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The Director  
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**By email: [AFCAreview@treasury.gov.au](mailto:AFCAreview@treasury.gov.au)**

Dear Sir/Madam

**The Treasury Consultation – Review of the Australian Financial Complaints Authority  
Submission by Australian Finance Group Ltd ACN 066 385 822**

Australian Finance Group Ltd (**AFG**) was founded in 1994, was listed on the Australian Securities Exchange in 2015, and has grown to become one of Australia's largest finance broking groups. Approximately 2,950 brokers (of which approximately 1400 are credit representatives of AFG) arrange residential mortgages, commercial finance and other loan products through AFG.

AFG also operates AFG Home Loans and AFG Securities and acts as the originator and servicer of white label home loans and securitised home loans as a non-ADI lender.

AFG welcomes the opportunity to respond to the Treasury's Review of the Australian Financial Complaints Authority (**AFCA**). For the purposes of this submission, AFG's response is limited to providing some key observations below in relation to our experiences with AFCA as a credit licensee.

***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?*

AFG's experience with AFCA has been varied over the period since AFCA was established on 1 November 2018. In the period from 1 November 2018 until 31 December 2020, the AFG group received 63 complaints referred through AFCA.

In that period we have experienced cases where the service level provided by AFCA differed greatly depending on the case manager assigned and their experience with credit regulation. AFG submits that additional training should be provided to case managers in specific areas, in particular credit services. This would improve not only the time taken to resolve the complaint but also lead to more consistent and higher quality outcomes.

A further issue that has arisen relates to conciliation conferences. We experienced examples where these conferences are conducted by the AFCA case manager. AFG submits that this practice erodes the effectiveness of a conciliation conference as a method to resolve a complaint in an open, informal and 'non-prejudice' way. AFCA's guidance note states that the conciliation conference is an opportunity for consumers and financial firms to speak directly to each other with the conciliator guiding the conversation. It is intended to be an independent, open and fair method of getting a quick resolution to a complaint. However, where the case manager is also the conciliator, it is difficult for the case manager to switch roles to a case manager if the complaint is not resolved at the conciliation conference and refer or be guided by the information it received through the conference. Similarly where an independent conciliator runs the conciliation conference, the case manager should not also attend the conference. The conciliator function should act independently of the case manager function. AFG notes that financial firms are currently charged \$2,755.00 for the conciliation conference and therefore should be a more robust and effective process which is independent to the case management process itself.

Australian credit licensees are subject to strict requirements set out in the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) and associated Regulations and ASIC regulatory guides. A further issue that has arisen is the inconsistent application (and sometimes disregard) by AFCA of laws applying to credit licensees. For example, one complaint lodged against the AFG group involved the purported breach of the responsible lending obligations in the NCCP Act. At the time the complaint was proceeding through the AFCA external dispute resolution process, the 'Wagyu and Shiraz' responsible lending case (*Australian Securities and Investments Commission v Westpac Banking Corporation* [2020] FCAFC 111) was being heard in the Full Federal Court. When the final outcome of the Wagyu and Shiraz decision was delivered by the Full Federal Court and the application to the complaint before AFCA was pointed out to AFCA, AFCA's response was that it was not required to take into account legal precedent. AFG submits that this position not only provides substantial uncertainty for financial firms in how a complaint will be treated by AFCA and the outcome that will be achieved but also leads to a lack of integrity in the external dispute resolution process.

AFG also notes the draft credit reforms introduced by the Treasury in November 2020 which are a substantial restatement of the responsible lending obligations and if applied in line with the legislative intent, we submit will assist to achieve the Government's stated aims of improving the flow of credit in line with the Government's economic recovery plan in response to the current economic circumstances and the recovery from the COVID-19 crisis.

However, this aim will be hampered if AFCA does not apply the same principles and legislative intent to consumer complaints in this area. AFG submits that AFCA should be given a clear

direction from the Government and ASIC, that the principles in the draft credit reforms (if passed) should be followed and applied consistently to matters that go through AFCA's external dispute resolution process. Without this alignment, the integrity of the credit system will be at risk and credit licensees will not be able to supply credit with the same confidence as is required to achieve the Government's stated aims.

