

An introduction to AFCA and the Fairness Project

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What we will discuss

- > Overview of AFCA's role and our dispute resolution process
- > Types of complaints AFCA can consider
- > AFCA's approach to financial difficulty at a glance
- > Common remedies
- > AFCA's Fairness Project



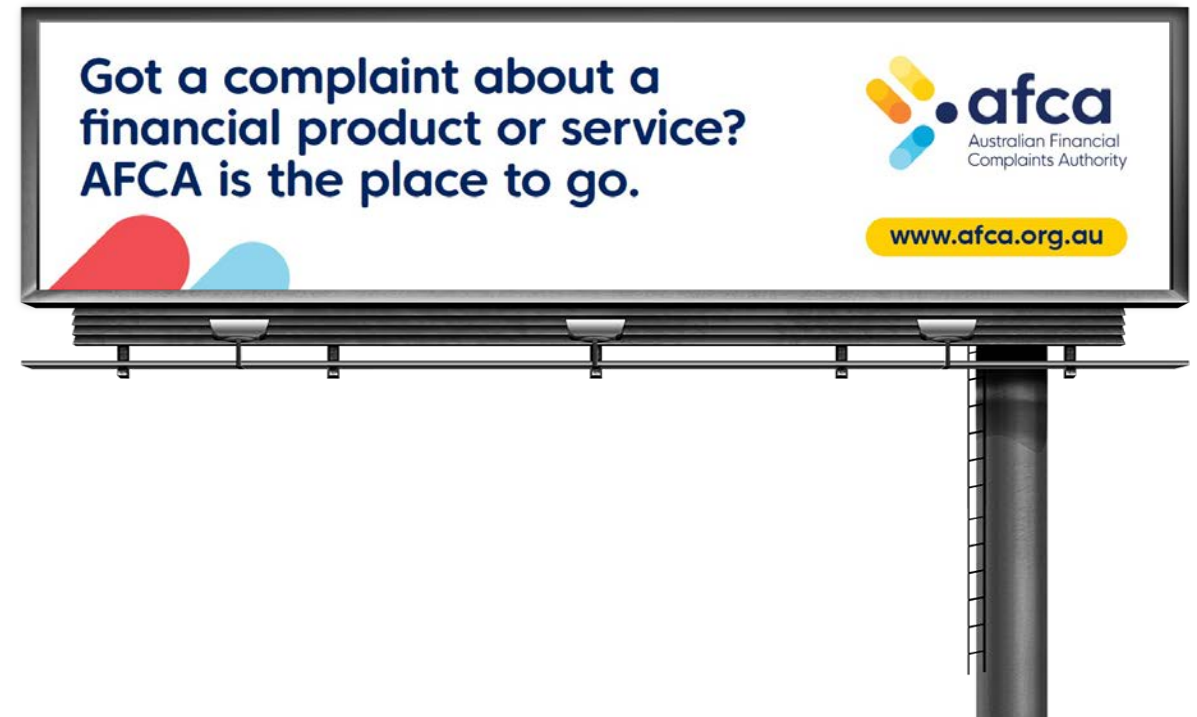
AFCA's role



Types of complaints we can consider

AFCA can handle disputes about a range of financial issues, including:

