



28 November 2017

Head of Secretariat
AFCA Transition Team
Financial Services Unit
The Treasury
Langton Crescent
PARKES ACT 2600

Email: afca@treasury.gov.au

Dear Madam/Sir,

SMSF ASSOCIATION SUBMISSION ON THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY

The Self Managed Super Fund Association (SMSFA) welcomes the opportunity to make a submission on the establishment of the Australian Financial Complaints Authority (AFCA).

We support the creation of AFCA as a single complaint body for financial services. We believe this will result in a more efficient complaints framework for industry, consumers and regulators.

While we support the change, we do hold some concerns that costs for advisors who currently subscribe to the Financial Ombudsman Scheme (FOS) or the Credit and Insurance Ombudsman (CIO) may rise depending on the fees levied by the AFCA. We urge Government to pay careful consideration to this aspect of creating the AFCA when approving the new body. This is especially relevant as financial advisors and licensees will face increased costs in the immediate future through the Australian Securities and Investment Commission (ASIC) cost-recovery levies and the new education and ethical framework for financial advisors.

We have limited our response to issues most relevant to our expertise.

Transparency and accountability

As the AFCA legislation establishes a monopoly external dispute resolution (EDR) scheme the amount of competition and accountability in the industry will be limited. Therefore, accountability measures will need to be in place to ensure that the entire EDR system works efficiently and effectively for all stakeholders.

AFCA and ASIC, which are effectively responsible for the regulation of AFCA, are ultimately accountable to consumers and those member firms who are compelled to join the EDR scheme. Both these key stakeholders have aligned interests in the aim for a fast, effective and inexpensive resolution process. At the same time member firms have an interest in ensuring they are not unfairly treated in preference to consumers who are ultimately the beneficiary of any EDR scheme.

Being unable to appeal determinations, excessive fees and unfounded claim against members warrant greater transparency. Extra accountability is also needed as the increased monetary limits



and compensation caps of the new scheme may result in larger payouts to consumers. These need to be appropriately justified in the new scheme with transparency so that all stakeholders can understand the rationale for compensation paid to consumers. Therefore, it is important that accountability and transparency are provided by AFCA to ensure that stakeholders are comfortable within decision making processes.

This can be achieved in the first instance by ensuring that AFCA articulates the principles behind its decision making. It should establish the practice of following precedents of previous decisions and then publishing these decisions. Not only does this provide transparency and accountability to key stakeholders it also provides a level of certainty and stability for the financial services sector.

ASIC Consultation

As the new framework will involve a shift to a single EDR scheme, there will be enhanced oversight and monitoring by ASIC. ASIC will have a new power to issue regulatory requirements that AFCA, in operating the scheme, must comply with.

Accordingly, the SMSFA deems it imperative that the legislation should require that ASIC consults with the financial advice industry and relevant stakeholders before issuing new regulatory requirements that AFCA must comply with. This will ensure that any changes to the new EDR scheme will be informed by the views of those subject to the EDR scheme and reduce the possibility of unintended consequences.

Sector advisory and stakeholder panels

The SMSFA also deems it appropriate that a financial sector advisory panel is set up with the creation of AFCA to assist with decision making where required. This independent panel should represent consumer representatives, financial advisors and superannuation trustees where their input is needed. AFCA should only utilise a panel to help them make decisions on complex or public interest cases to ensure cost effectiveness. Panels can provide a significant improvement in AFCA's decision making where they have no guiding material or precedents to utilise. This ensures that AFCA are relying on relevant expertise and consultation when it is required.

We would only encourage use of these panels in appropriate cases where it is cost effective and the benefit is substantial. As external consultation can be expensive, the utilisation of independent panels should only occur when it is deemed necessary. As AFCA evolves, guiding materials and precedents can be built from decisions which have utilised the panel.

Furthermore, we would support creation of an industry consultative panel that reflects the membership of AFCA and consumer interests. This panel should be consulted with and reported to on an annual or biannual basis to ensure AFCA does not drift away from providing an effective service to stakeholders. The Tax Practitioners Board Consultative forum is an example of one such panel which performs these duties as an accountability measure to the Tax Practitioners Board.

Independent reviews

As recommended by the Ramsay Review, there should be more frequent independent reviews based on a program of reviews approved by ASIC. The current proposals set these reviews at three years after initiation and every five years after.



The SMSFA recommends that the first review after AFCA's initiation is broad and encompasses all relevant issues in that time frame. Rather than just reviewing the higher compensation caps the review should also look at the efficiency of AFCA and how decisions have been made. Industry reception and feedback should also form part of the review in order to determine and implement further improvements while AFCA is still in its early stages.

Costing benchmarks

AFCA should also undertake costing benchmarks at regular intervals to determine they are not creating a cost burden on the industry. Given the potential for costs to increase exponentially, especially during the transition period, we believe it is necessary for this to be tracked with more certainty.

