

# SUBMISSION

Submission to AFCA —  
Proposed AFCA  
arrangements for  
comparative reporting of  
complaint data

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3 May 3019

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Mr Michael Ridgway  
Executive General Manager – Corporate Strategy and Services  
Australian Financial Complaints Authority  
Via email: [comparativereporting@afca.org.au](mailto:comparativereporting@afca.org.au)

3 May 2019

Dear Mr Ridgway

**Proposed AFCA arrangements for comparative reporting of complaint data**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to AFCA's consultation paper *Proposed AFCA arrangements for comparative reporting of complaint data*, received on 12 April as part of AFCA's limited consultation process.

**About ASFA**

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.7 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 15.6 million Australians with superannuation.

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If you have any queries or comments in relation to the content of our submission, please contact Julia Stannard, Senior Policy Advisor, on (03) 9225 4027 or by email [jstannard@superannuation.asn.au](mailto:jstannard@superannuation.asn.au).

Yours sincerely

Glen McCrea  
Deputy CEO and Chief Policy Officer

## 1. General comments

ASFA welcomes the opportunity to comment on AFCA's proposed arrangements for publication of comparative data as outlined in the consultation paper *Proposed AFCA arrangements for comparative reporting of complaint data* (consultation paper). We appreciate you providing ASFA with the opportunity to meet with you and senior AFCA colleagues on 18 April to discuss the proposals in more detail; those discussions assisted greatly in our consideration of the consultation paper and the preparation of this submission.

While financial firms that were previously members of the Financial Ombudsman Service (FOS) or the Credit and Investments Ombudsman (CIO) are familiar with the public reporting framework for comparative complaint data, it will be new for most superannuation trustees. Pursuant to discussions with your colleague Alison Morrow, ASFA sought feedback on the reporting proposals from our superannuation fund members, which is reflected in this submission.

ASFA considers it critical that consumers of financial services have access to a dispute resolution framework that operates effectively and efficiently, and as such we recognise the benefits and importance of providing a level of transparency around the volume and outcomes of complaints handled by AFCA. Accordingly, we support the public reporting framework embodied in paragraphs 267.78 – 267.79 of ASIC's Regulatory Guide RG 267 *Oversight of the Australian Financial Complaints Authority* (RG 267). That framework features a strong emphasis on transparency and comparability of data and on ensuring that data is accurate and presented in the appropriate context.

We also support AFCA's key objectives in their approach to comparative reporting — as outlined in the consultation paper — to simplify and enhance the accessibility of comparative reporting data for consumers and other stakeholders. To fully realise these benefits, it is imperative that any comparisons of complaints data are done on a like for like basis and are as transparent as possible.

We are also of the view that the data reported by AFCA needs to be simple, unambiguous and helpful to stakeholders, and presented in a manner which minimises the risk that the data will be misinterpreted or misapplied.

Given recent developments such as the Royal Commission and the Productivity Commission's review of superannuation, the sector is currently under intense scrutiny from government, the regulators, consumers, industry commentators and analysts and the mainstream media. It is, in ASFA's view, imperative that the launch of the comparative reporting is accompanied by material educating all stakeholders on how to meaningfully interpret and apply the data, to avoid inferences that may cause unwarranted reputational damage to individual superannuation trustees and to the sector in general.

In particular — as discussed during our meeting on 18 April — we see a need to accompany the initial and ongoing publication of comparative tables with material clearly explaining the data sets and emphasising the significance of the *outcomes adjusted data*. It is, in ASFA's view, important to avoid an undue level of focus on the *raw number* of complaints accepted by AFCA for a financial firm during a reporting period.

While the raw complaints data is a relevant indicator of the level of activity flowing through AFCA — and thereby achieves an objective of RG 267 — it is not a meaningful indicator of the external dispute resolution (EDR) 'performance' of any superannuation trustee and does little to inform consumers' decision making about superannuation products they may hold currently or may consider acquiring.

