

Office of Fair Trading

Claim fund decision referral and approval policy

Version 2 – March 2017



1. Purpose

To outline the delegations to decide and approve or refer claims lodged through the Claim fund established under the *Agents Financial Administration Act 2014*.

This policy will be reviewed annually or following legislative or procedural changes.

2. Definitions, terms and acronyms

AFAA – *Agents Financial Administration Act 2014*

C&R – Claims and Recoveries unit

ILR – Industry Licensing and Registrations division

OFT – Office of Fair Trading

QCAT – Queensland Civil and Administrative Tribunal

3. What is the Claim fund?

The Claim fund is established under AFAA and is used to compensate consumers who suffer financial loss as a result of contraventions listed in the AFAA by real estate agents, motor dealers, chattel auctioneers and debt collectors. \$200,000 is the maximum claimable amount under AFAA. Claimants can pursue amounts in excess of \$200,000 through civil action.

Under AFAA, real estate agents, motor dealers, chattel auctioneers and debt collectors must put deposits, rent and purchase money for transactions into a trust account.

The Office of State Revenue within Queensland Treasury manages the collection and reporting of interest on trust accounts which is paid into a consolidated fund. Part of that revenue finances the Claim fund.

4. Objectives

4.1. Decision delegation

The AFAA allows for the Chief Executive to decide all claims lodged against the Claim fund. This power is delegated to the Manager C&R, OFT. When deciding whether to deal with a claim, the Manager C&R, will consider if:

- the matter is supported by an evidential report (Claim receivership report, Claim investigation report or Special investigator report)
- there is significant uncontroverted evidence to support the claim (including evidence obtained by an investigator and/or the Manager C&R for claim fund purposes)
- the matter is not contested or the respondent admits to the breach
- relevant case law on point exists to guide the decision maker and the decision follows that case law and
- the matter is not legally or factually complex.

If the claim is for an amount in excess of \$10,000, the Manager C&R, must seek approval from the Director ILR before dealing with the matter. The Director ILR may allow the Manager C&R to decide the claim or decide to refer the matter to QCAT for determination.

When a claim allowable amount exceeds \$100,000, the Manager C&R must have the matter reviewed by the Director ILR to confirm the decision.

It should be noted that QCAT maintains a review jurisdiction should parties wish to have any decision made by the Chief Executive reviewed.

4.2. Referral delegation

Under AFAA, the Manager C&R has the power to refer a claim to QCAT for decision. Indicators that a claim is more appropriately decided by QCAT are:

- a requirement to hear oral evidence
- a need to determine a complexity of law
- where consolidation of like matters would allow similar evidence to be led in totality and/or streamline delivery of the decision and
- the parties wish.

The Director ILR should consider the same indicators before deciding to refer the matter to QCAT.

4.3. Payment delegation

Payment delegation and decision delegation are separated to ensure compliance with the department's Financial Management and Practice Manual. The table below provides a summary of the decision and payment approval delegations.

Claim amount	Decision	Payment approval
Up to \$10,000	Manager C&R	Director ILR
Up to \$100,000	Manager C&R	Director ILR
Up to \$200,000	Manager C&R, Director ILR (Confirms)	Executive Director, Fair Trading Operations

A *Claim fund decision model and controls* document is at Annexure 1.

5. Annexure 1

Claim fund decision model and controls

