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OF HONG KONG
香港律師會

**International Conference of
Legal Regulators 2025**

**New Ways to Regulate
in a Changing World?**

Fairness first People-centred regulation

David Locke – Chief Ombudsman and CEO of the
Australian Financial Complaints Authority (AFCA)



Australia's financial services sector

- Population of **27.4 million** people
- Financial services account for 7.4% of the Australian economy
- 132 banks, credit unions and building societies worth more than \$5.2 trillion
- Financial services providers, credit providers and limited license holders are required by law to be a member of AFCA
- Almost 50,000 members of AFCA – about 10,000 licensee firms and 40,000 authorised credit representatives (individuals or companies).

Composition of Australian Economy
Snapshot 30 September 2025

Industry Share of Output

Health & Education: 13.4%
Finance: 7.5%
Mining: 12.2%
Manufacturing: 5.9%
Construction: 7.5%



Output Share by State

New South Wales: 30.7%
Queensland: 19.1%
Victoria: 22.7%
Western Australia: 17.1%
South Australia: 5.6%
Tasmania: 1.6%



Population

27.5
million

Annual Growth
1.7%



Export Share by Type

Resources: 57.5%
Services: 21.1%
Rural: 11.7%
Manufactured: 8.1%



Export Share by Destination

China: 30.4%
Japan: 11.4%
Korea: 6.3%
US: 6.1%
India: 5.5%



Employment to Population Ratio

64.0%



Average Price of Residential Dwellings

\$1,016,700



Household Wealth (as a Share of Income)

910%



Household Debt (as a Share of Income)

182%



Consumer protection framework

Regulatory accountability systems

ASIC

APRA

ACCC

RBA

AUSTRAC

Governance and executive accountability

Financial
Accountability
Regime

Corporate
governance
obligations under
the Corporations
Act

Industry codes and standards

Banking Code of
Practice

General Insurance
Code of Practice

Life Insurance Code
of Practice

Dispute resolution and remediation

AFCA

Compensation
Scheme of Last
Resort

ASIC's Regulatory
Guideline RG271

Reporting and enforcement mechanisms

ASIC reporting

Whistleblower
Protection
Framework

Design and
distribution
obligations

A crisis of trust – our origins



“Very often, the conduct has broken the law... [It] has fallen short of the kind of behaviour the community not only expects of financial entities but is also entitled to expect of them.”

Commissioner Kenneth Hayne,
Financial Services Royal Commission, Final Report



Westpac advice cost couple dream retirement, banking royal commission hears

19 April 2018

Commonwealth Bank charged fees to dead clients, royal commission hears

19 April 2018

Banking royal commission: AMP executive says company put profits before the law

17 April 2018

Independent complaints authority

We provide consumers and small business with fair, free and independent dispute resolution for financial complaints.

We consider complaints about:



Credit, finance and loans



Insurance



Banking deposits and payments



Investments and financial advice



Superannuation

AFCA's role

A single financial services External Dispute Resolution (EDR) scheme:

- Three schemes (FOS, CIO and SCT) now one
- Operational since 1 November 2018, during Banking Royal Commission

Responsibilities:

- resolving complaints
- identifying systemic issues and working with financial firms to resolve them
- supporting regulators by reporting certain matters to them
- promoting awareness of AFCA – including discussion of Approaches

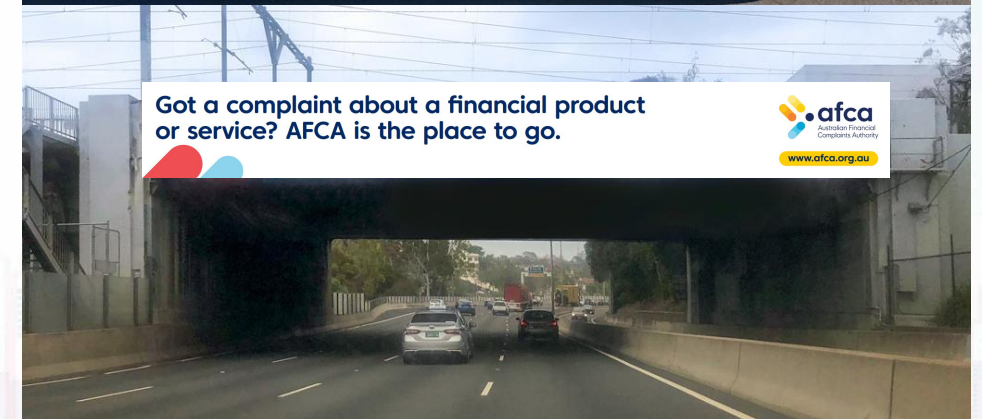
Our new approach

Timeline

- May 2018 *Ministerial authorisation*
- June 2018 *Chief Ombudsman appointed*
- September 2018 *ASIC approves AFCA Rules*
- November 2018 *Open for business*
- December 2018 ***13,000 phone inquiries in first month***

How do we shift behaviour?