Members of superannuation funds may make complaints to their fund trustee for a number of reasons. Many will choose to exercise their legal right to pursue EDR, particularly given there is no cost to the consumer to make a complaint to AFCA. However, in a significant proportion of cases the decision or conduct of the superannuation trustee will be found not to have been unfair or unreasonable and will be upheld. In many of these instances, the conclusion will be reached that the trustee's actions were effectively dictated by regulation or by the governing rules of the fund. Consumer dissatisfaction with the decisions or conduct of a superannuation trustee is always regrettable, but it should not automatically be assumed to stem from some non-compliance by the trustee.

An undue focus on the raw number of complaints accepted by AFCA for individual superannuation trustees may, in ASFA's view, create a misleading impression of the performance of those trustees. It also risks potentially causing unwarranted reputational damage to those trustees and to the sector more broadly. Accordingly, ASFA strongly encourages AFCA to ensure that messaging accompanying the initial and ongoing release of its comparative tables draws appropriate focus to the outcomes adjusted data and avoids highlighting raw complaints data.

### Recommendation

The initial and ongoing release of comparative reporting should be accompanied by messaging from AFCA that draws appropriate focus to the outcomes adjusted data and avoids highlighting raw complaints data.

Given the high-level nature of the consultation paper, it has not been possible to fully visualise the potential reporting in relation to superannuation complaints. The following sections of our submission highlights a number of areas where ASFA and our members are seeking greater clarity on the content and format of the proposed reporting.

## 2. Specific comments in relation to the proposals

### 2.1. Balance between user-friendliness/accessibility and detail

The consultation paper does not include a sample of the proposed comparative tables and provides little elaboration on many of the data items that stakeholders might expect to see included in the tables. This makes it difficult for stakeholders to meaningfully assess the balance between the level of detail to be provided and the user-friendliness/accessibility of the data. We have highlighted, in section 2.4 of this submission, a number of areas where greater clarity on the data to be included in the comparative tables is required.

ASFA acknowledges that while it is new for superannuation complaints, reporting of comparative complaint data has been an established feature for other financial products and services for some time. That aside, AFCA's proposed reporting arrangements do represent a departure from the arrangements adopted by the predecessor schemes FOS and the CIO.

Further, the reporting arrangements will come into effect during a time of intense scrutiny of the financial services industry by consumers, commentators and other stakeholders.

In launching any new data on the performance of the financial services industry into such an environment, ASFA considers it critical to ensure the clarity, transparency and effectiveness of that data is maximised and that it is truly fit for purpose. An important aspect of this, in ASFA's view, involves ensuring that it is able to be understood by consumers and that it is a relevant and meaningful aid to consumers' decision making. ASFA encourages AFCA to conduct consumer testing before finally settling the content and format for its comparative tables. If the results of the consumer testing indicate that substantial changes may be required to any of the proposals, AFCA should seek further feedback from stakeholders before finalising the comparative tables.

### Recommendation

Prior to finalising the content and format for its comparative tables, AFCA should undertake a process of consumer testing to ensure the data is accessible to consumers and the risk of misinterpretation is minimised.

## 2.2. The proposal to publish an overall comparative table

ASFA has reservations regarding the utility of the overall comparative table.

From our discussions with you and your AFCA colleagues, we understand that the overall table is intended to provide an overview of the activity flowing through AFCA. The table will rank the number of complaints received and accepted by AFCA for the relevant reporting period across financial firms of all types. The overall table will not be sorted by financial firm type or category of product or service, although it will be presented in such a manner that users can sort the data according to those categorisations.

ASFA is not persuaded that the overall table will provide meaningful data to users. In our view, there is little value to be obtained by comparing the EDR experiences of financial firms that operate in different sectors and provide different types of financial products and services. ASFA is concerned that this is not a comparison that will help consumers to make choices about the financial services providers they engage with, but in fact may be taken out of context — especially where financial firms provide products and/or services across different categories. Further, to the extent the data is utilised by commentators and industry analysts, it is likely to be interrogated down to produce rankings by product/service type, which would seem to duplicate the separate reporting AFCA will provide according to product group.