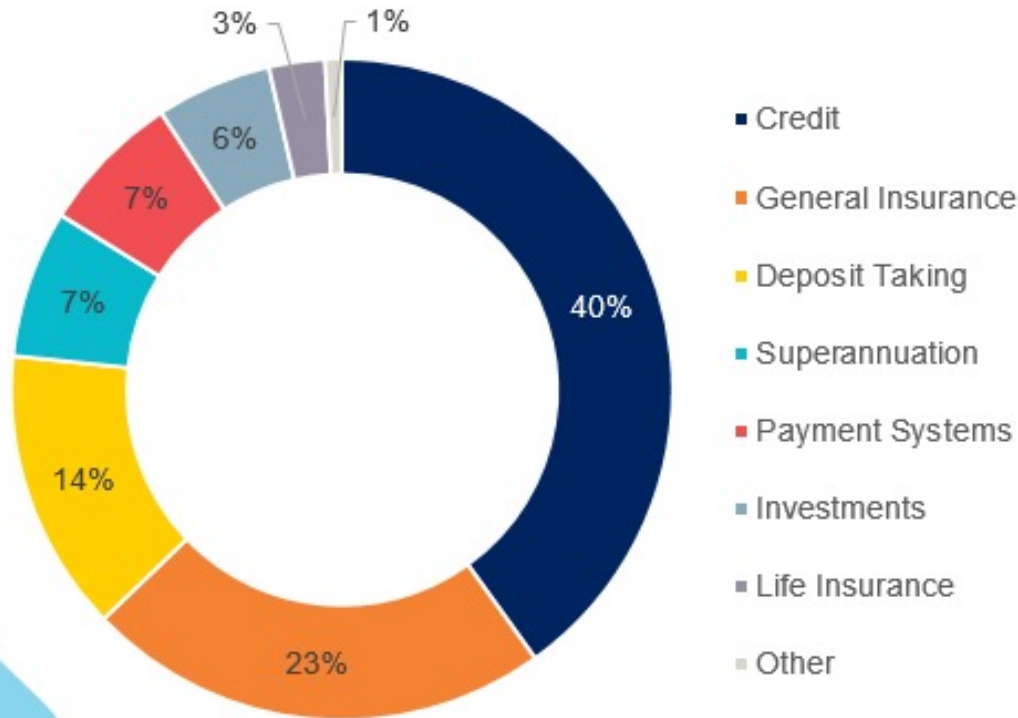
- > errors in banking transactions and credit listings
- > difficulty repaying loans, credit cards and short-term finance
- > denial of an insurance claim (such as car, home and contents, pets, travel, income protection and trauma)
- > inappropriate investment advice
- > a trustee's decision about the distribution of a superannuation benefit



The last 12 months' operations

1 February 2021 to 31 January 2022

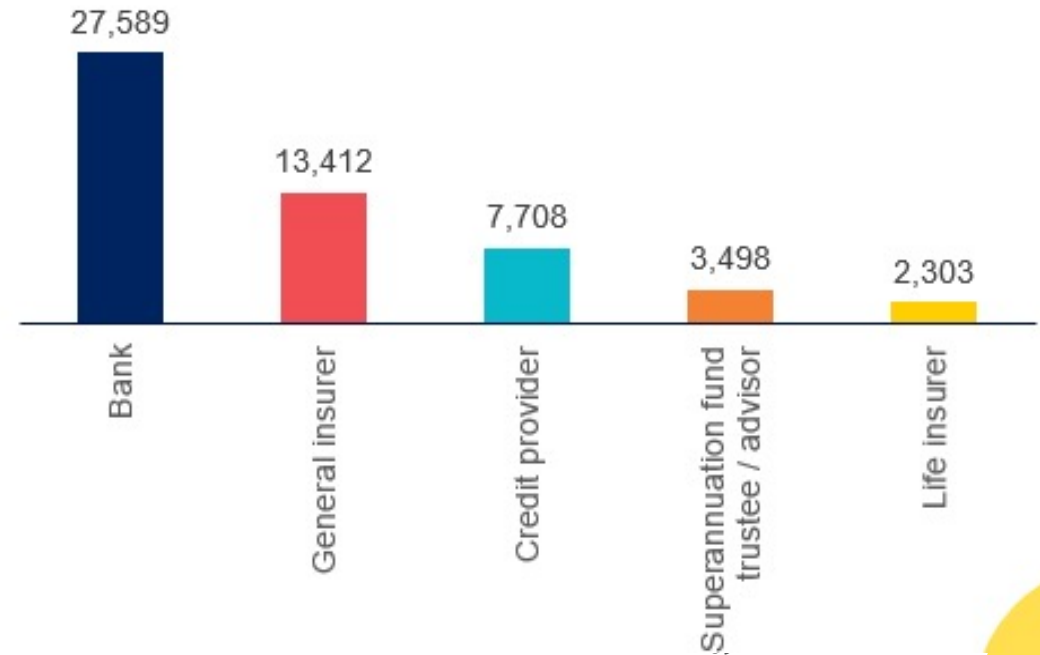
Complaints received by product line



69,593 complaints received

70,622 complaints closed

Complaints received by top 5 financial firm types



¹One complaint can have multiple product lines.

The last 12 months' operations

1 February 2021 to 31 January 2022

\$198.77 million in compensation and
refunds obtained through AFCA ¹

Small business

We received **3,590 (5%)** complaints from small businesses.