- Decisions made public
- Firms named in decisions
- AFCA Datacube a public resource
- Face to face with CEOs, boards



Community awareness

AFCA in the hot seat

Viewers of popular game show *'Who Wants To Be A Millionaire Hot Seat'* (2019) saw AFCA pop up as a question...

It was great to see our name getting out there!



Uncovering systemic issues



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Since 1 November 2018, AFCA has helped **more than 5 million people** to secure nearly **\$400 million** in compensation

ANZ fail deadset heartless

Record \$240m fine for shameful breaches despite earlier findings

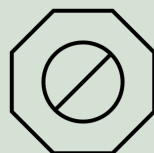
**AusSuper chiefs
singled out over
death claim delays**

**Cbus to simplify death benefit
payouts after ASIC litigation**

Super fund sued over death benefit payouts



**Identify, investigate,
report and resolve
systemic issues**



**Engage members to
ensure the issue
won't reoccur**



**Ensure consumers
are remediated / redress
when appropriate**



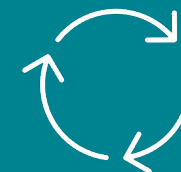
**Public reporting of
systemic issues and
referrable matters**

Using AI



Systemic issues

- AI models have transformed the way AFCA identifies, investigates and analyses potential systemic issues
- In 2024 our advanced analytics team successfully built models to:
 - Identify complaints similar to another complaint
 - Identify complaints similar to those already linked to existing systemic issues, and
 - Apply risk categorisations to prioritise a complaint as part of the systemic issues investigation process.
- These models allow all complaints to be assessed as they are received, achieving a dramatic lift in identification of complaints of interest compared to a manual process.



In development ...

Identifying vulnerability

- *using AI models to better identify financial difficulty, family violence and scam complaints*

Classifying complaints

- *developing AI models to automatically classify complaints, rather than customers having to choose from category lists.*

Providing justice at scale



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Flexible complaint resolution model to ensure fairness