### Recommendation

The proposal to publish an overall comparative table should not proceed.

## 2.3. The proposal to publish biannual comparative tables

We acknowledge that pursuant to RG 267 and AFCA's Rules, AFCA must publicly report, at least annually, information about complaints it receives in respect of its member firms.

ASFA is generally of the view that the frequency with which data is reported is a key element to its transparency. In this respect, some ASFA members have suggested that the publication of data on a biannual basis will be more conducive to allowing financial firms to review their position in a more timely manner than if data was published once a year. These members have noted the time lag associated with the reporting of complaint data by the predecessor schemes to AFCA (in particular, FOS). However, other ASFA members have expressed concerns about the proposed biannual reporting.

We note that AFCA only commenced operation on 1 November 2018 and is still developing a full understanding of its membership base, particularly in relation to superannuation complaints. Understandably, particularly given the higher than expected volumes of complaints received by AFCA across all product groupings, some aspects of AFCA's operations may still be subject to refinement and evolution — for example in relation to process steps. On this basis, ASFA considers it may be premature for AFCA to commence biannual reporting. We note that the 2019-20 year will be further complicated by the consideration of legacy complaints dating back to 1 January 2008, which has the potential to significantly skew the periodic comparability of the data if these complaints are not isolated for reporting purposes (see section 2.4.1 below).

On balance, ASFA considers it may be more appropriate for AFCA to commence its comparative reporting on an annual basis. We suggest it would then be beneficial for AFCA to consult with stakeholders to ensure the format and content of the reporting is appropriate and address any identified issues before commencing biannual reporting, potentially with effect from 2020-21.

### Recommendation

AFCA should initially commence comparative reporting on an annual basis, consult with stakeholders on the effectiveness of the published comparative tables for 2018-19 and make any necessary adjustments prior to commencing biannual reporting, potentially with effect from 2020-21.

## 2.4. Other comments about the proposed changes

### 2.4.1. Reporting for 2018-19 and 2019-20

ASFA agrees with the proposed 'transitional reporting' approach for 2018-19, which will involve reporting of data only for complaints received by AFCA for the period 1 November 2018 (AFCA's commencement) to 30 June 2019. It would be inappropriate and inconsistent to attempt to represent data for complaints received by the predecessor schemes FOS and the CIO for the period 1 July– 31 October 2018, given these were different EDR schemes operating under different terms of reference, and complaints made to the Superannuation Complaints Tribunal were not subject to any equivalent reporting regime.

We note that during 2019-20, AFCA will exercise its expanded remit to consider 'legacy complaints' dating back to 1 January 2008. In ASFA's view, the inclusion of these complaints in the comparative reporting for 2019-20 would significantly skew the data and would render the data unreliable for comparisons with future years (especially in relation to the proposed option for 'historical comparisons' – see 2.4.4). We consider it important that data for legacy complaints is filtered out of the main data set for 2019-20 and reported separately.

### Recommendation

Data in relation to legacy complaints accepted by AFCA during the 2019-20 financial year should be isolated in AFCA's record-keeping and reported on separately.

### 2.4.2. Identification of the ‘financial firm’

ASFA notes that the comparative tables are described in the consultation paper as providing data in relation to ‘financial firms’. We have three main observations in relation to this approach:

- (i) Some financial services groups operate under a structure which involves a number of separate financial services licensees. It is not presently clear how these structures will be reflected in the AFCA comparative tables – that is, whether the data will be reported at the group or licensee level.
- (ii) Most ‘financial firms’ — including superannuation trustees — provide more than a single financial product. Reporting comparative data at the financial firm level rather than the product/service level does not, in ASFA’s view, provide an accurate reflection of the consumer experience in relation to specific products offered by a financial firm and may provide a misleading impression.
- (iii) From a superannuation perspective, consumers are far more likely to recognise the name of the superannuation fund of which they are a member, or the product they hold, than the legal name of the superannuation trustee entity.

