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The Treasury
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SUBMISSION PAPER:

REVIEW OF THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY (AFCA)

This Submission Paper was prepared by Prospa Group Limited (ACN 625 648 722). www.prospa.com

Prospa Group Limited (**Prospa**) welcomes the opportunity to provide a submission in relation to the current review of AFCA.

1. A little about us – “Prospa”

Prospa is currently Australia’s #1 online lender to small business¹ and provides cash flow products and services for the small business economy. Headquartered in Sydney, we operate across Australia and New Zealand and employ over 200 people. To date, we have supported small businesses with over \$1.8 billion in funding. Prospa offers Small Business Loans between \$5,000 to \$300,000 and a revolving Line of Credit for up to \$150,000, as our standard product offering. Our products are typically used to fund small businesses’ working capital requirements and growth opportunities. Small businesses can complete an application on our platform in minutes, receive a credit decision within the same business day and, if successful, often have funds transferred within 24 hours.

All customers of Prospa are small businesses and our proprietary Credit Decision Engine analyses over 450 unique data points with each application, including turnover, profit & loss, business tenure, size and industry sector.

Prospa’s sophisticated risk-based scoring methodology has been developed over our more than eight years of lending to small businesses. We verify the specifics of every small business applicant using data from sources such as (but not limited to): ASIC’s website, Equifax and the Australian Tax Office.

¹Prospa is ranked #1 in Australia in the Non-bank Financial Services category on independent review site TrustPilot with a TrustScore of 4.9 and 6,192 reviews as at 25 March 2021. Prospa also reported the highest prompted and unprompted brand awareness for alternative lenders in research conducted by RFI Group, Australian SME Banking Council, September 2020.



Prospa is a founding member of the AFIA Online Small Business Lender Code of Lending Practice and was also a participant in the Federal Government's Coronavirus SME Guarantee Scheme from April 2020 to September 2020.

2. Prospa's impact on the Australian economy

Research conducted by RFI Group and the Centre for International Economics on behalf of Prospa revealed that our lending to small business has a positive and significant impact on the Australian economy.²

We have delivered over \$1.8 billion in funding to small business to date and, according to the study, it is estimated we have contributed up to \$7.2 billion to nominal Australian GDP and maintained up to 102,600 FTE jobs. These findings demonstrate that by providing small business owners with fast, simple access to finance, Prospa is not just directly contributing to its customers' revenue and jobs, but to the wider Australian economy.

3. General comments

Prospa appreciates the important role that AFCA plays in assisting customers who may be seeking a resolution to a complaint that has not been resolved through internal resolution processes.

We acknowledge that this initial period for AFCA has had some unique challenges. AFCA has had to operate with high volumes of customers seeking resolutions whilst integrating 3 existing organisations and training new staff. This has all taken place in a post-Royal Commission environment and during a global pandemic that has changed the way that we work and has impacted on customers.

As a party to the AFIA Online Small Business Lenders Code of Practice (**AFIA Code**) we have undertaken to maintain membership with AFCA to best support our customers.

Prospa is a member of AFIA and actively involved in various initiatives run by AFIA which relate to AFCA. In addition, we have independently met with AFCA representatives on a number of occasions including to discuss and further explore the differences between consumer and small business lending. We appreciate the opportunity to have direct engagement with AFCA and the ability to provide feedback and maintain dialogue with AFCA and the ombudsmen.

4. Responses

We have addressed the specific matters that were raised in the submission guidelines below.

² Using Prospa lending to 31 December 2020. Source: RFI Group and The Centre for International Economics: "The Economic Impact of Prospa Lending to Small Business" (January 2019), commissioned by Prospa.

4.1 Delivering against statutory objectives

Is AFCA meeting its statutory objective of resolving complaints in a way that is fair, efficient, timely and independent?

In relation to timeliness of resolutions, we note as follows:

Whilst we acknowledge that the initial period during which AFCA has been operating has included some additional challenges (as noted above), timeliness and efficiency of decisions has been an area where we have felt there could be some significant improvement. We have noted some improvement in speed of decisions in some cases, and we appreciate the volume of complaints that require processing, however we don't believe that AFCA is yet meeting all of these objectives in the resolution of complaints.

