

# REVIEW OF THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY



Director  
AFCA Review Secretariat  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

## SUBMISSIONS REGARDING AFCA AND THE DELIVERY AGAINST STATUTORY OBJECTIVES

### Delivering against statutory objectives

1. Is AFCA meeting its statutory objective of resolving complaints in a way that is fair, efficient, timely and independent?

- 1.1. Is AFCA's dispute resolution approach and capability producing consistent, predictable, and quality outcomes?
  - a) **AFCA's dispute resolution approach and capability are not capable of producing consistent, predictable, and quality outcomes.**
  - b) **We have submitted various claims to FOS and AFCA, only to have the submissions closed and/or said to be outside of the terms of reference.**
  - c) **In one case, the National Australia Bank (NAB) advised the Supreme Court of Western Australia that FOS had investigated our case -and closed our case, and at the same time NAB advised the FOS that the Supreme Court of Western Australia was dealing with the matter, when in fact, neither the Supreme Court nor FOS examined our matter.**
  - d) **The only thing predictable about AFCA is that it will consistently take sides with the banks rather than the consumer/customer.**
  - e) **The time limit (going back to 2008) is too restrictive. Our matters began in 2005 and are therefore beyond the current terms of reference.**
  - f) **There are psychological, mental, and emotional issues associated with the types of matters which are brought before AFCA. In many cases, when the bank withdraws**

## REVIEW OF THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY

financial support, the customer is left without resources to bring the matter to court or to AFCA. In some cases, it is years before the customer has a full understanding and appreciation of actions taken by the bank.

- 1.2. Are AFCA's processes for the identification and appropriate response to systemic issues arising from complaints effective?
  - a) **AFCA's processes for the identification and appropriate response to systemic issues arising from complaints are clearly not effective, which is evidenced from the one-sided outcomes of complaints which are deemed in favour of the banks.**
  - b) **AFCA merely ask the banks to respond to the initial submission, and do not require the banks to provide documentation to support the case.**
  - c) **We require loan application documents from the NAB, and have requested these through AFCA, however the NAB has not supplied these documents.**
- 1.3. Do AFCA's funding and fee structures impact competition? Are there enhancements to the funding model that should be considered by AFCA to alleviate any impacts on competition while balancing the need for a sustainable fee-for-service model?
  - a) **What are the funding and fee structures, and how do they relate to the consumer?**
  - b) **Is it the case that the fee-paying members (financial institutions) are the only ones to benefit from AFCA decisions?**

### Monetary jurisdiction in relation to primary production businesses

2. Do the monetary limits on claims that may be made to, and remedies that may be determined by AFCA in relation to disputes about credit facilities provided to primary production businesses, including agriculture, fisheries and forestry businesses remain adequate?
  - a) **The monetary limits on claims that may be made to, and remedies that may be determined by, AFCA in relation to disputes about credit facilities provided to primary production businesses are not adequate for agricultural businesses.**
  - b) **In our situation, the loss was many millions of dollars, and the current limit is far too small.**

## REVIEW OF THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY

### Internal review mechanism

3. AFCA's Independent Assessor has the ability to review complaints about the standard of service provided by AFCA in resolving complaints. The Independent Assessor does not have the power to review the merits or substance of an AFCA decision. Is the scope, remit, and operation of AFCA's Independent Assessor function appropriate and effective?
  - a) **It is well known, and a fact, that AFCA has not ruled in favour of the claimant for all of 2020 with respect to home loans. What is the percentage of outcomes which rule in favour of the claimant in primary production claims?**
  - b) **As the Independent Assessor cannot look fully into resolving complaints, and only review the standard of service provided, this only serves to strengthen the position of the banks and not the consumer.**
  - c) **AFCA does not disclose the process while the claimants are going through the process.**
  - d) **Banks have access to the secret process of AFCA, which protects its members (the banks).**
  - e) **What is the benefit of an independent assessor – they do not help the consumer in any way, when the full AFCA process is not known by the consumer?**
  
4. Is there a need for AFCA to have an internal mechanism where the substance of its decision can be reviewed? How should any such mechanism operate to ensure that consumers and small businesses have access to timely decisions by AFCA?
  - a) **Yes. There is a need for AFCA to have an internal mechanism where the substance of its decision can be reviewed.**
  
  - b) **We need an independent consumer ombudsman who is not ex-FOS or an industry member.**
  
  - c) **There is an imbalance of consumer representation compared to banking and/or ex-FOS representation.**
  
  - d) **AFCA unfairly excludes consumers.**



Susan Henderson  
24 March 2021



Kim Henderson  
24 March 2021