



ASIC
Australian Securities &
Investments Commission

**Independent Review of the
Australian Financial
Complaints Authority (AFCA)
Submission by the Australian
Securities and Investments
Commission**

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Contents

Overview	3
External dispute resolution in the Australian financial system.....	3
ASIC’s oversight role	4
A ASIC’s submission	7
Interaction between IDR and EDR	7
Delivering against statutory objectives	8
Looking to the future	15
Key terms	18

Overview

- 1 ASIC welcomes the opportunity to make a submission to the inaugural independent review of the Australian Financial Complaints Authority (AFCA).

External dispute resolution in the Australian financial system

- 2 ASIC plays an important role in relation to the oversight and setting of external dispute resolution (EDR) standards in the financial system. We have done so since 1999.

- 3 Since that time, the financial system EDR framework has evolved. There were multiple (i.e. up to as many as seven) sector-specific schemes, followed by some natural rationalisation. Eventually, after the conclusion of the [Review into dispute resolution and complaints framework](#) (Ramsay Review), the Australian Government established a single statutory-based scheme: AFCA.

- 4 ASIC is a long-standing proponent of the benefits of a single scheme. In our view, the COVID-19 pandemic has demonstrated the significant value of a single scheme that can effectively track complaints and emerging trends across the entire system.

- 5 The existence and effective operation of AFCA is an essential part of the broader financial regulatory system. AFCA helps consumers, small businesses and financial firms to resolve individual complaints in a timely, fair and effective way. It also helps lift industry standards and improve the transparency of firm performance and consumer outcomes.

- 6 Data from AFCA shows that in its first two years of operation (1 November 2018 to 31 October 2020), AFCA:

- (a) received more 153,000 complaints;
- (b) awarded \$477 million in compensation or refunds; and
- (c) saw more than \$202 million refunded to over 3.9 million consumers and small businesses following direct involvement from AFCA through its systemic issues work.

Note: See AFCA, [Two year report: 1 November 2018 – 31 October 2020](#), March 2021, p. 4.

- 7 AFCA therefore plays a critical economic role, returning millions of dollars in compensation to consumers and small businesses. This role is particularly important in uncertain economic times and when natural disasters strike.

ASIC's oversight role

8 The *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018* (AFCA Act) established the AFCA scheme. The AFCA Act required the scheme to have Ministerial authorisation and imposed conditions on the scheme. It also established AFCA's independent governance framework and gave ASIC powers to issue regulatory requirements, give directions and approve material changes to the scheme.

9 ASIC's guidance in [Regulatory Guide 267](#) *Oversight of the Australian Financial Complaints Authority* (RG 267) sets out how we administer these powers.

10 Since commencement, AFCA's jurisdiction has been amended by way of Ministerial authorisation conditions and ASIC legislative instruments. These amendments:

- (a) established a legacy jurisdiction for AFCA, to enable the scheme to accept historical complaints back to 1 January 2008;
- (b) gave effect to the Australian Government's COVID-19 economic response in relation to small-to-medium enterprise lending; and
- (c) closed a gap in AFCA's jurisdiction, which was identified in a judgment in the New South Wales Supreme Court in the matter of *D H Flinders Pty Ltd v Australian Financial Complaints Authority Limited* [2020] NSWSC 1690.

Note: See AFCA Scheme Authorisation 2018, AFCA Scheme (Additional Condition) Amendment Authorisation 2019, AFCA Scheme Authorisation (Additional Condition) Amendment 2020, [ASIC Corporations \(AFCA Scheme Regulatory Requirement\) Instrument 2020/0433](#) and [ASIC Corporations \(AFCA Regulatory Requirement\) Instrument 2021/0002](#).

11 ASIC has also approved material changes to the AFCA scheme to:

- (a) enable the scheme to name firms in published decisions; and
- (b) extend timeframes during the COVID-19 pandemic.

12 ASIC has worked collaboratively with AFCA and Treasury to efficiently respond to these issues. Our view is that the ASIC powers provide an appropriate balance between transparency and the ability to act quickly where the need arises.

Complaints to ASIC

13 AFCA is independent of ASIC and is responsible for its own internal processes and the management of complaints. While ASIC has no role in individual complaints handling and does not intervene in the decision-making processes of AFCA, we do receive complaints about the scheme.

