



# Superannuation and Life Insurance Forum

19 September 2019

# Today's agenda

- > Welcome
- > Complaint statistics
- > Trends in Super & Life Insurance complaints
- > AFCA activities update
- > Legacy complaints
- > Fairness Project
- > Open discussion: Case Studies
- > Q&A



# Complaint Statistics

Meredith Walker, Senior Manager –  
Business Integration

# 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

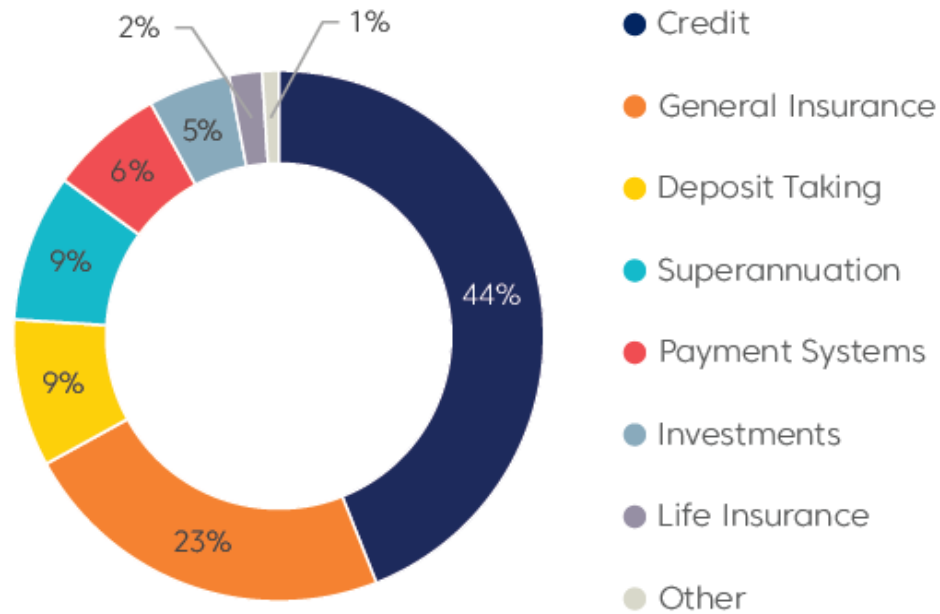
## Complaints received by top five issues\*

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.