Benchmarks will give strong insight into the expense of the AFCA especially when compared to the current EDR schemes. At relevant intervals a costing benchmark would display to the industry how the current costs of AFCA can be compared to the existing costs of FOS, CIO and the SCT. For example, the benchmark could show how a financial advice firm's fees have increased or decreased with the introduction of AFCA. In years going forward, costs can be compared year on year and will be able to highlight areas of concerns and opportunities for improvement.

This will also help in providing transparency and accountability over the funding provided from the industry. As financial advisors' costs increase across a multitude of streams in the near future, financial advisors should be aware of how their money is used by AFCA in the one stop EDR scheme. For example, financial advisors will be facing increased costs for:

- ASIC industry based funding levy and fee for service costs.
- Financial Advice Standards and Ethics Authority (FASEA) funding.
- Code monitoring scheme membership.
- Meeting new education requirements introduced by FASEA and the new industry exam.

Accordingly, it is essential that there is appropriate transparency regarding how AFCA meets its costs when it is industry funded.

Transparency around Internal Dispute Resolution (IDR)

The SMSFA agrees that AFCA also has a role play with IDR. Consumers want free, fast and effective dispute resolution and this does not always mean an EDR solution. Therefore, any improvement in IDR through the use of AFCA is welcomed.

Transparency over a standardised or best practice IDR process should be a priority to allow financial firms to implement their own processes. Advisors as much as consumers want cost effective dispute resolution. Confirmation on agreed industry standards regarding format, method and reporting for IDR activity will minimize the compliance cost on financial firms in undertaking this process and allow them greater opportunity to only use EDR methods as a last resort. However, flexibility should still be allowed for firms to design IDR schemes that match their resources and needs while also meeting industry standards.

Consideration of efficiency



The Association also believes that the efficiency of and competition in the financial services industry should form part of the terms of reference as a consideration for AFCA. Currently there is a lack of accountability to the financial services sector by EDR bodies and there may be a potential for AFCA to act to the detriment of the industry by imposing inefficient costs and compliance burdens on the sector.

If AFCA is required to consider the whole of financial services industry, including the rising fees from other parts of the sector it will ensure does not act without regard to all key stakeholders and how their actions may affect the financial services industry.

Governance

The consultation paper discusses the issue of ensuring that directors have appropriate skills and experience without simply being representatives of sectional interests. Understanding the concerns of this issue, in the absence of finding directors that represent the financial services sector as a whole, the Association does not see a large concern regarding conflicts of interest.

Despite the risk of conflicting interests, the SMSFA believe that consideration should be given to representing different parts of the financial services sector on the board. The transition team should ideally devise the board as evenly as possible to represent all interests. Having relevant expertise and experience should not be disregarded purely for the reason that directors may only represent a part of the financial services sector and not the whole sector.

For example, it can be viewed that the EDR system is weighted in favour of consumers as they can make cost free complaints against a financial advisor that cannot be appealed. Therefore, without the added competition of multiple EDR schemes, there needs to be as much accountability as possible for AFCA. The inclusion of a director that is an experienced financial advisor would improve the representation of the financial advice sector. The SMSFA believes that directors such as these should not be excluded from the board due to their potential conflict of interest due to their sectional representation.

Funding

As stated we do hold some concerns that costs for firms who currently subscribe to FOS or the CIO may rise depending on the fees levied by the AFCA. This risk increases during a transition period due to the funds needed to establish a new entity.

Given the increased costs facing financial advisors in licensees in the immediate future through ASIC cost-recovery levies and the new education and ethical framework for financial advisors it is imperative that the funding for AFCA is built on solid principles.

The SMSF Association agrees with the design principles in paragraph two of the funding section. We also believe the funding model needs to balance the interests of acceptable funding levels and expenses for the industry which are required to subscribe to AFCA for EDR.



Additionally, given that there is an agreed view that the SCT has been underfunded it is also appropriate that the creation of AFCA endeavours to rectify this problem. We believe it is necessary that this problem is not solved through an excessive increase in funding by the financial advice industry 'footing' the bill. In this sense, we would support a proposal that would distinctly separate the funding arrangements for superannuation and non-superannuation disputes.

The protection against cross-subsidisation would also have benefits for the superannuation sector as well, as APRA-regulated superannuation funds would be prevented from subsidising the cost of complaints arising under the financial advice sector that would have arisen under FOS or the CIO.

Finally, as explained above, with the cost pressures facing financial advisors we would encourage the Government to provide some funding to AFCA for its establishment rather than fund it through industry fees. While we support the creation of AFCA, we believe that at least some of its establishment costs should be funded by Government given that it is a reform being driven by Government.

If you have any questions about our submission please do not hesitate in contacting us.

Yours sincerely,

A handwritten signature in black ink that reads 'John L. Maroney'.

John Maroney
Chief Executive Officer
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak professional body representing SMSF sector which is comprised of over 1.1 million SMSF members who have \$696 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMS