

AUSTRALIAN TELECOMMUNICATIONS ALLIANCE SUBMISSION

To: The AFCA

Re: AFCA Scams Prevention Framework Rules consultation

28 September 2026



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1. AUSTRALIAN TELECOMMUNICATIONS ALLIANCE

The Australian Telecommunications Alliance (ATA) is the peak body of the Australian telecommunications industry. We are the trusted voice at the intersection of industry, government, regulators, and consumers. Through collaboration and leadership, we shape initiatives that grow the Australian telecommunications industry, enhance connectivity for all Australians, and foster the highest standards of business behaviour. For more details, visit www.austelco.org.au.

For questions on this submission, please contact Craig Purdon, c.purdon@austelco.org.au.

2. INTRODUCTION

The Australian Telecommunications Alliance (ATA) welcomes the opportunity to make a submission to help shape the rules which will govern the external dispute resolution(EDR) scheme within the Scams Prevention Framework(SPF).

ATA supports the objective of providing consumers and small businesses with an accessible, fair and effective external dispute resolution pathway for complaints under the SPF. A coordinated EDR model can assist to resolve genuine multi-party disputes and provide useful guidance as the SPF matures. The proposed Rules, however, rely on broad discretions and defer important operational safeguards to Operational Guidelines that are proposed to be developed in early 2027, shortly before commencement on 31 March 2027.

For telecommunications providers, the critical issue is not whether AFCA should have sufficient flexibility to resolve complex disputes. It is whether that flexibility is accompanied by clear jurisdictional thresholds, procedural safeguards and sector capability. Without these elements, incidental use of a telecommunications service may result in unnecessary joinder, information requests may become disproportionate, external expertise may be used routinely at providers' cost and AFCA's systemic-issue activity may overlap with the functions of the ACCC, ACMA and other SPF regulators

3. COMMENTS ON THE PROPOSED RULES AND PROCESSES

3.1 PROCEDURAL CERTAINTY AND OPERATIONAL GUIDELINES

- 3.1.1 The proposed Rules confer broad discretion on AFCA to decide whether a complaint should be considered, identify the issues and information relevant to the matter, choose the resolution method, allocate the matter to an Ombudsman, Adjudicator or Panel, obtain expert advice and determine what is fair having regard to good industry practice and other sources. Flexibility is understandable in an informal EDR scheme, but the cumulative breadth of these discretions creates material uncertainty for new telecommunications members.
- 3.1.2 Operational Guidelines are therefore not supplementary. They are essential to understanding the practical obligations created by the Rules. Providers must design governance, complaint-handling, evidence-retention, escalation, training and financial-control processes before 31 March 2027. Guidelines developed only in early 2027 may not provide adequate opportunity for consultation, systems design and staff training.

- 3.1.3 **ATA recommends:** AFCA publish , as soon as possible, Operational Guidelines for consultation before commencement and finalise them with enough lead time for implementation. The Operational Guidelines should contain criteria, examples, reasons requirements, response timeframes, review points and safeguards for each material discretion.

3.2 COMPLAINT ELIGIBILITY, JOINDER AND MULTI-PARTY PROCESS

- 3.2.1 The phrase “relates to, is connected with, or uses a Regulated Service” is capable of capturing incidental telecommunications involvement. A provider may have carried a legitimate one-time-password message, SMS, or phone call without knowledge of, or a practical capacity to prevent, the subsequent scam conduct. Incidental technical involvement should not be treated as a sufficient basis for joining the provider to a complaint.
- 3.2.2 The multi-party process should require an identified allegation concerning the particular Regulated Entity and a reasonable evidentiary basis connecting that entity’s conduct or omission to the issues and loss under consideration. Each entity should receive the allegation and core material, have a meaningful opportunity to contest joinder and be removed promptly when the complaint against it has settled or no longer meets jurisdictional requirements.
- 3.2.3 AFCA’s process must also align with the emerging multi-party IDR process. Where parties have supplied statements of compliance and some entities have settled, AFCA should use the IDR record rather than restart the matter. A settling entity should not remain a charged party merely because its information is potentially relevant. If further assistance is genuinely required, that entity should be treated as a non-party at no charge and requests should be limited and proportionate.
- 3.2.4 **ATA recommends:** The Rules require an identified allegation and evidentiary basis for each entity, a right to contest joinder, documented reasons for adding or retaining a party, timely removal after settlement, clear treatments for cost allocation of multi-party and or joined process, and a clear interface with multi-party IDR records and statements of compliance.

