



# Investments and Advice Forum

19 September 2019

# Today's agenda

- > Welcome
- > Complaint statistics
- > Trends in Investment and Advice complaints
- > AFCA activities update
- > Legacy complaints
- > Fairness Project
- > Open discussion: Case studies
- > Q&A



# Complaint Statistics

Jacinta Ryan, Senior Manager –  
Investment and Insurance

# Ten months at a glance

**60,687** complaints received

**73%** complaints were resolved

**69%** resolved within 60 days

**73%** complaints were resolved by agreement or in favour of complainants

## Complaints received by top five products\*

Product	Total
Credit cards	8,995
Home loans	5,418
Personal loans	4,672
Motor vehicle - comprehensive	3,318
Home building	2,372

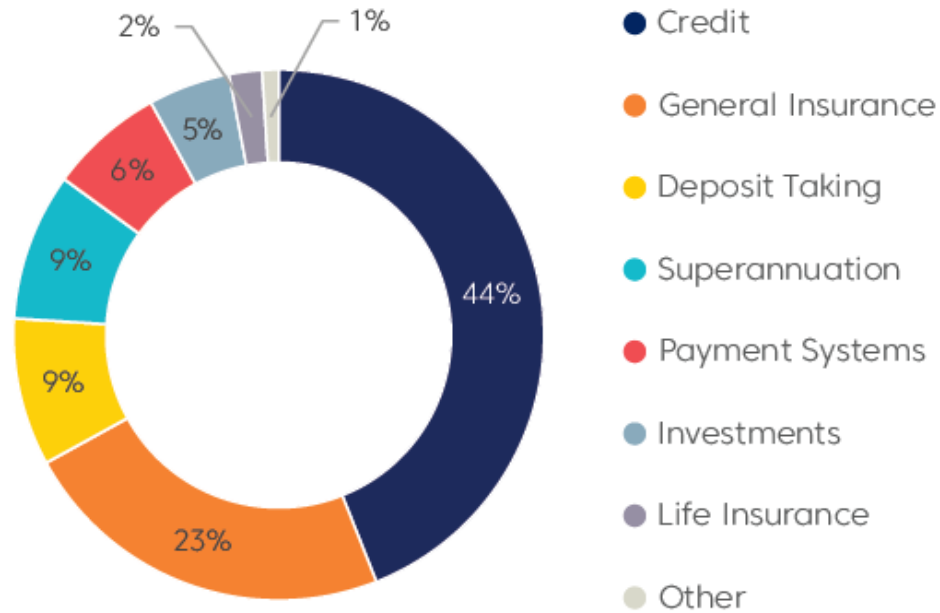
## Complaints received by top five issues\*

Issue	Total
Credit reporting	4,166
Unauthorised transactions	3,796
Delay in claim handling	3,453
Service quality	3,269
Incorrect fees/ costs	3,215

\* One complaint can have multiple products and issues.

