



<b>Committee</b>	Senate Economics Legislation Committee
<b>Inquiry</b>	Inquiry into the Financial Accountability Regime Bill 2022, Financial Sector Reform Bill 2022, Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 and the Financial Services Compensation Scheme of Last Resort Levy Bill 2022.
<b>Question No.</b>	001
<b>Date</b>	11 October 2022
<b>Topic</b>	Oversight of the Australian Financial Complaints Authority
<b>Reference</b>	Written
<b>Committee member</b>	Senator Andrew Bragg

## Question

1. What level of ongoing oversight and accountability of Australian Financial Complaints Authority's (AFCA's) operations is currently being undertaken?
2. How often, in what form, and to whom is this reported?
3. Are these reports publicly available?
4. How will ongoing oversight of AFCA's operations change following the proposed introduction of a Compensation Scheme of Last Resort (CSLR)?
5. Given that AFCA is a central part of the complaints mechanism in Australia's financial services system, how transparent are its processes and outcomes?
6. How could transparency be improved to further rebuild and maintain consumer confidence in the financial sector?
7. 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 AFCA may receive payment of compensation?

## Answer

Some of these questions are matters for Treasury as the policy agency responsible for the AFCA and CSLR legislative frameworks. To assist we have provided factual responses where we can.

### Answer to Question 1:

Chapter 7.10A of the Corporations Act sets out the ongoing oversight of the AFCA Scheme which is shared between AFCA's Board and Executive, ASIC and the Minister:

- AFCA's Board and Executive have operational oversight and responsibility for ensuring AFCA meets the mandatory requirements (s1052). It is a mandatory requirement that the scheme have an independent chair and an equal number of directors with industry and consumer expertise (s1051(3)).
- ASIC has powers to issue regulatory requirements and directions in specific circumstances (e.g. adequacy of financing and compliance with mandatory

requirements). ASIC has power to approve material changes to the scheme, and material changes cannot be made without ASIC's approval.

- the Minister may vary or revoke AFCA's authorisation, including by imposing conditions on the scheme [s.1050(5)(b)].

Additional oversight mechanisms include the:

- commissioning and conduct of independent reviews [(s1051(3)(a)) (see further detail in Q 2-3 below) and
- the independent assessor role (s1051(2)(c)).

As per the Explanatory Memorandum to the AFCA legislation, AFCA is independent and responsible for its own internal processes and the management of complaints. ASIC's powers are not intended to be used in response to individual complaints or in relation to AFCA's day to day business. See also ASIC Regulatory Guide 267, *Oversight of the Australian Financial Complaints Authority*

### **Answer to Question 2:**

AFCA has reporting obligations to each of ASIC, APRA and ATO, including in respect of serious contraventions and systemic issues (s1052E).

AFCA publishes annual reports and complaints data as per their reporting requirements (see response to Question 3 for further detail).

In accordance with the AFCA legislation, the inaugural independent review of AFCA was announced by Senator the Hon Jane Hume on 19 February 2021 and conducted by Treasury. The final report<sup>1</sup> and Government response<sup>2</sup> was tabled in both Houses of Parliament on 24 November 2021 with Government supporting or agreeing to the 14 recommendations. The AFCA board is responsible for commissioning further ongoing independent reviews in consultation with ASIC (see RG 267).

### **Answer to Question 3:**

AFCA's annual reports are public: see <https://www.afca.org.au/about-afca/annual-review>. These include details of the number, nature and distribution of complaints received and number of referrals made to the regulators.

AFCA also maintains and publishes the AFCA Datacube, which is an open and accessible visual comparative report about the consumer and small business complaints that it receives. The Datacube includes information about financial firms that received four or more complaints during a relevant time period. It enables comparisons between identified firms based on the number of complaints AFCA received about each firm, their business size, and statistics about how they handled and resolved complaints: see <https://data.afca.org.au/>.

The Independent Review final report and (non-confidential) submissions are publicly available: <https://treasury.gov.au/review/review-australian-financial-complaints-authority>.

### **Answer to Question 4:**

The CSLR Bills make no direct changes to the oversight arrangements for AFCA nor do the CSLR Bills change the way that AFCA resolves individual consumer and small business complaints under the AFCA Rules. For completeness, under the Bills the operator of the

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<sup>1</sup> <https://treasury.gov.au/review/review-australian-financial-complaints-authority>

<sup>2</sup> <https://treasury.gov.au/publication/p2021-219154-gr>

CSLR is also unable to consider the merits or facts of a consumer's dispute that has been subject to an AFCA determination (See Explanatory Memorandum at s2.28, p.69).

AFCA will have a new framework for sharing information with the operator of the CSLR – CSLR Co (see Explanatory Memorandum at 2.84-85, p. 78).

ASIC is given oversight powers over CSLR under the Bills (similar to what it has in relation to AFCA) see Explanatory Memorandum at 2.102 – 2.107, p. 80-81).

**Answer to Question 5:**

AFCA publishes:

- the AFCA Rules, Constitution and Engagement Charter;
- determinations it issues, naming the financial firms involved;
- over 30 Approach documents (which describe how AFCA reaches decisions about key issues in the complaints they deal with) and detailed operational guidelines to the Rules;
- complaints data in its Annual Reporting and the Datacube. See response to questions 1-4 above and
- its response to the recent Independent Review of the scheme.

AFCA also publicly consults on material changes to the Scheme.

**Answer to Question 6:**

The recent Independent Review made recommendations about enhancing AFCA's transparency. AFCA has undertaken to make some improvements. <https://www.afca.org.au/news/afca-independent-review>. This included recommendations relating to better communications around timeframes (rec 5), improving transparency of fees and how they are used (rec 8), and being more transparent in its public reporting of systemic issues (rec 13).

**Answer to Question 7**

This is not a matter for ASIC.