challenge is further complicated by consumers likely receiving Statements of Compliance that state a regulated entity has complied with its SPF obligations. AFCA should ensure complaints concerning the adequacy of scam prevention measures fall within scope. We discuss this issue further in our response to Question 16.

RECOMMENDATION 2. Clarify that complaints regarding the adequacy of a regulated entity's policies, practices and scam prevention measures fall within AFCA's jurisdiction. Ensure consumers are not excluded because they cannot accurately characterise the nature of the regulated entity's failure.

3. What further guidance regarding this proposed approach would be useful for the Operational Guidelines?

The Operational Guidelines should contain practical examples of the types of complaints AFCA can consider under the SPF. We consider this important because consumers might not understand or have any visibility over whether their complaint concerns a policy failure, systems failure, operational failure or broader conduct issue.

AFCA should also clarify how the relevant timeframe is determined in draft provision 1.4.6 when it comes to complainants' awareness of the loss or harm. This issue is likely to arise in romance scams, investment scams and other scams that occur over an extended period of time where it is difficult to ascertain when a victim is or "should reasonably have become aware" of the harm or loss.

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[1] One year on: Impact of APP reimbursement on victims | Payment Systems Regulator

RECOMMENDATION 3. Include practical examples of SPF complaints within jurisdiction.

RECOMMENDATION 4. Clarify how time limits apply to ongoing scam conduct.

4. What further guidance regarding this proposed approach to mandatory exclusions would be useful for the Operational Guidelines?

Scam complaints frequently involve delayed discovery of relevant information. Consumers often only gain access to key facts after a complaint has commenced or after information has been obtained from regulated entities. A rigid application of exclusions may therefore prevent consideration of meritorious complaints, and this limits the ability of dispute resolution processes and intelligence to inform prevention and disruption under the SPF.

The Operational Guidelines should recognise the role of information asymmetry and explain how AFCA will approach exclusion provisions where additional evidence emerges at a later stage.

RECOMMENDATION 5. Explain how AFCA will approach exclusions where relevant information emerges later and recognise information asymmetry as a significant feature of scam complaints.

RECOMMENDATION 6. Apply exclusions cautiously and more flexibly where there is evidence that consumers lacked access to key information or haven't had the opportunity to seek compensation under the SPF.

5. What further guidance about how AFCA may approach its discretion to exclude complaints would be useful for the Operational Guidelines?

No further comment.

6. Does the proposed approach appropriately reflect the multi-party nature of SPF complaints?

We support AFCA's proposed multi-party complaint framework and joinder powers. However, scam complaints commonly involve multiple regulated entities and consumers should not be expected to identify every relevant party or determine how responsibility should be apportioned.

A consumer-centred approach requires that responsibility for coordinating the complaint process sits with AFCA and regulated entities rather than consumers.

RECOMMENDATION 7. AFCA should proactively identify and join relevant parties where appropriate and clarify that consumers are not responsible for identifying all entities involved in the complaint.

RECOMMENDATION 8. Clarify that complaints will continue despite uncertainty regarding ultimate responsibility.

7. What further guidance regarding this proposed approach would be useful for the Operational Guidelines?

Consumers will benefit from greater clarity regarding how AFCA intends to manage multi-party complaints. The process should be transparent and easy to navigate, particularly where multiple regulated entities dispute responsibility, or where regulated entities take different positions on preliminary assessment or recommendation. AFCA should also clarify how it will manage the participation of additional parties to ensure that joining parties does not unnecessarily delay the progression or resolution of complaints.

An additional complication will arise as regulated entities seek to settle disputes with complainants individually while a multi-party dispute is on foot at AFCA. Settlement offers made to consumers should be visible to AFCA, and AFCA should ensure they represent a fair settlement of the regulated entity's responsibility. As the disputes are multi-party, and given the public benefit of scams intelligence revealed at dispute resolution, any settlement must not be subject to a non-disclosure agreement – an obligation we suggest AFCA must oversee.

RECOMMENDATION 9. Explain how AFCA will identify and join additional parties and clarify how responsibility and liability will be assessed across entities.

RECOMMENDATION 10. Make clear that consumers are not required to coordinate multi-party complaints themselves.

RECOMMENDATION 11. Clarify how AFCA will ensure that the process of joining additional parties does not result in unnecessary delays to complaint progression or resolution.

RECOMMENDATION 12. Clarify how AFCA will progress complaints where joined parties take different positions on a preliminary assessment or recommendation, including where one respondent accepts AFCA's proposed resolution and another rejects it and the proposed outcome is contingent on acceptance by all parties under Rule 1.6.4.

RECOMMENDATION 13. AFCA should have full visibility of any settlement offer between a regulated entity and a complainant to ensure the terms are fair having regard to the overall multi-party dispute.

8. How should AFCA adapt its current complaint resolution and decision-making approaches to handle similar SPF complaints?

As the SPF develops, AFCA will likely see recurring scam typologies and recurring issues arising across sectors. We consider consistency to be important, but scam matters are also highly fact specific and will continue to evolve.

AFCA should use published determinations and approach documents to promote consistency while retaining flexibility to address new scam harms and novel circumstances. Over time as technology improves, community expectations and jurisprudence develop, AFCA determinations and positions on liability may evolve. This evolution should be made clear to the public.

AFCA must proceed cautiously when exercising its powers to discontinue a complaint in draft provision 1.8.3(c) and assessing what an offer of "appropriate remedy or compensation" would be – we suggest only proceeding to discontinue when a full reimbursement is offered. This approach reflects that scams are unique and can cause severe, lasting financial, emotional and social consequences. By the time a victim reaches EDR, they have been through a long and sometimes traumatic process.

RECOMMENDATION 14. Publish lessons and guidance emerging from SPF determinations. Use decisions to improve transparency and understanding of AFCA's approach.

RECOMMENDATION 15. Clarify whether AFCA intends to develop a dedicated Scams Approach Document or similar guidance setting out how it will assess common scam-related issues under the SPF.

RECOMMENDATION 16. Use powers to discontinue a complaint under draft provision 1.8.3(c) with caution, and potentially only where the complainant has been provided with a full reimbursement by the regulated entity.

9. Does the proposed information gathering approach appropriately enable AFCA to obtain information necessary to resolve SPF complaints?

We strongly support AFCA's proposed information-gathering powers and, in particular, its ability to look behind Statements of Compliance. However, the proposed framework should go further to ensure AFCA can access the evidence necessary to properly assess complaints.