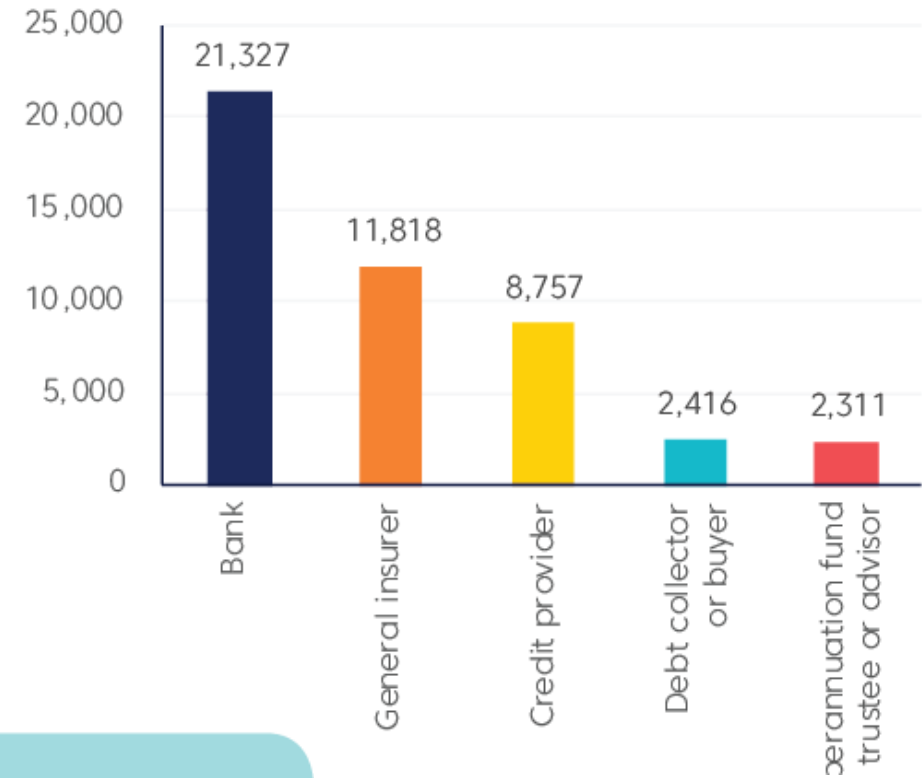
# Ten months at a glance

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



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

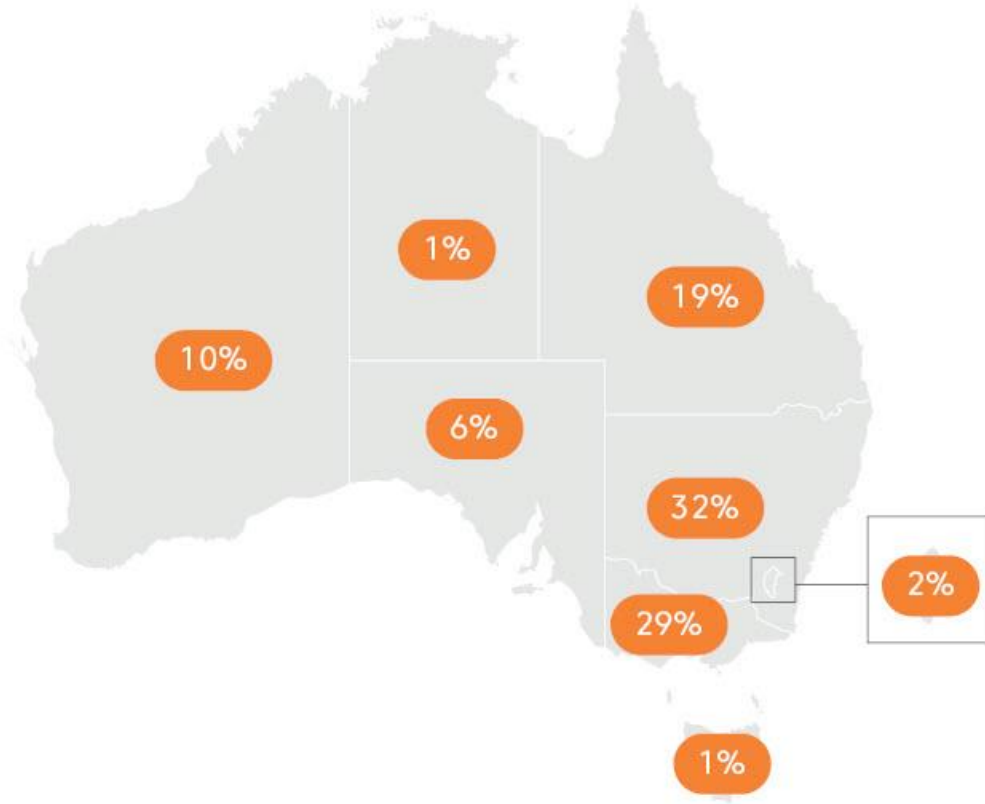
### Complaints received by top 5 financial firm types



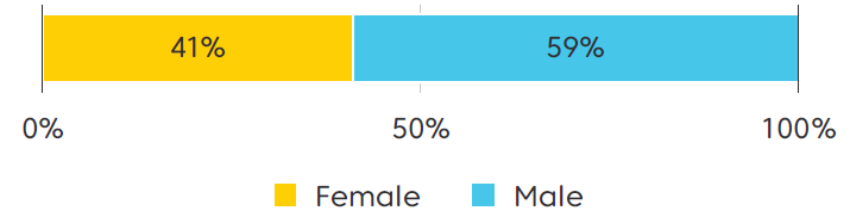
**16%** of licensee members had a complaint lodged against them in the first 10 months