3.3 INFORMATION GATHERING, EXPERT COSTS AND SECTOR CAPABILITY

- 3.3.1 ATA supports AFCA obtaining the information necessary to resolve a complaint. The proposed power to require a party to do anything AFCA considers helpful is nevertheless exceptionally broad when combined with adverse inferences, statutory declarations and multi-party requests. Safeguards should ensure requests are relevant to a defined issue, necessary, proportionate to the value and complexity of the dispute, confined to information reasonably available and subject to reasonable timeframes and confidentiality protections.
- 3.3.2 External technical advice may be appropriate in a genuinely complex case. It should not become a routine substitute for AFCA building its own telecommunications capability. The proposed \$10,000 contribution cap would appear to be a ceiling per dispute, not a standard allowance. It is unclear whether AFCA could seek up to \$10,000 per Regulated Entity in a dispute or if this is a cap per dispute.
- 3.3.3 In a multi-party matter, AFCA should consult affected entities before appointment, avoid duplicated reports and allocate costs transparently according to the need for and benefit of the advice. We hold concerns that while this may be a new area of expertise for AFCA, the decision to raise the cap from \$5000 to the proposed \$10,000 seems to go against AFCA seeking industry expertise on technical, cyber security of forensic matters when this will be readily available in our designated sector.
- 3.3.4 **ATA recommends:** AFCA should consider adding to the Rules (or at a minimum the Operational Guidelines) an explicit clause to build permanent telecommunications expertise and only use external experts where internal capability or industry expertise is unavailable. This should also be the point where AFCA reviews the proposed increase in the cap from \$5,000 to \$10,000 and considers retaining the existing \$5,000, consistent

with the Financial Firm Rules. Before appointment, AFCA should identify the issue, proposed independent expert competence and scope, consult affected entities, consider existing evidence, confirm market-based fees and explain allocation among parties. Contributions should be limited to reasonable, necessary and proportionate costs.

3.4 COMPENSATION LIMITS AND ATTRIBUTION

- 3.4.1 ATA supports effective redress for substantiated scam-related loss. The consultation material, however, does not establish why the current financial-services monetary jurisdiction should determine the appropriate limit for SPF complaints across telecommunications and digital platforms.
- 3.4.2 Before finalising the limits, AFCA should publish scam-specific evidence, including the distribution of claims and awards, the expected number of matters at different values and the basis for doubling the non-financial loss cap. The Rules and Guidelines should also explain whether indirect and non-financial losses, legal and professional costs and interest are assessed per scam, per complainant or per Regulated Entity, and how they are attributed where several sectors are involved.
- 3.4.3 On interest calculations and payments, whilst the proposed Rules permit AFCA to award interest on compensation payments, they do not include the equivalent provision that exists under the current Financial Firm Rules which allows AFCA to consider the extent to which either party's conduct contributed to delay in resolving the matter.
- 3.4.4 **ATA recommends:** AFCA provide the evidence and methodology supporting each proposed limit and interest calculation and allocation and publish clear, worked multi-party examples showing jurisdiction, direct-loss apportionment, indirect and non-financial loss, professional costs, and the prevention of double recovery. On interest payments, this includes where the delay is not attributable to the Regulated Entity.

