

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

AFCA QoN03 | AFCA QoN04 | AFCA QoN05

Mr VAN MANEN: In relation to that reporting, is it possible for you to give us more granular data on those systemic issues that you've identified and who they've been reported to? How many have been reported to ASIC, how many have been reported to APRA et cetera? In that too, could you give us a flavour or an outline at least of what the particular systemic issues are that you've identified and who you have reported it to, please.

Mr Locke: We'll take that on notice, I'm sure we can provide that. We wouldn't be able to identify the individual firms, as you would appreciate. Although all of our data with regard to the number of complaints, what products complaints relate to, how the financial firms respond to those complaints, what happens when matters go through to determination, whether they're found in favour or against the financial firm, is published on our website, on an interactive data cube. So anybody can go in and see where the complaints are against products and against financial firms. We also publish every determination. I mentioned that six per cent of matters go through to a determination. So it's just under 5,000 a year. We publish every determination on our website and we name the financial firm in those determinations. All of that is publicly available as well. So we're trying to provide as much transparency as we can and we'll provide as much information as we can.

Senator O'NEILL: Yes, great. We've had some incredible evidence over the years with regard to that matter. I have a couple of fact questions on reporting within 15 days. How many have you reported within 15 days and to whom? You report to ASIC and APRA. Do you report to anybody else?

Mr Locke: We'll take that on notice—and the ATO as well.

Senator O'NEILL: Could you give me a scale of everyone you can report to, who you have reported to and an indication of what those key matters were partly because I want to understand the infrastructure? But I'd also like to know if any

dodgy business models are emerging. I think the supply chain finance questions that we've had are an indication that an earlier observation of some terrible practices might have saved a lot of small businesses, sole traders, tradies and their employees and apprentices. What's going on in the space is the purpose of the question.

Mr Locke: Yes.

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Answer:

Given these three questions on notice relate to AFCA's reporting of systemic issues to Regulators, we have grouped the responses below.

By way of background, AFCA is required under the Corporations Act and ASIC's Regulatory Guide 267 (RG 267) to identify, refer and report systemic issues to relevant regulators. Under RG 267, a 'systemic issue' means an issue that may:

- affect more than one complainant
- involve many complaints that are similar in nature
- affect all current or potential complainants at a particular firm
- affect more than one firm.

We may identify possible systemic issues through our complaint work or by referral from a party or stakeholder. We undertake an investigation of those issues with the financial firm, before forming a view as to whether or not the issue is a definite systemic issue.

AFCA is required to make reports to regulators as soon as practicable, but no later than 15 days after AFCA considers that there is a definite systemic issue. The systemic issues identified relate to systems, practices and conduct of financial firms which cause consumer detriment and harm.

AFCA also provides regular reports to regulators about our general systemic issues work, including trends, patterns and other aggregated or de-identified data.

Regulatory Guides and Oversight of AFCA

ASIC's Regulatory Guide 267 (RG 267) came to effect in June 2018 and replaced Regulatory Guide 139. RG 267 applied to matters lodged after June 2018. This means that for a period, AFCA was required to make reports under both of ASIC's Regulatory Guides 139 and 267.

As a result, the obligation to report systemic issues to the regulators within 15 days (after AFCA considers that there is a systemic issue) only applied to a subset of matters we reported to the Regulators in the period. We note however that in addition to reporting matters within 15 days, AFCA also provides the regulators with quarterly systemic issue reports.

Regulators who AFCA must report systemic issues to

In accordance with RG 267 and the Corporations Act, AFCA reports definite systemic issues to the Australian Securities Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA) and the Australian Tax Office (ATO). Separately to this, we also report matters to the Office of the Australian Information Commissioner (OAIC).

From time to time we engage with other regulators and agencies as appropriate including ACCC, AUSTRAC and law enforcement agencies.

ASIC

Between **1 November 2018 and 31 May 2021**, AFCA reported **241** distinct Definite Systemic issue investigations to ASIC. This includes reports which were made both via the ASIC's quarterly reports, and reports (letters) sent on individual systemic issue investigations.

Top ten issues identified in investigations referred to ASIC

- Compliance with ASIC's Regulatory Guide 165 EDR Obligations
- Adequacy of claims handling process
- Conduct of employees/authorised representatives
- Insurance Contracts Act and Regulations
- Policy interpretation
- Misleading conduct
- Compliance with the Corporations Act
- Financial Difficulty
- Cancellation of policies
- Processing Error

APRA

Between **1 November 2018 and 31 May 2021**, AFCA reported **4** distinct Definite Systemic issue investigations to APRA.

Issues identified

- Compliance with the Superannuation Industry Act
- Retention of Documents

- Compliance with ASIC's Regulatory Guide 165 EDR Obligations
- Processing Error

OAIC

Between **1 November 2018 and 31 May 2021**, AFCA reported **2** distinct Definite Systemic issue investigations to the OAIC. The issue identified on these files was potential breaches of the Privacy Act and related Legislation.

ATO

No definite systemic issues investigations have been reported to the ATO since AFCA started on 1 November 2018.

Definite Systemic Issues referred in 15 days

The following data is a subset of the 240 reports made to regulators we referred to above. This data deals specifically with reports made within 15 days by AFCA to the Regulators.

AFCA reported **140** definite systemic issues to ASIC between **1 November 2018 to 31 May 2021** within 15 days. During that period, it also made:

- 4 reports to APRA
- 2 reports to OAIC
- Zero reports to the ATO

The nature of these issues are noted above.

Business to business lending and supply chain finance

Senator O'Neill referred to some current issues in supply chain finance and queried whether AFCA had any insights into this area. As noted at the hearing, AFCA does not generally see complaints of this nature. AFCA does not have jurisdiction to deal with business to business lending matters.