- 14 For the period from 1 November 2018 to 28 February 2021, ASIC received 153 complaints about AFCA.

Table 1: Complaints to ASIC about AFCA

Financial year	Number
2018–19 (from 1 November 2018)	40
Note: These figures include complaints AFCA dealt with under the terms of reference and/or rules of the predecessor EDR schemes (the Credit and Investments Ombudsman and Financial Ombudsman Service).	
2019–20	61
2020–21 (to 28 February 2021)	52
Total	153

Source: ASIC.

- 15 Of the 153 complaints received, the majority (142) were from consumers. We received 10 complaints from industry members and 1 anonymous complaint. The top five issues raised in these complaints to ASIC were about:
- concerns about the decision AFCA made in an individual case;
 - impartiality or bias;
 - timeliness;
 - jurisdiction; and
 - complaint communication.
- 16 As noted in paragraph 13, ASIC does not review or intervene in AFCA’s decision-making processes or the outcomes of individual complaints. ASIC assesses all the complaints we receive and when they relate to AFCA’s complaints handling, we will refer the complainant to AFCA’s independent assessor to consider the issues raised (if they have not already been considered in that forum). Intelligence we receive from these complaints can also inform our broader understanding of how AFCA is performing.
- 17 From time to time, we also receive direct feedback about AFCA from financial firms and consumer groups during our stakeholder engagement. Wherever possible, we invite stakeholders to provide specific examples of their concerns. This information informs our broader understanding of scheme operations and helps us to identify any new or emerging issues. It may also prompt further discussions with AFCA—and, where relevant, with Treasury—to better understand the issues involved.

Systemic issues and serious contraventions

- 18 Systemic issues reporting has been a longstanding feature of the financial services EDR framework. The systemic issues role of AFCA, relative to that of predecessor schemes, was enhanced by its explicit extension to complaints relating to superannuation.
- 19 In accordance with legislative requirements, AFCA reported 92 systemic issues to ASIC in 2019–20. AFCA also reported possible serious contraventions and shared information with ASIC under applicable statutory requirements and provisions of the Rules of Complaint Resolution Scheme (AFCA Rules).
- 20 Consumer complaints to AFCA are a lagging indicator. In many cases, matters reported by AFCA or its predecessor schemes to ASIC as systemic issues or potential serious contraventions involve financial firms that may already have come to ASIC’s regulatory attention. A combination of initiatives aimed at systemic focus and review are underway, including:
- (a) the inaugural independent review of AFCA;
 - (b) AFCA’s own initiatives to review the systemic issues role;
 - (c) updated breach reporting requirements in Schedule 11 of the [Financial Sector Reform \(Hayne Royal Commission Response\) Act 2020](#);
 - (d) the forthcoming commencement of internal dispute resolution (IDR) reforms, which will require firms to take a more systemic focus to complaints; and
 - (e) ASIC’s current consultation on remediation guidance.
- 21 These initiatives will be supplemented by the implementation of the IDR data reporting framework, legislated in the AFCA Act, to enhance transparency about IDR activity and performance across the finance sector. Together, they present an opportunity to take a whole of framework approach to the identification, resolution and reporting of systemic issues and will help ensure the framework continues to operate effectively.

Note: See [Media Release \(20-327MR\)](#) *ASIC seeks further feedback on internal dispute resolution data reporting requirements* (16 December 2020).

A ASIC's submission

Key points

This submission addresses the questions in the independent review's terms of reference, with a focus on the challenges and opportunities for AFCA as it moves into the next phase of its evolution. It covers:

- the interaction between the IDR and EDR framework (see paragraphs 22–25);
- how AFCA is delivering against the statutory objectives (see paragraphs 26–68); and
- scheme responsiveness to new and emerging issues (see paragraphs 69–81).