3.5 AFCA'S EDR ROLE AND REGULATORY BOUNDARIES

- 3.5.1 AFCA must assess relevant obligations to resolve an individual dispute. That function should be distinguished from investigating compliance for regulatory purposes. The proposed systemic-issue provisions contemplate investigation, required remediation, reports and ongoing monitoring until an outcome is acceptable to AFCA. These activities risk overlapping with the roles of the ACCC, ACMA and other SPF regulators.
- 3.5.2 A clear hand-off model is needed. AFCA should resolve the individual complaint, identify and refer potential systemic issues or serious contraventions, and cooperate with the relevant regulator. It should not operate a parallel enforcement or industry-wide remediation process unless that role is clearly required by law and coordinated with the regulator.
- 3.5.3 **ATA recommends:** AFCA and the SPF regulators publish a protocol defining when AFCA will assess issues for an individual complaint, when it will refer a systemic or compliance matter, how duplication will be avoided and which body is responsible for remediation, monitoring and closure. This is seen as a critical component of the Rules to avoid overlap and provide clarity that a consumer complaint will not be unintentionally investigated by multiple regulatory bodies, especially during the first 24 months of AFCA embedding and becoming experienced in these new processes.

3.6 COMMENCEMENT AND IMPLEMENTATION

- 3.6.1 The Rules are proposed to be published in early 2027 and commence on 31 March 2027. Providers need the final Rules and Operational Guidelines to build processes, implement controls and train staff. ATA seeks early consultation and publication of the Operational Guidelines.

- 3.6.2 Based on the timeline currently being considered by AFCA for implementation of the Rules, if adequate lead time is unavailable, AFCA should consider a transitional period for industry to embed the Guideline processes, while also undertaking an education focused approach to ensure there isn't any 'non-compliance'.

- 3.6.3 **ATA recommends:** AFCA should implement a six-month transitional period following commencement of the Rules. We note that similar transitional arrangements were applied to other major telecommunications regulatory reforms, such as the Security of Critical Infrastructure (SOCi) Telecommunications Sector Risk Management Program (TSRMP), which provided entities with six months from commencement to achieve compliance.

This transitional period creates an opportunity for AFCA and industry to work collaboratively on consumer education initiatives, helping consumers understand the purpose of the AFCA scheme and how to navigate the complaints process under the SPF.

3.7 SIX YEAR COMPLAINT PERIODS AND RECORD KEEPING

- 3.7.1 The six-year period may require providers to retain scam-related operational records for materially longer than current practices. AFCA should state what records it will reasonably expect, recognise lawful retention schedules and explain the interaction with privacy and data-minimisation obligations and the two-year period after an IDR response.

- 3.7.2 **ATA recommends:** AFCA define a minimum, proportionate set of expected records, confirm providers are not required to extend lawful retention periods solely because complaints may be made within six years, and explain how it will assess matters where records are no longer reasonably available.

3.8 AUTO COMPENSATION AND COMPLAINT FINALISATION

- 3.8.1 If an auto-compensation model proceeds, the Rules should state whether payment resolves the complaint, whether acceptance or a release is required and what residual issues can proceed. Fully resolved matters should not undergo a full EDR investigation; any systemic compliance concern should be referred to the regulator.

3.9 PUBLICATIONS OF DETERMINATIONS

- 3.9.1 Rule 1.15.7 provides that AFCA will publish Determinations identifying the Regulated Entities involved, unless publication would risk identifying another party or there are other compelling reasons not to publish. There is a risk this restriction may reduce visibility of recurring scam pathways for non-regulated entities outside the SPF (i.e., scams involving a non-regulated entity may not get published).

- 3.9.2 When deciding whether and how to publish a Determination, AFCA should also assess whether publication could increase scam, cybersecurity or operational risk. For example, where disclosure could lead to increased risk for consumers and Regulated Entities from scammers by exposing gaps in controls, operational processes or methods by which controls may be circumvented. Publication should also not inadvertently provide a roadmap for scammers or encourage consumers to place undue reliance on Regulated Entities' controls instead of taking reasonable protective steps themselves.

- 3.9.3 **ATA recommends:** AFCA should redact, summarise, delay or withhold publication where necessary, while continuing to publish de-identified thematic data that supports transparency and identifies emerging scam trends. We suggest at minimum that AFCA's operational guidance provide further detail on the circumstances where publication may be withheld or only partially published (including the risks identified above i.e., cybersecurity and operational risk).