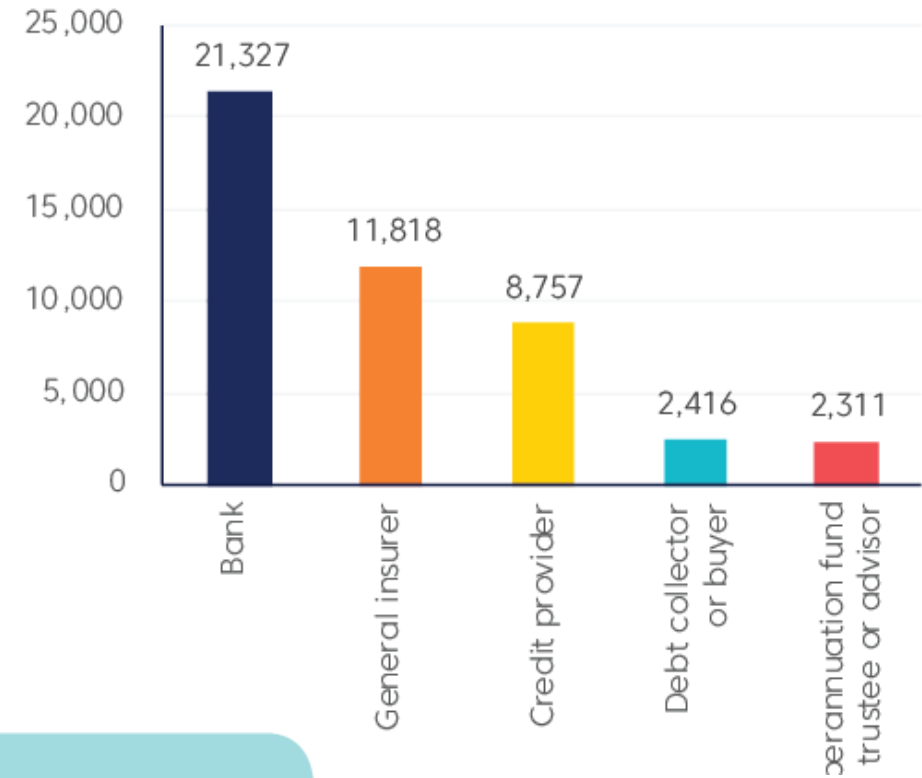
# Ten months at a glance

### Complaints received by product line<sup>2</sup>



<sup>2</sup> One complaint can have multiple product lines.

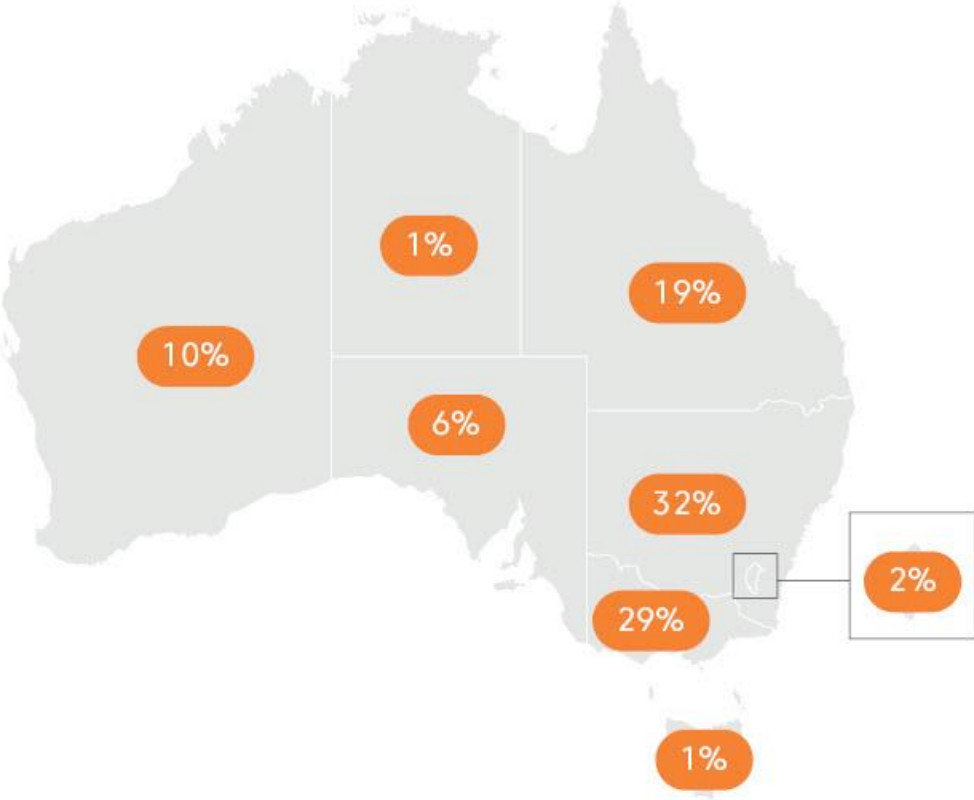
### Complaints received by top 5 financial firm types



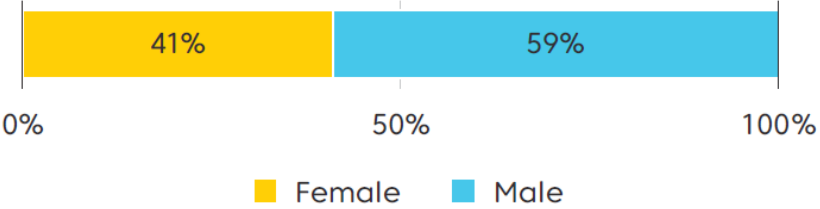
**16%** of licensee members had a complaint lodged against them in the first 10 months