Most complaints were about financial firm failure to respond to request for assistance.

1,657 licensee members had a complaint lodged against them in the last 12 months

Systemic issues

Definite systemic issues currently under investigation **10**

Total serious contraventions and other breaches referred to regulators since 1 January 2021 **20**

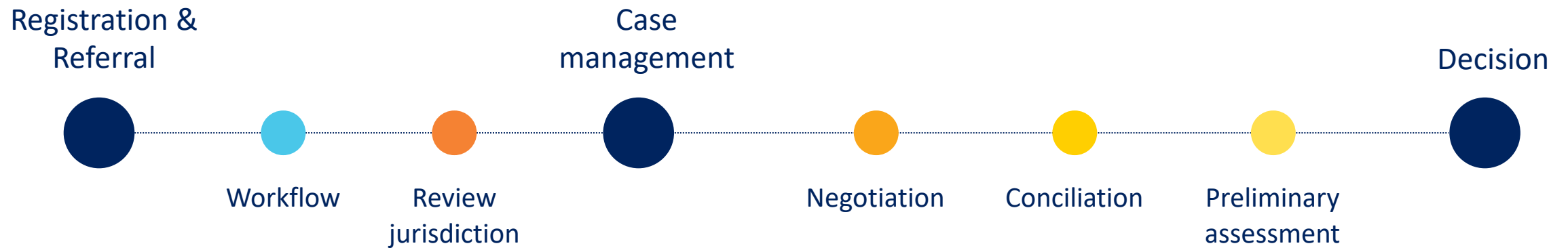
Scams

There were **3,671** scam complaints which is 5.3% of all complaints

¹ This includes matters previously received by AFCA's predecessor, Financial Ombudsman Service, and resolved by AFCA since 1 November 2018.

What to expect from our process

Flexible complaint resolution model



What to expect from us

- > Independent review of issues and merits of the complaint
- > Experienced complaint resolution staff with industry knowledge
- > Respectful engagement from our staff who will listen to your queries and concerns
- > Regular telephone contact
- > We will refer a request for a jurisdictional assessment promptly to our Rules team
- > Targeted requests for information to ensure we understand your perspective and position



Financial difficulty overview



Issues we can consider

AFCA can consider issues relating to financial difficulty, including:

- > If your financial firm has **declined your financial difficulty request**, or where the financial firm has not provided reasons for its decision to decline a request for assistance.
- > If your financial firm has sent you a **default notice** when you are experiencing financial difficulty.
- > If your financial firm has **failed to respond to your request for assistance** due to your financial difficulty
- > Request to **suspend enforcement proceedings** – where the financial firm continues action against you to recover a debt after you have made a financial difficulty request.
- > You have received a **default court judgment** in relation to a debt with a financial firm – we may be able to help in specific circumstances.

AFCA's approach to financial difficulty

AFCA is of the view that a financial firm has an obligation to give genuine consideration to a request for assistance and any reasonable alternatives that may help overcome complainant's financial difficulty.

Genuine consideration is:

- > Identifying financial difficulty and responding to it **promptly**
- > Requesting appropriate **information**
- > Considering longer-term **solutions** as well as short-term
- > Giving specific, written reasons if help is **declined**

AFCA expects that a complainant or their representative is willing to work with a financial firm by **responding promptly** to reasonable requests for information and discussing the issues raised.

Such information may include:

- > current and accurate details of their financial position; and
- > a **realistic repayment plan** that will result in the eventual repayment of the debt (i.e. a suitable repayment arrangement or an agency agreement to support sale of an asset)

Common remedies in financial difficulty

In a financial hardship complaint, the remedies we can provide include **varying the credit contract**.

Examples of credit contract variations include:

- > extending the period of the contract and reducing the amount of each repayment due under the contract
- > postponing repayments under the contract for a specified period
- > changing payment arrangements for either a short or longer term
- > reducing the loan interest rate for either a short or longer term.

When AFCA will not be in a position to vary, other types of remedies can include:

- > time to sell / refinance / discharge a facility
- > time to seek advice
- > arrangement for repayment of a shortfall debt
- > financial and non-financial loss
- > early release of super – **option of last resort**



AFCA's Fairness Project





What is the
fairness project?

Fairness

AFCA's Fairness Project aims to create clarity and certainty for all stakeholders. AFCA has created a framework that encapsulates the essential elements against which AFCA will assess financial disputes, in accordance with our jurisdiction.