3.10 RESTRICTIONS ON PROCEEDINGS AND INDEPENDENT OVERSIGHT

- 3.10.1 Rule 1.7 (**Restrictions on Regulated Entities during a SPF Complaint**) should be confined to the subject matter of the complaint and action necessary to preserve the status quo. It should not prevent lawful proceedings or recovery unrelated to the disputed amount or conduct.
- 3.10.2 This would align to the TIO's Complaints Handling Procedure, which notes that *'When the TIO refers a complaint to the member, it must stop credit management action on disputed charges for the duration of the Referral period, and while the TIO complaint is open.'* See section 2.5.3 - <https://www.tio.com.au/about-us/commitment-to-fairness/chp>
- 3.10.3 ATA supports an independent, transparent review of the new jurisdiction.

4. RESPONSES TO CONSULTATION QUESTIONS

4.1 IS AFCA'S PROPOSED APPROACH TO REFER – BACK APPROPRIATE FOR MULTI-PARTY SCAM COMPLAINTS?

- 4.1.1 Broadly, a flexible refer-back approach can be appropriate where it avoids repeating a completed multi-party IDR process. It should not, however, permit AFCA to begin substantive investigation before every newly identified Regulated Entity has received the complaint, the specific allegation against it and a reasonable opportunity to respond through IDR.
- 4.1.2 AFCA should recognise work already completed in multi-party IDR, including statements of compliance, agreed allocations and settlements. Where an entity was not involved in IDR, that entity should ordinarily receive the applicable IDR period. Any decision to shorten or dispense with refer-back should be reasoned and limited to circumstances in which delay would cause material unfairness or the entity has already had an equivalent opportunity to respond.
- 4.1.3 **ATA recommends: AFCA should retain flexibility, but set a default that each affected entity receives the allegation and a reasonable IDR opportunity, with reasons required for any departure and full recognition of completed multi-party IDR work.**

4.2 HAVE YOU IDENTIFIED UNINTENDED GAPS OR CONSEQUENCES IN COMPLAINT ELIGIBILITY?

- 4.2.1 The principal risk is that the breadth of “relates to, is connected with, or uses” may bring a telecommunications provider into a dispute solely because its service carried an element of the scam. Incidental conveyance of a call, SMS or legitimate one-time-password message is not, without more, evidence of error, failure or non-compliance by that provider.
- 4.2.2 The eligibility settings may also create uncertainty for services provided indirectly, wholesale services and platforms that do not know the identity or status of every end user. The six-year complaint period raises a related evidentiary issue because operational records needed to assess eligibility or involvement may not be retained for that period under existing practices.
- 4.2.3 **ATA recommends: Clarify that incidental use is insufficient by itself. AFCA should require a specific allegation and a prima facie evidentiary nexus to the Regulated Entity's conduct or omission before treating a complaint as being about that entity, and clarify how the eligibility settings operate in the sale of wholesale services, where a telecommunications provider does not have a direct relationship with the end-user.**

4.3 WHAT FURTHER GUIDANCE ON COMPLAINT ELIGIBILITY WOULD BE USEFUL?

- 4.3.1 The Rules should explain the evidence needed to establish that a complaint is about a particular Regulated Entity, how suspected and attempted scams will be treated, how AFCA will assess whether the complainant was an SPF consumer of the entity's service and how conduct spanning the 31 March 2027 commencement date will be separated.
- 4.3.2 They should include telecommunications examples involving carriage of calls and messages, one-time-password delivery, wholesale networks, platform services, number portability, accounts with multiple authorised users and circumstances where location or end-user identity is not known. The Guidelines should also address expected records and the interaction of the six-year and two-year time limits.
- 4.3.3 **ATA recommends: Publish sector-specific eligibility examples and a documented triage test covering consumer status, regulated service, relevant conduct date, identified allegation, evidentiary nexus and records reasonably available.**