# Who lodged complaints

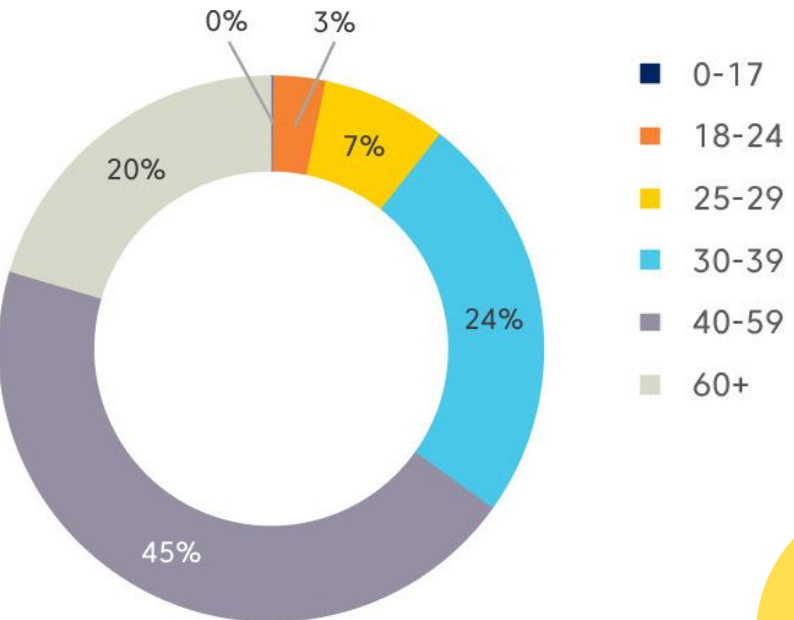
### Complaints received by location



### Complaints received by gender



### Complaints received by age



# Investments and advice complaints

**3,301** investments and advice complaints received. 5% of all complaints received

**43%** investments and advice complaints were resolved

**66%** investments and advice complaints resolved within 60 days

**57%** complaints were resolved by agreement or in favour of complainants

## Top 5 investments and advice products

Product	Total
Foreign Exchange	1,046
Mixed Asset Fund/s	293
Self-managed Superannuation Fund	287
Shares	279
Superannuation Fund	237

## Top 5 investments and advice issues

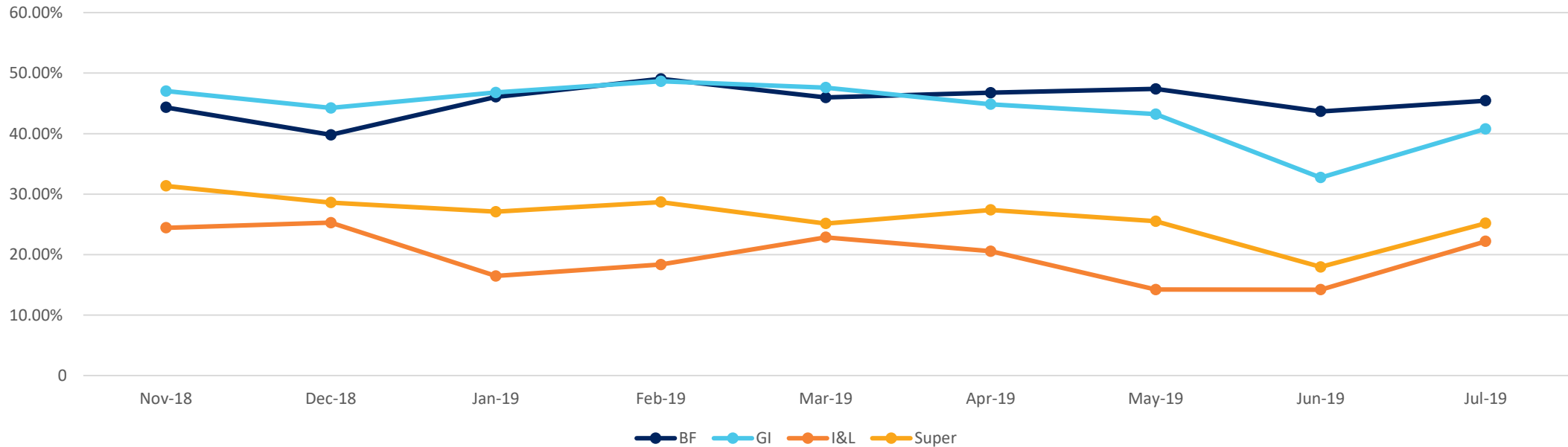
Issue	Total
Failure to follow instructions/agreement	891
Inappropriate advice	409
Failure to act in client's best interests	292
Incorrect fees/ costs	260
Misleading product/service information	159

