

From: [Neil Hermes](#)
To: [AFCA Review](#)
Cc: [REDACTED]
Subject: Review of the Australian Financial Complaints Authority
Date: Tuesday, 23 February 2021 3:46:19 PM

AFCA Review Secretariat 23 February 2021
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600
Review of the Australian Financial Complaints Authority
Email AFCAreview@treasury.gov.au

Dear Sir/Madam

Our submission addressing the “Delivering against statutory objectives”

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

No, not in our case (see details below)

1.1. Is AFCA’s dispute resolution approach and capability producing consistent, predictable and quality outcomes?

No, not in our case (unless the predictability and quality is viewed only from the point of view of the CBA)

1.2. Are AFCA’s processes for the identification and appropriate response to systemic issues arising from complaints effective?

No, not in our case. This is our biggest and fundamental issue with AFCA (see details below)

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?

We have no direct experience on this matter to comment.

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? Internal review mechanism

We have no direct experience on this matter to comment.

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?

We have no direct experience on this matter to comment.

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?

Yes, in the cases of a decision not to commence a systemic review under Section A17.

Details

We have set out for AFCA a comprehensive and forensic set of reasons that AFCA is obliged to undertake a Section A17 review into the systemic misconduct into certain action by CBA. The CBAs action directly destroyed our lives and the lives of thousands of other hard working

enterprising Australians.

We provided a comprehensive and damning analysis, in forensic detail, for our position to the Deputy Ombudsman on 11 November 2020 and then the Ombudsman and received rejections from both.

We wrote to the Chair of AFCA on 16 January 2021 noting our matter was a strategic matter and that the Directors, including the Chair, have an explicit duty under the Constitution of AFCA to be responsible for “*everything necessary or convenient to satisfy those requirements or duties (of AFCA)*” ^[1].

The Ombudsman wrote unilaterally for the Chair rejecting our request saying his rejection was not a matter for the Chair's attention.

We again wrote to the Chair of AFCA on 15 February and have still not received any reply from her.

We stated in our letter to the AFCA Chair that our matter was a *strategic matter* for AFCA.

Our matter has major implications for the AFCA, ASIC and CBA:

- a. there was clear and systemic misconduct against us and others by CBA,
- b. the misconduct is likely to have impacted up to thousands of CBA customers,
- c. the Government specifically imposed on AFCA the responsibility to deal with this exact circumstance under its Legacy provisions and other rules,
- d. AFCA is obliged under Rule Section A17 to do a systemic review.
- e. AFCA staff are ignoring overwhelming evidence in coming to unilateral decisions on matters of national importance which can only favour CBA.
- f. AFCA is showing gross disregard for the processes they are obliged by the Parliament to deliver and are implicitly biased towards the financial interests of the CBA.

Our complaint

AFCA has not acted according to its objectives which are to be fair, efficient, timely and independent in our request.

Our matter has potentially national administrative, financial and political implications that go to heart of the relationship between Senior Politicians, the Parliament, ASIC, AFCA and CBA and its Board.

Our detailed documentation has content that is potentially so grave and has far reaching consequences that we prefer not to provide it now.

Under the proper circumstances of confidentiality when the review commences, we would be prepared to share our sensitive material with investigators from Treasury at an appropriate time.

[REDACTED]

^[1]

AFCA (ACN 620 494 340) Constitution 1 March 2018 V4.4 Section 2.2