

AFCA News

Edition 1 - 21 March 2019



Welcome to the inaugural edition of *AFCA News* for the Australian Financial Complaints Authority (AFCA).

Key priorities

Our vision is for AFCA to be a world-class ombudsman service that raises standards,

minimises disputes and restores trust and confidence in the financial services sector more broadly. This means we need to provide a service to all Australians that is fair, helpful, efficient and independent.

Preventing disputes arising in the first place is a key priority – we'll be helping members improve their own internal dispute resolution systems through education and information. In addition, we want to ensure that the most vulnerable members of our community can access our service and get fair outcomes. This year, staff will be on the road to raise public awareness about AFCA and engage with diverse audiences so that we can provide a truly accessible dispute resolution service. You can read more about our [strategic plan here](#).

Our first four months

It's been a really busy first four months here at AFCA. Since opening our doors on 1 November last year, we have received many more calls and complaints than the three predecessor schemes combined over the same period the previous year. Compared with FOS and CIO, we are seeing an average 42% increase in the number of complaints being lodged with us - and we're expecting to be even busier this year in the wake of the final report of the Royal Commission. You can see an overview of our [first four months of operations on our website](#) - we received 23,681 complaints, with over 6,100 in February alone. The good news is that 49% of these matters have already been resolved, and we are recruiting for more staff to continue to investigate and fairly

resolve complaints as quickly and efficiently as possible.

The Royal Commission

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry delivered its final report on 1 February. [AFCA welcomed](#) the recommendations made by Commissioner Hayne, as well as the Government's response to the recommendations. AFCA stands firmly on the side of fairness and we believe these recommendations are critical to ensuring that customers and small businesses are treated fairly. We're currently working with the Government and other stakeholders in the implementation of several of the recommendations relating to AFCA, and we will keep you updated with more information about the specifics as we know more. You can read more about AFCA's response in this issue of *AFCA News*, and we are also publishing updates to afca.org.au/royalcommission

Senate Inquiry announced

We also recently welcomed the news that a Senate Inquiry has been set up to look into the ability of consumers to exercise their legal rights through the justice system, and whether there are fair, affordable and appropriate resolution processes to resolve disputes with financial services providers. This inquiry will also examine AFCA and how we operate, as well as the accessibility of our service. We have provided a [submission to the Inquiry](#) and I look forward to talking to the Committee about our program of work and how we operate.

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Our commitment to small business

We've recently appointed a dedicated [Lead Ombudsman for Small Business – Mr Geoff Browne GAICD](#). Geoff brings firsthand knowledge of the challenges facing small businesses and his appointment will help us to enhance and tailor our services to meet the unique requirements of Australian small business owners. I look forward to working with Geoff to improve dispute resolution outcomes in this sector.

I hope you find this first edition useful and informative, but if you have any comments or suggestions for articles you'd like to read in *AFCA News*, please contact us at publications@afca.org.au



David Locke
Chief Ombudsman and CEO

AFCA's response to the Royal Commission

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry handed down its final report to the Governor-General on 1 February 2019. This substantial report marks an important milestone for financial services in Australia, containing 76 recommendations, [all of which the Government agreed with in its response](#). We have outlined three main recommendations that will be AFCA's focus over the following months:

Redress for legacy disputes

Australian consumers and small businesses who have suffered from misconduct by financial firms but have not yet been heard, will be able to take their cases to AFCA and have them considered.

The Government has announced that AFCA's remit will be expanded for a period of 12 months to accept financial complaints about conduct going back to 1 January 2008. We will consider eligible complaints between 1 July 2019 and 30 June 2020, after the AFCA Rules have been revised. This is a positive step which means that many more people will be able to get access to justice and have their matters properly considered. We are currently [consulting on changes to our Rules](#) to enable us to deal with these complaints.

Compensation scheme of last resort

We were very pleased that the Government announced a compensation scheme of last resort. This is a scheme that AFCA and its predecessor schemes have been long-standing advocates of for over 10 years.

A compensation scheme of last resort is an important back-stop that ensures that people who have been the victims of misconduct, and lost out through no fault of their own, can finally be properly compensated. Consumers who have fairly been awarded compensation will finally receive the redress they deserve. The compensation scheme of last resort will provide compensation in future for consumers who have received a decision from AFCA or a court or tribunal in their favour, but who have not received their compensation due to the financial firm ceasing business.