**Registration
and referral**

**Case
management**

Decision

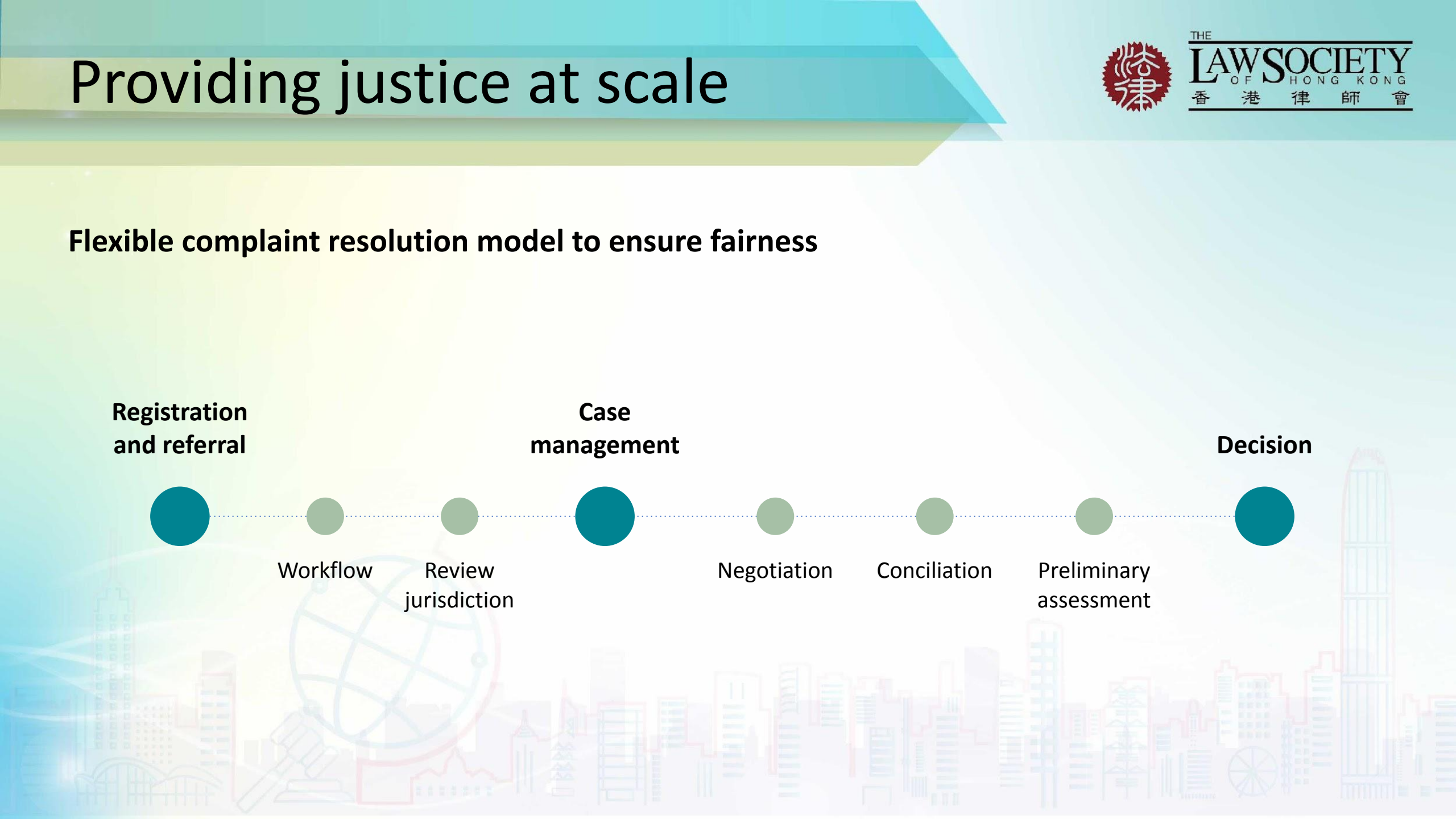
Workflow

Review
jurisdiction

Negotiation

Conciliation

Preliminary
assessment



Our impact



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Since AFCA's inception

(From November 2018)

600,000+

Complaints received



580,000+

Complaints closed



\$2.1 Billion

Compensation and refunds



Last financial year

(1 July 2024 to 30 June 2025)

100,745

Complaints received

101,302

Complaints closed

\$391 Million

Compensation and refunds

How can regulators prevent harm?



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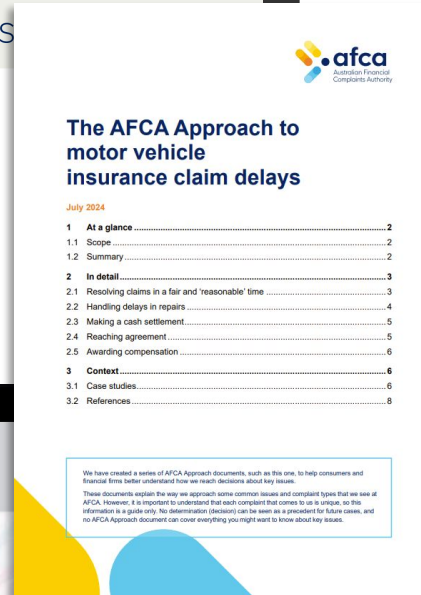
Deciding where to plant the flags...
if justice is fairness, how do you define fairness?

Changing conduct through transparency and collaboration



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40+ AFCA Approaches published



Influence without enforcement: our unique role



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AFCA doesn't regulate or enforce, but our work – particularly in systemic issues – influences policy, reforms practice and reduces harm, through data, collaboration and persistence