# Areas of concern

- > Growing number of financial difficulty cases
- > Ensuring awareness of AFCA
- > Systemic issues and serious misconduct
- > Members slow to respond to complaints when referred back – timeliness in response to AFCA
- > Members failing to ensure customers know about EDR (only 1 in 5 are informed at IDR about the ombudsman)
- > Firm remediation programs – design, reach, approach



# Known closure rate at registration and referral



	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun -19	Jul-19
<b>BF</b>	44.30%	39.80%	46.10%	49.00%	46.00%	46.80%	47.40%	43.70%	45.40%
<b>GI</b>	47.00%	44.20%	46.80%	48.70%	47.60%	44.90%	43.20%	32.70%	40.80%
<b>I&amp;L</b>	24.40%	25.30%	16.50%	18.30%	22.90%	20.60%	14.20%	14.20%	22.20%
<b>Super</b>	31.40%	28.60%	27.10%	28.70%	25.10%	27.40%	25.50%	17.90%	25.20%
<b>Total</b>	42.20%	38.40%	42.00%	44.70%	42.90%	43.10%	41.80%	36.20%	41.20%

# Complaints received

## Investments and Advice

	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun -19	Jul-19	Aug-19	Total
Complaints received	275	242	369	293	274	237	419	409	353	430	<b>3,301</b>

- > We saw an upward trend in the number of investment complaints received due to an increase in foreign exchange complaints.

# Accepted complaints & non-response rate

## Investments and Advice

	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun -19	Jul-19	Aug-19	Total
No response received	51	67	65	46	73	74	71	57	61	67	<b>632</b>
Response received	122	111	247	161	139	133	175	309	235	283	<b>1,915</b>
Total accepted complaints	173	178	312	207	212	207	246	366	296	350	<b>2,547</b>
% of no response	29%	38%	21%	22%	34%	36%	29%	16%	21%	19%	<b>25%</b>

# Complaints closed by status

Investments and Advice 1 Nov 18 – 30 Jun 19

Complaints Closed - Status	Number	Percentage
Closed Registration & Referral	609	28%
Closed Rules review	397	18%
Closed Case Management Level 1	343	16%
Closed Decision	322	15%
Closed Case Management Level 2	296	13%
Closed Preliminary View	194	9%
Closed Before Referral	52	2%
Total	<b>2,211</b>	

> Please note: Overall data is up to 30 June 2019 to reflect the Annual Report 2018-19

# Complaints closed by outcome

Investments and Advice 1 Nov 18 – 30 Jun 19

Outcome	Number	Percentage
Resolved by FF (at Registration at Referral)	609	28%
Outside Rules (including Outside Terms of Reference)	448	20%
Negotiation	315	14%
Discontinued	311	14%
Decision in Favour of complainant	165	7%
Decision in Favour of FF	102	5%
Resolved by FF	98	4%
Preliminary Assessment in Favour of complainant	56	3%
Conciliation	43	2%
Preliminary Assessment in Favour of FF	38	2%
Assessment	28	1%
<b>Total</b>	<b>2,211</b>	

> Please note: Overall data is up to 30 June 2019 to reflect the Annual Report 2018-19

# Complaints closed by stream at CM1 and CM2 status

Investments and Advice 1 Nov 18 – 30 Jun 19

	FastTrack	Standard	Complex	Total
Closed Case Management Level 1	101	218	24	343
Closed Case Management Level 2		238	58	296
<b>Total</b>	<b>101</b>	<b>456</b>	<b>82</b>	<b>639</b>

> Please note: Overall data is up to 30 June 2019 to reflect the Annual Report 2018-19

# AFCA activities update

Jacinta Ryan, Senior Manager –  
Investment and Insurance

# Public reporting

## AFCA is making changes to its public reporting

- > In line with the broader changes arising from the Royal Commission and regulatory changes, including ASIC regulatory guide 165.
- > ASIC has approved changes to the AFCA Rules to allow the scheme to name financial firms in published determinations.

## From 2019/2020:

- > AFCA will be naming firms in published decisions.
- > Changes to reporting on definite systemic issues – naming of firms involved
- > Changes to AFCA comparative reporting (requirement under RG237)
  - Complaints received numbers
  - Publish every 6 months
  - Come into effect for our AFCA 18-19 comparative reporting.
  - Published in October 2019



# AFCA fees and levies

Funding requirements have been adjusted due to:

- > Significant increase in complaints
- > Significant growth in the organisation
- > Actions required in response to the Royal Commission final report

Key factors:

- > AFCA has grown by more than 250 staff in 8 months
- > AFCA is now operating over 5 sites
- > Complaints currently tracking more than 40% higher than predecessor schemes, with no sign of reducing
- > Superannuation complaints more than double original forecast
- > IT changes, upgrades, recruitment and other support costs

# AFCA Financial Fairness Roadshow

77+ Locations across Australia

September – November 2019

- Tasmania
- Victoria
- Canberra
- Regional NSW

February – April 2020

- Sydney
- Queensland
- Western Australia
- South Australia
- Northern Territory





# Legacy complaints

Jacinta Ryan, Senior Manager –  
Investment and Insurance

# Legacy complaints dating back to 1 January 2008

From 1 July 2019 until 30 June 2020, Australian consumers and small business can lodge complaints that would normally fall outside AFCA's time limits.

- > AFCA will follow our usual process to investigate these complaints which are known as Legacy complaints
- > Process begins with AFCA referring complaints back to financial firms to resolve
- > It is our expectation that firms will engage proactively with their customers to resolve these legacy matters themselves where possible, as part of their commitment to justly remediate the misconduct of the past and meet the community's expectations of fairness
- > Where firms are unable to satisfactorily resolve the complaints, AFCA will start investigating these matters from **1 October 2019**

# Legacy complaints at a glance

520 legacy complaints received

59% Banking and Finance

21 % Investments

8% Superannuation

7% General Insurance

5% Life Insurance

Top Products	Tops Issues
Management investments (42%)	Advice (79%)
Superannuation – non Trustee (42%)	Charges (11%)
Securities (12%)	

# Our approach to Legacy complaints

- > AFCA will have regard to the relevant law, codes, industry practice that were in place (and decisions made) at the time of the disputed conduct
- > Approaches to assessing loss will reflect the current AFCA approach
- > We will be constantly reviewing our approaches to provide further guidance to members



# What is the same?

## AFCA will

- > Apply its Rules in accordance with the Operational Guidelines to assess jurisdiction
- > Apply 912A of the Corporations Act - Require the financial firm to provide information
- > Apply the appropriate decision making test including what is fair in all the circumstances
- > Make a decision based on the weight of information

## AFCA may where appropriate

- > Refer a matter to conciliation, provide a preliminary assessment or expedite to determination
- > Require a firm to provide a statutory declaration where material documents are not provided
- > Apply the free decision rebate policy to Legacy complaints

# What is different?

- > When a complainant became aware of the loss is not relevant in a Legacy complaint to assess jurisdiction
- > You can request that AFCA reconsider it's classification of the complaint as a Legacy complaint
- > 45 day IDR timeframe for non superannuation complaints whether or not it has been through IDR
- > Legacy complaint costs have a different funding structure;
  - fees will be higher, and
- > Complaints are likely to be complex and relate to matters raised in the Royal Commission
- > All Legacy complaints will be considered as standard or complex



# Focus on fairness – AFCA decision making jurisdiction

Jacqueline Pirone, Ombudsman



# Introduction

- > AFCA's purpose and values
- > AFCA's decision making jurisdiction
- > Fairness project



# Our purpose and values

It is inherent in AFCA's purpose and values to provide fair and independent decision making.

Central to this is that all decisions are balanced, considered...

...and fair.



# Our decision making jurisdiction

When determining a complaint an AFCA Decision Maker must do what is fair in all the circumstances having regard to:

- > legal principles
- > applicable industry codes or guidance
- > good industry practice; and
- > previous relevant Determinations of AFCA or Predecessor Schemes

# Our decision making jurisdiction

- > Is not new
- > Previous EDR schemes have had a similar jurisdiction
- > We are articulating what we are already doing



# What is the fairness project?

Articulation of how AFCA will assess financial firm conduct against existing legal and ethical obligations

# Why we are doing it

Clarity

Transparency

Consistency



# Fairness standard

## Fair dealing

Ensuring that one party does not take unfair advantage of another:

- > in the nature of the bargain struck
- > in the circumstances of entering that financial arrangement

## Fair treatment

- > Ensuring that one party is not treated inequitably or in a way that is adverse to their interests

## Fair service

Delivering quality, professional financial products and services in a manner that:

- > is fit for purpose
- > meets a consumer's legitimate interests and reasonable expectations

## Fair remediation

A prompt and proportionate response when things go wrong



# Fairness principles

## Play by the rules including:

- > Keep promises made
- > Be open and honest
- > Do not take unfair advantage
- > Be ethical and professional
- > Reasonable care and skill
- > Ensure services are fit for purpose
- > Protect the money of others
- > Provide value and benefit
- > Serve the interests of others
- > Consider consequences and impacts of your actions

# Fairness questions

1. Did the parties obey the law?
2. Did the parties make promises or representations they did not meet?
3. Did the parties act honestly, reasonably and in good faith with their dealings with each other?
4. Did one party take unfair advantage of another? Were specific circumstances or vulnerabilities considered?
5. Did the financial firm provide the product or service ethically, with reasonable care and skill and in accordance with industry and professional practice?
6. Did the financial firm meet the consumer's reasonable expectations about the product or service?
7. Did the product or service perform as expected and provide a fair value or benefit?
8. When acting for a consumer, did the financial firm act in the interests of the consumer or group of consumers as a whole?
9. How did the parties treat each other during their relationship or after concerns were raised?
10. What was the impact on the consumer and their experience of the service?

# What next?

Starting the conversation

Formal consultation

Updating our approaches



# Afternoon Tea



# Open discussion

## Case studies

- > Inappropriate advice – Decision 545958
- > Scoping of advice – Decision 496009
- > Advisers changing licensees – Decision 540505

# Case Study 1 - 545958

- > 29 year old
- > Fly in Fly out worker
- > \$120,000 in super and net equity of \$125,000 in home
- > Earning \$200,000 year
- > Went and saw the adviser (who was also an accountant) to get his tax done
- > Mental health issues



# Case Study 1 - 545958

- > In March 2018, adviser recommends an agribusiness investment with borrowed funds (\$50,000)
- > Further he recommends refinance of loan increasing equity. Use the tax returns to invest in investment property.
- > November 2018 – recommends the SMSF invest in investment property (limited recourse)



# Case Study 1 - 545958

- > Lost job
- > Had to sell investment property then real house
- > Could not find work in QLD moves to Vic and rental property
- > Withdraws funds from SMSF illegally to pay down tax investment (potential cost of \$70,000)
- > Mental health condition has got worse.