4.4 WHAT GUIDANCE ON MANDATORY EXCLUSIONS WOULD BE USEFUL?

- 4.4.1 Guidance should explain when a complaint has been "previously dealt with", how materially new information will be assessed, how matters dealt with by another EDR scheme are treated and how AFCA will avoid double recovery after a court, tribunal, IDR or settlement outcome.
- 4.4.2 For the monetary exclusion, AFCA should explain how total direct loss attributable to a single scam is calculated, including linked transactions, successive scam activity, recoveries and complaints involving multiple entities. AFCA should also explain whether and how parties may agree to AFCA considering an otherwise excluded complaint.
- 4.4.3 **ATA recommends: Consider connecting settlement finality expressly to the mandatory exclusion for matters previously dealt with. Provide worked examples(covering complete and partial settlements and confirmation when a resolved component cannot be reopened, while preserving any clearly identified residual complaint) and reasons criteria for each mandatory exclusion, including prior proceedings, partial settlement, recoveries, linked scams, total loss and consent to jurisdiction.**

4.5 WHAT GUIDANCE ON AFCA'S DISCRETION TO EXCLUDE COMPLAINTS WOULD BE USEFUL?

- 4.5.1 The broad discretion should be supported by published criteria, a requirement to identify the relevant ground, notice to affected parties, an opportunity to comment and written reasons. Guidance should distinguish complaints about commercial preference from allegations of SPF non-compliance and explain the threshold for frivolous, vexatious, misconceived or insubstantial complaints.
- 4.5.2 The Guidelines should also clarify when a more appropriate forum exists, how AFCA will treat matters resolved through IDR or auto-compensation and when a complaint involving the same subject matter but a new entity should proceed.
- 4.5.3 **ATA recommends: AFCA should adopt a structured exclusion process with notice, submissions, reasons and internal review, supported by examples that constrain rather than merely restate the discretion.**

4.6 DOES THE PROPOSED APPROACH APPROPRIATELY REFLECT THE MULTI-PARTY NATURE OF SPF COMPLAINTS?

- 4.6.1 The approach recognises that multi-party complaints will be common, but it requires stronger safeguards. A

Regulated Entity should not be added merely because it appears somewhere in the scam chain. Each party should face an identified allegation supported by a reasonable evidentiary basis, have a right to contest joinder and be removed when the complaint against it is resolved or outside jurisdiction.

- 4.6.2 The Rules should also align with the multi-party IDR process. If some entities settle and the total settlement is agreed with the consumer, those entities should not remain charged parties in EDR. AFCA should be able to review the IDR record and request limited assistance without rejoining settled entities.
- 4.6.3 **ATA recommends: AFCA should retain a coordinated multi-party model, but add thresholds, notice, joinder-review, settlement-removal, cost and IDR-interface safeguards.**

4.7 WHAT FURTHER MULTI-PARTY GUIDANCE WOULD BE USEFUL?

- 4.7.1 The Guidelines should cover the threshold and evidence for adding a party, the information provided at joinder, response periods, treatment of settlements, removal criteria, apportionment, confidentiality across competitors, cost charging and the distinction between a party and a non-party asked to assist.
- 4.7.2 They should also set out how AFCA will use statements of compliance and multi-party IDR tools, how disagreements about allocation or compliance will be escalated, and how AFCA will avoid reopening settled components of a matter.
- 4.7.3 **ATA recommends: AFCA should develop an end-to-end multi-party process map and worked scenarios, including partial settlement, failed IDR allocation, late joinder, non-party assistance and removal of a resolved entity.**

4.8 HOW SHOULD AFCA ADAPT ITS APPROACH TO HANDLE SIMILAR COMPLAINTS ON A COMMON BASIS?

- 4.8.1 Common handling can improve consistency and reduce duplication, but grouping must not displace individual procedural fairness. AFCA should define the common factual and legal issues, identify which evidence is common and which remains individual, consult parties before grouping and permit separation where individual circumstances materially differ.
- 4.8.2 AFCA should also manage confidential and commercially sensitive material carefully, particularly where competitors are parties. A common outcome should not create a de facto industry rule that bypasses consultation or the roles of SPF regulators.
- 4.8.3 **ATA recommends: AFCA use common-basis handling only after defining common issues and consulting parties, while preserving individual evidence, confidentiality, reasons and the ability to separate unsuitable matters.**