The Government will also be funding \$30 million to cover the payment of legacy unpaid determinations from the Financial Ombudsman Service and Credit and Investments Ombudsman.

Increased oversight role for AFCA in remediation

We also welcome the Government's recommendation that AFCA will be more involved in relation to remediation schemes that are run to compensate consumers. We already have considerable experience of working on remediation schemes. When we are involved at an early stage, we are able to ensure that the remediation scheme is designed and implemented in a way that delivers fair outcomes for customers. We find that when the programs are implemented well, and in accordance with the principles we would apply, we see very few follow up complaints and people are better equipped to move on and get on with their lives.

Fair insurance premiums

AFCA accepts that insurance providers are entitled to set prices and premiums based on both industry standards and their own system of factors and weightings. As with most other businesses, they can pass on general cost increases to the consumer to offset increases in day-to-day business expenses.

However, insurers do not have absolute freedom when it comes to determining yearly premiums - they have a responsibility to act fairly to their customers. This includes ensuring they are using

methods that reflect good industry practice or that there are well justified reasons for any disproportionately large increases.

Additionally, communicating premium increases to customers is key. Consumers have a right to understand *why* there's a significant increase and *how* the new premium was calculated, so they can make an informed choice and shop around if necessary.

Although AFCA has limited jurisdiction about the level of a premium, fee, or interest we can decide on cases that involve the incorrect application or misrepresentation of a premium increase.

Case study

Incorrect application of premiums

Issue: A customer's home and contents insurance policy increased 39% from the previous year. The insurer explained that this increase was based on additional flood data that had become available, in addition to the normal modelling and calculation practices it generally applied.

AFCA's jurisdiction: The insurer submitted that the complaint concerned the level of a fee, premium or charge and as such was outside AFCA's jurisdiction. The insurer stated that they had sent the customer an offer of renewal and it was their choice to accept or reject it. AFCA can, however, consider complaints that concern the incorrect application of a premium¹. As this complaint concerned the method by which the insurer set the premium and not the process of renewal, we accepted it as being within jurisdiction.

Findings: The customer's renewal notice included a comparison of last term to this term's premiums; however, it did not explain how this was calculated. When we asked the insurer about this, they explained that each house was individually assessed for flood risk by

using local or state government studies, where available.

The customer provided us with a recent government report which indicated that the house and land had an extremely low-flood risk.

In response, the insurer advised that the study was not available to the industry. They did not explain, however, why it was not sourced, given local and government studies are considered by the insurer to provide the most reliable flood hazard maps.

The insurer did not provide us with enough information to determine whether the new modelling used was fair, and whether it justified the premium increase. As a result, we found in favour of the complainant and determined the insurer had not exercised its discretion fairly when setting the premium. We reduced the flood premium increase by 50%.

Applications: Assessing and setting premiums is largely at the discretion of the insurer, but they are required to act fairly and consistently with good industry practice and their own established procedures.

¹ [AFCA Rule C.1.2](#) states that AFCA must exclude

a) A complaint about the level of a fee, premium, charge, rebate or interest rate – unless:

(i) the complaint concerns non-disclosure, misrepresentation or incorrect application of the fee, premium, charge, rebate or interest rate by the Financial Firm having regard to any scale or practices generally applied by that Financial Firm or agreed with that Complainant

Systemic Issues

AFCA is currently investigating 84 systemic issues. We have also identified eight potential serious contraventions and other breaches. [Find out more about what constitutes a systemic issue or serious contravention on our website.](#)

These case studies provide examples of some systemic issues we have identified and resolved.



Case study

Unfair financial difficulty policies

Issue: There were concerns that a bank's financial difficulty policies and procedures for its home loans were not compliant with section 72 of the *National Credit Code (NCC)*, clause 28 of the *Code of Banking Practice (CBP)*, and the *AFCA Approach to Financial Difficulty*².

The financial firm's hardship policies prevented it from offering hardship solutions if a customer had been in long term financial difficulty and had previously failed to adhere to hardship agreements, or where the period of delinquency was significant. This means the financial firm refused to consider options such as a serviceability test followed by a capping arrangement, and instead focused on alternative repayment options which were unaffordable in light of the circumstances.