As noted throughout this submission, scam complaints involve significant information asymmetry. Consumers are unlikely to know what records exist, what information was generated by a regulated entity's systems, whether critical evidence has been omitted from a Statement of Compliance or even to know when to ask these questions. While AFCA's inquisitorial powers are a safeguard, there is a risk that too much reliance is placed on AFCA identifying and requesting specific documents. In practice, consumers cannot be expected to know whether fraud alerts were triggered, internal escalations occurred, intervention opportunities arose, or scam intelligence was received. We are aware through our casework practice of matters where critical documents were not initially produced and only emerged later in the dispute process, despite being highly relevant to the complaint.

We also foresee a real risk that a Statement of Compliance becomes a static account of events in what is, in reality, a highly dynamic environment. A regulated entity may have fraud detection systems, scam alerts, escalation pathways and intervention processes on paper, but the critical question is whether those systems operated effectively in practice.

It is also important that AFCA's approach is not reduced to a tick-box exercise. Where AFCA identifies inconsistencies, gaps in information, evidence that controls were ineffective, or information suggesting that relevant matters have been omitted from a Statement of Compliance, AFCA should be prepared to seek underlying records and form its own view based on the available evidence. AFCA's ability to scrutinise underlying evidence is critical in ensuring Statements of Compliance are treated as a starting point for investigation rather than the final word on compliance.

RECOMMENDATION 17. AFCA should be proactive in its use of information-gathering powers. AFCA should not rely solely on information volunteered by the regulated entity. AFCA should expressly state that a Statement of Compliance is not the determining factor and that it may be tested against underlying evidence.

RECOMMENDATION 18. Operational Guidance should identify examples of circumstances that may justify looking behind a Statement of Compliance, such as inconsistencies between the Statement of Compliance and other evidence, gaps in timelines or records or evidence of missed intervention opportunities.

RECOMMENDATION 19. Where relevant information is omitted from a Statement of Compliance, AFCA should have clear pathways to investigate whether this resulted from error, inadequate record-keeping, or more serious compliance concerns.

10. Is a $10,000 cap appropriate for expert advice costs?

The proposed cap appears to be a reasonable starting point. However, some scam complaints may involve complex issues requiring technical or specialist expertise.

AFCA should monitor whether the cap remains appropriate once the SPF has commenced.

RECOMMENDATION 20. Allow flexibility in exceptional circumstances and review the cap after implementation.

11. What guidance should be developed by AFCA to manage the use of GenAI-by parties to a complaint?

The increasing use of GenAI presents both opportunities and risks. While it may improve accessibility, there is also a risk that AI-generated material may be inaccurate, incomplete or misleading. We also recognise the burden that GenAI can place on the efficiency and accessibility of AFCA and all EDR schemes.

The use of GenAI should not displace or replace the need for parties to provide underlying documentary evidence. Where there is any inconsistency between AI-generated material and the underlying records, AFCA should rely on the original evidence.

RECOMMENDATION 21. Require disclosure where generative AI has been used and prioritise original evidence over AI-generated summaries.

RECOMMENDATION 22. Develop Operational Guidance regarding the use, reliability and authenticity of AI-generated content in SPF complaints.

12. Do the proposed compensation limits appropriately reflect the nature and impact of scam-related harm that should be considered by AFCA?

We strongly support the proposed increase to compensation limits. The increase will improve access to redress for many scam victims and better reflect the substantial losses that can be caused by scams.

We are concerned however that the proposed $1.2 million jurisdictional limit will force consumers who have suffered significant scam losses above the cap to pursue lengthy and costly court proceedings. AFCA's jurisdiction should extend to complaints involving losses above $1.2 million, even if the amount that AFCA can award remains capped. This would enable AFCA to investigate complaints, make findings regarding compliance with SPF obligations, identify systemic issues and facilitate resolution, while preserving an appropriate limit on monetary awards. It would also avoid arbitrary distinctions between consumers based solely on the size of their loss.

We consider that any scam complaint should be capable of being brought to AFCA, regardless of the value of the loss. Consumers who have suffered losses more than $1.2 million may be in extremely difficult financial circumstances, they may have lost most or all of their life savings and they may carry ongoing liability for loans where the scam involved borrowed funds. It is unreasonable to expect these consumers to then fund court proceedings simply to access a determination on their complaint.

Allowing AFCA to consider these matters, while maintaining a cap on the amount that can be awarded in appropriate circumstances, would provide access to a low-cost, low-complexity dispute resolution process. Consumers could then decide whether they are prepared to accept the compensation cap as a trade-off for avoiding litigation.

We note further that there is no monetary cap on losses associated with superannuation funds within AFCA’s financial firm jurisdiction, raising questions as to whether there should similarly be no monetary cap for scam losses from a complainant’s superannuation fund where the conduct of regulated entities further along the scam chain of events is in question (acknowledging that superannuation funds are not yet a designated sector under the SPF).

RECOMMENDATION 23. AFCA should retain jurisdiction to consider complaints involving losses exceeding $1.2 million.

RECOMMENDATION 24. The $1.2 million limit should apply to the compensation AFCA can award, rather than whether a complaint can be considered. Consumers with large losses should not be excluded from AFCA's scam jurisdiction solely because the value of their claim exceeds the compensation cap.

RECOMMENDATION 25. The $1.2 million limit should not apply to the compensation AFCA can award where the loss came from a superannuation fund to align with AFCA's current monetary cap for superannuation funds.

13. Are the proposed limits for legal and other professional costs adequate?

Consumers continue to face significant power imbalances when disputing matters with large, regulated entities. The legal costs cap has remained unchanged despite increasing legal costs and the growing complexity of disputes. Multi-party disputes involving information asymmetries, novel laws and well-resourced regulated entities will inevitably require tens, even hundreds, of thousands in legal fees to pursue.

RECOMMENDATION 26. Increase the legal costs cap to at least $10,000.

RECOMMENDATION 27. Ensure cost arrangements support access to justice.

14. Does this appropriately capture the degree of non-financial loss that may be suffered in SPF complaints?

We support AFCA's proposed increase to non-financial loss compensation as a minimum baseline.