# Who lodged complaints

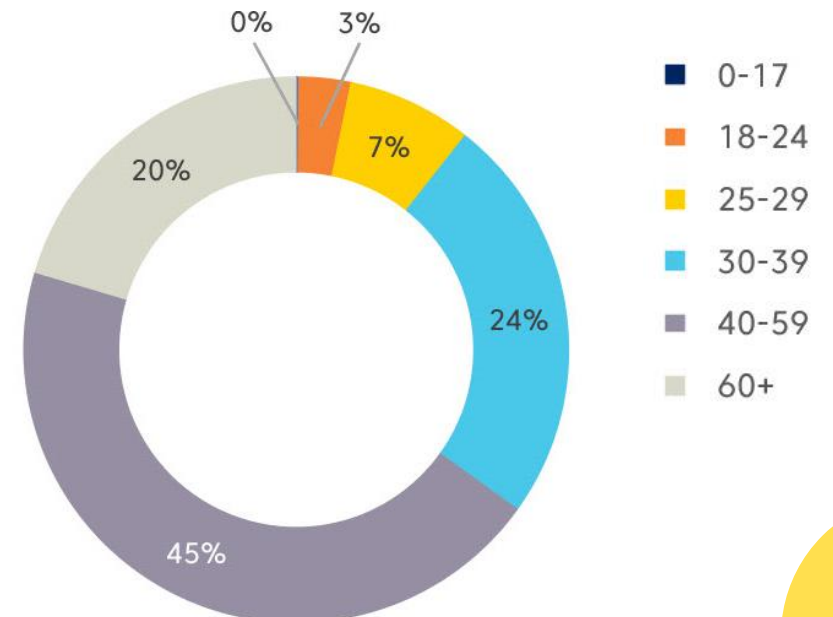
## Complaints received by location



## Complaints received by gender



## Complaints received by age



# Superannuation complaints

**5,259** superannuation complaints received. 9% of all complaints received

**47%** superannuation complaints were resolved

**62%** superannuation complaints resolved within 60 days

**66%** complaints were resolved by agreement or in favour of complainants

## Top five superannuation products

Product	Total
Superannuation Account	2,156
Total & Permanent Disability	846
Income Protection	443
Death Benefit	433
Pension	81

## Top five superannuation issues

Issue	Total
Incorrect fees/ costs	714
Delay in claim handling	615
Account administration error	391
Denial of claim	333
Claim amount	324

# Life insurance complaints

**1,478** life insurance complaints received. 2% of all complaints received

**48%** life insurance complaints were resolved

**55%** life insurance complaints resolved within 60 days

**59%** complaints were resolved by agreement or in favour of complainants

## Top five life insurance products

Product	Total
Income Protection	487
Term Life	221
Total & Permanent Disability	137
Funeral Plans	137
Trauma	106

## Top five life insurance issues

Issue	Total
Denial of claim	193
Incorrect premiums	162
Delay in claim handling	126
Claim amount	106
Cancellation of policy	102