We triangulate intelligence

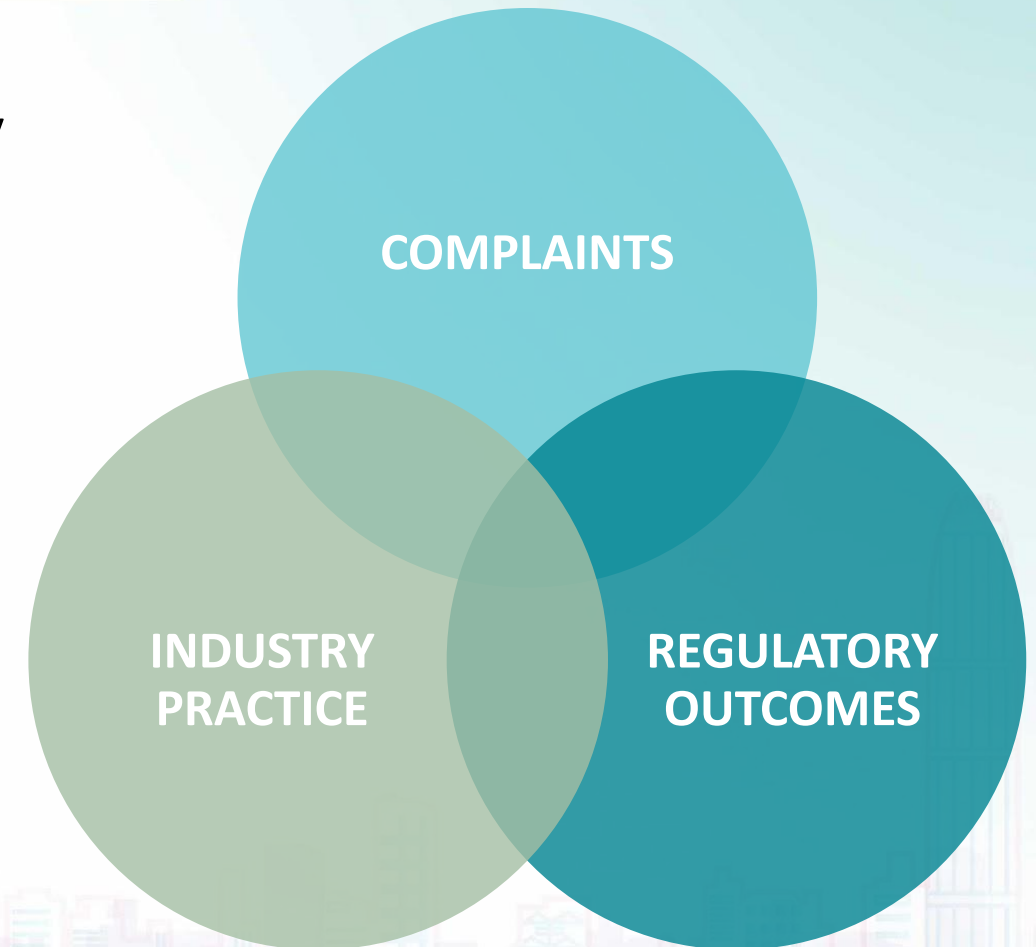
- AFCA identifies and connects risk across:
 - Individual complaints
 - Industry systems and behaviours
 - Regulatory and policy priorities

We drive change through insight

- Our influence leads to firm and industry-level change and remediation, improved controls and policy input
- EDR insights support early intervention and de-risking

We help prevent complaints at the source

- We share what we see – so problems don't just get resolved, they get removed

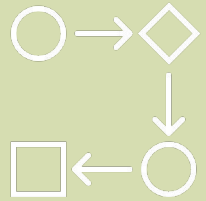


Fairness Framework – AFCA's model for people-centred regulation



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Objectives



Understand and
explain AFCA's
fairness jurisdiction



Deliver a fair process



Provide a fair
outcome



Ensure consistency

AFCA Fairness Framework



Framework component

We created a framework which brought together the elements that operate to ensure that we deliver on our mandate of providing fair, efficient and consistent dispute resolution.

Jurisdiction

1 AFCA's Fairness Jurisdiction

Assessment and investigation process

2 The Fairness tests

3 The Fairness Navigation Tool

4 AFCA's Approach Roadmap

5 Fair Remediation

Decision making process

6 Delivering Fair Process

7 Procedural Fairness

8 AFCA's Engagement Charter

Consistent fair outcome

9 Unfair Engagement process and consequence

10 Capturing Fair Outcomes

Ensuring consistency



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The framework operates to deliver consistent decisions and outcomes



We have developed internal tools and assurance to assist in this process



The fairness navigation tool is being used as a desktop aide by case worker and decision makers to assist in assessing complaints and guiding investigations



It enables us to deliver fair process and decisions consistently



We have mapped the questions in the fairness tool to existing legal obligations across all product areas

Key elements of a fair process



1

Did the parties understand the issues in dispute?

3

Was the decision maker impartial and did AFCA manage actual or perceived bias?

5

Was the process managed in a way that produced a fair outcome?

2

Were the parties given a fair opportunity and reasonable time to present and respond to information?

4

Did any party need help to access, understand or engage in the process?

The fairness tests in the AFCA Rules



Non superannuation jurisdiction

The AFCA decision maker must do what the AFCA decision maker considers 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 (but these are not binding)



Superannuation jurisdiction

When determining a superannuation complaint, the AFCA decision maker:

- may refer question of law to the Federal Court in
- accordance with section 1054C of the *Corporations Act*
- must apply the approach specified in section 1055 of the *Corporations Act*.

When an AFCA decision maker determines a superannuation complaint, it has all the same powers, obligations and discretions of the trustee, insurer, retirement savings accounts (RSA) provider or other decision maker whose decision or conduct is being reviewed.

Fairness navigation tool

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

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?