4.9 DOES THE PROPOSED INFORMATION GATHERING APPROACH APPROPRIATELY ENABLE AFCA TO OBTAIN NECESSARY INFORMATION?

- 4.9.1 It provides sufficient power, but the breadth requires express proportionality safeguards. Requests should be tied to identified issues and be relevant, necessary, proportionate, reasonably specific and feasible within the stated timeframe. AFCA should first consider whether the information is already available from the complainant, another party, the IDR record or a regulator.
- 4.9.2 Where a request is burdensome, a party should be able to seek clarification, narrowing or an extension before any adverse inference. AFCA should recognise legal restrictions, privacy, security, third-party confidentiality, privilege and operational sensitivity, and should prefer redaction, summarisation or controlled access where appropriate.

- 4.9.3 Consider clarifying that an adverse inference will only be drawn where relevant and material information is reasonably available to a party and is withheld without adequate explanation. An inability to comply within the original timeframe, or to produce information that cannot reasonably be located or retrieved despite reasonable efforts, should not of itself justify an adverse inference. Adverse inferences should be reserved for unjustified non-compliance or withholding of information.
- 4.9.4 It also remains unclear at present what protocols are expected to be in place for the sharing of information, consent and the responsibility of the information sharing, especially in a multi-party environment. Are these to be developed by AFCA to expand on the draft Rules of section 1.10 Information Sharing? Is the collection of information from a customer, and the approval to share only based on the Privacy Act?
- 4.9.5 **ATA recommends: Add a documented request-and-review process incorporating relevance, necessity, proportionality, availability elsewhere, reasonable time, confidentiality, privilege, security and a mechanism to narrow or challenge a request.**

4.10 IS A \$10,000 CAP APPROPRIATE FOR EXPERT ADVICE COSTS?

- 4.10.1 ATA does not support treating \$10,000 as a routine amount available in each complaint. Expert advice may be necessary for a limited number of complex or novel technical matters, but AFCA should principally build and fund the internal sector expertise needed to operate the jurisdiction.
- 4.10.2 Before requiring a contribution, AFCA should identify the question requiring expertise, explain why existing material and internal capability are insufficient, consult affected entities on expertise, conflicts, scope and cost, and ensure fees reflect market rates. In multi-party matters, allocation should be reasoned and avoid duplicated expert work.
- 4.10.3 **ATA recommends: Retain any cap (preferably the \$5,000 cap consistent with the Financial Firm Rules) only as an exceptional ceiling and add necessity, prior consultation, expert independence and competence, defined scope, market-rate, duplication and multi-party allocation safeguards.**

4.11 WHAT GUIDANCE SHOULD AFCA DEVELOP FOR USE OF GENERATIVE AI?

- 4.11.1 Guidance should be technology-neutral and apply equally to all parties. The core requirements should be accuracy, relevance, human review, transparency where AI materially generated evidence or analysis, protection of personal and confidential information, and prohibition on fabricated authorities, quotations or evidence.
- 4.11.2 AFCA should not assume AI use from writing style or impose disproportionate certification burdens. Parties should remain responsible for submissions. AFCA should provide a correction process and should not reject otherwise relevant material solely because AI assisted its preparation.
- 4.11.3 **ATA recommends: Develop balanced guidance requiring human accountability, verification, source integrity, privacy and confidentiality, while preserving accessibility and avoiding technology-specific rules that rapidly become outdated.**

4.12 DO THE PROPOSED COMPENSATION LIMITS APPROPRIATELY REFLECT SCAM RELATED HARM?

- 4.12.1 ATA accepts the importance of adequate redress but is not satisfied that the consultation establishes an appropriate scam-specific basis for the limits. In particular, AFCA should explain why the financial-services jurisdictional limit is the correct measure for the SPF and why the direct-loss compensation cap should equal the full \$1.263 million jurisdictional threshold.

