

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Inquiry into the Financial Accountability Regime Bill 2022 [Provisions], Financial Sector Reform Bill 2022 [Provisions], Financial Services Compensation Scheme of Last Resort Levy Bill 2022 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 [Provisions]

2022 - 2023

Division: Financial System Division
Topic: AFCA Oversight and CSLR
Reference: Written
Senator: Andrew Bragg

Question:

- a) What level of ongoing oversight and accountability of Australian Financial Complaint Authority's (AFCA's) operations is currently being undertaken?
- b) How often, in what form, and to whom is this reported?
- c) Are these reports publicly available?
- d) How will ongoing oversight of AFCA's operations change following the proposed introduction of a Compensation Scheme of Last Resort (CSLR)?

Answer:

a)

The Australian Financial Complaints Authority (AFCA) scheme is subject to regulatory oversight by the Australian Securities and Investments Commission (ASIC) in accordance with Chapter 7 of the *Corporations Act 2001*.

ASIC is responsible for ensuring AFCA operates in accordance with relevant legislation and conditions prescribed within the *AFCA Scheme Authorisation 2018*. ASIC has the ability to issue directions to ensure AFCA's compliance with legislation and authorisation conditions. The Minister has the ability to vary or revoke the *AFCA Scheme Authorisation 2018*, including by varying or revoking conditions relating to the authorisation.

Additionally, as part of its oversight of the AFCA scheme, ASIC is also responsible for approving material changes to the AFCA scheme rules, which underpin the operation of the AFCA scheme.

In accordance with the mandatory requirements prescribed in Chapter 7 of the *Corporations Act 2001*, the AFCA scheme is subject to independent assessment of its complaints handling service. AFCA has an Independent Assessor function which is available to receive complaints from any party to a complaint, including financial firms, who are dissatisfied about AFCA's complaints service. The Independent Assessor function supplements AFCA's complaints and feedback process, which deals with complaints about AFCA's service. In accordance with its terms of reference, the Independent Assessor does not have power to re-open a complaint submitted to AFCA or to consider the merits of a complaint or the

substantive outcome of a complaint. However, where they find that AFCA has not provided an appropriate standard of complaints handling services, they must make a recommendation to AFCA about the action that AFCA should take, including providing compensation if an unusual degree of distress or inconvenience has occurred.

In accordance with the mandatory requirements prescribed in Chapter 7 of the *Corporations Act 2001*, AFCA must also commission independent reviews of the AFCA scheme's operations and procedures. An independent review of the AFCA scheme was undertaken in 2021, however this was in accordance with statutory requirements, and was not AFCA commissioned.

b)

In accordance with Chapter 7 of the *Corporations Act 2001*, AFCA is required to report particular matters to the Australian Prudential Regulatory Authority (APRA), ASIC or the Commissioner of Taxation. These matters include:

- a serious contravention of any law that may have occurred;
- a contravention of the governing rules of a regulated superannuation fund or an approved deposit fund that may have occurred;
- a breach of the terms and conditions relating to an annuity policy, a life policy or a retirement savings account that may have occurred; or
- a party to the complaint that may have refused or failed to give effect to a determination made by AFCA.

Also in accordance with Chapter 7 of the *Corporations Act 2001*, AFCA is required to report systemic issues to APRA, ASIC or the Commissioner of Taxation that arise from its consideration of complaints under the AFCA scheme.

In addition, AFCA publishes information relating to its operations within a particular period, including complaints data, within its Annual Report. Complaint and outcome data is also maintained within a public database called the 'AFCA Datacube' which contains data in relation to each financial firm. AFCA also publishes determinations it makes in response to complaints. The AFCA Annual Reports, AFCA Datacube, and AFCA determinations are all available on the AFCA website.

In accordance with Chapter 7 of the *Corporations Act 2001*, an independent review of the AFCA scheme was undertaken with the final report tabled in Parliament on 24 November 2021. Further information on the review is provided in a separate response.

c)

The AFCA Annual Reports, AFCA Datacube and AFCA determinations are available on the AFCA website.

Reports on serious contraventions of law or systemic issues are not publicly available.

d)

The proposed compensation scheme of last resort (CSLR) Bills do not affect the existing regulatory oversight arrangements in place for the AFCA scheme. ASIC will continue to have regulatory oversight for the AFCA scheme, and its powers and responsibilities will remain unchanged.

The proposed CSLR Bills also would not affect AFCA's complaints handling processes which are contained within the AFCA scheme rules, AFCA operational guidelines, and AFCA Approach Documents.

The CSLR Bills include an information use, disclosure and request mechanisms designed to support the operator's administration of the CSLR. These mechanisms would facilitate sharing of relevant information, including from AFCA to the operator of the CSLR, which would support the operator's administration of the CSLR. The relevant provisions are contained in sections 1058A and 1069D of the *Financial Sector Reform Bill 2022*.

The authorised operator of the CSLR will be subject to regulatory oversight by ASIC, in a manner similar to the regulatory oversight arrangements in place for AFCA.

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2022 - 2023

Division: Financial System Division
Topic: AFCA Transparency
Reference: Written
Senator: Andrew Bragg

Question:

- a) Given that AFCA is a central part of the complaints mechanism in Australia's financial services system, how transparent are its processes and outcomes?
- b) How could transparency be improved to further rebuild and maintain consumer confidence in the financial sector?

Answer:

a)

The Australian Financial Complaints Authority (AFCA) operates in accordance with enabling legislation contained in Chapter 7 of the *Corporations Act 2001*, authorisation conditions contained in the *AFCA Scheme Authorisation 2018*, AFCA scheme rules, operational guidelines, approach documents and its company constitution. These materials are available on the AFCA website.

The AFCA scheme rules, operational guidelines, and approach documents outline the processes that AFCA follows in processing and handling complaints. AFCA publicly consults on changes to the AFCA scheme rules and on its approach documents that guide how it handles particular matters. Any material changes to the AFCA scheme must be approved by the Australian Securities and Investments Commission (ASIC)

Each determination made by AFCA in finalising complaints is published on the AFCA website. Determinations contain information about the financial firm against whom the complaint was made, the complaint itself, the matters that informed consideration of the complaint, including views and matters provided by the complainant and the financial firm, and the outcome as decided by the AFCA decision maker.

AFCA also publish complaint and outcome data, including outcome data, within its Annual Report, and maintains a public database called the 'AFCA Datacube' which contains complaint data in relation to each financial firm. The AFCA Datacube is available on the AFCA website.

The final report of the independent review of the AFCA scheme found that AFCA was operating effectively and made further recommendations to support enhancements to AFCA's transparency towards parties to a complaint, and improvements to decision making processes. Further information on these matters, including AFCA's ongoing work to implement related review recommendations, are outlined in response to Question B below.

AFCA has also committed to certain transparency actions as part of its role in supporting the operation of the compensation scheme of last resort (CSLR). In addition to continuing to publish all determinations on the AFCA website, AFCA will publish a new AFCA approach document to categorising complaints involving financial advice and financial product failure. The development of the approach document will be supported by a consultation process.

b)

An independent review of the AFCA scheme was undertaken with the final report tabled in Parliament on 24 November 2021. The review found that AFCA is performing well in a difficult operating environment and a changing regulatory landscape. The review made a total of 14 recommendations, with three directed towards supporting improved transparency.

The report can be accessed on the Treasury website: treasury.gov.au/publication/p2021-219154.

AFCA has established an AFCA review 'Recommendations Dashboard' which tracks its ongoing progress against implementing the AFCA review recommendations. The Recommendations Dashboard is available on the AFCA website: www.afca.org.au/news/afca-independent-review