



Australian Government

Government response to the REVIEW OF THE AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY

November 2021

Introduction

The Australian Financial Complaints Authority (AFCA) is a not-for-profit company limited by guarantee that has been authorised by government to be the operator of the external dispute resolution scheme under the Corporations Act. Under this authorisation, AFCA is required to comply with mandatory requirements set out in its underpinning legislation and any additional conditions specified by the Minister.

Since its establishment in 2018, AFCA has represented a new era for financial dispute resolution, delivering consumers and small businesses with access to a free and accessible dispute resolution service for financial complaints, whether they relate to banks, credit providers, insurance companies or superannuation funds. AFCA plays an important role in ensuring a stronger economy and a fair go for all Australians.

The Government welcomes the overall finding of the Review of AFCA that it is performing well and providing an effective dispute resolution service for consumers and small businesses.

While recognising the majority of recommendations in the Review are directed to AFCA, the Government also agrees to the recommendation directed to Government, which is to amend the legislation to remove the requirement for authorised credit representatives to be members of AFCA.

The Review was conducted by a unit within the Department of the Treasury and was handed to the Minister for Superannuation, Financial Services and the Digital Economy in August 2021.

Government response to the recommendations in the Review of the Australian Financial Complaints Authority.

Recommendation	Government response
<p>1. AFCA should provide clearer guidance on the circumstances under which a further issue identified during the complaint process would revert to financial firms for consideration through internal dispute resolution.</p> <p>Where the issue is combined with an existing complaint, both parties should be provided with procedural fairness by having the opportunity to comment on changes to the scope of the complaint.</p> <p>However, in instances where AFCA finds parties inappropriately seeking to add new issues, it should take action to dismiss or curtail such behaviour.</p>	<p>The Government supports AFCA acting on this recommendation and would encourage AFCA to create a clear framework for when a matter should or should not revert to internal dispute resolution (IDR).</p> <p>The Government has, like the reviewers, received reports of AFCA identifying new issues which firms have not had the opportunity to address via an IDR process.</p> <p>In the interests of procedural fairness, it is important that firms can consider issues via IDR first, and that new issues are not added inappropriately. The Government considers that enhancing understanding of AFCA's complaints process would provide clarity for all parties and support more timely and efficient resolution of complaints.</p>

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<p>2. In making its decisions, AFCA should consider what is 'fair in all the circumstances' having primary regard to the four factors identified in its Rules – legal principles, industry codes, good industry practice and previous decisions.</p>	<p>The Government supports AFCA acting on this recommendation, but emphasises that the characterisation of conduct as fair or unfair is evaluative, and therefore must be done by AFCA with close attention to the underpinning legal provisions.</p> <p>The Government recognises the importance of AFCA considering what is fair in all the circumstances, and notes that Financial Services Licensees and Credit Licensees are legally obliged to act 'efficiently, honestly and fairly'.</p>
<p>3. AFCA should not advocate for, nor act in a manner that otherwise advantages, one party such that the impartiality of the complaints resolution process is compromised.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>AFCA's impartiality is essential for all parties to maintain confidence in the complaints resolution process.</p> <p>Procedural fairness must apply equally to both parties.</p>
<p>4. AFCA should address poor conduct by paid advocates affecting the efficiency of the scheme, such as by amending its Rules to allow it to exclude certain paid advocates from involvement in the complaints process. The Government could also consider an amendment to AFCA's authorisation conditions to support such changes.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>The Government's intention is for AFCA's complaints process to be directly accessible by consumers. Therefore, representatives, particularly those who are paid, should play little to no role in the interactions between AFCA and the consumer.</p> <p>The Government will work with AFCA to consider whether an amendment to its authorisation conditions is required to address this recommendation.</p>