In our experience, some matters can be drawn out over a number of months, in some cases this has been known to extend beyond a year. Currently, we have three open matters which date back over 12 months. We do not believe that it is indicative of providing an efficient or timely outcome and do not see this as fair for either the complainant or the relevant financial firm. Once a complaint has made its way to AFCA for resolution, a rapid resolution is often one of the key outcomes that is sought, by both the complainant and the financial firm.

Given the importance of timely resolution of complaints, we believe that AFCA should consider publishing further information on total case numbers including details on the stages at which these are resolved or withdrawn.

In relation to fairness and efficiency, we note as follows:

Currently, AFCA does not appear to provide complainants with any indication of possible or likely outcomes from their matters. We believe that a fairer and more efficient approach would be for AFCA to inform complainants that unless the financial firm is found to have completely mismanaged the lending decision or made another gross error, the best-case scenario and most likely outcome will be x, y or z (with total waiver of debt unlikely).

We believe that AFCA should be managing complainants' expectations of potential outcomes upfront, including, where appropriate (a) encouraging customers to continue to make payments whilst the case progresses, even if these are on a reduced basis; and (b) encouraging customers to accept early offers or terms that are offered if the Case Manager believes the offer is fair and reasonable and will result in an outcome similar or better than the anticipated determination AFCA will provide the customer. In our experience, a significant number of complainants believe that the most likely outcome is that AFCA will determine that all remaining monies are waived. In our experience such an outcome is unusual and would only occur if there had been gross mismanagement on the part of the financial firm. However, if a complainant proceeds on the understanding that they will not have to make any further payments, then it can come as a shock and a large unexpected financial burden when a decision does not go in the customer's favour or results in only a small amount of the total remaining debt being waived.

We have invested significant time in developing our early repayment discounts and payment plan offerings for customers. These are targeted at providing our customers with achievable and accommodating options to assist them with managing their financial obligations. We believe that if customers are made aware early on in

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their dealings with AFCA of what the most likely outcome of their case may be, then they would be more inclined to work with financial firms and consider any reasonable offer to resolve their grievance. This would not only save time and money for both parties but also remove the emotional and financial impact that can result from a decision being made by AFCA months later that is not consistent with the customer's initial expectations.

In relation to whether resolution of complaints is 'fair', we understand AFCA has a 'fairness framework' and note Rule A14.2 which states:

When determining any other complaint, the AFCA Decision Maker must do what the AFCA Decision Maker considers is fair in all the circumstances having regard to:

- a) legal principles,*
- b) applicable industry codes or guidance,*
- c) good industry practice and*
- d) previous relevant Determinations of AFCA or Predecessor Schemes*

In our experience, this rule provides AFCA with scope as to what they will base their decision on and what weight will be given to each of the items listed. As a financial firm, we are required to operate within the law and use legal principles to guide us in decision making. Whilst we also ensure that we are operate using good industry practice and use previous AFCA determinations to guide us in our future conduct, we are obliged to give greatest precedence to the legal principles which apply to our industry and must ensure, above all else that we accord with those requirements. Given we are bound by the law and any applicable codes, we do not believe it is 'fair' for AFCA to be able to choose what weight it gives to these items, including discretion as to whether good industry practice should outweigh legal principles or applicable codes.

Further to this point, in some circumstances, the reasoning given by AFCA for decisions has been very vague. We do not believe that this is fair to any party that is trying to (a) understand the decision; and (b) incorporate learnings from the decision into future practice. As an example, in one decision, AFCA stated that the taking of security in our loan documentation was an 'unusual term' and that their decision was based on 'fairness, taking into account legal principles'. When we requested details as to what legal principles this decision relied on, we were not provided with any clear answer. We, however, were able to provide AFCA with legal principles that showed we were entitled to take security and lodge a caveat and accordingly we remain unsure what legal principles formed the basis of this determination.

Is AFCA's dispute resolution approach and capability producing consistent, predictable and quality outcomes?

