

9 March 2021

AFCAreview@treasury.gov.au

Reference: 1. Review of the Australian Financial Complaints Authority
2. Terms of Reference: Consultation c2021-147524

SUBMISSION:

Introduction: Credit Counsellors Australia Pty Ltd (CCA) is the grantee of Australian Credit Licence 383790 and acts in the capacity of a debt solutions advisor and facilitator of debt agreements on behalf of SRMC Pty Ltd (SRMC) a Registered Debt Agreement Administrator (720). Both companies are current members of the Australian Financial Complaints Authority (AFCA); as follows:
Credit Counsellors Australia Pty Ltd – Membership 19512
SRMC Pty Ltd - Membership 79937

Since inception of its membership on 30 June 2010, a limited number of complaints have been lodged with AFCA against CCA; and importantly none of these have been adjudicated to have any veracity. It should be stated that one (1) complaint is currently on foot and the outcome at this juncture is unknown.

Complainants: In our experience, complainants fail to bring the subject matter of their concerns to the attention of the provider prior to lodging a formal complaint with AFCA thereby denying the provider the opportunity to discuss any complaint and endeavour to manage it through internal dispute resolution. Regrettably, AFCA still accept grievances without first requiring that a complainant approach the supplier, in writing. Of those complaints lodged against CCA, not one complainant sought an explanation or other satisfaction through internal dispute resolution. For those consumers familiar with the role of AFCA we strongly believe that their intent in lodging a complaint is to “frighten off” the supplier knowing full well that the process is a very costly one for the provider - win or lose.

Compromise: The insolvency profession, in which CCA participates, is a highly regulated business sphere where adherence to Insolvency Law and Practice Directions are very grounded. A selection of files are audited annually by officers of Regulation Branch, the Australian Financial Security Authority. Documentation required to support the formulation of a debt agreement submission is substantial and all fees and charges are declared, for the client, in more than one document. A debt agreement’s major purpose is to satisfy affected creditors. Some complainants seek to recover damages based on their perception of wrongdoing by the provider, rather than the facts provided, initially by themselves. Additionally, it is incumbent upon the debtor client to verify the information in a debt agreement proposal prior to lodgement and by way of a Declaration. This submission suggests that it is not good business practice to compromise with a consumer when there is no fault and if reputational damage may result.

Adjudication: 1. *Documentation:* Due to the nature of CCA’s business operation, the documentation required to be supplied in support of a defence is very substantial and expensive to produce both in time and resources. We accept that this is necessary however it adds considerably to the cost of a defence.

2.

2. Specialisation: It would be helpful to all stakeholders if AFCA adjudicators dealing with personal insolvency issue complaints were specialised in the field. Particularly now, as debt agreement administrators are required to be members of AFCA. This would result in swifter decision making and reduced costs.

3. Costs: Due to a lack of specialisation, matters relating to CCA have historically journeyed from one stage to another while further documents, emails and such are requested and supplied. Recently, a case adjudicated in CCA's favour cost approaching \$6,000 and then the complainant, being unhappy with the result, brought the matter forward again with the new complaint currently remaining on foot. This should not be permitted, and a consumer's initial complaint should be the ultimate complaint.

4. Equity: The current system under which AFCA operates is totally inequitable. It lacks all the hallmarks of commercial justice. The provider subject to a complaint, no matter how feeble that complaint may be, bears the total cost of the adjudication. It fails to account for the size and financial position of the accused business and AFCA fees are levied without any consideration of those circumstances. It is more destructive when the accused business is found to be fault free. Small to medium size businesses are dealt a heavy financial blow when confronted with unbudgeted expense such as those levied by AFCA.

The system imposed upon business, to recoup the costs of operating AFCA may be perceived as a form of *commercial blackmail* when one considers that the total cost of adjudication is borne by the accused. It becomes a matter of *compromise or suffer*. A fault-free adjudication of a complaint should be fee-free. Prior to January 2021 AFCA offered two (2) free adjudications annually. That has been quashed but should be re-instated as a means of assisting those businesses that do not attract complaints in large numbers. Additionally, a complainant should, at the very least, be expected to pay a fee to lodge a complaint. By adopting such a fee, those consumers who are simply endeavouring to avoid payment; or simply seeking to collect damages may well think seriously prior to facilitating a complaint. We are of the opinion that this would reduce complaints significantly and release AFCA to undertake its duties more proficiently.

This submission is based upon the experience this business has encountered in its dealings with AFCA and the complaints lodged against it since 30 June 2010.

Clifford Mearns RITP; CPIP; FPIPA; FIML; MAICD; MINSOL; JP(Qual)
Registered Administrator & Director
P +61 7 5555 5955 Email: cliff@srmc.com.au
F +61 7 5555 5919 Web: www.srmc.com.au
PO Box 5140, GCMC QLD 9726