Interaction between IDR and EDR

- 22 The dispute resolution framework for Australia's financial system comprises:
- (a) IDR—where a firm has the first opportunity to resolve complaints with their customers; and
 - (b) a single EDR scheme—this is AFCA, which deals with escalated complaints unresolved at IDR.
- 23 The overwhelming majority of consumer complaints are resolved by firms themselves at IDR. Since the passage of the AFCA Act, ASIC has completed a significant body of work to update financial firm IDR standards and requirements as set out in [Regulatory Guide 271](#) *Internal dispute resolution* (RG 271). These updated standards and requirements come into effect on 5 October 2021.
- 24 AFCA's role and insights into firms' IDR performance also contributes to ASIC's regulatory work. This work includes six IDR deep dives at large financial firms, as part of ASIC's supervisory program, our updates to IDR policy settings and our review of remediation guidance.
- Note: ASIC's supervisory program is also known as the close and continuous monitoring program.
- 25 ASIC is currently consulting on the new IDR data collection and reporting framework, which will complete the implementation of the reforms introduced by the AFCA Act: see [20-327MR](#).

Delivering against statutory objectives

- 26 The statutory architecture for the AFCA scheme is built on longstanding EDR principles and practice. These principles are expressed in the legislative design (organisational, operator and compliance requirements) and specifically referenced as the general considerations for an EDR scheme in s1051A of the *Corporations Act 2001* (Corporations Act). These principles are:
- (a) accessibility;
 - (b) independence;
 - (c) fairness;
 - (d) efficiency and effectiveness; and
 - (e) accountability.
- 27 These principles are made operational in the AFCA Rules and practice. This review presents an opportunity to revisit the operational effectiveness of key aspects of AFCA’s operations against these principles.

Efficiency and effectiveness

- 28 As an alternative to the courts, EDR processes and approaches to complaints resolution should be designed to be easy to use and provide timely and fair complaint outcomes. They should also properly reflect due acknowledgement of the power and information asymmetries common in the relationship between financial firms and consumers.

Finality of decisions and review mechanism

- 29 The binding nature of decisions on financial firms provides finality to the complaints process. This is an essential part of the framework and gives predictability and closure to both firms and complainants. While complainants retain their rights of private action, in practice, complainants rarely pursue a complaint to the courts.
- 30 AFCA’s data shows that a significant proportion of complaints made to the scheme are resolved at AFCA’s registration and referral stage, or relatively early in AFCA’s processes: see Table 2. A minority of complaints progress to decision.

Table 2: State at which AFCA complaints are closed—1 November 2018 and 31 October 2020

Resolution stage	Banking and finance	General insurance	Super-annuation	Investments and advice	Life insurance	Small business
Registration	44,611	17,257	4,453	1,987	969	2,182
Case management	32,801	9,931	5,176	3,668	1,401	4,570

Resolution stage	Banking and finance	General insurance	Super-annuation	Investments and advice	Life insurance	Small business
Preliminary assessment	4,482	3,860	1,301	608	458	691
Decision	3,384	3,877	767	884	469	775
Unresolved at end of period	4,382	1,550	2,044	1,347	226	692
Total complaints received	89,660	36,475	13,741	8,494	3,523	8,910

Source: AFCA, [Two year report: 1 November 2018 – 31 October 2020](#), March 2021, pp. 8–18.

- 31 Complaints that are not resolved at the registration and referral stage escalate into AFCA’s case management process. The majority are resolved at the next escalation step, with a smaller minority progressing to the decision stage for resolution. These internal escalation points typically engage more senior AFCA decision makers, who may consider new or additional information or arguments from the parties and who take an independent view of the case.
- 32 AFCA’s own analysis states that, of complaints that are resolved by decision, only 9% overturned a preliminary assessment provided to the parties. Of these:
- (a) 4% were overturned due to the parties providing new information after the preliminary assessment was made; and
 - (b) 5% were overturned as a result of a different interpretation of the law or different view on the facts.
- Note: See AFCA, [AFCA independent review: AFCA submission](#), March 2021, paragraph 2.40.
- 33 The terms of reference for this review invite stakeholders to consider whether there is a need for AFCA to have an internal mechanism where the substance of its decisions can be reviewed.
- 34 ASIC has no direct evidence to suggest the benefit of such a review mechanism would outweigh the costs. These costs would include both direct financial costs to the financial firms that fund the scheme, and costs to all parties caused by the inevitable delay to the timely and efficient resolution of consumer and small business complaints.
- 35 As with the courts, there will inevitably be cases where a party is dissatisfied with a final AFCA decision. As noted above, complaints made to ASIC reflect some of this dissatisfaction. Consumers retain their rights of private

action and financial firms do, from time to time, challenge aspects of an AFCA decision or jurisdiction in the courts.