We don't believe that AFCA's dispute resolution approach is achieving all these outcomes yet. Some particular points where we see scope for improvement are detailed below:

- We often see a lack of consistency in approach as between case managers, particularly at the more junior level. This has a material impact on the predictability and quality of outcomes as we are not able to determine how a decision will be made or what matters will be considered in arriving at that decision. We have had situations where case managers have applied differing interpretations to the same factual information or documentation, or where different information is considered in one matter as against a very similar set of factual circumstances in another matter. Where matters are handled

inconsistently, this impacts on the consistency and predictability of outcomes. We believe this can also impact on the quality of outcomes as previous decisions are not treated as a guide to assist with expediting matters. This can also have financial impact due to the inconsistent approaches that are taken.

- Whilst we have certainly seen an improvement over the last 2 years in case managers understanding that small business loans fall outside of the consumer legislation, this continues to still arise from time to time. Further education of case managers in relation to the difference between consumer and small business lending would be beneficial to ensure consistency and predictability as well as to streamline the process and increase efficiency. We also believe there is scope for greater assurance, for instance through enhancements to Regulatory Guide RG267, that ASIC policies and any changes to these policies will be promptly and consistently applied by AFCA case managers.
- Currently there is no way to appeal a decision where it is believed it has been made erroneously. Whilst we note that AFCA was intended as a final decision maker, we believe that an appeal function would assist in improving the consistency of outcomes and provide a final avenue for discussion and enquiry where parties believe that the decision could have been made differently or that it has been made inconsistently with another similar case.
- We have had matters continue to escalate through case management despite a lack of engagement from the complainant, even where specific information or engagement has been sought. This not only creates additional work for the financial firm as the matter progresses but also has a financial impact as a matter escalates through the stages.
Recommendation: We advocate for the implementation of a set of rule and timelines for cases where responses are not received within set time periods.
- In addition to the previous point, we have seen AFCA grant extensions to customers who request further time on the final day of a response period. Whilst we understand that sometimes these are genuine requests, we would like to see greater rigour applied to the granting of these extensions to prevent complainants from continuously seeking late extensions which don't have any solid basis other than further delaying the final determination date. As matters continue to be extended, additional work is created for the financial firm which has both an administrative and financial impact. This can also have financial impacts on the customer as, if they have ceased repayments whilst the case is on foot, they may find that at the resolution of the matter, the amount they had expected to be waived is not as large as anticipated and they are surprised at the amount that it then required to be repaid on their initial borrowing.
Recommendation: We would recommend that greater discretion be granted to case managers to assess extension requests and that they be permitted to request more information from the party seeking the extension to allow the case manager to best assess the request to ensure that it is being made on a valid and reasonable basis.
- Whilst we acknowledge that the majority of cases brought to AFCA are genuine in nature, we do believe that there is a minority of claims that are made for vexatious or improper purposes. This may

include complainants bringing a claim without genuine basis in the hope of receiving a favourable outcome or pressuring a financial firm to offer a settlement to avoid a protracted case.

Recommendation: We would like to see case managers given more discretionary ability to close cases where there are clear signs that the case is vexatious or without a clear foundation. This includes third party representatives who are representing a customer for a fee and applying a standard approach to a diverse range of situations, and also to cases where a broad range of possible complaints are raised in an attempt to stall repayments or seek a favourable settlement from a financial firm keen to avoid a protracted case.

