

Debt agreement administrators

This fact sheet provides information about AFCA's jurisdiction in relation to complaints lodged against debt agreement administrators (DAAs)

DAAs are required to be AFCA members

From 1 January 2021 all registered DAAs are required to be members of AFCA in accordance with the *Bankruptcy (Registered Debt Agreement Administrator Conditions) Determination 2020*.

DAAs are regulated by the Australian Financial Security Authority (AFSA) and have not previously been required to be a member of AFCA, although some DAAs are already AFCA members. The Attorney-General's Determination introduces the new DAAs' registration condition to ensure consumers have access to an external dispute resolution service.

Membership applications can be completed online here, afca.org.au/members/apply-for-membership.

If you have any questions during the process, please contact the AFCA membership team on 1300 565 562 or email membership@afca.org.au

What is AFCA's role?

AFCA helps individuals, small businesses and their financial firms to resolve complaints about financial products and services.

We are impartial and independent. We do not act for either party to advocate their position. If a complaint is not resolved between the parties, we can decide an appropriate outcome.

Decisions we make can be binding on the financial firm involved in a complaint. We can award compensation for losses suffered because of a financial firm's error or inappropriate conduct. We do not, however, award compensation to punish financial firms or impose fines.

AFCA can consider complaints lodged by complainants against DAAs

Under our Rules, AFCA can consider certain complaints lodged by an individual against a DAA who is an AFCA member.

This is because Rule B.2.1 allows AFCA to consider complaints submitted to it by a complainant where the complaint arises from, or relates to, a "financial service". A "financial service" is defined in Section E of the Rules to include a product or service that is financial in nature which is, or is in connection with, "debt administration".

What is a debt administration complaint?

AFCA can consider debt administration complaints that raise the following issues:

- misleading and deceptive conduct
- unconscionable conduct
- inappropriate advice
- non-disclosure
- credit reporting
- financial difficulty.

We can also consider any other issues raised by complainants that otherwise fall within our jurisdiction.

Are there debt administration complaints AFCA cannot consider?

Generally, we can consider a complaint against a DAA unless our Rules do not allow us to. For example we might not consider a complaint if it has been lodged outside our time limits or is excluded for one of the mandatory exclusion reasons in section C.1 of the Rules.

AFCA also has discretion to exclude complaints under section C.2 of the Rules, for example where a complaint has already been dealt with by a court. However we do not exercise our discretion to exclude a complaint lightly and we will not exercise our discretion unless there are compelling reasons for doing so.

In some cases, a DAA may consider that a complaint lacks merit or does not have any substance because the DAA believes that it did not make an error or breach any obligation owed to the individual. AFCA will not lightly exclude a complaint for lacking merit or substance under its Rules. If a complaint is within our jurisdiction, the complaint will progress to case management for investigation as to whether the complaint has merit.

For more information, you can find our Rules and Operational Guidelines here, afca.org.au/rules

When can a member make a jurisdictional objection?

A member can make a jurisdictional objection at any stage of AFCA's complaint resolution process; however we ask members to let us know early in the process and to provide any information and supporting documentation as soon as they identify jurisdictional concerns with a complaint.

If a member raises a jurisdictional dispute during the Registration & Referral stage, the complaint will progress to the Rules team for review. If a complaint is found to be within jurisdiction, the complaint will progress directly to case management.

What can AFCA do with a debt administration complaint?

When a complaint is within jurisdiction, we have a range of methods we can use to resolve a complaint. We will select the method, or combination of methods, that we think is most likely to resolve the complaint fairly and efficiently.

Some of the complaint resolution methods we may use are:

- negotiation
- telephone conciliation conference
- preliminary assessment
- determination.

You can find more information about AFCA's complaint resolution process here, afca.org.au/process