- 36 The terms of reference for this review also invited stakeholder feedback about the scope, remit and operation of AFCA’s independent assessor role and function. In a new scheme that has grown significantly—both in terms of staff and volume of complaints—in a short period of time, we consider the independent assessor to be critical to ensuring the ongoing effectiveness and efficiency of the scheme. Responding to service complaints from consumers and financial firm members of the scheme, the independent assessor is specifically tasked with identifying process and service design issues to improve the operational performance and user experience at the scheme.

Unpaid determinations

- 37 Another test of scheme efficiency and effectiveness—and the confidence of consumers of financial products and services—is whether an AFCA determination is implemented, and any compensation awarded to a consumer or small business is paid.

- 38 A key feature of the Ramsay Review’s recommended single EDR scheme related to enforceability:

Enforceability: firms will be required to comply with its [the single scheme’s] determinations as a condition of membership and it will report firms that fail to comply to the appropriate regulator. The body will have the power to expel firms that fail to comply.

Note: See Ramsay Review, [Final report: Review of the financial system external dispute resolution and complaints framework](#), April 2017, p. 14.

- 39 In the [Final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), Commissioner Hayne found that the absence of a conduct-related obligation on AFCA member firms was an important omission and potential weakness of the EDR framework: see Recommendation 4.11.

- 40 In response, the Australian Government made the Treasury Laws Amendment (AFCA Cooperation) Regulations 2019 (AFCA Cooperation Regulations). These regulations require AFCA member firms to take reasonable steps to:

- (a) cooperate with AFCA to resolve complaints;
- (b) give reasonable assistance to AFCA and to identify, locate and provide necessary documents and information; and
- (c) give effect to any determination made by AFCA.

Note: See [Media Release \(21-075MR\)](#) ASIC commences proceedings against credit licensee over failure to comply with AFCA determination (16 April 2021).

- 41 Penalties apply for failure to comply with the AFCA Cooperation Regulations.
- 42 The prospect of expulsion is intended to promote compliance and cooperation with AFCA. A mandatory member firm that is expelled from AFCA will be in breach of either their Australian financial services (AFS) licence or their Australian credit licence. They could also be the subject of ASIC action under the AFCA Cooperation Regulations. There are other reasons why AFCA members may be expelled, including for non-payment of membership and/or complaint fees. From time to time, AFCA publishes the details of firms expelled for non-payment of AFCA levies and fees.

Note: See [AFCA publishes details of non-compliant members](#) on the AFCA website.

- 43 These steps will not help when the member firm is insolvent or effectively unable to pay (e.g. including where any professional indemnity (PI) insurance is exhausted or does not respond); and the determination will remain unpaid.
- 44 ASIC considers that a compensation scheme of last resort (CSLR) is needed in these cases, and we have long supported the introduction of a broad-based CSLR that addresses uncompensated losses across the AFCA jurisdiction.

Note: See ASIC, [Review of the financial system external dispute resolution framework: ASIC's response to supplementary issues paper](#), July 2017. We have publicly commented on the inherent limitations of PI insurance as a compensation mechanism. We have also raised concerns about uncompensated consumer losses in Australian Government inquiries and reviews, including the [2014 Financial System Inquiry](#), the [Ramsay Review](#) and the [Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#) (Financial Services Royal Commission).

- 45 In its response to the Financial Services Royal Commission, the Australian Government announced its intention to establish a CSLR. ASIC welcomes this commitment, which will close a gap that compromises the effectiveness of the scheme in providing access to justice and redress to consumers and small businesses. In the meantime, and since April 2020, open complaints involving insolvent firms have been put on pause at AFCA: see AFCA, [AFCA pauses complaints against insolvent financial firms](#), 14 April 2020.

Note: See Treasury, [Restoring trust in Australia's financial system: The Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), February 2019.

Sustainable funding

- 46 ASIC has no direct role in relation to AFCA's funding model. Prior to commencing operations in 2018, AFCA consulted on an interim funding model. That model retained aspects of the models of the predecessor schemes and the Australian Prudential Regulation Authority (APRA) levy for superannuation complaints. With the benefit of over two years of

operational experience and a robust evidence base of complaints experience and cost, AFCA is commencing a review of its funding model.