# 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

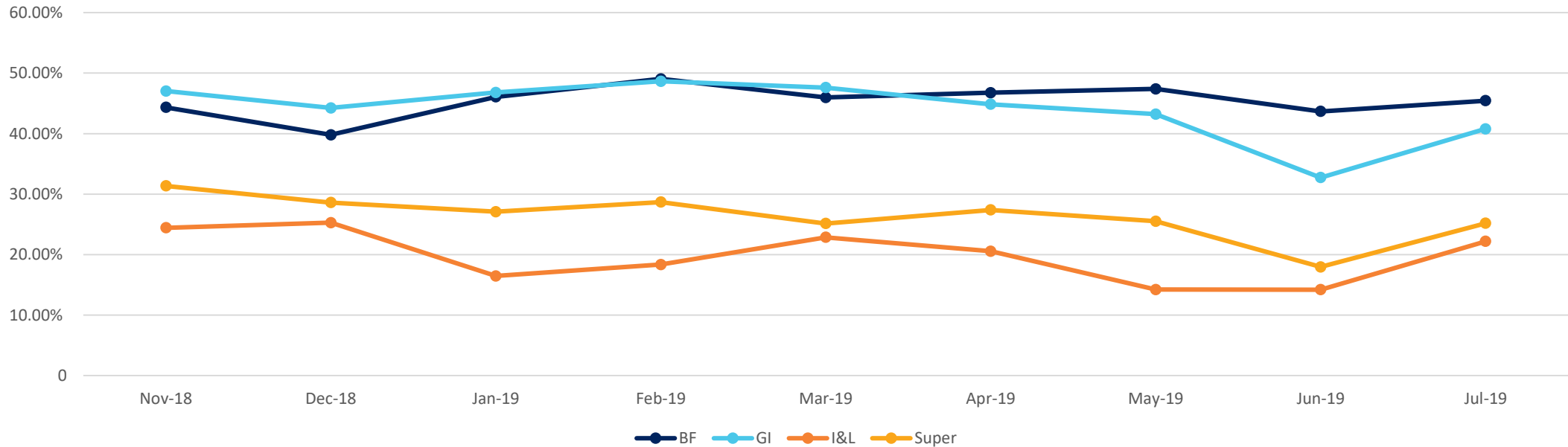
# Complaints received

## Superannuation

	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun -19	Jul-19	Aug-19	Total
Complaints received	538	424	516	536	548	449	503	517	661	567	<b>5,259</b>

> The number of super complaints received was fairly consistent in the last 10 months.

# 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
BF	44.30%	39.80%	46.10%	49.00%	46.00%	46.80%	47.40%	43.70%	45.40%
GI	47.00%	44.20%	46.80%	48.70%	47.60%	44.90%	43.20%	32.70%	40.80%
I&L	24.40%	25.30%	16.50%	18.30%	22.90%	20.60%	14.20%	14.20%	22.20%
Super	31.40%	28.60%	27.10%	28.70%	25.10%	27.40%	25.50%	17.90%	25.20%
Total	42.20%	38.40%	42.00%	44.70%	42.90%	43.10%	41.80%	36.20%	41.20%

# Accepted complaints & non-response rate

## Superannuation

	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun -19	Jul-19	Aug-19	Total
No response received	13	48	34	51	82	93	76	86	65	89	<b>637</b>
Response received	108	204	244	292	280	264	258	246	317	307	<b>2,520</b>
Total accepted complaints	121	252	278	343	362	357	334	332	382	396	<b>3,157</b>
% of no response	11%	19%	12%	15%	23%	26%	23%	26%	17%	22%	<b>20%</b>

# Complaints closed by status

Superannuation 1 Nov 18 – 30 Jun 19

Complaints Closed - Status	Number	Percentage
Closed Registration & Referral	1,292	41%
Closed Case Management Level 1	952	30%
Closed Rules review	303	10%
Closed Preliminary View	226	7%
Closed Case Management Level 2	191	6%
Closed Decision	106	3%
Closed Before Referral	62	2%
<b>Total</b>	<b>3,126</b>	