The Fairness project has:

- described and benchmarked our fairness jurisdiction both domestically and internationally
- built a framework to assist AFCA staff to consistently apply the fairness jurisdiction in our complaint handling
- articulated how the parties should engage with each other and AFCA to ensure a fair process
- explained our approach to delivering fair outcomes, and
- designed systems to calculate and capture fair outcomes once achieved.

We know that consistency of our decision-making is important, and we have spent the past year strengthening our framework for delivering on AFCA's fairness jurisdiction. This work is now being embedded into our 'business as usual' activities.

The AFCA strategy

Purpose

To provide fair, independent and effective solutions for financial disputes

Vision

To be a world class ombudsman service

- > raising standards and minimising disputes
- > meeting diverse community needs, and
- > trusted by all

Strategy statement

Working with consumers, small business and industry, we will resolve and reduce financial disputes through innovative solutions, education and communication.

We will deliver to the Australian community services that are easy to use, free for complainants, efficient, timely and impartial.

Values

Fair and independent

Transparent and accountable

Honest and respectful

Proactive and customer focussed

Goals

Australian community and government

A fair ethical and trusted service that influences reform in the financial services sector

Consumers and small business

An excellent customer experience that meets diverse needs and delivers fair outcomes

Members

A valued member experience that helps members to improve internal practices to avoid or resolve disputes

Our people

Highly skilled and engaged people with the tools they need to deliver high quality outcomes

Our decision making jurisdiction

Non-superannuation

When determining a complaint an AFCA decision maker must do what is fair in all the circumstances having regard to:

- > legal principles
- > applicable industry codes or guidance
- > good industry practice; and
- > previous relevant determinations of AFCA or predecessor schemes