Outcome: Following our identification of the issue, the financial firm updated its hardship policy to offer more sustainable solutions. This included having practical discussions with customers experiencing financial difficulty to assist them to overcome their hardship.

The firm also offered capping arrangements for investment properties on a case by case basis. Training was provided to the firm's hardship team to ensure that the updated policies were implemented correctly.

Application: Policies should not automatically exclude a customer from receiving hardship solutions due to long term hardship and issues such as high arrears or long periods of delinquency. Instead, financial firms should assess each request for assistance on an individual basis, and place an emphasis on the customer demonstrating their ability to service the loan.

If a customer has a positive change in circumstances that allows them to restart payments on a loan, they could be offered a repayment trial followed by capitalisation of arrears – the repayment trial could be the usual minimum monthly payment (MMP), interest only payments or loan term extension with reduced MMP.

Alternatively, if the customer has received hardship assistance over an extended period and they are still unable to meet the repayment schedule, then it may be appropriate to decline further hardship assistance, but instead consider other options such as a timeframe to permit the asset to be sold to repay the debt.

² Then under the FOS Approach to Financial Difficulty

Case study

Incorrect claims handling processes

Issue: An insurer requested that customers contribute to the cost of repairs for claims on motor vehicle insurance policies based on 'wear and tear' – an incorrect reliance when the cause of damage was by accident. The exclusion for wear and tear is applicable only when damage arises during ordinary use of the vehicle, not as the result of an accident. Unlike similar policies from other insurers, there was no provision in the policy that allowed the financial firm to seek a contribution for betterment.

Outcome: The financial firm ceased receiving contributions, implemented procedural changes for referrals from repair managers and provided training to claims staff to reinforce best practice. A remediation program was created to compensate affected customers.

Application: When a provision is interpreted and applied incorrectly by staff, it has the potential to quickly affect many customers. It is essential that staff are adequately trained to process claims within the scope of the policy.

Financial Firms must tell their customers about AFCA



It can be confusing for consumers to understand where to take their complaint next, so it is the legal responsibility of an AFCA member to communicate to customers about their right to complain to us.

When a customer has a complaint about a financial product or service, the first point of contact should be their financial firm. If the customer is not happy with the final response of the financial firm or they do not receive a response, they can complain to AFCA.

In accordance with [ASIC Regulatory Guide 165](#), all IDR final response or delay letters must include a reference to AFCA. By June 2019, all members must also include AFCA's contact details in their Product Disclosure Statements, Financial Services Guide or Credit Guide.

Upcoming AFCA member events

3 April

- Banking and Finance Forum, Sydney
This forum is sold out, [register for the webcast](#)
- Superannuation Forum, Sydney
This forum is sold out, [register for the webcast](#)

4 April

- Investments and Advice Forum, Sydney
This forum is sold out.
- Life Insurance Forum, Sydney
This forum is sold out, [register for the webcast](#)

5 April

- General Insurance Open Forum, Sydney
This forum is sold out, [register for the webcast](#)

Events we're attending

21 March

Health, Justice & Ageing Symposium, VIC
Eastwood Community Expo, NSW
Community Legal Centres Queensland (CLCQ)
Conference, QLD

22 March

Community Legal Centres Queensland (CLCQ)
Conference, QLD

29 March

AFCA Consumer Advisory Panel meeting, VIC

Conciliation at AFCA

Webcast, 17 April 2019

Conciliation is one of the methods AFCA can use to resolve complaints. This webcast is designed to provide you with an overview of what to expect when participating in a conciliation conference at AFCA.

[Click here to register now](#)

[Click here to view all upcoming events on our events calendar](#)

Current Matters

[AGM Markets Ptd Ltd](#)

[Berndale Capital Securities Pty Ltd](#)

[Bestjet Travel Pty Ltd](#)

[Viewble Media and The Shoppers Network](#)

Feedback and questions

We want to hear from you! If you have any financial questions, article suggestions or want to know more about AFCA processes, please submit your question and we'll provide an answer in an upcoming edition.
Email: publications@afca.org.au

Contact Us

Phone: 1800 831 678 (free call)
1300 56 55 62 (members)
Email: info@afca.org.au
Website: www.afca.org.au

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