- Given the prevalence of complaints that relate to credit enquiry change requests, we believe there is merit in having some set parameters or quick resolution ability around such complaints. All businesses rely on the integrity of the credit reports and also have obligations to ensure information placed on credit files is correct. Accordingly, we understand the importance of these decisions being made correctly and that the information recorded is accurate and complete. Substantial effort is undertaken to ensure this information is filed correctly throughout usual processes. Vexatious or unfounded requests to remove listings causes undue administrative burden and costs to financial firms as can also undermine the integrity of the credit reporting system on which we all rely.
- **Recommendation:** The DataCube data that is published is important in providing context and also holding financial firms to account. We believe this could be improved by normalising for the size of the relevant firm (rather than simply noting this on a staggered scale) to ensure greater transparency and fairness in how these outcomes are reported to the public.
- **Recommendation:** We believe that there should be more prescriptive rules set around the reasoning that is given in decisions. As detailed in the response to the previous question above, we have had decisions which only provide vague details as to the reasoning underpinning the outcome and when we have enquired further on this, been given generic and incomplete details as to how the decision was reached or what legal principles it was based on. This makes it difficult to understand a decision and also undermines the predictability, consistency and quality of the outcomes that are achieved through the AFCA process.
- Whilst we acknowledge that it is of the utmost importance to ensure a fair and reasonable outcome for all parties involved, we believe that quick and early settlement of disputes with a fair and equitable outcome for all parties (having regard for the relevant matter) is an important part of the resolution process and will assist with ensuring quality outcomes.
Recommendation: We would recommend that AFCA consider whether any incentive should be provided to case managers for early or proactive resolution of matters. This may include assisting customers with assessing an offer presented to them by a financial firm to settle the matter early, including the case manager providing guidance of possible outcomes if the matter was to proceed with AFCA. Where numerous fair and reasonable offers have been made to a customer throughout the term of the case and each has been ignored or rejected, we think that this should be mentioned in the determination to acknowledge the financial firm's attempt to resolve the matter in a fair and timely manner.

- Before a complaint is made to AFCA, the complainant should have attempted resolution through the financial firm's internal dispute resolution process. Often we find that is not the case and a notification from AFCA is the first that we hear of a customer's dissatisfaction. Whilst we understand that case managers are meant to reject anything that has not yet gone through an IDR process with the relevant financial firm, in our experience this is not always the case. We would advocate for tighter application of the rules around cases that are being opened with AFCA to ensure that financial firms are given the opportunity to resolve the case through their IDR processes before it is escalated to AFCA. This would promote greater scope for a timely resolution and ensure a reduction in AFCA fees for cases that are able to be resolved outside of the AFCA process.

4.2 Internal Review Mechanism

AFCA's Independent Assessor has the ability to review complaints about the standard of service provided by AFCA in resolving complaints. The Independent Assessor does not have the power to review the merits or substance of an AFCA decision. Is the scope, remit and operation of AFCA's Independent Assessor function appropriate and effective?

Is there a need for AFCA to have an internal mechanism where the substance of its decision can be reviewed? How should any such mechanism operate to ensure that consumers and small businesses have access to timely decisions by AFCA?

We do not have a lot of visibility on the current function of the Independent Assessor however we note that currently there is no scope for merit or substantive review of decisions.

As noted above, we believe that the quality of outcomes could be improved through an appeals process allowing financial firms to appeal decisions that they believe are incorrect or unjust or where an outcome seems inconsistent with previous determinations.

Currently, there are very limited avenues through which decisions can be appealed or challenged. We believe that expanding the Independent Assessor's role to include a merits based review would provide an avenue for review of determinations which could assist with improving the consistency, quality and predictability of outcomes. This may also assist with costs which, as noted above, can be inconsistent for a number of reasons.

In addition to the Independent Assessor's review, we believe that a final avenue of appeal to the Administrative Appeals Tribunal would also be appropriate in some cases. The AAT was established to enable an independent review of these types of situations that companies can find themselves in so we believe this would be an appropriate forum as a final point of appeal where determinations are believed to be unfair, unjust or inconsistent with previous decisions. This would further assist with improving consistency in outcomes and such decisions could be used to set a precedent which future decisions could use as a guide.

If such a merits review system were to be made available, we would expect that any change in decision as a result of a merits review which saw an existing determination changed would be reflected in all public registers maintained by AFCA. This would mean that any revised decision would be deemed the final outcome of the matter and all records would record it as such.



5. Closing remarks

We appreciate the opportunity to contribute a submission to this important review of AFCA and its service and function. We see the importance of the role that AFCA fulfils for both customers and financial firms. We hope that in sharing our experiences, feedback and recommendations that AFCA's role can be further enhanced and improved through the outcomes of this review.

Kind regards,

Greg Moshal

Chief Executive Officer, Prospa

If you would like more information regarding our submission, please contact:

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