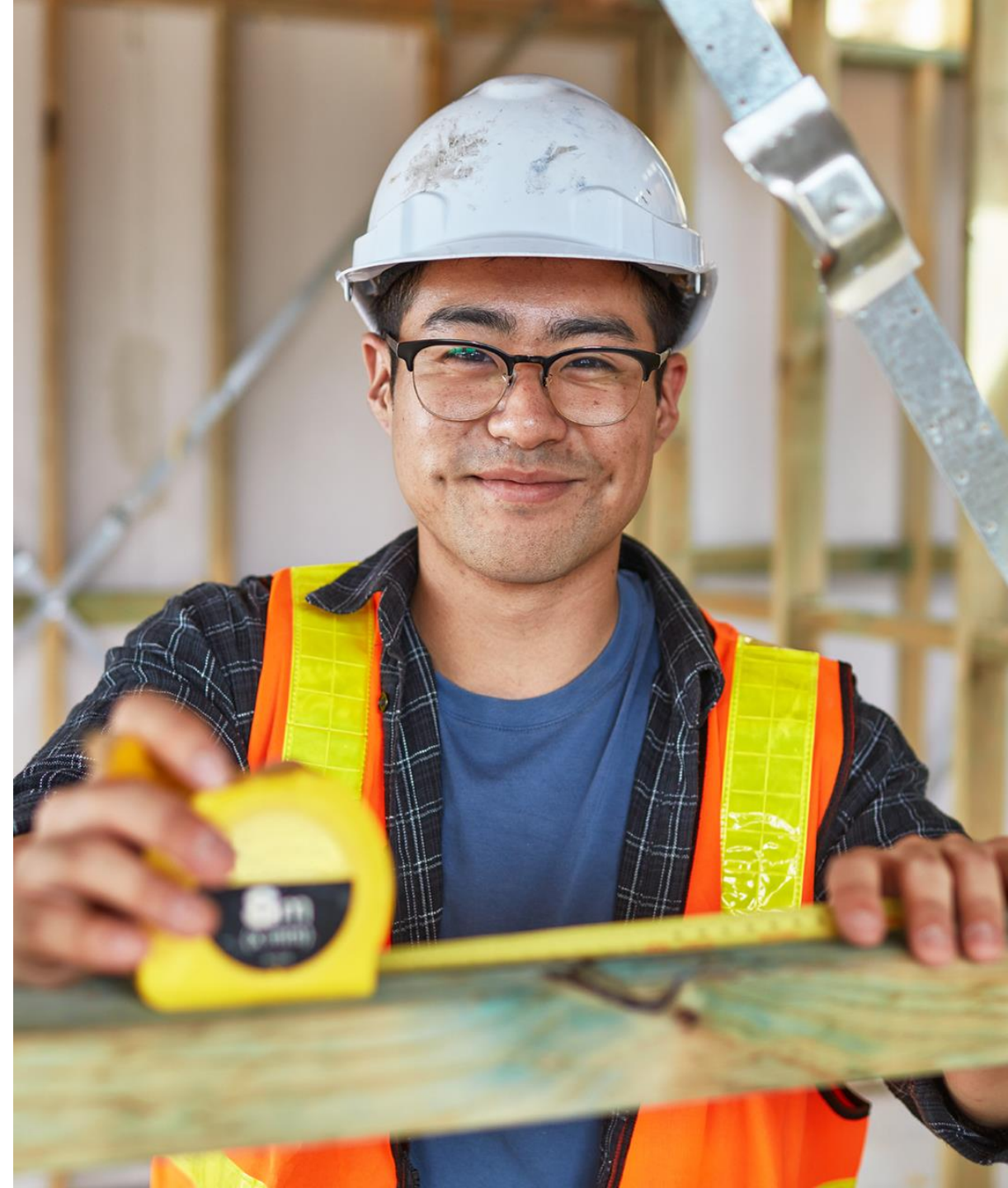
# Case Study 1 - 545958

- > Inappropriate advice – no need to do anything to achieve his goals.
- > Advice was excessively risky.
- > Investment Losses – included all actual losses.
- > Insurance Losses – lost income protection for involuntary unemployment, some insurance in super, could not get further life insurance.
- > Did not include penalties for accessing super early.
- > \$320,000 loss.



# Case Study 2 - 496009

- > Went to adviser specializing in property investment
- > Facilitated his investment – introduced him to property developer.
- > Builder went bust.
- > Eventually property was completed. Was rented out.
- > Claimed \$80,000 (cost of builder going bust)
- > Said he should have been advised of risks and diversified



# Case Study 2 - 496009

Based on complaint number 496009

- > Did the adviser adequately scope the advice?
- > If he did not did this cause a loss?
- > Adviser said this person interested in property and provided him with that service.



## Case Study 2 - 496009

- > Adviser did not scope out advice. Fact find refers to holistic advice.
- > “But for” the breach should have advised him of the risks of property.
- > Had he known would have invested in diversified fund.
- > However complainant made a profit comparing a growth diversified with what he was invested in.
- > No loss.



# Case Study 3 - 540505

- > Adviser advises complainants to take out a loan secured against their property in 2008.
- > Also recommends they take out loan against home and also invest it.
- > In 2012 adviser switches to new licensee. Strategy maintained.
- > Complains in 2016. Complaint brought against both.

