

Chair, Senator Canavan
Senate Standing Committees on Rural and Regional Affairs and Transport
CC: Committee Secretary
PO Box 6100
Parliament House
Canberra ACT 2600

By email: RRAT.Sen@aph.gov.au

Dear Senator Canavan,

Re: Preliminary invitation to appear before parliamentary hearing on Bank closures in regional Australia

Thank you for the preliminary invitation to appear before the Senate Rural and Regional Affairs and Transport References Committee on the inquiry into bank closures in regional Australia (the Inquiry).

Although AFCA has not made a submission to the Inquiry, we would like to take the opportunity to clarify AFCA's role and jurisdiction, as well as clarify our role in relation to the oversight of the Banking Code of Practice.

Whilst the issue of bank closures is an extremely important one, AFCA actually plays limited role in this space. We do not believe given our jurisdiction that our attendance is likely to provide great value to the Committee.

AFCA's EDR jurisdiction

AFCA is the independent EDR scheme for the financial services sector. AFCA's service is offered as an alternative to tribunals and courts to resolve complaints about financial firms, including banks. AFCA's main function is to assist consumers and small businesses to reach agreement with financial firms about how to resolve these complaints, and if necessary to make determinations that are binding on financial firms. We are impartial and independent.

In the FY 2022/23 AFCA received 96,987 complaints, including 53,638 complaints relating to banking and finance.

AFCA can only deal with a dispute where a consumer has an existing contractual relationship with a bank and where they have suffered actual financial loss as a result of the actions of the bank.

The AFCA Rules set out what complaints AFCA can and cannot consider and how we must deal with them. It also sets out AFCA's discretion to exclude certain complaints.

When determining complaints relating to banking, AFCA decision makers must do what they consider is fair in all the circumstances having regard to:

- a) legal principles
- b) applicable industry codes or guidance
- c) good industry practice and
- d) previous relevant Determinations of AFCA or Predecessor Schemes.

Bank closures

Generally, AFCA will exclude complaints where we consider that a complaint relates to a financial firm's exercise of commercial judgement. This is because this falls within the list of discretionary exclusions in our rules and there is no legal obligation on banks to provide bank branches and in person banking.

A bank's decision to close a branch or to move some of its business bankers to other branches, is an example of a financial firm's commercial judgement and AFCA does not ordinarily deal with these complaints.

AFCA is unable to deal with complaints unless there are relevant legal or contractual obligations that AFCA considers have been breached by a financial firm and a consumer or small business has suffered a loss as a result. There are currently no such obligations.

Consequently, we do not to have any complaints data, insights, or experience to draw upon to inform the Committee's Inquiry.

Oversight and enforcement of industry codes

Some of evidence provided to the Committee in its recent hearings suggested that AFCA has oversight of the Banking Code of Practice (BCOP). As noted above, our decision makers, when determining the outcomes of complaints, may have regard to applicable industry codes of practice. However, AFCA does not oversee compliance with the BCOP.

Compliance with BCOP is enforced by the Banking Compliance Code Committee (BCCC). The BCCC is an independent body responsible for monitoring code-subscribing banks' compliance with BCOP and driving best practice. It is funded by the Australian Banking Association (ABA) and is constituted by an Independent Chair, a consumer and an industry representative.

A separately funded and operated business unit of AFCA provides administrative support to the BCCC. The budget, the priorities, the resourcing, and the work of the BCCC however, is independent of AFCA.

We hope that this letter clarifies AFCA's role in relation to issues relevant to the Inquiry. We look forward to hearing from you regarding the current invitation to appear before the Committee and whether the Committee still feels there is any value in an appearance.

With best wishes,

David Locke
Chief Ombudsman and Chief Executive Officer
Australian Financial Complaints Authority