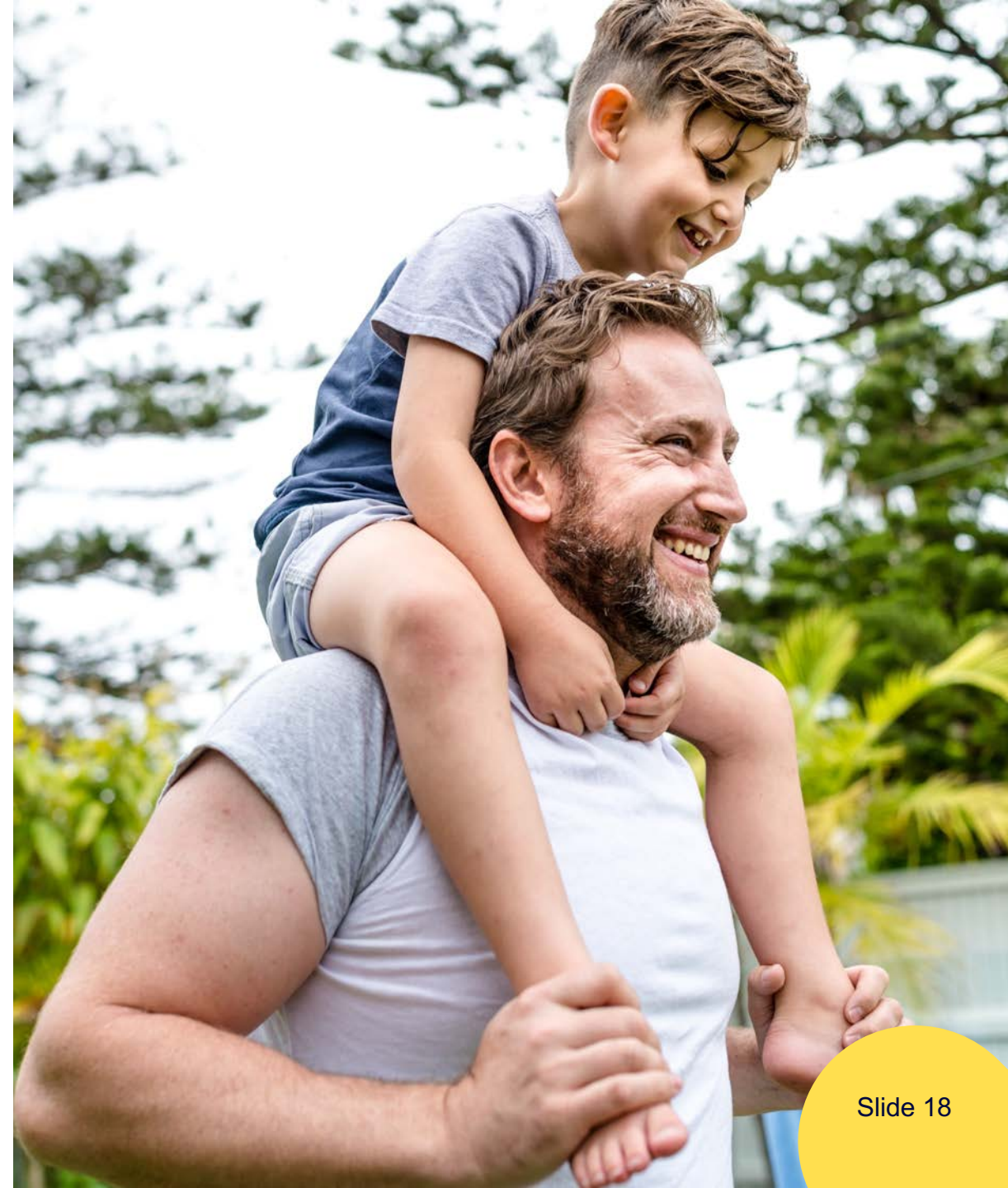
Superannuation

When determining a complaint an AFCA decision maker must consider whether the decision under review was fair and reasonable in its operation in relation to the complainant in all the circumstances:

- > cannot make a determination contrary to law
- > cannot make a determination contrary to the governing rules

Our approach

- > Procedural fairness
- > Substantive fairness
- > Principles of design and assessment of financial products and services
- > Relationship between financial firms and consumers



AFCA Fairness Framework Overview

	Framework component
Jurisdiction	1 AFCA's fairness jurisdiction
Assess	2 The fairness standard
	3 The fairness tool
	4 The roadmap
	5 Fair remediation
Decision making	6 The process map
	7 Procedural fairness
	8 Engagement Standard
Ensuring fair outcomes	9 Addressing unfair engagement
	10 Capturing fair outcomes

Fairness standard

Fair dealing

Ensuring that one party does not take unfair advantage of another:

- > in the nature of the bargain struck
- > in the circumstances of entering that financial arrangement

Fair treatment

Ensuring that one party is not treated inequitably or in a way that is adverse to their interests

Fair service

Delivering quality, professional financial products and services in a manner that:

- > is fit for purpose
- > meets a consumer's legitimate interests and reasonable expectations.

Fair remediation

A prompt and proportionate response when things go wrong

Fairness principles

Play by the rules, including:

- > Keep promises made
- > Be open and honest
- > Do not take unfair advantage
- > Be ethical and professional
- > Reasonable care and skill
- > Ensure services are fit for purpose
- > Protect the money of others
- > Provide value and benefit
- > Serve the interests of others
- > Consider consequences and impacts of your actions



Fairness questions

1. Did the parties obey the law?
2. Did the parties make promises or representations they did not meet?
3. Did the parties act honestly, reasonably and in good faith with their dealings with each other?
4. Did one party take unfair advantage of another? Were specific circumstances or vulnerabilities considered?
5. Did the financial firm provide the product or service ethically, with reasonable care and skill and in accordance with industry and professional practice?
6. Did the financial firm meet the consumer's reasonable expectations about the product or service?
7. Did the product or service perform as expected?
8. When acting for a consumer, did the financial firm act in the interests of the consumer or group of consumers as a whole?
9. How did the parties treat each other during their relationship or after concerns were raised?
10. What was the impact on the consumer and their experience of the service?

Fairness tool

Play by the rules,
including:

- Keep promises made
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Engagement charter

AFCA has developed an Engagement Charter, based on AFCA's values, which outlines:

- standards parties can expect of AFCA
- how participants will conduct themselves
- the need for fair, respectful and co-operative engagement
- consequences for parties who engage in inappropriate behaviour

The charter is available on our [website](#).



What's next?

If you have a complaint you would like to lodge or would like to discuss your individual situation further with us you can reach out by:

- Visiting our website – www.afca.org.au (you can also lodge your complaint online here)
- Calling us on 1800 931 678 (free call)
- Emailing us at info@afca.org.au

Questions?

