

13 October 2022

Mr Alan Raine  
Committee Secretary  
Senate Standing Committee on Economics  
Parliament House  
PO Box 6100  
CANBERRA ACT 2600

Dear Mr Raine,

### Response to Questions on Notice

I refer to your email dated 11 October 2022 and Senator Andrew Bragg's request that the Australian Financial Complaints Authority (AFCA) provide a response to questions on notice by Thursday 13 October.

The following are AFCA's responses, in accordance with the order of questions in your email.

### Oversight of AFCA

#### **QON 1 - What level of ongoing oversight and accountability of Australian Financial Complaint Authority's (AFCA's) operations is currently being undertaken?**

By way of background, AFCA came into effect on 1 November 2018 and was authorised by the then Minister for Revenue and Financial Services, under the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018* (Cth) (the AFCA Act).

The AFCA Act sets out standards that AFCA must meet; it provides additional powers in relation to superannuation disputes and gives ASIC certain regulatory powers regarding oversight of AFCA, including the power to issue directions to AFCA. The [AFCA Rules](#) set out how legislative and policy requirements will be met and they are supported by the [AFCA Operational Guidelines](#).

Under the AFCA Act, AFCA is required to report to ASIC, APRA and the ATO about certain matters, and ASIC has power to issue certain directions to AFCA.

The AFCA Act also outlines the general considerations for an external dispute resolution scheme, which apply to AFCA as part of its authorisation. These include accessibility, independence, fairness, accountability, efficiency and effectiveness of the scheme.

The AFCA Board has oversight of AFCA's operations and responsibility for ensuring AFCA is meeting the requirements under the AFCA Act and Constitution.

Pursuant to the AFCA Act, the responsible Minister may vary or revoke AFCA's authorisation conditions.

### **Australian Securities and Investments Commission (ASIC) Oversight Role**

The Australian Securities and Investments Commission (ASIC) has the primary oversight role of AFCA, in accordance with Regulatory Guide 267 ([RG267](#)) – Oversight of the Australian Financial Complaints Authority. RG 267, outlines among other things, ASIC's role and powers, AFCA's compliance requirements and principles of operation (Accessibility, Independence, Fairness, Efficiency and Effectiveness and Accountability, also noted above). RG 267 also outlines reporting requirements, including requirements for material changes to the AFCA Scheme.

### **Independent Reviews**

As part of its accountability obligations, AFCA is required to undergo periodic Independent Reviews. In accordance with RG 267 AFCA must undergo an independent review at least every five years. AFCA is required to publish the final report of any independent review and publicly respond to each recommendation on an 'if not why not' basis.

In 2021, the then Minister for Financial Services commissioned an Independent Review of AFCA, which was conducted by Treasury. The Review was a very positive report card for AFCA. It found that AFCA is performing well in a difficult operating environment and a changing regulatory landscape. It reaffirmed AFCA's impartiality and its fairness jurisdiction, acknowledging that this approach underpins the body's "critical" role as an efficient alternative to a tribunal or court for consumers, small businesses, and financial firms.

AFCA's response to the Independent Review and program of work to address the Review recommendations are publicly available and can be found on AFCA's website. In the interest of transparency, AFCA regularly reports progress against the Independent Review Recommendations to both the Regulators, Treasury, Financial Firms and AFCA's Consumer Advisory Panel, in addition to the broader community through our [website](#).

### **Independent Assessor Role**

AFCA is accountable and committed to external scrutiny of its service standards. The AFCA Independent Assessor independently considers the service complaint and provides an independent assessment on the service issues raised.

The Independent Assessor works independently of AFCA's complaints processes and is appointed by the AFCA Board. The Independent Assessor reports quarterly to the AFCA Board.

Information about complaints received by the Independent Assessor is published every six months, with a detailed report also published in AFCA's Annual Review.