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



Delivering fair outcomes

- ? Were the relevant issues properly identified and assessed?
- ? Was the outcome fair in all the circumstances?
- ? Was the decision accessible, clear and persuasive?
- ? Did the decision take into account relevant law, regulatory guidelines, industry practice, and AFCA's approach?
- ? Was the decision one that a decision maker acting reasonably would make?
- ? Did the determination being finality to the complaint?

Fair remediation

AFCA's role is to compensate for actual loss suffered by a complainant as a result of the financial firm's error or breach. AFCA's role is not to punish a financial firm.

Our approach to remediation is to compensate the complainant for their direct financial loss, and sometimes non-financial loss.

- AFCA has available a wide range of remedies that we can provide set out under our Rules.
- We focus on providing the most appropriate remedy for the circumstances, to compensate for the loss suffered – the remedy is tailored to the circumstances.
- Our Approach documents clearly outline how AFCA will assess and compensate loss for different types of complaints.
- We clearly articulate the remedy awarded in decisions to minimise ambiguity and subsequent disputes.

Fair engagement



The AFCA Engagement Charter shares AFCA's values and outlines the behaviour we expect from financial firms, complainants and AFCA's people when resolving disputes.

It is a living document that makes the roles, responsibilities and expectations of each party more explicit so our stakeholders have a shared understanding of good conduct.

Find it online:

www.afca.org.au/about-afca/engagement-charter

Engagement Charter

Purpose

AFCA's Engagement Charter outlines AFCA's expectations about how people using our service will engage with us and each other during our complaint resolution process. It also describes the service standards others can expect from AFCA.

It is a living document, based on core principles and designed to respond to an ever-changing financial landscape. We may amend and expand on the principles set out in this document from time to time.

AFCA's role

AFCA's purpose is to provide fair, independent and effective solutions for individuals and small businesses who have a complaint about a financial product or service.

AFCA has a specific and important role assisting individuals and small businesses to resolve complaints about financial services and products. We are:

- impartial and independent – we do not advocate for either party or their position.
- fair and focussed on dispute resolution outcomes – if everyone cannot come to an agreement, it is our role to decide an appropriate outcome.

AFCA's vision is to be a world class ombudsman service, by:

- improving practices and minimising complaints
- meeting diverse community needs; and
- being trusted by all.

AFCA's jurisdiction

Our **Rules** set out the complaints we can consider, the procedures we use to resolve complaints and the remedies we provide. Our **Operational Guidelines** and **Transitional Superannuation Guidelines** set out how we interpret and apply our Rules.

We can consider a broad range of financial complaints, 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)
- investment and financial advice
- a trustee's decision in relation to the administration of a superannuation account including distribution of a death benefit.

But that's not enough...

Fairness is meaningless
if your service isn't
accessible for everyone



Equity of Access Program



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The Equity of Access program has been established to deliver on AFCA's vision to ensure fairness and equity across all of AFCA's services

Strategic priority

Equity of access

Objective

To ensure fairness and equity across all of AFCA's services

Outcomes

- 1 Reduced barriers to access and use
- 2 Culturally competent services
- 3 Empowered customers
- 4 Increased trust and confidence

Our approach over the next year will be guided by a clear set of principles



Listen and prioritise what matters most



Quick wins – make fast improvements where possible



Potential big-picture projects this financial year



Plan ahead for roadmap execution

Embedding a fairness culture



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Doing what
is right

feels

intentionally
different.



Collaborating
with bright,
diverse minds

feels

uplifting
and
inclusive.



Solving
complex
problems

feels

life-changing
and rewarding.

Fairness feels **good**

Fairness feels **good**

Treating scam victims fairly

1 July 2024 to 30 June 2025

- **5,988** scam complaints received
- **16%** full compensation
- **43%** partial compensation
- **\$33 million** awarded



Overarching framework

Legislation: New part in the Competition and Consumer Act 2010, imposing overarching principles-based obligations

Regulator: ACCC

Ministerial designation of sectors and regulators

Initial sectors: banking, telecommunications, digital platforms providers (social media, paid search engine advertising and direct messaging)

Scams Prevention Framework Rules

Supports effective operation of the Framework

**Banking Code
Regulator**

ASIC

**Telecommunication providers
Code Regulator**

ACMA

**Digital platform providers
Code Regulator**

ACCC

Dispute resolution mechanisms

IDR and EDR

Common ground



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- Handling complaints against professionals
- Managing stressed or vexatious complainants
- Balancing what's law and what's fair
- Rigour as well as efficiency
- Community expectations
- Maintaining trust



*Does everyone leave
having experienced
fairness?*

Questions for you ...



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Thank you