However, AFCA should keep the adequacy of compensation limits under review as the SPF matures and evidence regarding the impacts of scam victimisation continues to emerge. Scam victimisation often causes substantial emotional and psychological harm which can persist long after any financial loss occurs. Scam victims may also experience significant non-financial harm arising from associated privacy breaches, including ongoing anxiety, loss of security and concerns about future misuse of personal information.

Additionally, we are concerned that the definition of non-financial loss risks understating these harms by requiring consumers to experience an 'unusual degree or extent' of inconvenience, time, or interference with peace of mind. This converts what should be an assessment of actual harm into a relative test in circumstances where industry conduct regarding scams has been very poor, with a demonstrated history of systemic issues and consumer harm.[2]

Where harm has become widespread because of persistent industry underperformance, its prevalence should not prevent compensation. The assessment should focus on the nature, severity, duration and consequences of the harm experienced, not whether it was unusual compared with the experiences of other consumers.

Similarly, the framework should avoid undue emphasis on assumptions about how a reasonable or 'moderately robust' consumer should respond. Such a test risks focusing on a decision maker's assessment of a consumer's resilience rather than the consequences of the regulated entity's conduct and the consumers individual circumstances. AFCA must keep in mind that these are victims of crime – some of the worst involve years of deception through romance scams, extortion or threats of harm – and a victim's response throughout dispute resolution may reflect that experience.

Consideration of whether a consumer took reasonable steps to minimise the impact or contributed to the loss can similarly shift the assessment away from the harm suffered towards whether the consumer responded in an ideal or expected manner. Recognition of non-financial harm should not depend on demonstrating a particular degree of resilience or resourcefulness in the face of scam harm or industry failure.

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[2] ASIC, *Federal Court Orders $35 Million Penalty against HSBC for Scam Protection Failures* (Media Release, 18 June 2026) <https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2026-releases/26-127mr-federal-court-orders-35-million-penalty-against-hsbc-for-scam-protection-failures>.

Further, the impact of scams is not experienced uniformly. The same conduct may have significantly different consequences depending on an individual's circumstances, including financial hardship, disability, family violence, language barriers, digital exclusion, caring responsibilities, remoteness or reliance on telecommunications for safety, health care, cultural obligations, employment and community connection. Recognising these differences does not create unequal treatment; rather, it reflects the fundamental principle that compensation should be assessed by reference to the actual harm suffered.

AFCA should expressly recognise that a consumer's circumstances may be relevant to the extent of the harm experienced, even where those circumstances were not known to the provider. Provider knowledge may be relevant to assessing conduct, but it should not determine whether harm actually caused by that conduct is recognised.

Finally, the framework should also recognise that some consumers may face barriers in identifying, disclosing or evidencing the full extent of their non-financial harm. Absence of detailed contemporaneous evidence should not, by itself, indicate that the harm was minor, particularly where trauma, shame, disability, language, cultural factors or other vulnerabilities affect disclosure. Consumers should be given a reasonable opportunity to explain the impacts they experienced and the circumstances affecting their ability to identify or communicate those impacts.

RECOMMENDATION 28. Adopt a broad interpretation of non-financial loss that recognises the significant emotional, psychological and privacy-related impacts of scam victimisation.

RECOMMENDATION 29. AFCA should revise its definition of non-financial loss to ensure all non-financial harm experienced by consumers is eligible for compensation and is assessed by reference to the harm suffered rather than whether the harm is unusual.

RECOMMENDATION 30. AFCA should ensure its non-financial loss framework expressly recognises a consumer’s circumstances may be relevant to the extent of harm experienced.

RECOMMENDATION 31. AFCA should ensure its non-financial loss framework recognises consumers may face barriers in identifying, disclosing or evidencing the full extent of their non-financial harm.

RECOMMENDATION 32. Keep non-financial loss compensation limits under review to ensure they remain adequate to recognise the harms experienced by scam victims as evidence and practice develop.

15. Should parties be required to notify AFCA of terms of settlement of any EDR complaint for the purposes of public reporting and closing the complaint?

We support this proposal. Settlement outcomes can provide important information regarding scam harms, recurring failures and emerging risks. This information should be available to support AFCA's systemic issues functions. It may also help identify whether scam losses and associated compensation payments are increasingly being treated by financial firms as a cost of doing business, rather than creating an incentive to address underlying systemic failures.

We also strongly support AFCA's prohibition on non-disclosure clauses in settlement agreements and releases arising from SPF complaints. Scam complaints can expose systemic failures, emerging scam typologies and weaknesses in scam prevention frameworks. There is a strong public interest in ensuring that consumers, regulators, advocates and industry participants can discuss these issues openly. Allowing confidentiality clauses risks concealing important information about recurring failures and reducing opportunities for broader regulatory learning and consumer protection.

RECOMMENDATION 33. Ensure settlement agreements do not prevent consumers from discussing their experiences or settlement outcomes, including with regulators, consumer advocates, researchers, policymakers, the media or other consumers.

Anticipated industry position

We expect some regulated entities may argue that confidentiality provisions are a common feature of dispute resolution and that they encourage settlement by allowing parties to resolve disputes privately. Industry may say that removing confidentiality protections could discourage settlement, increase reputational risks and lead to more complaints proceeding to formal determination.

While confidentiality may sometimes help with facilitating a settlement, SPF complaints are different from ordinary commercial disputes because they often reveal broader consumer protection issues that may affect large numbers of consumers.

Throughout the years of SPF consultations, we have provided case studies and highlighted our experience of banks providing low-ball settlement offers on the condition of victims signing non-disclosure agreements – several of these cases have been in circumstances where a victim was entitled to substantially more than was on the table. Prohibiting confidentiality clauses would also discourage entities from routinely making unreasonably low settlement offers as these would be exposed. For this reason, we also strongly support requiring entities to provide all settlement agreements to AFCA.

The public interest in transparency and systemic accountability outweighs any interest in preventing disclosure of complaint outcomes. We note that AFCA's proposal does not prevent parties from settling complaints. It simply prevents regulated entities from requiring consumers to remain silent about matters that may be relevant to regulators, advocates, other consumers and the broader operation of the SPF.

16. What further guidance about AFCA's proposed approach to decision making would be useful?

We strongly support the retention of AFCA's fairness jurisdiction. Scam complaints are likely to involve novel fact patterns, evolving harms and significant information asymmetries. A narrow compliance-based approach would not adequately capture the realities of scam victimisation.

As noted throughout this submission, AFCA should be empowered to assess both the operation and adequacy of a regulated entity's policies, practices, systems and controls. Scam complaints may involve allegations that fraud detection systems, intervention processes or broader controls were themselves deficient.

