

# AFCA Approach consultation – General insurance

## Consultation paper

1. Approach to the duty to take reasonable care not to make a misrepresentation (**new**)
2. Approach to non-disclosure and misrepresentation (**updated**)

### November 2024

This consultation paper seeks feedback from relevant stakeholders and interested members of the Australian community. The consultation paper covers:

- AFCA's Approach to the duty to take reasonable care not to make a misrepresentation in general insurance
- amendments to AFCA's existing Approach to non-disclosure and misrepresentation in general insurance.

These Approaches apply to complaints about general insurance policies. We will consult separately about our approach to these issues in complaints about life insurance policies.

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# 1. Background

## About AFCA

The Australian Financial Complaints Authority (AFCA) is a free, fair and independent dispute resolution scheme. We consider complaints about financial products and services. AFCA's service is an alternative to tribunals and courts to resolve complaints consumers and small businesses have with their financial firms.

## About AFCA's Approach Documents

AFCA Approach Documents help consumers and financial firms to better understand how we reach decisions about key issues. These documents explain the way AFCA approaches common issues and complaint types. They give the parties to a complaint real insight into what they can expect during our process and the types of submissions they should make in support of their case.

However, it is important to understand each complaint that comes to us is unique, so the information in an Approach Document is a guide only. No determination (decision) can be seen as a precedent for future cases, and no AFCA Approach Document can cover everything you might want to know about a key issue.

## About this consultation

We invite stakeholder feedback on two AFCA Approaches dealing with non-disclosure and misrepresentation issues in AFCA's general insurance jurisdiction. This is set out in Part 3 of this consultation paper.

# 2. The consultation process

## About the consultation

AFCA is seeking feedback about the draft Approach Documents through a public consultation process. The draft Approaches are linked in Appendix 1 of this document and on our [consultation webpage](#).

The Approaches are currently in draft form. AFCA will consider feedback from all stakeholders before they are finalised.

The public consultation process will run from **Wednesday 6 November 2024** until **Wednesday 27 November 2024**.

Our final updated Approaches will be published on the AFCA website. We will also publish a Feedback report to inform stakeholders of the outcomes of our consultation process.

## How to make a submission

We invite you to comment on the key consultation questions in this paper and any other issues you wish to raise. Your feedback will help us to decide on the final content.

Our consultation process is designed to be flexible and accessible. AFCA invites stakeholders to provide feedback or make a submission through one of the following channels:

- **email general questions and comments** to us at [consultation@afca.org.au](mailto:consultation@afca.org.au)
- **send us a written submission** by emailing it to [consultation@afca.org.au](mailto:consultation@afca.org.au)
- **post/mail a written submission** to:

Lead Ombudsman – General Insurance  
Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001

Please provide your feedback by **27 November 2024**. AFCA will consider and respond to consultation submissions and feedback after the consultation period has closed.

## How we handle personal information

Submissions about the draft Approach documents will be published on the AFCA website at the end of the consultation period. We will:

- include your name or organisation on the published version of the submission unless you ask for the submission to not be published or to be de-identified.
- not publish personal information (e.g. phone number, email or postal address).

If we receive information as part of a submission that is unrelated to the consultation, we will consider the most appropriate way to address to this information.

If you would like your submission to be **de-identified** or you do not want your submission to be published on AFCA's website, please let us know.

By making a submission:

- you consent to AFCA handling your personal information. Any personal information obtained through the consultation process may be used for the purpose of analysis or to contact you if we require further information.
- you acknowledge you understand your submission may also be used for the secondary purpose of considering the submission in future consultations.

Please refer to our privacy policy at [www.afca.org.au/about-afca/policies/privacy-policy](http://www.afca.org.au/about-afca/policies/privacy-policy) for more information about how we handle personal information.

### What will happen next

Stage	Date	Milestone
Stage 1	6 November 2024	AFCA consultation paper released
Stage 2	27 November 2024	AFCA consultation period ends – comments due
Stage 3	November / December 2024	AFCA to consider and respond to consultation feedback and submissions
Stage 4	December 2024	AFCA publishes updated final Approaches

Table 1: Expected consultation timeline

### 3. The proposed Approach and consultation questions

Below we set out some background information about our draft Approaches and specific questions we seek feedback on. We also welcome your general feedback about changes that could be made to these Approaches to better achieve our objectives.

#### Approach to the duty to take reasonable care not to make a misrepresentation – general insurance

AFCA has extensive experience dealing with complaints about general insurance products. We deal with these complaints in a consistent way.

To support transparency and efficiency for consumers and financial firms, we have prepared this Approach which explains how AFCA will consider complaints about the duty to take reasonable care not to make a misrepresentation in general insurance. This includes information about which general insurance contracts are covered by this duty and when it applies, and insurers’ and consumers’ obligations under the *Insurance Contracts Act 1984* (the Act).

We also provide information about how AFCA considers all the circumstances to determine an outcome that is fair to all the parties.

This Approach is intended to reflect the way AFCA has consistently addressed these issues in its published determinations and does not represent any change to AFCA’s views.

We seek the following feedback:

1. Are there aspects of the Approach that could be further improved or clarified? Please provide examples if available.
2. Are there any unintended consequences that you envisage may result from the Approach?
3. Do you have any suggestions for how AFCA could amend the Approach to better achieve the objectives of the Approach?

### Approach to non-disclosure and misrepresentation – general insurance

AFCA has made amendments to our existing Approach to non-disclosure and misrepresentation to take into account legislative changes implemented since our previous Approach was published. These changes encompass legislative amendments to the Act that came into effect in 2021.

We generally provide updated Approach documents in mark-up with a clean version for stakeholders to consider. Given the extent of changes required in order to incorporate the legislative amendments, we present the updated draft Approach as a clean version.

We invite stakeholders to provide any feedback on the updated draft Approach.

## 4. Attachments

### Appendix 1

- [Draft Approach to the duty to take reasonable care not to make a misrepresentation – general insurance](#)
- [Draft Approach to non-disclosure and misrepresentation – general insurance](#)