

AFCA is here – The new ‘One Stop Shop’ for insurance EDR

Paul Angus & Shauntelle Lim | November 2018 | General Insurance

What is AFCA?

The Australian Financial Complaints Authority (**AFCA**), the new external dispute resolution scheme for the financial services sector, became operational on 1 November 2018. AFCA replaces the Financial Ombudsman Service (**FOS**), the Credit & Investments Ombudsman (**CIO**) and the Superannuation Complaints Tribunal (**SCT**). Similar to FOS, AFCA is based on an ombudsman model.

Its key features include:

- It is to be the single point of contact for complainants with respect to external dispute resolution services.
- It must conduct independent reviews of its operations.
- Directors must be split evenly between business and consumers.
- It is financed by the industry.
- It must have an Independent Assessor to deal with complaints about its service.
- Decisions are binding on Members but not on Complainants.
- It is free for consumers.
- It must be accessible, fair, efficient, timely and independent.
- It is subject to ASIC oversight.

What does this mean for the General Insurance Industry?

All new disputes lodged from 1 November 2018 will be handled under the new AFCA Rules, which incorporate new claims limits and compensation caps.

All current disputes at FOS and disputes that are open as at 1 November 2018 will be handled by AFCA under the FOS Terms of Reference.

Disputes lodged with AFCA from 1 November 2018 will be referred to as Complaints. Applicants will be referred to as Complainants, and Financial Services Providers will be referred to as Financial Firms.

Procedures for resolving disputes at AFCA are expected to be similar to the previous FOS procedures as far as general insurance is concerned. Generally, a Complaint lodged with AFCA will progress through the Registration and Referral process, following which it will either be allocated to the Fast Track, Standard & Complex or Financial Difficulty areas for resolution. AFCA will try to resolve a complaint by way of negotiations or conciliation. If reasonable attempts at resolution by agreement are unsuccessful, a Preliminary Assessment or Determination will be made.

Complaints to AFCA need to be submitted before the earlier of the following time limits:

- a) Within six years of the date when the Complainant first became aware (or should reasonably have become aware) that they suffered the loss.
- b) Where the Financial Firm gave the complainant an IDR Response in relation to the complaint, within two years of the date of that IDR Response.

If a dispute has already been dealt with, whether by agreement or by way of a decision under one of the predecessor schemes, it is unlikely that the matter will be able to be referred back to AFCA a second time.

What General Insurance products can AFCA consider?

AFCA's jurisdiction is limited to the following types of general insurance products:

1. Retail General Insurance
2. Residential Strata Title Insurance
3. Small Business Insurance
4. Medical Indemnity Insurance
5. Title Insurance

AFCA defines a *Small Business* as a Primary Producer or other business with less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint.

With respect to Small Business Insurance, AFCA cannot consider cover in relation to:

- Contractors All Risks;
- Fidelity Guarantee;
- Legal Liability (including Public Liability and Products Liability);
- Professional Indemnity; and
- Industrial Special Risks.

Remedies

For complaints other than a Superannuation Complaint, a decision maker at AFCA may make an award granting relief involving one or more of the following:

- a) The payment of a sum of money.
- b) The reinstatement, variation, rectification, or setting aside of a contract.
- c) The meeting of a claim under an insurance policy by, for example, repairing, reinstating or replacing items of property.
- d) In the case of a complaint involving a privacy issue with an individual, that the Financial Firm should not repeat conduct on the basis that it constitutes an interference with the privacy of an individual or that the Financial Firm should correct, add to or delete information pertaining to the Complainant.
- e) In relation to a default judgment, an order not to enforce the judgment.
- f) In relation to privacy related complaints, an order consistent with declarations available to the Information Commissioner when they make a decision under Section 52 of the *Privacy Act*.
- g) An apology.

This is not an exhaustive list and a Decision Maker may determine that a Financial Firm should take a course of action not noted above.

A Decision Maker may award interest, which, subject to the Determination, accrues until the payment is made. An award of interest will generally be calculated in accordance with the *Insurance Contracts Act 1984*. An award of interest is not taken into account for purposes of the maximum amounts payable under the compensation caps.

New Jurisdictional Limits

The following table outlines the new jurisdictional limits for non-superannuation disputes.

Type of claim	Previous FOS limits	AFCA limits
Most non-superannuation disputes	Monetary limit \$500,000	Monetary limit \$1 million
	Compensation cap \$323,500	Compensation cap \$500,000
Dispute about a small business credit facility	Facility limit \$2 million	Facility limit \$5 million
	Compensation cap \$323,500	Compensation cap \$1 million
Dispute about a small business credit facility to primary production business (e.g. agriculture, forestry and fishery businesses)	Facility limit \$2 million	Facility limit \$5 million
	Compensation cap \$323,500	Compensation cap \$2 million
Income stream product disputes	Compensation cap \$8,700 per month	Compensation cap \$13,400 per month
Uninsured third party motor vehicle claims	Compensation cap \$5,000	Compensation cap \$15,000
General insurance broker disputes	Compensation cap \$174,000	Compensation cap \$250,000
Indirect Financial Loss (consequential loss)		Compensation cap \$5,000
Non-Financial Loss		Compensation cap \$5,000
Costs of pursuing complaint (including legal costs)		Compensation Cap \$5,000

Where to from here?

As AFCA is in its early days only time will tell whether there will be any significant impact to the industry from the changes to the EDR scheme. In general, it is likely to be 'business as usual' subject to some of the changes noted above, with the complaints handling processes largely remaining the same as they were with FOS – albeit under a new name, with some new limits and some new areas of claims to which the process will apply.

AFCA and FOS have been in consultation with the industry for some time now and the changes are unlikely to catch any insurer by surprise. However, insurers need to be aware of the detail of the new regime and carefully consider the approach to disputed claims in light of AFCA.

If you require any assistance or information regarding the new AFCA processes, please contact Shauntelle Lim or Paul Angus as we would be happy to assist.



Paul Angus
Partner
T: 02 8257 5780
M: 0408 188 808
Paul.Angus@turkslegal.com.au



Shauntelle Lim
Senior Associate
T: 03 8600 5073
M: 0417 406 165
Shauntelle.Lim@turkslegal.com.au