The recent *Australian Securities and Investments Commission v HSBC Australia Limited [2026] FCA 847*[3] findings demonstrate that effective oversight requires scrutiny of the underlying systems and framework itself, not just whether staff followed existing procedures. ASIC's case focused on whether HSBC's systems, processes and controls were adequate to manage scam, fraud and unauthorised transaction risks. AFCA should similarly be assessing the adequacy of the underlying framework, rather than limiting its consideration to compliance with that framework.

We consider it important that AFCA is not assessing just the existence of policies and practices, but whether those measures operated effectively in practice and achieved the outcomes contemplated by the SPF. The existence of

[3] ASIC v HSBC Bank Australia Limited - Judgment - 18 June 2026.

a scam prevention framework on paper should not be treated as evidence that the framework was effective in preventing, detecting, disrupting, reporting or responding to scams – such an approach will take us nowhere in reducing scams in this country.

Additionally, when determining SPF complaints, AFCA should consider broader principles such as consumer vulnerability, fairness and causation, rather than technical compliance with the SPF Codes and Rules. This would help ensure outcomes reflect the circumstances of each case and allow AFCA to assess whether a regulated entity's conduct, systems or omissions contributed to a consumer's loss, even where there may be compliance with minimum requirements.

We note that rule 1.7.2 permits a regulated entity to undertake certain actions "with AFCA's consent" during the course of an SPF complaint. However, the Rules do not appear to specify the factors AFCA will take into account when deciding whether to grant that consent. Greater transparency regarding the circumstances in which consent may be granted would assist both complainants and regulated entities to understand how these discretionary powers will be exercised and promote consistency and procedural fairness.

Throughout the Rules, AFCA's obligations are frequently expressed using phrases such as "as soon as possible", "as soon as practicable" and "within a reasonable timeframe". While some flexibility may be necessary, these terms can create uncertainty for complainants and regulated entities and make it difficult to assess whether a matter is progressing appropriately.

We note that regulated entities are generally required to comply with clearly defined statutory timeframes. AFCA should consider whether greater specificity could be provided for these obligations, including through indicative timeframes to improve transparency and accountability.

RECOMMENDATION 34. Preserve AFCA's "fair in all the circumstances" jurisdiction.

RECOMMENDATION 35. Clarify that AFCA can assess the adequacy of policies and practices.

RECOMMENDATION 36. Confirm that AFCA may consider broader principles such as fairness and causation.

RECOMMENDATION 37. Avoid reducing SPF complaints to a compliance checklist.

RECOMMENDATION 38. Clarify the factors AFCA will consider when exercising discretionary powers.

RECOMMENDATION 39. AFCA should review references to "as soon as possible", "as soon as practicable" and "within a reasonable timeframe" throughout the Rules and provide more specific timeframes or service standards where appropriate.

17. Does reference to AFCA's Engagement Charter in Rule 1.2.2 assist stakeholders in their understanding of how they should participate in the AFCA process?

We support inclusion of the Engagement Charter.

18. Should the definition of Paid Representative be expanded to include lawyers and accountants?

We do not support expanding the definition. Lawyers and accountants have professional and ethical duties and perform a different role to claims management businesses and often assist consumers experiencing vulnerability to navigate complex disputes.

RECOMMENDATION 40. AFCA should further consider potential unintended consequences.

RECOMMENDATION 41. Distinguish between professional advisers and commercial claims management businesses.

19. Are there other industry, regulatory or system-wide reforms that should be considered?

The growth of paid representatives may be an indication of broader accessibility issues within dispute resolution systems. Where complaints processes are difficult to navigate, time-consuming or perceived as inaccessible, consumers may be more likely to engage claims management firms or other paid representatives to pursue their complaints on their behalf.

We are concerned that the SPF may create opportunities for the growth of claims management businesses offering to assist scam victims in seeking reimbursement. This issue has attracted attention in overseas jurisdictions, particularly in the United Kingdom following the introduction of reimbursement arrangements for authorised push payment (APP) scams, where claims management companies have reportedly become involved in a substantial proportion of reimbursement disputes and may retain a significant share of compensation payments.

Similar issues are already emerging in Australia. For example, claims management businesses such as Claimo are already active in the consumer compensation and redress markets, offering services that assist consumers to pursue claims in return for a fee.[4] While these services may appeal to consumers who are distressed, vulnerable or uncertain about how to navigate complaints processes, they also raise questions about whether consumers are receiving the full benefit of compensation outcomes and whether commercial incentives are aligned with consumers' best interests.

We consider this issue warrants consideration in the SPF context. Scam victims often experience distress, financial hardship and vulnerability following a scam and may be particularly susceptible to marketing that promises assistance in obtaining compensation. We have sadly observed such behaviour in response to "scam recovery services" – some of which operate as a second scam for victims. While paid representation may be appropriate in some circumstances, there is a risk that consumers receive less of any compensation outcome where representatives charge substantial fees, despite AFCA providing a free and accessible external dispute resolution service. There is also a risk that commercial incentives may not always align with consumers' best interests.

The experience in the UK suggests that the introduction of scam reimbursement frameworks may create incentives for claims management businesses to enter the market. As the SPF develops, AFCA and Government should monitor whether consumers are increasingly relying on fee-charging representatives and consider whether this reflects underlying barriers to accessing dispute resolution processes. In our view, the primary policy response should be to ensure that consumers can easily navigate complaints processes without requiring paid assistance.

Improving accessibility and support for consumers, including through clear processes, trauma-informed practices and access to free assistance services such as financial counsellors and community legal centres, may reduce reliance on claims management services and help ensure compensation outcomes are retained by scam victims.

RECOMMENDATION 42. Improve accessibility and support for unrepresented consumers throughout the SPF and complaints process, including through user-centred design, trauma-informed processes and access to free assistance services.

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[4] About Us I Claims Management Service Australia I Claimo.

RECOMMENDATION 43. AFCA should undertake an early review of the role of claims management firms in the SPF and assess whether additional safeguards are required, including fee transparency requirements, licensing and conduct obligations and measures to promote access to free consumer assistance services.

RECOMMENDATION 44. Consider whether increased legal costs caps could reduce incentives for claims management models.

