



# **AFIA**

## **CAR RENTAL CONCILIATION SERVICE TERMS OF REFERENCE ©**

2022



## AFIA CAR RENTAL CONCILIATION SERVICE TERMS OF REFERENCE

### 1. INTRODUCTION

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#### Establishment

- 1.1 The AFIA Car Rental Conciliation Service (CRCS) is a conciliation service established by the Board under the provisions of the Constitution.

#### Review

- 1.2 These Terms of Reference are subject to review by the Board at any time.

### 2. DEFINITIONS AND INTERPRETATION

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#### Definitions

- 2.1 Unless the context indicates or requires otherwise:
- AFIA** means Australian Finance Industry Association Limited ACN 000 493 907 (including any Division) and includes any Subsidiary it might have from time to time.
- Administrator** has the meaning given to that term in clause 4.2.
- Board** means the board of Directors of AFIA from time to time, acting as a board.
- Business Day** means a day which is not a Saturday, Sunday or public holiday in the place where the relevant act is to be performed.
- Chief Executive Officer (CEO)** means the chief executive officer of AFIA from time to time.
- Code** means the AFIA Car Rental Code of Practice applicable to the Group and which has been approved by the Board.
- Confidential Information** has the meaning given to that term in clause 6.
- Constitution** means the constitution of AFIA, as amended from time to time.
- Customer** means a person who has entered into a car rental agreement with a Member, or their representative authorised in writing.
- Group** means the AFIA Fleet & Rental Group, a designated group established by AFIA.
- Member** means an AFIA member who is part of the AFIA Fleet & Rental Group, is a signatory to the Code and has agreed to abide by the terms of the Code including participation in the CRCS.

Terms used in these Terms of Reference which are not defined in it, but which are defined in the Constitution will have the same meaning as there defined.

Terms used in these Terms of Reference which are not defined in the Constitution but are defined in the *Corporations Act 2001 (Cth)*, will have the same meaning as there defined.



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### Interpretation

- 2.2 Unless the context indicates or requires otherwise, in these Terms of Reference:
- (a) headings are for convenience only and do not affect the interpretation of these Terms of Reference;
  - (b) reference to the singular includes the plural and vice versa;
  - (c) reference to a person includes a corporation and vice versa;
  - (d) reference to a body, a committee or a position of, or in relation to, AFIA, or to an official document relating to AFIA, means that body, committee, position or document from time to time;
  - (e) any term which is defined in the descriptions of the parties, the recitals or elsewhere in these Terms of Reference will have that defined meaning;
  - (f) where any word or phrase is defined in these Terms of Reference, any other grammatical form of that word or phrase will have a corresponding meaning;
  - (g) reference to an annexure or an appendix, or to a part, article or other subdivision, is to an annexure or appendix, or to a part, article or other subdivision, of these Terms of Reference;
  - (h) reference to a statute, ordinance, code or other law includes any amendment to it, any replacement of it and any statute, ordinance, code or other law intended to operate in conjunction with it and, in each instance, includes every regulation, rule and other instrument;
  - (i) reference to "month" is to a calendar month;
  - (j) all monetary amounts are in Australian dollars;
  - (k) "including" and similar expressions are not words of limitation; and
  - (l) reference to a function includes a reference to a power, authority and duty.

### 3. PURPOSE AND AUTHORITY

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#### Purpose

- 3.1 The purpose of the CRCS is to provide a conciliation service where:
- (a) a Customer has raised a dispute with a Member about whether charges related to a rental that occurred in Australia were correctly applied by the Member; and
  - (b) the dispute has been considered and decided under the Member's internal dispute resolution (IDR) process; and
  - (c) the Customer wants further consideration of the dispute because the Customer is not satisfied with the outcome of the Member's IDR process.



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### Authority

- 3.2 The CRCS is authorised to investigate any activities within its Terms of Reference and, in carrying out its administrative, compliance and investigative roles, is authorised to take such actions as are within its powers and to recommend to the Board appropriate further actions.
- 3.3 The CRCS will have access to relevant records to carry out its task and will have the right to seek such additional information and explanations as (acting reasonably) it considers appropriate in the circumstances.

### Guiding Principles

- 3.4 The CRCS will:
- (a) act in a fair and effective manner with integrity and impartiality; and
  - (b) be transparent and accountable.

