



A.B.N. 96 930 382 15
PO Box 2070
Bayswater 3153

Phone: 1300 353 027
Email: info@cherpa.com.au

Submissions@AFC.org.au

Australian Financial Complaints Authority (AFCA)

Rules of Complaint Resolution Scheme (Draft)

June 2018

27th June 2018

Re: Submission from Consumer Household Equipment Rental Providers Association (CHERPA)

We have the Draft documents and offer the following comments:

Before we get into specifics, we would like to voice our in principal objection to being forced into a single monopolised EDR scheme. This goes against the fundamentals of free choice and competition.

Having said that, we offer the following insights and comments:

We find many instances where AFCA has no set time period to respond to complaints or Financial Firms and uses the language "Timely" or Reasonable timeframe". We feel these terms are too broad and open ended ie A.2.1 (c)(iii) & A.16.1.

We would like to see Firm Time periods set

The Document also refers to timeframes that AFCA will advise A.5.2, A.5.3, A.9.1, A.12.3(b)(i), A.12.4.

Again we would like to see some indication what the likely timeframes would be and if Financial Firms etc can apply for extensions ?

A.21.3 “these rules specify some timeframes”, yet we can not see any Timeframes specified other than in B.4.2.1(a) which refers to A.4.3(c)

Again we would like these timeframes clarified or at least indicative timeframes.

A.4 Complaints that AFCA Handles.

We believe that AFCA should not accept any Complaint that has not been firstly sent to the Financial Firms IDR body and even if the complainant states they have been through an IDR, proof must be obtained from either the Complainant or the Financial Firm that this course of action has been taken and the matter could not be resolved. Should the Complainant not have been through an IDR with the Financial Firm, AFCA should immediately decline to take the complaint and refer the Complainant to the relevant Financial Firms IDR scheme at no charge to the Financial Firm.

A.5.1 when AFCA receives a complaint, AFCA will notify the relevant Financial firm in writing of the complaint.

Please confirm that the term “in Writing” is by Post, Email, Fax or a combination of any of these and in what timeframe from receiving the complaint ?

A.7.1 (b) The Financial Firm must not seek Judgement or take any other action to pursue debt recovery legal proceedings that the Financial Firm began before the Complainant submitted the complaint to AFCA other than to the minimum extent necessary to preserve the Financial Firms legal rights.

As obtaining Judgement has a time limit from the date the Statement of Claim is issued, unless AFCA can resolve the complaint before the expiration of the time limit, the Financial Firm would be disadvantaged if they could not seek Judgement and this in term may require the Complainant and the Financial Firm to incur further costs. This being the case it is unreasonable to have to seek AFCA’s consent as in A.7.2 (a). Consent should be a given !!

It then states in A.7.1 9 (c)(i) The Financial Firm must not take any action to :

- (i) Recover the debt subject to the complaint, including enforcement of a default judgement obtained from a court

It is our understanding that a Court of law, is a higher authority than AFCA and as such (as it is currently with the current EDR’s) that AFCA would have no jurisdiction and would have to decline from hearing the complaint

A.7.5 If a complaint is submitted to AFCA is resolved by agreement between the parties or is determined by an AFCA Decision Maker and the Determination becomes binding on the Financial Firm...

We refer to A.1.2. These rules form part of a contract between AFC, the Financial Firms and the Complainants. As this is a "Contract" we believe ALL parts are to be bound by any agreement or Determination !

A.9.6 Contribution by Financial Firms towards costs of experts appointed by AFCA.

The size of the claim and the size of the Financial Firm should also be part of this equation and as such and costs of this nature should be scalable on the basis if Size of the Financial Firm and the likely value or companion obtainable. AFCA should also advise the Financial Firm of likely cost and their intention to call experts, prior to exercising this course of action.

A10.3 Despite rule A10.1 AFCA need not provide the parties with any Memoranda, analysis or other documents prepared by AFCA's employees or contractors unless required by law.

This should be what's good for the goose is good for the Gander. If AFCA is not required, then the Financial firm should also have the same protection in relation to internal working documents etc.

A.11.2 (b) refers to "Advisors"

We would seek clarification of this term and should be added to E.1 Defined Terms.

A16.5 An Independent Assessor's recommendation is not binding on AFCA.

Again we refer to A .1.2 if ALL parties are under a contract, as such, ALL parties should be bound by any agreements or determinations and to reject An Independent Assessors recommendation unless refuted by another Independent Assessor or expect is unfair on the other parties.

A.20.1 Public Reporting.

We recommend that any Public Reporting be done on Financial year basis.

A.22.1 AFCA be immune from Liability.

In Principal we agree that may need to be the case, except where AFCA or those associated have committed an unlawful act or has discriminated against a party.


D.5.1 & D.5.2 Costs

We totally disagree that a Financial Firm should incur any costs incurred by the Complainant for Legal or other professional costs or travel incurred by the Complainant in the course of the complaint. The Complainant already incurs no cost to lodge or have a complaint heard and the Financial firm who not only contributes yearly to the EDR Scheme, but on each and every complaint with no recourse to Complainant.

Again, as there has been no cost scale released to date, we would seek that these fees be scalable dependant on the value of the complaint and likely compensation in relation to the size of the Financial Firm. Ie Consumer Leases relate to Goods that have a value in the range of \$150 to max approx. \$3000.

The last thing the establishment of any EDR scheme should be seeking to do, is to create a platform and atmosphere where Complainants and unscrupulous legal aid/consumer advocates can escalate complaints to the EDR knowing that it will be more commercially cheaper for the Financial Firm to settle unfounded and vexatious claims

We look forward to your response and comments

A handwritten signature in black ink, appearing to read 'I. Stewart', enclosed within a large, loopy oval scribble.

Ian Stewart
Vice President