

Wednesday 27 November 2024

Lead Ombudsman – General Insurance
Australian Financial Complaints Authority (AFCA)
GPO Box 3
Melbourne VIC 3001
By email: consultation@afca.org.au

Dear Ms. Curtis,

I am writing on behalf of Financial Counselling Victoria (FCVic) to provide feedback on AFCA's joint consultation on General Insurance Approaches.

As the peak body and professional association for financial counsellors in Victoria, FCVic is uniquely positioned to understand systemic consumer issues. Our members assist more than 23,000 Victorians every year, and are privy to emerging themes in complex consumer issues – particularly those impacting vulnerable cohorts including those in financial hardship, people impacted by catastrophic natural disasters, newly arrived migrants and refugees, and more than 3,800 family violence victim-survivors.

AFCA is well aware of the tremendous efforts of Victorian financial counsellors in raising concerns about the conduct of insurers in the claim process, particularly after a natural disaster. I understand from statistics provided by Chief Ombudsman Locke that in the 12 months to May 2024, 50 per cent of financial complaints to AFCA were from Victorian financial counsellors.

Given this expertise and depth of knowledge, we have consulted with our membership, through the Insurance Working Group, on the feedback provided in this letter.

1. Enhancing readability and accessibility

While understanding that there are regulatory and legislative complexities to the information that AFCA is required to provide, we recommend that the Approaches be further simplified in the language used to better support consumers who are self-advocating through their complaint. Financial counsellors note that Plain English with no legal terminology overlay is required.

In Australia, about 44% of adults read at a low literacy level, according to the Australian Bureau of Statistics¹. Running the non-disclosure and misrepresentation document through a readability engine revealed writing to a tertiary-education level, which would be inaccessible to many consumers. For instance:

A misrepresentation or non-disclosure will be considered fraudulent if the person did so knowingly, without belief in its truth, or recklessly. This will require clear and cogent evidence in support.

Could be better written as:

A misrepresentation or non-disclosure will be seen as fraud if the person did it on purpose, knowing it wasn't true, or didn't care if it was true. There needs to be clear proof to show this happened.

¹ Australian Bureau of Statistics (ABS) (2013) Programme for the International Assessment of Adult Competencies, Australia.

Without the assistance of a professional advocate such as a financial counsellor, many consumers may find it difficult to navigate the Approaches documents (and complaints process) as a result.

2. Definition of AFCA Scope

AFCA prominently state they are an EDR Scheme for the ‘financial services sector’ across marketing materials including the AFCA website. As evidenced in financial counselling casework, this causes confusion to consumers, who read ‘financial services sector’ as relating only to banks and other financial institutions, excluding insurance products and their providers.

To enhance consumer understanding of AFCA’s role, some explanatory detail could be added to ‘AFCA’s purpose’ as follows (while recognising that General Insurance is noted in the title of the Approaches):

*AFCA is the independent external dispute resolution (EDR) scheme for the financial service **and general insurance** sector.*

3. Clarify the role of a consumer advocate

Throughout the Approaches documents, and specifically in the process map and description, there is an opportunity to highlight clearly where advocates representing a consumer might play a role.

This will help to make it clear to consumers that they can be supported by an independent third party advocate, and may not be required to repeat their story multiple times through the complaints process. This is particularly important where their experience may have been traumatic – for instance, requiring family violence victim-survivors to retell their story would be unnecessarily re-traumatising when they could have an advocate present, who already knows their story.

There is also an opportunity here for AFCA to consider where they might identify a consumer going through the complaints process who is not currently represented by a consumer advocate, but would benefit from having one. This may be something as simple as a statement under the ‘Seeking information to provide a fair resolution’ section noting:

Where AFCA considers that a complainant may benefit from assistance from a consumer advocate, AFCA may encourage getting in touch with a financial counsellor.

4. Acknowledging that information may not be able to be provided

The Approaches provide some examples of the type of information that consumers may be asked to provide as part of the complaint process. We would like to see an acknowledgement that in certain circumstances, it may not be possible for consumers to provide documentation – for example, where natural disasters have meant that they have lost all paper records or where the policy was facilitated by an insurance broker.

Given the body of evidence around the negative impact of natural disasters on people’s cognitive abilities and memory recall, we believe that there should be recognition that consumers may not be able to provide answers to some of the questions that they might be asked. Due to the impacts of trauma, they simply may not recall the circumstances in which they originally took out the policy.

When it comes to insurance brokers, financial counsellors report that it is common for brokers not to provide written confirmation of discussions, nor the actual preliminary cover documents to clients. Where disputed claims end up at AFCA, insurers will use this lack of evidence against consumers, particularly if all disclosures were made verbally to the insurance broker. These circumstances should be taken into consideration during the complaint process.

5. Recognition of other considerations

The Approaches list minimal literacy skills or limited understanding of English as vulnerable situations that may be considered in an AFCA decision. This list should be broadened to include other situations that may impact on a person’s ability to provide accurate and complete information at the point of taking out a policy – including experience of family violence and the ongoing impacts of natural disasters.

It has been established that insurance can be used as a weapon of financial abuse in family violence situations², and allowances should be made accordingly. Similarly, the significant flow-on impact of natural disasters on consumer vulnerability is not well recognised by insurers, and not well enough by AFCA. This vulnerability must be acknowledged and addressed for dispute resolution to be fair and equitable.

Thank you for your consideration. To discuss this letter further or for any further queries, please contact FCVic's Advocacy Manager Amanda Chan on achan@fcvic.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Zyl', with a horizontal line underneath.

Zyl Hovenga-Wauchope
Executive Officer
Financial Counselling Victoria

² <https://www.unsw.edu.au/newsroom/news/2024/03/insurance-latest-weapon-financial-abuse-how-to-fix>