Additional matters not directly addressed by a consultation question

Adverse inferences and withheld evidence

We support AFCA's proposal to draw adverse inferences where relevant information is not provided. The ability to draw adverse inferences is an important safeguard where a party fails to comply with information requests or where records that would ordinarily be expected to exist cannot be produced.

AFCA should ensure that parties cannot avoid scrutiny by refusing to provide relevant information or by failing to retain records that are relevant to the matters in dispute. The Operational Guidance should provide greater clarity regarding how AFCA will approach situations where there are unexplained gaps in the available evidence.

The Operational Guidance should also clarify that requests for information will, in the first instance, be directed to the regulated entity where the relevant information is within its possession or control. Consumers should not bear the burden of obtaining information that is held by regulated entities or that would ordinarily be expected to exist as part of a regulated entity's systems, processes or record-keeping obligations.

Further guidance would also be beneficial regarding the proposed "material importance" threshold for drawing adverse inferences. The Operational Guidance should include examples of information that AFCA will ordinarily regard as materially important to its consideration of a complaint. At a minimum, this should include information relevant to any matters addressed in a Statement of Compliance and information concerning scam detection, intervention, transaction monitoring, customer interactions and decision-making processes.

RECOMMENDATION 45. AFCA should be prepared to draw adverse inferences where relevant records are not produced, expected records are absent, or information requests are not complied with without reasonable explanation.

RECOMMENDATION 46. Operational Guidance should explain how AFCA will approach situations where there are gaps in the evidence or records that would ordinarily be expected to exist, including clarifying that where relevant information is held by a regulated entity, the burden of providing that information rests with the regulated entity rather than the consumer.

RECOMMENDATION 47. AFCA should ensure that adverse inference powers are used effectively where relevant information is withheld and without reasonable explanation and provide guidance on the types of information that will generally be regarded as being of "material importance", including information relevant to a Statement of Compliance.

Systemic issues and transparency

We strongly support AFCA's systemic issues framework. Scam complaints are likely to generate valuable insights regarding recurring failures and emerging risks. AFCA should take a proactive role in identifying, escalating and communicating systemic issues.

RECOMMENDATION 48. Publish regular de-identified thematic reporting and be transparent regarding systemic issues identified and remediation undertaken, including de-identified reporting of consumer outcomes where appropriate and identification of regulated entities where this is necessary to promote accountability, transparency and systemic improvement.

RECOMMENDATION 49. Publicly communicate lessons emerging from systemic investigations and identify recurring weaknesses across sectors.

Accessibility and First Nations consumers

We understand AFCA is working with First Nations communities and stakeholders, including through a co-design process, to improve access and equity for First Nations consumers, alongside its broader commitment to embedding equity considerations across the organisation. This work represents an important opportunity to ensure that the SPF jurisdiction is designed and implemented in a way that is accessible, culturally safe and responsive to the needs of First Nations consumers.

We welcome AFCA's commitment to embedding these considerations as part of its broader approach to dispute resolution and seek clarification on how First Nations equity and access principles will be reflected in the SPF jurisdiction.

Rule 1.11.2(b) permits parties to discuss confidential information with their lawyer, adviser, accountant or insurer. AFCA should also expressly include financial counsellors within this exception. Financial counsellors frequently assist consumers experiencing financial difficulty and vulnerability, and access to relevant complaint information may be necessary for them to provide effective support and advice throughout the SPF process.

Rule 1.13.4 permits AFCA to close a complaint where a complainant does not respond within a specified timeframe. Non-response may not always indicate disengagement. Consumers affected by scams may experience vulnerability, illness, family violence, language barriers, digital exclusion, or other circumstances that affect their ability to respond within timeframes. While timeframes are important for efficient case management, AFCA should retain discretion to re-open a complaint where a complainant can demonstrate reasonable extenuating circumstances that contributed to their non-response. This would help ensure that vulnerable consumers are not unfairly excluded from the SPF process due to circumstances outside their control.

RECOMMENDATION 50. Confirm that First Nations equity and access principles will be incorporated into the design and implementation of the SPF jurisdiction as business-as-usual. Explain how this will operate for scam complaints and how AFCA's SPF processes are culturally safe, accessible and responsive to barriers such as remoteness, language, literacy and digital exclusion.

RECOMMENDATION 51. Include financial counsellors in rule 1.11.2(b).

RECOMMENDATION 52. Introduce flexibility where extenuating circumstances contribute to non-response

Overlapping jurisdictions and long-running scams

AFCA should provide clearer guidance on how it intends to deal with (1) complaints that straddle the SPF commencement date and (2) complaints that potentially engage both the SPF and Financial Firm jurisdictions.

AFCA should clarify how it will approach complaints involving conduct that spans the SPF commencement date. While the Operational Guidance provides examples of how pre-commencement conduct will be treated, further guidance would be beneficial where the same regulated entity is alleged to have engaged in relevant conduct both before and after 31 March 2027. In these circumstances, it is unclear how AFCA will distinguish between conduct assessed under the SPF and conduct assessed under existing Financial Firm jurisdiction, and how any resulting liability will be apportioned.

Scams frequently involve overlapping obligations and causes of action. For example, a consumer may allege that a bank failed to comply with responsible lending obligations where the scam involved the consumer borrowing funds while also failing to meet its SPF obligations to prevent, detect, disrupt or respond to scam activity.

Consumers should not be required to navigate multiple AFCA processes, choose between jurisdictions, or separately pursue different aspects of the same complaint. Unless there are exceptional circumstances, the SPF Rules should apply in all cases.

RECOMMENDATION 53. AFCA should publish guidance and examples explaining how complaints involving conduct both before and after 31 March 2027 will be managed, including where the same regulated entity is alleged to have contributed to losses across both periods.

RECOMMENDATION 54. AFCA should clarify how complaints involving both SPF and Financial Firm issues will be managed, including how overlapping obligations and causes of action will be assessed.

RECOMMENDATION 55. AFCA should clarify which rules, remedies and decision-making frameworks will apply where both SPF and Financial Firm jurisdictions are engaged, including how conflicts or inconsistencies between the two frameworks will be resolved.

RECOMMENDATION 56. Where appropriate, AFCA should consider related SPF and Financial Firm issues together to minimise complexity and duplication for consumers.

Mass scam harm events

The AFCA SPF Rules should consider situations involving large-scale scam events that affect many consumers simultaneously. Scams increasingly occur at scale and can involve failures across multiple regulated entities and sectors. In these circumstances, individual complaint-by-complaint resolution may be inefficient and burdensome for consumers.