## Reporting obligations

### **QON 2 – How often, in what form, and to whom is this reported? Are these reports publicly available?**

AFCA has several reporting requirements, as per RG 267 and the AFCA Act. As noted above, AFCA reports the number and nature of service complaints and Independent Assessor complaints every 6 months and every 12 months. This information is provided to ASIC and the AFCA Board. The reports are also publicly available on AFCA's website.

In addition, AFCA produces complaint data every 6 months, through its [datacube](#), and every 12 months through the AFCA [Annual Review](#). Both these publications are available on AFCA's website. The AFCA Annual Review particularly, provides information relating to AFCA's timeliness and decision making, industry specific trends and insights, as well as systemic issues that AFCA reports to the Regulators, ASIC, APRA and the ATO.

AFCA publishes its [determinations](#) on its website. From 1 October 2019, AFCA has named financial firms in published determinations.

As noted above, the Treasury's Independent Review of AFCA has been published along with AFCA's ongoing response to recommendations on AFCA's [website](#).

### **QON 3 - How will ongoing oversight of AFCA's operations change following the proposed introduction of a Compensation Scheme of Last Resort (CSLR)**

AFCA's ongoing oversight is not expected to change following the proposed introduction of the CSLR. This is because it is proposed that the operator of the CSLR scheme will be a subsidiary of AFCA Limited, limited by guarantee and operated on a not-for-profit basis. The CSLR operator will be managed by its own board including its independent chair that will be appointed by the Minister and ASIC will have a role in ensuring the CSLR operator's compliance to its primary legislation and regulations.

AFCA will continue to be overseen by ASIC, in accordance with RG 267 and the AFCA Act.

AFCA will have a new framework for sharing information with the CSLR operator. The oversight requirements of the CSLR scheme are noted in the proposed Bills and accompanying regulation.

### **QON 4 - Given that AFCA is a central part of the complaints mechanism in Australia's financial services system, how transparent are its processes and outcomes?**

AFCA is committed to the transparency of its processes, decisions, approaches, and data. As noted above, AFCA's decisions, complaint data, complaint processes are published on AFCA's website and are publicly available. AFCA has also published a range of [Approach and Fact Sheet resources](#), which outline in detail AFCA's approach to how it deals with a wide range of complaint issues.

Financial firms are also able to access data relating to their complaints through AFCA's member hub and report dashboard, as well as AFCA's public [datacube](#). AFCA also engages members through live member forums and other regular events, all of which have been positively received.

**QON 5 - How could transparency be improved to further rebuild and maintain consumer confidence in the financial sector?**

AFCA has already made several enhancements to improve the transparency of the performance of the industry. As noted above we publish extensive amounts of data on our website about complaints volumes, types and trends. Furthermore, we publish our decisions to our [website](#) for industry, consumers and the broader community to see.

AFCA also publicly consults on any material changes to the AFCA scheme.

**QON 6 - Should AFCA be required to appear before Senate Estimates, given AFCA holds the Government's approval to operate the external dispute resolution scheme detailed in the Corporations Act 2001, and that AFCA's role is to be expanded following the establishment of a CSLR under which eligible consumers who have unpaid determinations for compensation from ACFA may receive payment of compensation?**

AFCA has appeared before Parliamentary Committees on several occasions since it started in November 2018. In the last few years AFCA has attended 9 Parliamentary Hearings and has provided evidence of its work and complaint insights.

AFCA is not a Government Department or regulatory agency. It is a not-for-profit public company limited by guarantee which operates an independent industry funded dispute resolution service. As such it is not publicly funded. We understand that attendance at Senate Estimates allow Senators to scrutinise and closely examine how the executive government is spending taxpayer's money and on the Government's future spending plans.

AFCA is always happy to attend any Parliamentary Committee hearing that it is invited to provide evidence about its work, as well as insights to improve industry practice and consumer literacy and awareness of financial products and services. We are uncertain as to whether Senate Estimates is the appropriate forum for this, given its purpose.

Please do not hesitate to contact us if you have any queries.

Yours sincerely



**David Locke**  
**Chief Ombudsman and Chief Executive Officer**  
**Australian Financial Complaints Authority**