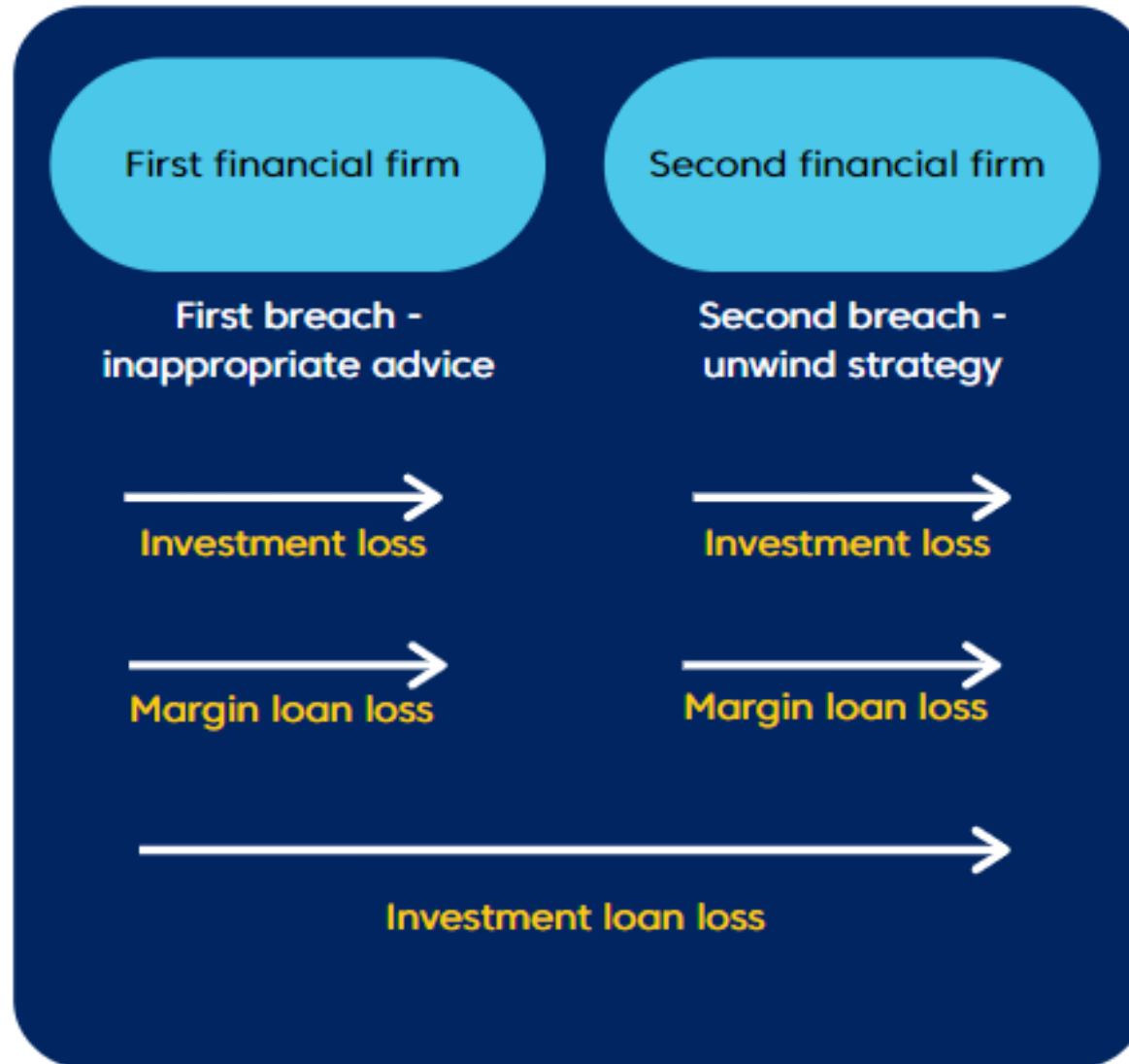


# Case Study 3 - 540505

- > Complainant settles against first because offer made prior to it getting to AFCA.
- > Decision only considered second financial firm's conduct.
- > Finds that in 2013 when the adviser switches across adviser should have reviewed and unwound strategy
- > Loss is calculated – had they got out what position would they have been in ?
- > Left with a residual debt. Not responsible for that debt.



# Case Study 3 - 540505



# Wrap up and questions

## AFCA contact details

- [afca.org.au](http://afca.org.au)
- [info@afca.org.au](mailto:info@afca.org.au)
- 1800 931 678
- GPO Box 3, Melbourne VIC 3001

## AFCA membership contacts

- 1300 56 55 62
- [membership@afca.org.au](mailto:membership@afca.org.au)



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Thank you