While AFCA already has established systemic issue functions, it is unclear how those powers will operate in the SPF context. A single scam event may involve multiple banks, telecommunications providers and digital platforms and responsibility may be spread across several regulated entities and multiple regulators. AFCA should clarify how it intends to identify, investigate and escalate systemic issues arising from large-scale scam events including where there may be a need for proactive remediation by one or more regulated entities with appropriate oversight by the relevant regulator to ensure consumer redress as currently occurs under ASIC RG 277 for banks.

RECOMMENDATION 57. AFCA should publish guidance on how it will manage mass scam events affecting large numbers of consumers.

RECOMMENDATION 58. AFCA should clarify how its systemic issues powers will operate where a scam event involves multiple regulated entities and sectors.

RECOMMENDATION 59. AFCA should explain how systemic scam issues will be referred and coordinated across the relevant SPF regulators.

Access to relevant information where commercial sensitivity is claimed

We recognise that AFCA must balance procedural fairness and transparency against legitimate concerns regarding commercially sensitive information. However, commercial sensitivity should not become a blanket basis for withholding information that is relevant to determining whether a regulated entity complied with its SPF obligations.

RECOMMENDATION 60. Where relevant information cannot be disclosed in full, AFCA should facilitate disclosure through summaries, redactions, de-identification or other appropriate mechanisms and ensure its own access is not unreasonably restricted even where there are grounds for a consumer's access to be limited. Regulated entities should not be permitted to rely on information that consumers have no meaningful opportunity to understand or respond to. Clarify that claims of commercial sensitivity are not a blanket basis for withholding information relevant to SPF complaints.

RECOMMENDATION 61. Operational Guidance should provide examples of how AFCA may facilitate disclosure through redaction, de-identification, summaries or other protective measures.

RECOMMENDATION 62. Where AFCA permits information to be withheld on commercial sensitivity grounds, it should explain how it has satisfied itself that the withheld information does not undermine its ability to fairly determine the complaint or the consumer's ability to understand and respond to the submissions or evidence relied upon by the other party.

RECOMMENDATION 63. AFCA should not accept a regulated entity's assertion of commercial sensitivity without appropriate scrutiny.

RECOMMENDATION 64. If AFCA determines that information cannot be disclosed due to commercial sensitivity, it should start with a presumption of adverse inference against the relevant regulated entity unless it is persuaded otherwise, in recognition of the significant information asymmetry between the parties and inability of a complainant to challenge or respond to the information.

Consequences of non-compliance with information requests

We support AFCA's ability to draw adverse inferences and report repeated non-compliance to regulators. However, it is unclear what the consequences are where either a regulated entity or a complainant fails to comply with AFCA's information requests. In particular, it would be useful to understand how AFCA will balance procedural fairness with the need to determine complaints efficiently, and what options remain available if a complaint cannot be fully investigated because relevant information has not been provided. Delays caused by a party's failure to provide requested information can also prolong uncertainty, inconvenience and distress for complainants, particularly where consumers have already experienced significant harm arising from a scam.

RECOMMENDATION 65. AFCA should clarify the consequences of non-compliance with information requests by both complainants and regulated entities, including how it will ensure consumers are not unfairly disadvantaged where a complaint cannot be fully investigated due to missing information. AFCA should use all available powers to minimise delays caused by non-compliance and recognise that unnecessary delays may themselves result in compensable non-financial harm, including additional stress, inconvenience and uncertainty for consumers.

Automatic escalation of IDR complaints to AFCA

The consultation paper (at 1.2.3) says that consumers will have the right to escalate unresolved complaints from IDR to AFCA. However, it is unclear whether consumers will be required to take additional steps to initiate the AFCA process once IDR is complete.

Consumer Action has consistently advocated for reducing barriers to EDR and streamlining complaint pathways for consumers. For some consumers, particularly those experiencing vulnerability, trauma or confusion following a scam, requiring a further escalation step may create an unnecessary barrier to accessing external dispute resolution and increase the likelihood that consumers disengage from the complaint process altogether. Where consumers disengage, they may lose access to compensation, redress and independent review despite potentially having meritorious complaints. The burden of navigating multiple steps is likely to fall most heavily on those consumers who are least able to advocate for themselves following a scam. High drop-out rates are not only a poor consumer outcome, they risk excluding vulnerable consumers from the protections the SPF is intended to provide and may undermine the broader objectives of the framework.

Creating an opt-out model for progression from IDR to EDR, rather than requiring consumers to opt in, may also create stronger incentives for regulated entities to resolve complaints effectively during IDR, before they automatically progress to AFCA. It would also help ensure that consumers are not prevented from accessing EDR simply because they are unable to navigate an additional procedural step at the conclusion of the IDR process.

Complaints contain valuable information about scam typologies, emerging risks and regulated entity responses. If unresolved complaints do not progress to AFCA, opportunities to identify systemic issues, collect actionable scam intelligence and improve scam prevention and disruption measures may be lost.

This concern may be particularly relevant in SPF complaints, which are expected to involve multiple parties and lengthy complaint processes. In these circumstances, an opt-out referral model would better promote accessibility, participation and the effective identification of systemic issues.

RECOMMENDATION 66. AFCA and Government should establish an opt-out referral process whereby unresolved SPF complaints automatically progress to AFCA at the conclusion of the IDR process, unless the consumer chooses to opt out. Consideration should be given to whether the single IDR platform currently under development by industry (BOB) can facilitate automatic referral of complaints to AFCA. This would reduce the need for consumers to repeatedly provide information and recount their experiences, supporting a more trauma-informed and accessible dispute resolution process.

Consumers without access to AFCA

We are concerned that consumers may be unable to access AFCA where a regulated entity is no longer an AFCA member at the time a complaint is lodged, even if the entity was a member when the relevant conduct occurred (at 2.2.2). This risks leaving consumers without a practical dispute resolution pathway and creates uncertainty about what rights and remedies remain available.

RECOMMENDATION 67. AFCA should clarify the rights and available remedies of consumers in these circumstances, including how consumers may obtain redress where a regulated entity is no longer a member and how multi-party complaints involving current and former members will be managed.

RECOMMENDATION 68. Where AFCA cannot consider a complaint because a regulated entity is no longer a member, AFCA should refer the matter to the relevant regulator.