- 4.12.2 Clear guidance is also needed on causation, recoveries, mitigation, double recovery and apportionment. In a multi-party framework, the total direct-loss cap should apply once per scam, while any entity-specific awards should reflect the loss caused by that entity's conduct and the SPF apportionment framework.
- 4.12.3 **ATA recommends: Publish scam-specific evidence and methodology for the limits and detailed multi-party attribution examples before finalising the Rules. ATA reserves its final position pending that material.**

4.13 ARE THE PROPOSED LIMITS FOR LEGAL AND OTHER PROFESSIONAL COSTS ADEQUATE?

- 4.13.1 ATA has not identified an evidence base establishing that \$5,000 is the appropriate amount. AFCA is designed to be accessible without paid representation, so recovery should be limited to costs reasonably and necessarily incurred to understand, establish or progress a complaint in circumstances where the expenditure was proportionate.
- 4.13.2 AFCA should provide industry with analysis of whether the cap applies per complaint, complainant or Regulated Entity; how costs are attributed in multi-party matters; whether pre-AFCA costs are recoverable; and how duplicated or unrelated work is excluded.
- 4.13.3 **ATA recommends: Provide evidence for the cap and adopt necessity, reasonableness, verification, proportionality, causation and multi-party attribution criteria. No cost should be recoverable merely because it was incurred.**

4.14 DOES THE PROPOSED WORDING APPROPRIATELY CAPTURE NON-FINANCIAL LOSS IN SPF COMPLAINTS?

- 4.14.1 Using established wording may support consistency, but the existing formulation should not result in compensation for the distress inherent in being deceived by a scammer where that harm was not caused or materially increased by the Regulated Entity's conduct. The relevant loss should be unusual in degree or extent and causally connected to the particular entity's error or failure.
- 4.14.2 AFCA should explain the evidence required, how vulnerability is considered without creating automatic awards, how overlapping contributions by multiple entities are addressed and how double recovery is prevented.
- 4.14.3 **ATA recommends: Retain a clear causation requirement and publish assessment bands and worked examples distinguishing scammer-caused harm from additional non-financial loss attributable to a Regulated Entity.**

4.15 SHOULD PARTIES BE REQUIRED TO NOTIFY AFCA OF SETTLEMENT TERMS?

- 4.15.1 AFCA requires enough information to close the complaint, record outcomes, apply jurisdictional exclusions and perform lawful reporting. Any notification requirement should nevertheless be limited to information reasonably necessary for those purposes and should respect confidentiality, legal privilege, privacy and commercial sensitivity.
- 4.15.2 AFCA should specify how settlement information may be used, who may access it and when de-identified reporting is sufficient. The obligation should not create a general power to publish detailed settlement terms or use settlement as evidence of non-compliance. Settlement terms should not be disclosed to other parties except where required by law or necessary to administer the settlement, apply a jurisdictional exclusion or prevent double recovery.
- 4.15.3 The fact or amount of settlement should not be treated as an admission, a compliance finding or evidence

for allocating liability among non-settling parties.

- 4.15.4 **ATA recommends: Require notification of minimum standardised outcome data, with any additional settlement terms sought only where necessary to close the complaint, identify issues resolved and prevent double recovery should be required. This should be protected by clear use, access, confidentiality and de-identification rules. Detailed settlement terms should be sought only for a specified necessity and should not be shared with other parties unless legally required.**

4.16 WHAT FURTHER GUIDANCE ON AFCA'S DECISION MAKING APPROACH WOULD BE USEFUL?

- 4.16.1 This is a priority issue. The Guidelines should explain complaint acceptance, issue definition, allocation to an Ombudsman, Adjudicator or Panel, use of preliminary assessments, application of legal principles, SPF Codes and Rules, industry codes and guidance, "good industry practice", previous determinations and liability apportionment.
- 4.16.2 They should also explain how AFCA will engage with Treasury guidance on apportionment, how it will treat compliance findings or regulatory guidance, when it will refer issues to the ACCC or ACMA, how external experts will be used and how parties can address material relied upon. Published determinations should support consistency but should not become binding precedent or expand obligations beyond legislation and codes.
- 4.16.3 Operational guidance must be available before commencement. Otherwise regulated entities cannot design reliable governance, evidence and escalation processes.
- 4.16.4 **ATA recommends: Consult on and publish comprehensive decision-making Guidelines before commencement, including worked multi-sector cases and a protocol with the SPF regulators.**