- 47 In its first two years of operations, AFCA has seen significant increases in complaints volumes with drivers including the Financial Services Royal Commission and the COVID-19 pandemic. AFCA also reported that scam-related complaints jumped 23% in the second half of 2020, while other classes of complaint (such as home contents insurance, motor vehicle insurance and financial hardship complaints) have seen recent declines.

Note: See AFCA, [A year on: 11,000 COVID-19 complaints, scams on the rise](#), media release, 30 March 2021.

- 48 The terms of reference for this review also invited stakeholder feedback about whether AFCA's funding and fee structures affect competition. ASIC has no evidence of anti-competitive effect arising directly from the AFCA case fee model. However, we are aware of other industry concerns about AFCA's fee structures, particularly as they relate to the conduct of third-party paid representatives. These representatives, in pursuit of favourable outcomes for their clients, may seek to leverage AFCA fee arrangements to drive firms toward more commercial settlements of what may be unmeritorious complaints.
- 49 ASIC has given guidance to industry on dealing with representatives as part of our updated IDR guidance in [RG 271](#). More generally, we note that firms can seek to manage some of the costs of EDR by improving their complaints handling at IDR. This was one of the objectives underpinning ASIC's updated standards and requirements in RG 271.

Accessibility

- 50 To be effective, dispute resolution processes must be easy to access and use. The accessibility principle applies from when a consumer first makes their complaint to the firm and continues to apply throughout the IDR and EDR processes.
- 51 Accessibility is built into the AFCA legislative architecture, ASIC policy settings, and the AFCA Rules and processes. AFCA (and the predecessor schemes) operate as alternatives to the courts. AFCA's role is to resolve consumer and small business complaints flexibly, efficiently and with a minimum of cost and formality.
- 52 Financial products and services, and the overarching regulatory and licensing frameworks, are inherently complex.
- 53 It is longstanding practice for AFCA (and the predecessor schemes) to help consumers and small businesses identify all relevant issues and parties to a complaint so that it can be resolved expeditiously. This is particularly

important for disadvantaged or vulnerable complainants, who may face specific barriers to making and progressing a complaint. This proactive approach also helps industry members by:

- (a) quickly and efficiently identifying relevant issues and documents;
- (b) reducing the number of times firms and complainants need to be contacted (potentially reducing the time taken to resolve complaints); and
- (c) minimising the risk of repeat or separate complaints being made (and therefore the cost to firms).

54 An appropriate focus on accessibility can also ensure that consumers receive consistent outcomes in similar complaints at AFCA, regardless of:

- (a) their differing levels of ability to present their case; and
- (b) whether they are represented or unrepresented in their complaint.

55 This broader role—to improve access to justice and, recognising the asymmetry in power between a financial firm and an individual consumer or small business, to provide support to consumers to enable them to present their case—has been a long-accepted part of the EDR framework. It was embedded in the design of even the earliest industry-based financial services dispute resolution schemes. With appropriate procedures and division of roles, it is also compatible with impartial decision making in individual complaints.

Note: See the Ramsay Review, *Final report: Review of the financial system external dispute resolution and complaints framework*, April 2017, p. 28. See also Productivity Commission, *Access to justice arrangements: Inquiry report*, September 2014, p. 314.

56 Subject to the outcomes of this review, we may review our guidance in [RG 267](#) to more clearly communicate our expectations of AFCA about accessibility.

Fairness

57 Requirements relating to procedural fairness, how AFCA approaches and manages individual complaints, and substantive fairness in outcomes are reflected in the AFCA legislative and policy framework and the AFCA Rules and processes. They apply in both AFCA's superannuation and non-superannuation jurisdictions.

58 The decision-making test applied by AFCA in its general jurisdiction—which is subject to consideration of fairness in all the circumstances—is consistent with the test applied by the predecessor schemes. This test has been in place for more than 20 years.

- 59 From time to time, stakeholders raise concerns about AFCA’s fairness approach in individual cases. When this occurs, we encourage stakeholders to raise their concerns with AFCA directly, particularly where they may raise broader industry issues or have consequences beyond the resolution of a specific complaint. We have no evidence that this feedback process is not working effectively.
- 60 AFCA has commenced a significant body of work focusing on fairness in both process and outcomes. This task is supported by case file reviews, documented approaches to common complaint types, and rounds of stakeholder engagement in early 2020.
- 61 AFCA should continue to lead this work program. It should publicly communicate any identified issues and outcomes to member firms and consumer stakeholders as part of its commitment to continuous improvement and transparency.