Court proceedings and scam complaints

We have concerns about Example 6. While the court proceedings may have determined the complainant's liability for the debt, the SPF complaint concerns different issues, namely whether the regulated entity complied with its scam prevention obligations. A finding that a debt is repayable does not necessarily determine whether a bank failed to take reasonable steps to prevent, detect, disrupt or respond to a scam. This also raises concerns that AFCA would be prevented from hearing a complaint where a court has ordered a lender to repossess a property. We can foresee cases where repossession proceedings are finalised in default of the victim's appearance or without the victim having access to the all the information, representation or time to fully defend an application on the grounds of hardship and potentially multiple regulated entities non-compliance with the SPF. Against this background, we are concerned about AFCAs intention to exclude complaints of this nature and urge AFCA to consider how it may take a more flexible approach.

RECOMMENDATION 69. AFCA should distinguish between challenging a court's finding on liability and assessing whether a regulated entity complied with its SPF obligations.

Fraudulent complaints

We have questions about Example 11. Should AFCA be required to obtain confirmation directly from the consumer before excluding a complaint, rather than relying solely on information provided by the regulated entity?

It is also unclear whether AFCA will refer suspected identity fraud or misuse of consumer identities to the relevant SPF regulator.

RECOMMENDATION 70. AFCA should take reasonable steps to verify the consumer's instructions before excluding a complaint under Rule 2.2.2(j).

RECOMMENDATION 71. AFCA should clarify whether suspected identity fraud will be referred to the relevant regulator for investigation.

Decision-maker independence

We have concerns regarding proposed Rule 1.14.4, which says that a Decision Maker may have had some prior involvement in the management of a SPF complaint before making a Determination.

We understand this provision has been introduced following the decision in *Notesco Pty Ltd v AFCA [2022] NSWSC 285*, where the Court considered AFCA's obligations concerning impartial decision-making and its own Rules. While we recognise the challenges involved in managing complex complaints, it is not clear that a rule change can remove AFCA's broader obligations to provide procedural fairness and avoid bias.

Consumers and regulated entities should have confidence that Determinations are made by a decision-maker who approaches the issues with an open mind and has not previously formed views about the merits of the dispute. This is particularly important in complex SPF complaints involving multiple parties, substantial losses or disputed questions regarding compliance with SPF obligations.

RECOMMENDATION 72. AFCA should clarify how Rule 1.14.4 will operate consistently with principles of procedural fairness and bias.

RECOMMENDATION 73. AFCA should consider whether Decision Makers who have had substantive involvement in earlier stages of a complaint should be prevented from making the final Determination.

Moral hazard and consumer incentives

We are aware that some industry stakeholders have argued that stronger compensation protections may reduce incentives for consumers to take reasonable steps to protect themselves from scams. This "moral hazard" argument is frequently raised in discussions about scam reimbursement and compensation frameworks.

Concerns that stronger reimbursement protections may encourage consumers to behave less cautiously are not supported by the available evidence. An independent evaluation of the United Kingdom's APP scam reimbursement framework found no evidence that changes in consumer behaviour affected reported APP fraud levels[5] and reported that reimbursement requirements were a significant driver of stronger anti-fraud controls by payment service providers[6] and reductions in APP fraud losses.[7]

These findings are consistent with the reality that scam victims are often subject to sophisticated deception, manipulation and psychological pressure. Scams are increasingly perpetrated through trusted channels and exploit human behaviour in ways that cannot always be prevented through consumer vigilance alone. In this context, placing excessive weight on moral hazard concerns risks overstating consumers' ability to detect and avoid scams while understating the role that regulated entities can play in preventing losses.

The available evidence suggests that reimbursement frameworks can improve outcomes for consumers while strengthening incentives for regulated entities to invest in scam prevention. Concerns regarding moral hazard should therefore be supported by evidence rather than assumed, particularly where they may be used to justify limiting consumer protections or access to redress.

RECOMMENDATION 74. AFCA and Government should not assume that stronger reimbursement protections create consumer moral hazard. Reimbursement settings should be based on evidence, including emerging international experience, which indicates that reimbursement frameworks can strengthen incentives for regulated entities to prevent scams without encouraging reckless consumer behaviour.

[5] Frontier Economics, Independent evaluation of APP scam policies: summary report, page 39-40.
[6] Ibid, page 26-29.
[7] Ibid, page 37.

APPENDIX A - SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1. Avoid repeated refer-back processes that could create unreasonable delay where multiple parties are involved.

RECOMMENDATION 2. Clarify that complaints regarding the adequacy of a regulated entity's policies, practices and scam prevention measures fall within AFCA's jurisdiction. Ensure consumers are not excluded because they cannot accurately characterise the nature of the regulated entity's failure.

RECOMMENDATION 3. Include practical examples of SPF complaints within jurisdiction.

RECOMMENDATION 4. Clarify how time limits apply to ongoing scam conduct.

RECOMMENDATION 5. Explain how AFCA will approach exclusions where relevant information emerges later and recognise information asymmetry as a significant feature of scam complaints.

RECOMMENDATION 6. Apply exclusions cautiously and more flexibly where there is evidence that consumers lacked access to key information or haven't had the opportunity to seek compensation under the SPF.

RECOMMENDATION 7. AFCA should proactively identify and join relevant parties where appropriate and clarify that consumers are not responsible for identifying all entities involved in the complaint.

RECOMMENDATION 8. Clarify that complaints will continue despite uncertainty regarding ultimate responsibility.

RECOMMENDATION 9. Explain how AFCA will identify and join additional parties and clarify how responsibility and liability will be assessed across entities.

RECOMMENDATION 10. Make clear that consumers are not required to coordinate multi-party complaints themselves.

RECOMMENDATION 11. Clarify how AFCA will ensure that the process of joining additional parties does not result in unnecessary delays to complaint progression or resolution.

RECOMMENDATION 12. Clarify how AFCA will progress complaints where joined parties take different positions on a preliminary assessment or recommendation, including where one respondent accepts AFCA's proposed resolution and another rejects it and the proposed outcome is contingent on acceptance by all parties under Rule 1.6.4.

RECOMMENDATION 13. AFCA should have full visibility of any settlement offer between a regulated entity and a complainant to ensure the terms are fair having regard to the overall multi-party dispute.

RECOMMENDATION 14. Publish lessons and guidance emerging from SPF determinations. Use decisions to improve transparency and understanding of AFCA's approach.