# Complaints closed by outcome

Superannuation 1 Nov 18 – 30 Jun 19

Outcome type	Number	Percentage
Resolved by FF (at Registration and Referral)	1,292	41.30%
Negotiation	517	16.53%
Discontinued	384	12.28%
Outside Rules	339	10.84%
Resolved by FF	222	7.10%
Preliminary Assessment in Favour of FF	106	3.39%
Assessment	95	3.04%
Determination Trustee decision affirmed	81	2.59%
Conciliation	44	1.41%
Preliminary Assessment in Favour of complainant	21	0.67%
Determination Trustee decision substituted	16	0.51%
Prelim Assessment: Trustee decision affirmed	9	0.29%
Determination Trustee decision remitted	1	0.03%
Determination Trustee decision varied	1	0.03%
<b>Total</b>	<b>3,126</b>	

# Complaints closed by stream at CM1 and CM2 status

Superannuation - 1 Nov 18 – 30 Jun 19

	FastTrack	Standard	Complex	Total
Closed Case Management Level 1	509	159	284	952
Closed Case Management Level 2		53	138	191
<b>Total</b>	<b>509</b>	<b>212</b>	<b>422</b>	<b>1,143</b>

# Complaints received

## Life Insurance

	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun -19	Jul-19	Aug-19	Total
Complaints received	170	130	143	158	151	128	143	145	155	155	<b>1,478</b>

> The number of life insurance complaints received was fairly consistent in the last 10 months.



# Accepted complaints & non-response rate

## Life Insurance

	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun -19	Jul-19	Aug-19	Total
No response received	29	41	24	18	28	39	25	33	27	29	<b>293</b>
Response received	82	69	89	89	69	75	80	72	81	102	<b>808</b>
Total accepted complaints	111	110	113	107	97	114	105	105	108	131	<b>1,101</b>
% of no response	26%	37%	21%	17%	29%	34%	24%	31%	25%	22%	<b>27%</b>

# Complaints closed by status

Life insurance - 1 Nov 18 – 30 Jun 19

Complaints Closed - Status	Number	Percentage
Closed Registration & Referral	346	27%
Closed Rules review	214	17%
Closed Case Management Level 1	203	16%
Closed Decision	173	14%
Closed Case Management Level 2	168	13%
Closed Preliminary View	160	13%
Closed Before Referral	8	1%
<b>Total</b>	<b>1,272</b>	

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

# Complaints closed by outcome

Life Insurance - 1 Nov 18 – 30 Jun 19

Outcome	Number	Percentage
Resolved by FF (at Registration and Referral)	346	27%
Outside Rules (including Outside Terms of Reference)	221	17%
Negotiation	160	13%
Discontinued	156	12%
Decision in Favour of FF	112	9%
Resolved by FF	79	6%
Preliminary Assessment in Favour of FF	60	5%
Decision in Favour of complainant	50	4%
Conciliation	33	3%
Preliminary Assessment in Favour of complainant	31	2%
Assessment	24	2%
<b>Total</b>	<b>1,272</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

Life insurance - 1 Nov 18 – 30 Jun 19

	FastTrack	Standard	Complex	Total
Closed Case Management Level 1	81	84	38	203
Closed Case Management Level 2		100	68	168
<b>Total</b>	<b>81</b>	<b>184</b>	<b>106</b>	<b>371</b>