A further issue that has arisen relates to joinder of complaints. The purpose of joining complaints with two financial firms is not clear and, in our experience, a complaint against a lender is different to that of a complaint against a mortgage broker. Each complaint should be viewed independently of each other or subsequent to each other. We find that quite often the consumer lodges the same complaints against both financial firms. Given its independent role, we submit that AFCA should not be advising or assisting consumers to lodge more than one similar complaint to different financial firms. It would be helpful if AFCA could provide more guidance to consumers on this point.

AFG has also experienced long delays in resolution of complaints, with one current complaint still awaiting resolution from AFCA that was originally lodged in November 2019. Two further recently closed cases dated back to June 2017 and January 2018.

However, AFG has found in the last 12 months, that the standard and consistency of outcomes has improved including the time taken by AFCA to resolve complaints.

AFG submits that more literature and customer education on the role of AFCA and their process being available to the public would benefit the external dispute process immensely. As an example, some consumers think that a conciliation conference is an opportunity for AFCA and the consumer to influence the financial firm to pay additional compensation. The independence of the conciliator is not widely known in our experience.

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

AFG's experience has also found inconsistency in how AFCA identifies and determines systemic issues. In one example, AFCA made a preliminary determination in a complaint in favour of AFG. The following day, a systemic issue advice was issued to AFG. No notice was provided to AFG of the intention to report a systemic issue at the time the preliminary determination was issued and it did not appear to have had any reference to the outcome of the preliminary determination.

This complaint was ultimately found predominantly in AFG's favour at final determination and no systemic issue was found by AFCA.

AFG submits that AFCA should refrain from issuing systemic issue notices until a final determination has been made and all circumstances and facts are known to the systemic issuers team within AFCA.

- 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?*

The current fee structure of AFCA is weighted heavily against the financial firm. A complainant can bring any matter to AFCA in the first instance, and provided it is within AFCA's jurisdiction, must proceed through the AFCA process notwithstanding the merits of the complaint. This initial fee can be between \$5,000 to \$10,000.

This burden disincentivises financial firms to operate, especially mortgage brokers who operate small businesses and could be subject to multiple frivolous complaints each year. The Deloitte Access Economics report dated July 2018 '*The Value of Mortgage Broking*' notes that the majority of the almost 17,000 mortgage brokers in Australia work in or for a small business.

AFG submits that the fees paid by financial firms should be reviewed and reduced in circumstances where AFCA finds in favour of the financial firm.

In addition, financial firms were previously afforded one fee free complaint each year. This practice has now ceased.

AFG has also found that AFCA's processes of annual review of membership and fees payable is problematic. Some of AFCA's staff conducting the renewal do not have a clear understanding of the membership and fee structure. For example, some of our affiliated brokers who hold their own Australian Credit Licence were advised by AFCA to contact AFG (who holds a separate credit licence to those brokers) to renew their AFCA membership, which is clearly incorrect.

### ***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?*

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?*

AFG submits that there is a need for AFCA to have an internal mechanism where the substance of its decisions can be reviewed because of the issues raised above in relation to the inconsistent process and outcomes currently being produced by AFCA.

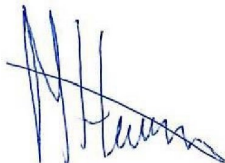
One way this mechanism could work is to peer review all decisions made by case managers. A separate role could be created which oversees this peer review process to ensure consistency of outcomes and also maintain timeframes for the case managers.

In addition, if conciliation conferences are mandated prior to advancing to the case management stages and these conferences are conducted by an independent conciliator who is separate to the case manager, AFG submits that this would incentivise financial firms to resolve complaints at the conciliation stage given it is more cost effective and a more efficient process.

Whilst we note the operational issues outlined above since AFCA's inception in November 2018, AFG also notes the recent progress displayed by AFCA and more efficient processing of complaints through the external dispute resolution mechanism. AFG encourages Treasury to implement the changes suggested in our submission above to further continue this progress and we would be happy to provide any assistance with this implementation.

Please do not hesitate to contact AFG if you require any further detail about the matters raised in this submission.

Yours sincerely



**Mark Hewitt**  
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Australian Finance Group Ltd