4.17 DOES REFERENCE TO AFCA'S ENGAGEMENT CHARTER ASSIST STAKEHOLDERS?

- 4.17.1 A reference can assist if the Charter is stable, public and consistent with the Rules. The Charter should not create substantive obligations or sanctions beyond the approved Rules, and material changes affecting members should be consulted on.
- 4.17.2 AFCA should apply the Charter reciprocally to complainants, representatives, regulated entities and AFCA personnel and distinguish difficult or distressed engagement from unreasonable conduct or abuse of process.
- 4.17.3 **ATA recommends: Retain the reference with an express statement that the Charter is guidance, applies reciprocally and cannot expand the Rules or alter procedural rights without consultation.**

4.18 SHOULD "PAID REPRESENTATIVE" INCLUDE LAWYERS AND ACCOUNTANTS?

- 4.18.1 Lawyers and accountants are already subject to professional obligations and disciplinary frameworks. Expanding the definition could cause overlap, uncertainty and restrictions on a consumer's access to appropriately qualified advice. AFCA should first identify the specific harm the change is intended to address and why existing professional regulation and AFCA's case-management powers are inadequate.
- 4.18.2 If inclusion is pursued, safeguards should recognise legal professional privilege, duties to the court and client, accounting professional standards, natural justice and available review. Any conditions or exclusion should be proportionate, reasoned and confined to conduct in AFCA matters.
- 4.18.3 **ATA recommends: Do not expand the definition without evidence and targeted consultation with the**

legal and accounting professions. Address identified misconduct through profession-specific, proportionate mechanisms.

4.19 WHAT OTHER REFORMS SHOULD ADDRESS PAID REPRESENTATIVE CONDUCT IN EDR?

- 4.19.1 AFCA should consider coordinated reforms rather than relying solely on discretionary exclusion. Options include clear fee and disclosure standards, informed consumer consent, verification of authority, prohibitions on misleading claims and cold solicitation, minimum competence and record-keeping requirements, referral arrangements with ASIC and professional bodies, and targeted action against repeat misconduct.
- 4.19.2 AFCA should also publish data on representative-related issues and consult before changing expectations. Any reform should protect consumers from secondary scams while preserving access to legitimate legal, financial counselling and professional assistance.
- 4.19.3 **ATA recommends: AFCA to work with government, ASIC, consumer bodies and professional regulators on a consistent framework for paid representatives, supported by evidence, due process and targeted enforcement against harmful conduct.**

5. FINANCIAL FIRM RULES

Although the consultation questions focus on the SPF EDR Rules, ATA notes that the consultation material also asks whether the amended Financial Firm Rules clearly distinguish matters governed by those Rules from SPF complaints and what operational guidelines would assist.

ATA supports a clear separation but considers mixed complaints require additional guidance.

Guidance should explain how AFCA will classify issues where an entity is both a financial firm and Regulated Entity, how conduct and loss spanning 31 March 2027 will be treated, whether one or parallel case files will be used, how information and settlement interact across the two divisions, and how duplication of fees, investigation and remedies will be avoided.

6. CONCLUSION

ATA supports an accessible and effective SPF EDR scheme. The Rules will be more likely to achieve that objective if broad procedural flexibility is matched by clear jurisdictional thresholds, proportionate information-gathering, fair multi-party processes, internal sector capability, transparent compensation principles and a defined boundary between EDR and regulation.

ATA respectfully asks AFCA to consult on and publish the operational guidelines sufficiently before 31 March 2027, and to revise the Rules where core safeguards should not be left to guidance. ATA and its members would welcome continued engagement with AFCA, and other stakeholders on the detailed design and implementation of the scheme.

Ends