RECOMMENDATION 15. Clarify whether AFCA intends to develop a dedicated Scams Approach Document or similar guidance setting out how it will assess common scam-related issues under the SPF.

RECOMMENDATION 16. Use powers to discontinue a complaint under draft provision 1.8.3(c) with caution, and potentially only where the complainant has been provided with a full reimbursement by the regulated entity.

RECOMMENDATION 17. AFCA should be proactive in its use of information-gathering powers. AFCA should not rely solely on information volunteered by the regulated entity. AFCA should expressly state that a Statement of Compliance is not the determining factor and that it may be tested against underlying evidence.

RECOMMENDATION 18. Operational Guidance should identify examples of circumstances that may justify looking behind a Statement of Compliance, such as inconsistencies between the Statement of Compliance and other evidence, gaps in timelines or records or evidence of missed intervention opportunities.

RECOMMENDATION 19. Where relevant information is omitted from a Statement of Compliance, AFCA should have clear pathways to investigate whether this resulted from error, inadequate record-keeping, or more serious compliance concerns.

RECOMMENDATION 20. Allow flexibility in exceptional circumstances and review the cap after implementation.

RECOMMENDATION 21. Require disclosure where generative AI has been used and prioritise original evidence over AI-generated summaries.

RECOMMENDATION 22. Develop Operational Guidance regarding the use, reliability and authenticity of AI-generated content in SPF complaints.

RECOMMENDATION 23. AFCA should retain jurisdiction to consider complaints involving losses exceeding $1.2 million.

RECOMMENDATION 24. The $1.2 million limit should apply to the compensation AFCA can award, rather than whether a complaint can be considered. Consumers with large losses should not be excluded from AFCA's scam jurisdiction solely because the value of their claim exceeds the compensation cap.

RECOMMENDATION 25. The $1.2 million limit should not apply to the compensation AFCA can award where the loss came from a superannuation fund to align with AFCA's current monetary cap for superannuation funds.

RECOMMENDATION 26. Increase the legal costs cap to at least $10,000.

RECOMMENDATION 27. Ensure cost arrangements support access to justice.

RECOMMENDATION 28. Adopt a broad interpretation of non-financial loss that recognises the significant emotional, psychological and privacy-related impacts of scam victimisation.

RECOMMENDATION 29. AFCA should revise its definition of non-financial loss to ensure all non-financial harm experienced by consumers is eligible for compensation and is assessed by reference to the harm suffered rather than whether the harm is unusual.

RECOMMENDATION 30. AFCA should ensure its non-financial loss framework expressly recognises a consumer's circumstances may be relevant to the extent of harm experienced.

RECOMMENDATION 31. AFCA should ensure its non-financial loss framework recognises consumers may face barriers in identifying, disclosing or evidencing the full extent of their non-financial harm.

RECOMMENDATION 32. Keep non-financial loss compensation limits under review to ensure they remain adequate to recognise the harms experienced by scam victims as evidence and practice develop.

RECOMMENDATION 33. Ensure settlement agreements do not prevent consumers from discussing their experiences or settlement outcomes, including with regulators, consumer advocates, researchers, policymakers, the media or other consumers.

RECOMMENDATION 34. Preserve AFCA's "fair in all the circumstances" jurisdiction.

RECOMMENDATION 35. Clarify that AFCA can assess the adequacy of policies and practices.

RECOMMENDATION 36. Confirm that AFCA may consider broader principles such as fairness and causation.

RECOMMENDATION 37. Avoid reducing SPF complaints to a compliance checklist.

RECOMMENDATION 38. Clarify the factors AFCA will consider when exercising discretionary powers.

RECOMMENDATION 39. AFCA should review references to "as soon as possible", "as soon as practicable" and "within a reasonable timeframe" throughout the Rules and provide more specific timeframes or service standards where appropriate.

RECOMMENDATION 40. AFCA should further consider potential unintended consequences.

RECOMMENDATION 41. Distinguish between professional advisers and commercial claims management businesses.

RECOMMENDATION 42. Improve accessibility and support for unrepresented consumers throughout the SPF and complaints process, including through user-centred design, trauma-informed processes and access to free assistance services.

RECOMMENDATION 43. AFCA should undertake an early review of the role of claims management firms in the SPF and assess whether additional safeguards are required, including fee transparency requirements, licensing and conduct obligations and measures to promote access to free consumer assistance services.

RECOMMENDATION 44. Consider whether increased legal costs caps could reduce incentives for claims management models.

RECOMMENDATION 45. AFCA should be prepared to draw adverse inferences where relevant records are not produced, expected records are absent, or information requests are not complied with without reasonable explanation.

RECOMMENDATION 46. Operational Guidance should explain how AFCA will approach situations where there are gaps in the evidence or records that would ordinarily be expected to exist, including clarifying that where relevant information is held by a regulated entity, the burden of providing that information rests with the regulated entity rather than the consumer.

RECOMMENDATION 47. AFCA should ensure that adverse inference powers are used effectively where relevant information is withheld and without reasonable explanation and provide guidance on the types of information that will generally be regarded as being of "material importance", including information relevant to a Statement of Compliance.

RECOMMENDATION 48. Publish regular de-identified thematic reporting and be transparent regarding systemic issues identified and remediation undertaken, including de-identified reporting of consumer outcomes where appropriate and identification of regulated entities where this is necessary to promote accountability, transparency and systemic improvement.

RECOMMENDATION 49. Publicly communicate lessons emerging from systemic investigations and identify recurring weaknesses across sectors.

RECOMMENDATION 50. Confirm that First Nations equity and access principles will be incorporated into the design and implementation of the SPF jurisdiction as business-as-usual. Explain how this will operate for scam complaints and how AFCA's SPF processes are culturally safe, accessible and responsive to barriers such as remoteness, language, literacy and digital exclusion.

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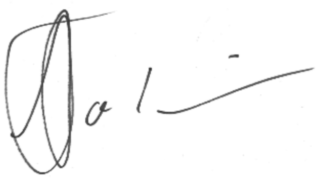
We again wish to congratulate AFCA on its substantial work to bring the complex multi-party EDR system to life. While our feedback is detailed, we are generally very supportive of AFCA's approach.

Please contact Policy Officer **Pavithra Jayasekera** at **Consumer Action Law Centre** on 03 8554 6963 or at pavithra@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Stephanie Tonkin | Chief Executive Officer