Accountability

- 62 Stakeholder confidence in the independent and effective operation of AFCA is supported by a robust and transparent accountability and governance framework. This framework comprises Ministerial authorisation and ongoing AFCA board and ASIC oversight: see [RG 267](#) at RG 267.23.
- 63 Under this framework, the AFCA board is responsible for oversight of the day-to-day operations of the scheme, to ensure it complies with the legislative requirements, good corporate governance and ASIC policy settings in RG 267. The board is also responsible for appointing AFCA decision makers, the independent assessor and meeting reporting requirements.
- 64 The AFCA Act gave ASIC specific powers in relation to the scheme. These include powers to issue regulatory requirements, directions and approve material changes to the scheme. It also imposed requirements on the scheme to refer (or report) certain matters to one or more of ASIC, the Australian Prudential Regulation Authority (APRA) and the Commissioner of Taxation. These include referring:
- (a) contraventions and breaches (s1052E(1) and (2));
 - (b) settled complaints (s1052E(3)); and
 - (c) systemic issues (s1052E(4)).
- 65 These accountability requirements are supported by the independent assessor role and function, and the mandatory requirement that the scheme commission periodic independent reviews of scheme operations and procedures: see s1051(3)(a).

- 66 Following this inaugural, post commencement review, it is a requirement that AFCA commission a comprehensive independent review at least every five years. We consider independent reviews to be a key accountability mechanism to ensure both AFCA's continued effective operation and to maintain stakeholder confidence in the scheme. ASIC's guidance in [RG 267](#) also anticipates the benefit of more targeted independent reviews, within the five-year period, to consider a specific issue or issues as necessary.
- 67 Supporting the formal accountability framework are a range of valuable transparency measures relating to scheme processes, decision making, and complaint outcomes. These include AFCA's:
- (a) data cube, which publishes data about complaints received and outcomes achieved, updated every six months;
 - (b) publication of its determinations, now enhanced by changes to the AFCA Rules—following public consultation and ASIC approval in August 2019—to enable the scheme to name firms in determinations;
- Note: See [Media Release \(19-224MR\)](#) *ASIC approves AFCA rule change enabling the naming of firms* (26 August 2019).
- (c) published approach documents;
 - (d) public consultation on AFCA's fairness jurisdiction; and
 - (e) continuing program of direct stakeholder engagement with member firms and consumer groups.
- 68 These transparency measures, supported by the work of the independent assessor in identifying process gaps and opportunities for improvement, are key to promoting stakeholder understanding and confidence in the scheme. They also provide opportunities for stakeholders to effectively contest or query AFCA's approach as it is being developed or amended.

Looking to the future

- 69 In just over two years of operations, AFCA has grown significantly and stepped up operations to establish itself as the new, single financial services EDR scheme and respond to the Financial Services Royal Commission and the COVID-19 pandemic. ASIC views the establishment and growth of AFCA in this timeframe, and during a pandemic, to be an important and enduring achievement.
- 70 This review presents an opportunity to consider whether there are gaps in the legislative architecture and the AFCA Rules and to ensure that scheme remains fit for purpose and capable of flexibly responding to emerging issues.

Jurisdiction

71 We have no evidence that the current monetary limits are not fit for purpose. However, it may be appropriate for this review to consider setting a transitional timeframe to harmonise and align the monetary limits and compensation caps for different types of complaint. The review could also consider whether AFCA's current caps on awarding non-financial loss remain appropriate.

72 We also note that the [Australian Small Business and Family Enterprise Ombudsman inquiry into small business insurance](#) recommended extending AFCA's jurisdiction over small business general insurance products. The small business insurance product definitions and exclusions in the AFCA Rules are longstanding definitions, and any changed approach would require broad public consultation.

Third-party paid representatives

73 We consider that AFCA's ability to respond to new and emerging issues is key to the scheme's continuing effectiveness. The challenges currently posed by third-party paid representatives provide a useful case study of a difficult issue with material effects on firms, consumers, AFCA, the Australian Government and regulators.