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<p>5. AFCA should:</p> <ul style="list-style-type: none"> – continue to publish data on its timeliness and start publishing data on the full range of complaints it resolves, including those that extend beyond 12 months – better manage expectations around timeframes in its communications with parties to a complaint – focus on improving the timeliness of complaints that remain unresolved beyond 12 months. 	<p>The Government supports AFCA acting on this recommendation.</p> <p>The Government considers that AFCA publishing data on the time taken to resolve the full range of complaints will better manage the expectations of all parties and provide confidence that the process is operating effectively and efficiently.</p>
<p>6. AFCA should exclude complaints from sophisticated or professional investors, unless there is evidence that they have been incorrectly classified.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>The Government agrees that complaints from sophisticated and professional investors should be excluded, as these investors are not included in the retail consumer protection framework. A person must meet the asset or income threshold and actively opt in to the sophisticated investor classification by requesting a certificate from a qualified accountant every two years.</p> <p>Sophisticated investors would be aware that in doing so they opt out of the accessible dispute resolution framework provided by AFCA, and should resolve their disputes via the conventional route of the courts.</p>
<p>7. AFCA’s funding model should not disincentivise financial firms from defending complaints that they consider do not have merit and should better take into account the circumstances of small financial firms.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>The Government supports reforms to AFCA’s funding model that reduce the burden on small financial firms and removes incentives for financial firms to settle claims that have no, little or questionable merit.</p>
<p>8. AFCA should improve the transparency of its fees for financial firms and how the fees are being used to support AFCA’s activities.</p>	<p>The Government supports AFCA acting on this recommendation.</p>

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	<p>The Government considers greater transparency by AFCA about how its fees are used will provide financial firms with greater confidence that AFCA is operating effectively and efficiently.</p>
<p>9. AFCA determinations should continue to not be subject to merits review, but the substance of a determination should be reviewable with respect to its application to future cases. To this end, AFCA should enhance the visibility, accessibility and independence of its existing forward-looking review mechanism.</p> <p>AFCA should amend its Operational Guidelines to remove the requirement for an applicant to demonstrate an error of law to access the formal forward-looking review mechanism. Applicants should be able to access it if they are able to demonstrate that the AFCA determination adopts an approach that could have a significant impact across a class of consumers, businesses or transactions.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>At this time, the Government agrees that determinations should not be subject to merits review, to support timely resolution of complaints.</p> <p>The Government also supports changes to AFCA’s Operational Guidelines to provide applicants with more flexibility to access the existing forward looking review mechanism.</p> <p>Going forward, an independent review of a sample of AFCA cases (including cases that have been referred to the forward-looking review mechanism, and the Independent Assessor) should be conducted to assess whether a merits review mechanism would be appropriate. This review will be conducted as soon as practicable after 18 months.</p>
<p>10. Complaints about AFCA’s service should remain the responsibility of the Independent Assessor. AFCA should improve the Independent Assessor’s visibility as part of its communications with parties to a complaint.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>The Government notes that improving awareness of the Independent Assessor could enhance the effectiveness of AFCA’s existing complaints resolution processes. However, complaints made to the Independent Assessor should be included in the scope of the independent review noted above.</p>
<p>11. AFCA should ensure thorough consultation is undertaken on each Approach Document prior to final publication.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>The Government considers greater consultation by AFCA on Approach Documents will strengthen AFCA’s complaints handling process by providing all parties with an opportunity to identify any</p>

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	issues in relation to AFCA's approaches to handling of complaints.
<p>12. Where a systemic issue has been referred to ASIC or another regulator, AFCA should cease its investigation of the systemic issue. ASIC and other regulators should advise AFCA of the outcomes of the referrals they receive. However, AFCA should continue to resolve any relevant individual complaints.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>The Government agrees that there should be greater clarity between the roles and responsibilities of regulators and AFCA in investigating systemic issues to avoid duplication</p>
<p>13. AFCA should be more transparent in its public reporting of systemic issues, including on a de-identified basis as appropriate. This would encompass factors such as the industry to which the systemic issues relate, the nature of the complaints, the number of affected consumers, total value of remediation and reporting to the regulators.</p>	<p>The Government supports AFCA acting on this recommendation.</p> <p>The Government considers greater transparency would promote more timely identification and remediation of systemic issues by financial firms and provide consumers with faster redress.</p>
<p>14. The <i>National Consumer Credit Protection Act 2009</i> should be amended to no longer require authorised credit representatives to be members of AFCA.</p>	<p>The Government agrees to this recommendation.</p> <p>The Government notes that the requirement for authorised credit representatives to be members of AFCA does not enhance consumer protection or access to redress as the obligation to pay compensation awarded by AFCA remains the responsibility of credit licensees.</p>