



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

29 March 2021

The Director  
AFCA Review Secretariat  
Financial System Division  
Treasury  
Langton Cres  
Parkes ACT 2600

*via email: [AFCAreview@treasury.gov.au](mailto:AFCAreview@treasury.gov.au)*

Dear Sir/Madam

### **Review of the Australian Financial Complaints Authority (AFCA)**

AFCA provides a vital service to small businesses seeking affordable determinative justice. This service could be enhanced in a number of ways.

#### **1. Expanding AFCA's remit**

A limitation of AFCA coverage occurs because 'wholesale' financial firms are optional not compulsory AFCA members. This means small businesses can have different dispute rights for the same product sold by different vendors. We request that the Review consider the expansion of compulsory AFCA membership to entities trading solely on wholesale markets.

There is also a strong case to expand AFCA's monetary and insurance product jurisdiction for small businesses seeking cost effective dispute resolution. In consultation with the National Farmers Federation, we recommend lifting the jurisdictional limit to \$10 million and the compensation limit to \$5 million for primary producers, and extending this increase to small business disputes generally.

We also suggest that the Review consider expanding AFCA's Rules to cover all insurance products purchased by small businesses, including legal liability insurance products, for claims under \$1 million. Legal liability products are the most common insurance products held by small businesses. They are explicitly excluded under AFCA's rules which denies many small businesses access to the affordable determinative justice AFCA provides.

#### **2. Further strengthening AFCA's decision processes**

We support AFCA's work to handle large issues collectively and believe it leads to fairer and more efficient outcomes. However, AFCA dispute settlements, in collective matters or otherwise, are confidential and we suggest the Review consider any unintentional impact of this practice. One impact we have seen is that confidential settlements restrict precedent uses when dealing with non-AFCA members. In these cases, it would assist disputants if AFCA published interpretative decisions, similar to the ATO, indicating how a dispute of a particular nature should be decided.

We support AFCA's current 'slip rule' that allows determinations to be amended in cases of accidental or arithmetical error. To strengthen AFCA's decision process, we propose a version of the 'slip rule' in cases of significant error in process or merits. We suggest that the Independent Assessor have the discretion to refer a determination back to AFCA for a fresh decision if they identify a potential significant error of process or merit. In practice, this rule would require a clear threshold to prevent all determinations being brought to the Independent Assessor.

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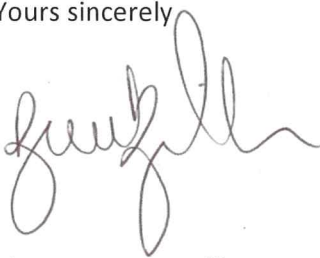
### 3. Minimising fees

We recognise AFCA's ongoing work to minimise fees and timelines for disputes. However, we understand that on occasion small businesses are disadvantaged by the ability for consumers to push disputes through the process at the exclusive cost of the small business respondent. In some cases, this incentivises small business respondents to settle claims unnecessarily because the fees outweigh the dispute value.

We believe the ongoing work to minimise fees would be enhanced by AFCA further strengthening their processes in excluding meritless complaints. Excluding these cases at the earliest reasonable opportunity will benefit all parties by providing certainty to complainant and respondent, minimising the fees paid by the respondent, and allow AFCA to reprioritise resourcing.

Thank you for the opportunity to comment. We would be pleased to meet with you to discuss case studies. To arrange a meeting please contact Ms Jac Frater on 02 6213 7434 or at [jac.frater@asbfeo.gov.au](mailto:jac.frater@asbfeo.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Billson', written in a cursive style.

**The Hon. Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman