



20 November 2017

Head of Secretariat
AFCA Transition Team
Financial Services Unit
The Treasury

Email: afca@treasury.gov.au

Confidential submission

Dear Sir/Madam

**Re: Establishment of the Australian Financial Complaints Authority – Consultation Paper
November 2017**

We welcome the opportunity to provide feedback on the Government's November 2017 Consultation Paper relating to the establishment of the Australian Financial Complaints Authority (AFCA) (the **Consultation Paper**).

We support the steps the Government is taking to improve the dispute resolution framework applying to the financial sector.

Background

Capstone Financial Planning Pty Ltd (**Capstone**) is a national privately owned and operated financial services business that has been the holder of Australian financial services licence (**AFSL**) 223135 since July 2002. We are a member of the Financial Ombudsman Service Australia scheme.

Capstone currently authorises and provides support services to a panel of 153 authorised representatives via a tiered authorisation offering ranging from the provision of limited scope financial services suited to accountants to broader authorisations for traditional financial advisers offering more holistic financial planning services to clients. Capstone's authorised representatives are in the main, small business owners.

Feedback

For the ease of reference, we have adopted the relevant sequence of questions as they appear in the Consultation Paper, in providing our feedback below:

a) Question 4: Impact on Professional Indemnity Insurance

The proposed dispute limit of \$1 million and a compensation cap of \$500,000 for most non-superannuation is a significant increase to the limits that currently apply. We expect that such an increase (and as a result of the associated increase in risk for Professional Indemnity insurers) will likely result in a sizeable increase in the cost of Professional Indemnity Insurance cover for financial services firms.

We note that this comes at a time when financial services firms are already facing increased costs resulting from numerous regulatory changes (including the Australian Securities and Investment Commission's cost recovery program).

b) Question 5: Consistent decision making

Suitably skilled, qualified and knowledgeable staff

We agree with the Government's proposal that staff at all levels should be skilled and knowledgeable about relevant industry sectors and receive appropriate training. Such an approach is critical given the complex nature of the underlying subject matter AFCA will be responsible for making decisions about as well as the implications of AFCA's decisions on its member firms and consumers.

In the circumstances, we suggest that complaints dealt with by AFCA should only be reviewed by staff who meet requisite training and competence requirements in the relevant product or technical areas reflective of the subject matter of the complaint (for example investments, superannuation, insurance in the context of financial planning complaints). This is also consistent with the Australian Securities and Investments Commission's (ASIC) guidance relating to how advice licensees are required to conduct client reviews and remediation programs (detailed in Regulatory Guide 256: Client review and remediation conducted by advice licensees).

We believe the level of training and competence required should be at least consistent with the relevant requirements set by ASIC and/or the relevant professional standards authorities from time to time.

Clear and consistent decision making

Clear guidance regarding how AFCA will apply the principles of fairness, efficiency, timeliness and independence is critical, in our view, to ensure that AFCA adopts a consistent approach to decision making and relevant standards are maintained. This is particularly relevant given the potential impacts associated with poor decision making to member firms and consumers alike.

In the circumstances, we believe AFCA's decision making approach should be clear, detailed and unambiguously documented in its operational guidelines or similar guidance documents. We believe it is also important that AFCA's approach and its relevant guidance documents be subject to review by an independent assessor (with feedback from AFCA's member firms and consumers) on a reasonably regular basis. We believe such an approach is important to ensure that AFCA's approach remains not only consistent with the principles of its foundation but in step with regulatory and industry developments.

Right of review

We note that like the existing external dispute resolution schemes it will replace, it does not appear that the AFCA process will provide member firms or consumers a formal right of review of individual AFCA decisions.

Given the scope of the AFCA's decision making abilities and in the interests of upholding the principle of fairness, we recommend that consideration be given to incorporating a mechanism for member firms and consumers to request a review of individual AFCA decisions thus ensuring more equitable and consistent decisions. We acknowledge and support the operation of such a mechanism should include relevant conditions to also allow for efficient and timely finalisation of AFCA complaints.

c) Question 10: Clear guidance about when a panel should be used

Guidance regarding when an AFCA panel should be used to decide a complaint should clearly and unambiguously be set out in its operational guidelines or similar guidance documents. We agree that the guidance should address the proposed relevant considerations set out in the Consultation Paper.

d) Question 11: Independent review

The scope of the proposed independent review should be broadened to include the practical operation of AFCAs decision making process, with a particular focus on its application of the principles of fairness, efficiency, timeliness and independence.

e) Question 20: Complaints lack in substance

We recommend AFCA implement robust controls at an early stage of its complaints process to ensure effective screening of the complaints that it receives and subsequently, accepts. We believe that such an approach is important in ensuring that the forum made available by AFCA is not misused to the detriment of its stakeholders.

f) Question 35: Principles that should underpin AFCA's funding model

In addition to the design principles mooted in the Consultation Paper, we believe that any proposed funding model should also take into account the impact of the significant cost burden new regulatory initiatives are likely to have on member firms (especially those involved in the provision of financial advice). Whilst we acknowledge that AFCA should be appropriately funded to ensure that it is able to appropriately and effectively perform its required role, it is important to also ensure that this does not result in an unreasonable burden on its member firms, especially those which may not enjoy the same scale as the largest financial sector firms in Australia.

We thank you for the opportunity to provide our comments and we welcome the opportunity to discuss our comments further.

If you have any questions, please contact me directly on g.oriley@capstonefp.com.au or 03 8622 0701.

Yours sincerely


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