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

# AFCA activities update

Meredith Walker, Senior Manager –  
Business Integration

# 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

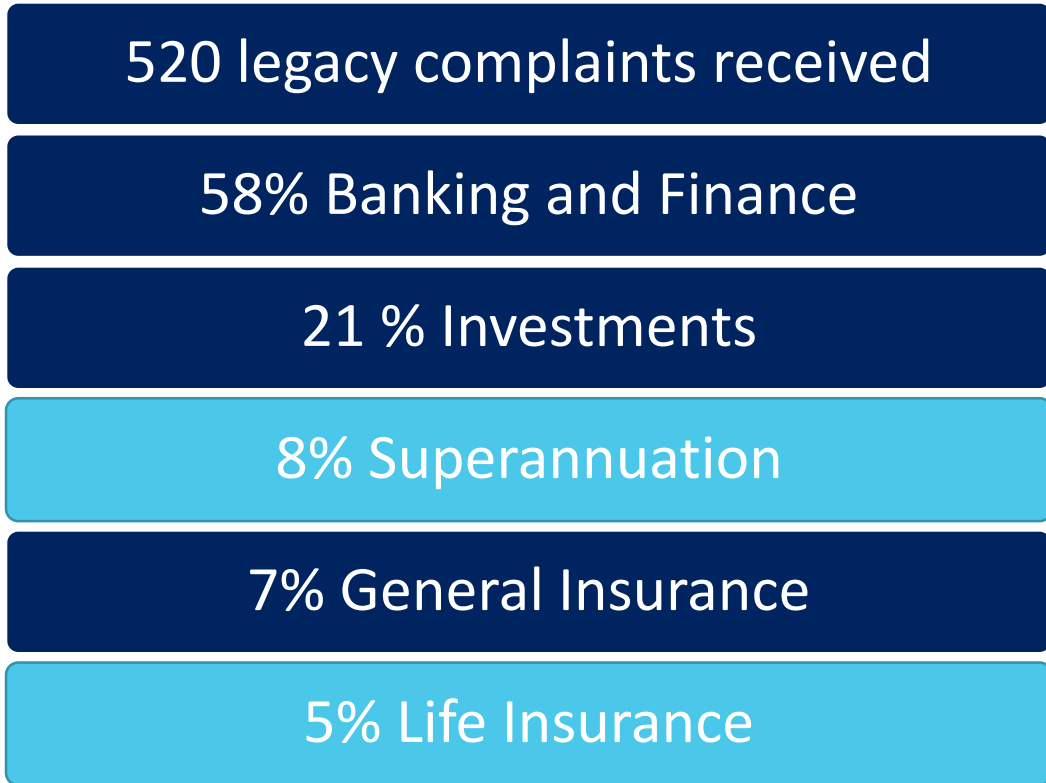
Di Ennis, Executive General Manager  
- Resolution

# 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



Top products	Top issues
Superannuation account (62%)	Charges (44%)
Total & Permanent Disability (31%)	Service (25%)
	Denial of claim (19%)

Top products	Top issues
Non-income stream (54%)	FF decision (60%)
Income stream (35%)	Charges (15%)
	Disclosure (15%)

# 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

Pam McAlister, 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



# Morning Tea



# Open discussion

## Case studies

- > Insurers rights to avoid in group life for fraudulent misrepresentation - Decisions 613562 and 619820
- > Occupational classifications - Decision 611558



# Case Study 1: 613562 and 619820

## The facts

- > The trustee had a 'group life' policy with Insurer 2. It previously had a 'group life' policy with Insurer 1.
- > The complainant is the nominated beneficiary of a deceased member under a binding nomination.
- > Insurer 2 sought to avoid cover for the insured death benefit of \$78,750.
- > The reason given was that the deceased member did not disclose two medical conditions to Insurer 1 when she applied for cover on 29 November 2009



# Case Study 1: 613562 and 619820

## The Law

- > For pre-28 June 2014 disclosures, section 21 of the Insurance Contracts Act (duty of disclosure) does not apply to a 'life insured' under a group life contract. *Sharma v LGSS*.
- > The Insurer 2 had to rely on fraudulent misrepresentation, because it was more than 3 years.

## Section 29 of the Insurance Contracts Act

1. This section applies where the person who became the insured under a contract of life insurance upon the contract being entered into:
  - ~~a) failed to comply with the duty of disclosure; or~~
  - b) made a misrepresentation to the insurer before the contract was entered into ....
2. If the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.
- ~~3. If the failure was not fraudulent or the misrepresentation was not made fraudulently the insurer may within 3 years after the contract was entered into, avoid the contract.~~

# Case Study 1: 613562 and 619820

## The misrepresentation

- > The deceased member was asked 'To the best of your knowledge, have you ever had any type of cancer... or mental/nervous disorder including stress anxiety or depression?'
- > The answer given was 'No.'
- > The deceased member was diagnosed with blood cancer and had seen her doctor to monitor her medication in September 2009.
- > Also diagnosed with depression in March 2007 and placed on anti-depressant medication.
- > Insurer 2 obtained an underwriting opinion from Insurer 1 that it would not have granted cover if it had known of the deceased member's blood cancer.
- > The deceased member's answer was at least reckless of the truth and therefore fraudulent.

