

## Parliamentary Joint Committee on Corporations and Financial Services

### Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament

#### Australian Financial Complaints Authority

#### AFC QoN09:

**Mr Locke:** If you have a credit provider who is only providing credit facilities to businesses, they're not currently required to be a member of AFCA. If they provide credit facilities to consumers and to businesses, then they are required to be a member of AFCA.

**Senator O'NEILL:** So there's a bit of a blind spot there. We can't watch business to business.

**Mr Locke:** At the moment it's not within our jurisdiction. And I know that's—

**Senator O'NEILL:** Which is maybe the data hole that we were talking about before.

**Mr Locke:** something that Mr Billson's predecessor, Ms Carnell, had views about. But it's currently not within our scope.

**Senator O'NEILL:** You've indicated a number of times that you can't make policy for the government, but could you provide any insights for the committee about that data gap—where might it be picked up, would you need to expand your powers, or is there somewhere else that that could happen?

**CHAIR:** That is a policy question.

**Mr Locke:** This would be a matter for government. It may be considered in the course of the review.

**Mr Untersteiner:** We have made some broader comments in our own submission to the independent review of AFCA as well, which does comment on some of the

jurisdiction statistics and issues. That's available on our website. We're happy to provide that as well.

**Mr Locke: We're happy to table the excerpt from that, if that assists**

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**Answer:**

AFCA's submission to the AFCA Independent Review can be found at the following link: <https://www.afca.org.au/media/1132/download>

The following provides a summary of AFCA's proposals for further scheme enhancements as set out in more detail at section 6 of our submission.

**AFCA's test case procedure**

In 2020, the test case procedure under AFCA's Rules was used for the first time. AFCA has now approved two test cases in relation to small business interruption insurance. While AFCA is not a party to the proceedings, we actively engaged with key stakeholders, including the industry and regulators, during the approval process. We recognise the importance of issues arising from large scale events and complaints with significant legal effect. Following the outcome of these test cases, we invite further discussion with stakeholders on the role of AFCA and regulators in initiating or approving test cases about issues which have large scale system-wide or consumer impact.

**AFCA's 'slip rule'**

AFCA proposes that the section in our Operational Guidelines that deals with the process for remedying errors or accidental omissions in a determination be reviewed and articulated, either in a specific AFCA Guideline, or as a provision in AFCA's Rules. AFCA will consult with stakeholders on any proposed amendments.

**AFCA's compensation cap for non-financial loss**

It is important that AFCA's compensation cap for non-financial loss is adequate and enables AFCA to compensate a complainant for more significant and extreme harm, stress and inconvenience caused by the conduct of a financial firm. AFCA proposes to consult on an amendment to our Rules to increase the compensation cap for non-financial loss, commensurate with the jurisdictions of other consumer redress schemes.

### **Dealing more efficiently with certain complaints**

AFCA is reviewing options to improve processes involving some low value complaints, for instance, complaints that are lodged by consumers about their credit reports.

### **Dealing with systemic and recurring inappropriate conduct of fee-for-service representatives**

AFCA proposes amendments to our Rules, so we can more effectively deal with recurring and inappropriate conduct by some fee-for-service representatives. AFCA will consult with stakeholders on proposed amendments.

### **AFCA's small business insurance jurisdiction**

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) conducted an inquiry into small business insurance in 2020. The final report for this inquiry included a recommendation that AFCA's jurisdiction for small business insurance complaints be expanded to cover all insurance products purchased by small businesses for claims assessed at \$1 million or less.

AFCA recognises this is an important policy matter. As a matter of fairness and to ensure access to justice, AFCA supports this recommendation and would be pleased to consult with stakeholders accordingly. However, we note that certain commercial, industrial and liability insurance claims can be very complex. The expansion of the AFCA scheme in this way would therefore require a comprehensive feasibility or capability analysis.