#### Recommendation

To provide a more meaningful indication of the customer experience, and improve accessibility, comparative data should be reported in respect of specific products offered by a financial firm, rather than at the financial firm level overall. In particular, for superannuation, use of the trustee (financial firm) name should be avoided in favour of the name of the specific superannuation fund/product.

### 2.4.3. The specific data that will be reported

The consultation paper provides little detail on the specific data to be reported in the comparative tables. While it is possible to draw some inferences from the comparative data previously reported by the predecessor schemes (particularly FOS), it is difficult to relate this to superannuation complaints.

#### 2.4.3.1 Ensuring appropriate categorisation without double-counting

It is important to ensure that complaints are consistently and appropriately categorised, and that there is no duplication or double-counting of complaints. A number of matters are unclear from the consultation paper, including:

- How will complaints in relation to financial advice about superannuation be reported? Previously, FOS published a comparative table for ‘superannuation’ that may have included complaints in relation to financial service providers that *only* provided advice about superannuation, that *only* provided superannuation products, or that provided *both* advice and products. Further clarity is required in relation to how AFCA intends to report complaints related to advice about superannuation.
- From a superannuation perspective, a number of complaints are likely to involve a complaint about a decision made by the trustee’s group life insurer. ASFA understands that the intention is that these complaints will be reported under the ‘superannuation’ product grouping, and that they will be broken out as a separate sub-category. If these complaints are reported as ‘superannuation’ complaints, it is important that double counting is avoided and they are not also reported under the ‘insurance’ product grouping.

### **2.4.3.2 Categorisation of complaints**

The consultation paper states that “complaint data will continue to be split according to product group, based on AFCA’s product classification system”.

We understand from discussions with you and your AFCA colleagues that superannuation complaints will be broken down, for reporting purposes, into a number of sub-categories. These are yet to be finalised, but are likely to include administration complaints, complaints about pensions, complaints about death benefits, and complaints relating to group life coverage (total and permanent disablement, temporary incapacity and potentially terminal illness). We agree that these appear to be appropriate classifications.

We encourage AFCA to provide transparency in relation to the sub-categories adopted for reporting purposes, and the process by which it will be categorising superannuation complaints. We envisage that this may take a form similar to the ‘explanatory notes’ that accompanied the comparative reporting provided previously by FOS.

### **2.4.3.3 Reporting of information about complaint outcomes**

We understand from our discussions with you and your colleagues that complaints reported in the tables will be those that have proceeded through to case management, not the total number of complaints automatically recorded at the ‘registration and referral’ stage. In particular, complaints that have been deemed to fall outside AFCA’s Rules will not be included in the complaint numbers reported in the tables.

We also understand that AFCA is intending to publish information about the ‘outcome’ of complaints similar to that previously reported by FOS. In particular, this will include, for each relevant financial firm:

- the stage of the AFCA complaint resolution process that was reached (on average)
- the number or percentage of complaints were resolved in favour of the complainant, and those resolved in favour of the financial firm
- the number or percentage of complaints that were resolved by agreement or discontinued.

ASFA agrees that these are relevant and important details to report. However, feedback received from ASFA members is that there would also be value in:

- reporting the reasons for withdrawal or discontinuance of complaints (in addition to simply the rates of withdrawal or discontinuance)
- highlighting the rate of resolution at each of the different complaint resolution stages, as opposed to simply the average stage reached
- providing additional information in respect of complaints resolved in favour of the financial firm, in particular identifying where the decision or conduct complained of was driven by regulatory obligations or fund governing rules.

### **2.4.3.4 Minimum threshold for reporting**

The predecessor scheme FOS applied a reporting threshold for its comparative tables, such that data was only included for a financial firm where five or more disputes were brought to FOS over 12 months in a particular product group.

It is implicit from the consultation paper (and was confirmed during our discussions with you on 18 April) that AFCA also intends to apply a reporting threshold of five complaints, except for the 2018-19 transitional period when a threshold of four complaints will apply.