### Professional Advice

- 3.5 The CRCS can obtain outside legal, financial, industry or other independent professional advice or information at AFIA's expense and to secure the attendance of outsiders with relevant experience and expertise if it reasonable and necessary to carry out its task.
- 3.6 The CRCS must advise the AFIA CEO of its intention to obtain advice as set out in 3.5 before seeking any such advice or incurring any cost in relation to such advice.

## 4. FUNCTIONS AND RESPONSIBILITIES

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### Functions

- 4.1 The CRCS has the following functions and responsibilities:
- (a) receive complaints related to the Code;
  - (b) establish and maintain an up-to-date register of complaints relating to the Code;
  - (c) investigate such complaints that fall within its powers to do so;
  - (d) make determinations in relation to complaints investigated by it;
  - (e) assist in the provision of data to Members to help identify systemic issues to improve internal processes and provide better customer experiences; and
  - (f) exercise and perform such other acts as may be provided for from time to time in the Terms of Reference or the Code, or which are incidental to any of the above functions and responsibilities.



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### **Administrative Functions**

- 4.2 The CRCS may delegate some of its secretarial and administrative functions and responsibilities to a third party (Administrator). The CRCS must not delegate its power to make decisions in relation to complaints lodged with the CRCS.

### **Management Duties**

- 4.3 In executing its duties and responsibilities, the CRCS will:
- (a) in a timely manner, keep the AFIA CEO and Board apprised of its activities and of any incidents of which the AFIA CEO or Board should be aware; and
  - (b) recommend to the Board any changes to procedures to improve the operation of the CRCS.

## **5. INVESTIGATING COMPLAINTS**

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### **Commencement of Investigations**

- 5.1 The CRCS may only commence an investigation of a complaint when:
- (a) the complaint relates to an AFIA Member who is a signatory to the Code and has an obligation to adhere to the standards set out in the Code;
  - (b) the complaint is about whether charges related to a rental that occurred in Australia were correctly applied by a Member;
  - (c) the complaint relates to a rental car or another type of rental vehicle rented using a car driver's licence issued by a relevant Australian State or Territory Government authority, or the international equivalent where the Customer does not hold a driver's licence issued by an Australian State or Territory Government authority; and
  - (d) the Customer has fully exhausted the Member's IDR process and received the Member's final decision.

### **Withdrawal from Conciliation**

- 5.2 A Customer can withdraw from the conciliation process at any time once it has commenced.
- 5.3 A Member cannot withdraw from the conciliation process.

### **Consideration of a Complaint**

- 5.4 The CRCS may consider a complaint except that, subject to clause 5.5, the CRCS must not consider a complaint in any of the following circumstances:



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- (a) The complaint relates to a car rental company that is not a signatory to the Code;
- (b) The complaint is the subject of court proceedings that have already commenced;
- (c) The complaint is based on substantially the same events and facts as a previous complaint by the Customer to the CRCS, unless there is material new information;
- (d) The rental occurred outside Australia;
- (e) The complaint relates to a personal injury matter;
- (f) The complaint is about the method or cost of repairs to a vehicle;
- (g) The complaint is made by a third party;
- (h) The complaint is deemed to be frivolous or vexatious; or
- (i) The CRCS identifies a more appropriate forum to deal with the complaint.

### **Investigations at Request of the Board**

5.5 The CRCS may investigate a complaint if the Board determines that it is in the interests of the industry or AFIA that a particular complaint be investigated by the CRCS.

### **Responding to Complaints**

5.6 Where the CRCS investigates a complaint, it will:

- (a) aim to acknowledge the complaint in writing within 3 Business Days of receiving the complaint;
- (b) provide details of the complaint to the Member;
- (c) ask the Member to provide information and documents that are relevant to the complaint;
- (d) if appropriate, ask a Member to investigate or make additional inquiries related to the complaint and report back to the CRCS;
- (e) determine the outcome of the complaint based on the written material provided by both parties; and
- (f) aim to respond with a clear decision within 30 days of receiving the complaint.

5.7 Notification of the outcome and the decision of the CRCS will be provided in writing to both parties. If the complaint is not upheld, the Customer will be advised of the reasons why.

### **Outcomes the CRCS can provide**

5.8 Where the complaint is upheld, the CRCS will look to ensure that any unjustified charges incorrectly raised by the Member are refunded in full.

