

# Australian Financial Complaints Authority Rules Change Consultation

Legal Aid NSW submission to  
Australian Financial Complaints Authority

*April 2019*

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**Legal Aid**  
NEW SOUTH WALES 

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## About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 24 offices and 221 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, extended legal assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with LawAccess NSW, community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services.

The Legal Aid NSW Civil Law Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, housing, employment, social security and access to essential social services.

Legal Aid NSW welcomes the opportunity to make a submission to the Australian Financial Complaints Authority's Rule Change Consultation. Should you require any further information, please contact:

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## Introduction

Legal Aid NSW welcomes the opportunity to contribute to the Australian Financial Complaints Authority's (**AFCA**) Rules Change Consultation. We support the Commonwealth Government's announcement to enable AFCA to deal with complaints about conduct by financial firms dating back to 1 January 2008. Access to redress for legacy complaints has a number of benefits to consumers, industry and the community. We are confident that AFCA's consideration of legacy disputes will build consumer confidence in the financial services industry.

Our submission focuses on measures and approaches that we recommend that AFCA adopt in providing access to redress for legacy disputes. We make these comments in response to Question 3 of the Consultation Paper calling for "any other comments about the proposed change" to AFCA's Rules. We do not make any comment in response to Questions 1 and 2 of the Consultation Paper.

## Approach when providing guidance about the legacy complaints process

The Consultation Paper notes that AFCA will provide further guidance prior to 1 July 2019 about how it will handle legacy complaints and its approach to issues that these complaints may raise. When formulating this guidance, we recommend that AFCA consider:

1. Accessibility of the redress process to vulnerable complainants, particularly regionally and remotely based complainants and Aboriginal complainants; and
2. How best to manage the potentially large number of legacy complaints.

### Accessibility

The legacy dispute process should be easy for complainants to access and navigate, particularly Aboriginal complainants and those complainants based in regional or remote areas. It should also be well-publicised before 1 July 2019 to ensure that complainants are aware of their expanded rights to seek redress. This is critical given the short amount of time in which legacy complaints can be made to AFCA. AFCA's communication strategy could include information about:

- The function and goals of the legacy complaint process;
- Eligibility requirements;

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- Limitation periods; and
  - How to access the process.

### Managing a potentially large number of legacy complaints

There is a real potential for a substantial number of legacy complaints to be made to AFCA in a short amount of time. This is because of the widespread public awareness around the recent Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, and the appreciable increase in AFCA's remit to review complaints dating back to 1 January 2008. Further, these complaints will present new challenges for AFCA given that they may deal with conduct that is over a decade old. AFCA will need to ensure that it is properly resourced to deal with a high volume of complaints in a timely manner, and that it also has the flexibility to resolve a higher number of complaints than anticipated.

AFCA will also need to ensure that it is not overwhelmed with inappropriate legacy complaints. This can be managed by:

- Community education and plain language information about eligibility and process;
- A warm referral process for consumer advocates; and
- An effective triage system to check the eligibility of complaints at an early stage.