# Case Study 1: 613562 and 619820

## The decision

- > Notwithstanding the fraudulent misrepresentation, Insurer 2 did not have a statutory right to avoid cover, because Insurer 2 was not the insurer to whom the misrepresentation was made.
- > To conclude otherwise would have required Section 29 be read with additional words.

## Section 29 of the Insurance Contracts Act

1. This section applies where the person who became the insured under a contract of life insurance upon the contract being entered into:
  - ~~a) failed to comply with the duty of disclosure; or~~
  - b) made a misrepresentation to ~~the~~ *an* insurer (i.e. Insurer 1) before the contract was entered into ....
2. If the failure was fraudulent or the misrepresentation was made fraudulently, ~~the~~ *another* insurer (i.e. Insurer 2) may avoid the contract.

# Case Study 1: 613562 and 619820

## But surely not any other insurer?

- > A bridge too far – especially since for superannuation complaints:
  - AFCA cannot make a determination contrary to law
  - AFCA must consider whether the insurer's decision was fair and reasonable in its operation in relation to the complainant (who was an innocent beneficiary in this instance)

## Section 29 of the Insurance Contracts Act

1. This section applies where the person who became the insured under a contract of life insurance upon the contract being entered into:
  - a) ~~failed to comply with the duty of disclosure; or~~
  - b) made a misrepresentation to ~~the~~ *an* insurer (i.e. Insurer 1) before the contract was entered into ....
2. If the failure was fraudulent or the misrepresentation was made fraudulently, ~~the~~ *another* insurer (i.e. Insurer 2) *who assumed the same risk as the insurer to whom the misrepresentation was made* may avoid the contract.



# Case Study 1: 613562 and 619820

## What does it mean?

- > It is common practice for a trustee to change the insurer for its group life insurance.
  - > This is sometimes called 'transfer' of cover – although in fact there is a new policy with the new insurer, often on similar terms.
- > There is a gap in the law as it applies to group life policies when:
    - the trustee changes from one insurer to another;
    - the new insurer accepts the risk for the fund members covered by the previous policy without requiring any underwriting; and
    - a misrepresentation has been made to the previous insurer.

# Case Study 2: 611558

## The facts

- > The fund defaults members into a 'Standard' work rating.
- > This work rating is the highest risk and highest cost rating.
- > Members can apply to change to 'Professional' rating or 'Low Risk' rating.
- > The trustee disclosed that the complainant
  - was in the 'Standard' work rating when he transferred divisions, and
  - could apply to change his work rating.
- > But did not tell him what sorts of work 'Standard' rating would usually apply to.

# Case Study 2: 611558

## The facts continued

- > The complainant worked mainly in an office environment.
- > In June 2018 he found out from talking to other members what 'Standard' meant.
- > He successfully applied to change his work rating to 'Professional'.
- > His complaint to AFCA was that the difference in his premiums should have been refunded



# Case Study 2: 611558

## The Decision

- > The 'Standard' work rating was not true to label; therefore the trustee had to properly explain what it meant.
- > The complainant could not make an informed decision about whether to apply to change his work rating unless he could recognise that the 'Standard' rating was clearly not applicable to him.
- > In these circumstances the trustee's decision not to refund his premiums was not fair and reasonable.
- > AFCA's substituted decision was that the trustee refund the premiums from when he could have applied for the 'Professional' rating had he been properly informed to the date he did successfully change his rating

# 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)



**Australian Financial Complaints Authority**



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Thank you