The CRCS can only adjudicate on whether a charge was correctly raised by a member, and not on the quantum of the amount charged.



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5.9 The CRCS has no jurisdiction to award any form of compensation payment.

### **Decisions are Binding on Members**

5.10 Members must comply with rulings and decisions made by the CRCS.

### **Appeals**

5.11 There is no further review or appeal process available to a Customer through the CRCS. Using the CRCS does not affect a person's statutory rights. A Customer is free to seek other remedies, including legal remedies through the courts.

## **6. CONFIDENTIAL INFORMATION**

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6.1 For the purpose of these Terms of Reference (including the CRCS and its operation) Confidential Information means all technical, commercial and other confidential information and materials of a Member, consumer or small business and includes any information or material that discloses or relates to:

- (a) a Member's compliance or non-compliance with a Code;
- (b) an actual or alleged breach of a Code by a Member;
- (c) commercial, financial or legal affairs of a Member including pricing policies, costing information, supplier lists and Customer lists;
- (d) legal advice;
- (e) a matter to which an obligation of confidence applies under privacy law; and
- (f) any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose attention that information or material otherwise comes, would consider confidential.

6.2 Subject to clause 6.3:

- (a) the CRCS must keep confidential all Confidential Information which comes to its attention in regard to CRCS issues; and
- (b) the CRCS must not disclose or use for a purpose other than contemplated by the Code or these Terms of Reference, any Confidential Information supplied to the CRCS in connection with the conduct of the business of the CRCS.



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- 6.3 The CRCS may disclose Confidential Information:
- (a) to a person to whom disclosure is reasonably required for the purpose of the CRCS exercising its functions or powers;
  - (b) to any person to whom disclosure of the Confidential Information is required by law; or
  - (c) with the prior written consent of the Member, subject to privacy law.

### 7. REPORTING BY CRCS

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- 7.1 The CRCS will prepare a report each quarter for the AFIA CEO. Each report should include an outline of the activities of the CRCS in the relevant period, including:
- (a) information about complaints lodged with the CRCS, and the decisions made by the CRCS in relation to those complaints, including but not limited to, the number of complaints upheld in favour of Customers, and the number of complaints not upheld;
  - (b) information about the performance of the CRCS in accordance with these Terms of Reference, including but not limited to:
    - (i) the number of investigations of complaints concluded within specified timeframes; and
    - (ii) the number of investigations of complaints concluded outside specified timeframes and the reasons for that;
  - (c) information about any serious and systemic issues of breaches of the Code which have come to the CRCS's attention;
  - (d) any recommendations on Code improvements and industry issues relevant to the operation of any Code arising out of the operation of the CRCS in the relevant period, including where non-compliance with a Code indicates an industry-wide issue or weakness of a Code; and
  - (e) any other matters that the CRCS considers should be included that are consistent with the functions of the CRCS.
- 7.2 The CRCS will not share any confidential information, including but not limited to, personal and financial information about any particular Customer, unless permission has been provided to share this information and the sharing of the information is necessary to resolve a complaint.



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### 8. POLICIES AND PROCEDURES

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#### **Development of Policies and Procedures**

- 8.1 The CRCS may develop policies, guidelines and operating procedures on the administration, management and implementation of the CRCS that are consistent with these Terms of Reference, the Code and any other relevant protocol document including best practice guidelines issued by relevant government authorities or agencies.

#### **Recommendations about Changes to Code**

- 8.2 The CRCS may recommend to the Board changes to the Code.

#### **Recommendations about Changes to Terms of Reference**

- 8.3 The CRCS may recommend to the Board changes to the Terms of Reference. The Terms of Reference will be reviewed and updated as required.



## AFIA CAR RENTAL CONCILIATION SERVICE TERMS OF REFERENCE

### SCHEDULE 1

#### 1. Relevant Legislation

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

*Australian Securities and Investments Commission Act 2001*

*Competition and Consumer Act 2010*

*Corporations Act 2001*

*Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*

*Privacy Act 1988*

*Spam Act 2003*

#### 2. Relevant Regulatory Bodies

Australian Competition and Consumer Commission (ACCC)

Australian Financial Complaints Authority (AFCA)

Australian Prudential Regulatory Authority (APRA)

Australian Securities and Investments Commission (ASIC)

Australian Transaction Reports and Analysis Centre (AUSTRAC)

Office of the Australian Information Commissioner (OAIC)