ASFA agrees that a minimum threshold should apply, to ensure the data is statistically significant and to reflect the fact that many financial firms will have only very low numbers of complaints that proceed to AFCA for EDR. However, it is unclear how a threshold of five complaints — an uneven number — will be applied if AFCA adopts six-monthly reporting periods instead of reporting annually.

#### **2.4.3.5 Business sizing metrics**

The consultation paper states that AFCA will “publish a simpler business size metric for each financial firm, based on business size information that financial firms provide us as part of their annual membership levy assessment”. This is intended to ensure that the “complaint data published for each financial firm can be compared appropriately, taking into account the relevant business size of each firm”.

ASFA has two main observations in relation to the business sizing metrics:

- (i) While the size of the business is of some relevance when comparing complaint data, it is unclear how AFCA will determine the ‘business size’ for financial firms within which there are several licensees operating (also see our related comment under 2.4.2 above). Further, detailed information regarding the calculation of the levies paid by AFCA members is not presently available on the publicly accessible section of the AFCA website, although members have access to detailed information via the secure services portal. In order for the business sizing metric to provide any meaningful context for stakeholders who are not familiar with AFCA’s levy arrangements, it will be necessary for AFCA to make publicly available, as part of the comparative tables package, information clearly explaining the business size categories adopted for reporting purposes.
- (ii) A financial measurement of business size is not necessarily the most meaningful metric for consumers and may be incorrectly interpreted. We note that while FOS applied a ‘chance of complaint’ metric (illustrating the number of disputes for each provider in a product group relative to the size of the provider’s business in that product group), AFCA is specifically proposing not to adopt that approach.

While ASFA agrees with the proposal to report the total number of complaints accepted by AFCA for each relevant financial firm, we are concerned that this information will lack appropriate context if it is presented only in the context of a financial size measure, without any regard to the number of customers/product holders. Unless the complaint data for each financial firm is contextualised against the number of customers/members/product holders, the data could be open to misinterpretation, thereby potentially exposing firms to reputational damage.

For example, two superannuation funds (Fund A and Fund B) may have identical funds under management — and would therefore be classified the same according to the proposed business size metric — however Fund A has 250,000 members while Fund B has 1 million members. In a given reporting period, AFCA might accept the same number of complaints in respect of each of Funds A and B, however it would be entirely unreasonable for users of the data to infer that their EDR ‘performance’ is comparable.

## Recommendation

AFCA should provide stakeholders with a more granular description of the data to be reported in the comparative tables and the basis for its reporting. This should include the categorisations to be adopted for superannuation complaints, the breakdowns to be utilised for complaint outcome information, the threshold complaint level at which a firm will be included in the comparative tables, and the proposed business sizing metrics.

AFCA should ensure that the business size metric it adopts does not focus solely on a financial measurement, but also relates the number of complaints for each financial firm against the number of product holders/customers/members.

### 2.4.4. Historical comparisons

The consultation paper indicates (at point 7 in section 2.2) that AFCA will “provide an option of making historical comparisons for financial firms’ past comparative reporting results”, effective from the 2019-20 comparative reporting. It is not clear what this option entails. In particular, it is not clear whether this is an option that will be made available to all financial firms to access such data (and if so, on what basis), and whether the historical data provided to financial firms would also be made publicly available by AFCA. Further detail in relation to this proposal would be welcomed.

In principle, we note that historical comparisons should allow financial firms to reflect on and monitor their EDR performance over time. However, to the extent that AFCA may make changes to its comparative tables over time, this will impact the usefulness of historical comparisons. Accordingly, it is important that emphasis is placed *now* on appropriately identifying the core data to be captured in all reporting year-on-year. We have noted in this submission a number of areas where there is uncertainty regarding the data to be reported in the comparative tables. We would encourage AFCA to provide more granular detail regarding its proposals and to seek feedback from stakeholders prior to settling the content and format of its comparative tables.

## Recommendation

AFCA should provide further clarity regarding its proposed option to provide historical comparisons.

To minimise issues in relation to the future utility of historical comparative data, AFCA should provide more granular detail about the data proposed to be reported and obtain stakeholder feedback prior to settling the content and format of its comparative tables.