

26 March 2021

Attention: AFCA Review Secretariat  
[AFCAreview@treasury.gov.au](mailto:AFCAreview@treasury.gov.au)

**Re: SUBMISSION  
Treasury Review of the Australian Financial Complaints Authority (AFCA)**

The Treasury website states

*“AFCA was established on 1 November 2018 in response to the Review of the financial system external dispute resolution and complaints framework and replaced the three dispute resolution bodies — the Financial Ombudsman Service (FOS), the Credit and Investments Ombudsman (CIO), and the Superannuation Complaints Tribunal (SCT)...*

*The legislation underpinning the establishment of AFCA requires the Minister to cause an independent review of AFCA as soon as practicable after 18 months of operation. **The review was not conducted earlier due to the impact of the coronavirus pandemic.**”*

AFCA’s remit was extended to review LEGACY financial complaints for a 12 month period from 1 July 2019 to 30 June 2020. AFCA’s website states

Chief Ombudsman and Chief Executive Officer, David Locke said AFCA will work with all stakeholders to implement these changes fairly and effectively.

“We believe that this will provide access to justice and redress to many thousands of Australian consumers,” Mr Locke said.

“This change means that many more people will be able to get access to justice and have their matters properly considered.”

Whilst the Treasury website informs us that the OVERDUE AFCA REVIEW **was not conducted earlier due to the impact of the coronavirus pandemic**, the same courtesy and exemption was not fairly applied to all LEGACY complaints.

Mr Craig Caulfield, Bank Warrior wrote to AFCA and Mr Locke on behalf of all LEGACY complainants and was informed no extensions will apply for LEGACY cases – in fact Mr Caulfield was notified that it wasn’t AFCA’s decision!

So whilst AFCA continued ‘as usual’ during the coronavirus pandemic, even though many complainants were restricted by the impacts of the coronavirus pandemic, Treasury forged ahead and laxed the requirement to complete the ‘Review of AFCA’ under the cover of COVID – WHY?

- AFCA is not fit for purpose.
- AFCA does not have the powers and resources it needs.
- AFCA say they are fair and independent which they are not, as evidenced in their own determinations.
- AFCA is a private company – not for profit company limited by guarantee.
- AFCA works on an adversarial not inquisitorial basis.
- AFCA Decision Makers are heavily weighted by industry representatives – this is an unfair imbalance against consumers
- AFCA claim limits are horrifically low – why should innocent complainants be out of pocket for white collar crime committed by many Australian financial institutions and the wider financial sector?
- AFCA is not fair and transparent and is part of the problem in misleading the tens of thousands of financial victims across Australia.

### AFCA'S website regarding credit states

#### **Credit, finance and loan complaints**

The Australian Financial Complaints Authority (AFCA) can consider a complaint you have about a credit, finance or loan product you have with your financial firm.

This page outlines the types of complaints AFCA can consider about credit, loans and finance products, and what to do next if you want to make a complaint to us.

There are some things we can't consider; for example – if your complaint concerns the level of an overdrawn fee or interest rate increase. However, we may be able to consider a complaint about a fee or charge if it has been incorrectly calculated or applied to your account. There are also some [specific exclusions](#) that relate to credit complaints.

[Detailed information](#) about these different types of credit, loan and finance products is available to help you decide if you want to complain to us.

#### **Small business?**

If you are a small business, there is specific information about [business credit and loans](#) on the Information for Small Businesses page.

#### **Overview**

Credit and finance include:

- credit cards, overdrafts and lines of credit
- an organisation that provides credit in connection with the sale of goods, or the supply of services – payment for which is deferred for at least seven days
- short-term finance such as payday lending.

Loans include:

- home loans, including reverse mortgages
- personal loans such as car, holiday loans and debt consolidation loans
- investment and small business loans.

We also consider complaints about guarantees.

AFCA does not inform complainants of the following issues – this is not being fair or transparent and is being misleading and deceptive in the AFCA complaint process. How many complaints have been falsely determined against by AFCA due to the following serious restrictions and associated issues which are not disclosed to consumers during the AFCA complaints process?

**The Commonwealth of Australia Official Committee Hansard Senate – Lending to Primary Production Customers, Monday 18 September 2017 Canberra** states

“**Senator CHISHOLM:** Just why you think it isn't going to deliver what the government is hoping for?

**Mr Venga:** I think I pointed out that for a number of cases **there will remain a regulatory gap**, for example. So in terms of farm debt or small businesses, **as long as they take that credit from a bank or other organisation that's licensed, AFCA would be available. But if they're taking it from a commercial lender which is not licensed—and there are quite a few of them about—it's not going to cover that at all.**

The other problem with AFCA is that I suspect it will retain—and there's good reason for it on some grounds— the right to exclude a complaint where it's too complicated, too large or needs forensic advice and things like that. That's done even now, and the Goldie case, for example, is a case in point. I think that gives them an out, and it does need an out sometimes because some cases are just not suitable for ombudsmen's schemes. As Philip conceded, things like receivers and all those are outside the ambit of any jurisdiction that they might have over them. The trouble is that a lot of investigative accountants become the receiver in these cases. This is just my reading of the parliamentary committee on the impairment of loans.

**The ability to join third parties is an issue.** You see that the SCT, for example, can do that presently. The criticism of the SCT is that there has been a huge backlog of delays. But even the Ramsay review acknowledged that that was because of chronic underfunding, so it seems odd that you would take a statutory tribunal and put it in ombudsman law. I know that there is some concern in the superannuation industry about that. But I'm not an expert in that area.

It seems to me that AFCA is also giving a leg-up to the larger organisations. At the end of the day, AFCA, if it's going to receive any percentage of complaints from the big boys, like the banks, it is going to be geared towards resolving its disputes. It will be a monopoly, unlike what you have presently with three schemes. Being a monopoly, it would be quite easy for it to become inefficient and complacent in the way it does things. It would be quite sluggish in extending its jurisdiction when it can. The reality is that costs are likely to increase. That will be borne by financial service providers. The big banks certainly can afford that, but the smaller guys certainly can't. They are not in a position to absorb or pass on costs because they operate on thinner margins. So I don't think it's a very competitive thing from the financial services perspective.”

At the **FINANCIAL REVIEW BANKING & WEALTH SUMMIT** November 2020

**Gerard Brody, CEO, Consumer Action Law Centre** stated

“AFCA’s Rules specifically exclude any complaints to do with credit risk. ... they do say there is exception for maladministration and maladministration is interpreted as compliance with the law. Now if the responsible lending law is to be removed what are we replacing it with? So, there are a lot of unknown questions here, it’s going to restrict AFCA. **I have had a look back at some of the AFCA determinations this year, I think I looked at all the home lending determinations, to be honest, there isn’t one that favoured the consumer.**”

AFCA continues to make determinations against consumers relating to credit without full disclosure of AFCA’s actual ability to assess credit complaints against unlicensed organisations.

It is alarming AFCA continues its misleading and deceptive conduct by escalating their determinations to the independent assessor, even if they fall outside AFCA’s ability/jurisdiction to assess complaints. Cover ups!!!

Consumers are purposely excluded from AFCA membership whilst industry participates as members - this is not a fair and transparent process for consumers.

The AFCA process is nothing but a farce which continues to fail all Australians justice.

Shame on AFCA, ASIC, Treasury and our Government.

Ms Rita Mazalevskis, concerned consumer