74 It is a design feature of the dispute resolution framework that consumers should be able to make a complaint to a firm at IDR and, if unresolved, to escalate their complaint to AFCA. There should be no cost and no need for specialist assistance or representation to escalate to AFCA.

75 It has always been open to consumers to use a representative, paid or unpaid, to help them make a complaint at either IDR or AFCA. It is not, however, necessary to do so.

76 Despite this, a growing industry has emerged of third parties representing consumers at both IDR and AFCA for a fee. These representatives include:

- (a) debt management firms offering services such as 'credit repair', which involves challenging credit default listings; and
- (b) insurance claims agents, intermediaries who help a consumer with an insurance claim or complaint and take a percentage of any successful claim.

77 The activities of these firms can often lead to poor consumer outcomes. They may introduce unnecessary costs for consumers and firms. Firms responding to complaints lodged by third-party paid representatives may elect not to defend a request to remove a correctly listed credit default, which may have negative effects on the integrity of the credit reporting regime.

78 ASIC welcomes the Australian Government's initiatives to address harms in this area. These initiatives include:

- (a) [bringing debt management firms into the credit licensing regime](#), as part of a package of reforms announced in September 2020. Debt management firms must hold an Australian credit licence when they are paid to represent consumers in disputes with financial firms. The firms themselves will need to meet IDR and EDR obligations and be members of AFCA. This reform is intended to take effect from 1 April 2021;
- (b) requiring regulated debt agreement administrators to become members of AFCA from 1 January 2021 (see the [Bankruptcy \(Registered Debt Agreement Administrator Conditions\) Determination 2020](#)); and
- (c) legislative amendments to bring insurance claims intermediaries into the financial services' regulatory regime (see the [Financial Sector Reform \(Hayne Royal Commission Response\) Act 2020](#)).

79 These initiatives are supplemented by ASIC's guidance for financial firms in [RG 271](#). We have set out our expectations for how firms should deal with representatives at IDR, including when:

- (a) the firm reasonably believes that the representative is acting against the complainant's best interests;
- (b) the firm reasonably believes that the representative is acting in a deceptive or misleading manner with the complainant and/or the firm;
- (c) the firm reasonably believes that the representative is not authorised to represent the complainant; or
- (d) at the time the firm is dealing with the complaint, the representative has been excluded by AFCA from representing complainants in relation to any complaint lodged with AFCA.

Note: For more information, see [Handling complaints and paid representatives: ASIC provides financial firms with guidance](#) on the ASIC website.

80 The AFCA Rules also enable the scheme to address certain misconduct by third-party representatives.

Note: See AFCA Rule C2.2(g).

81 We consider that this review presents a timely opportunity to ensure that the AFCA Rules and processes efficiently, effectively and fairly consider complaints lodged by, and made about, third-party paid representatives. This will help future-proof the scheme and support it to flexibly respond to:

- (a) evidence of direct consumer harms; and
- (b) distorted costs and other impacts on firms introduced by the conduct of these representatives.

Key terms

Term	Meaning in this document
AFCA	Australian Financial Complaints Authority—AFCA is the operator of the AFCA scheme, which is the external dispute resolution scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
AFCA Act	<i>The Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018</i>
AFCA Rules	Rules of Complaint Resolution Scheme—A document setting out AFCA’s jurisdiction and procedures, to which financial firms are contractually bound
APRA	Australian Prudential Regulation Authority
ASIC’s supervisory program	ASIC’s enhanced onsite supervision program to review specific practices within the targeted regulated entities. Note: This is also known as the close and continuous monitoring program.
consumer or complainant	A person or small business eligible to make a complaint to AFCA. It includes, at a minimum: <ul style="list-style-type: none"> • an individual consumer or guarantor; • a superannuation fund member or third-party beneficiary eligible to make a complaint under s1053, or taken to be a member of a regulated superannuation fund or approved deposit fund, or a holder of a RSA, as provided for by s1053A; • a small business with less than 100 employees, including a primary production business (as defined in the <i>Income Tax Assessment Act 1997</i>).
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CSLR	Compensation scheme of last resort
EDR	External dispute resolution

Term	Meaning in this document
financial firm	<p>Firms covered by s1051(2)(a), which includes:</p> <ul style="list-style-type: none"> • AFS licensees; • unlicensed product issuers; • unlicensed secondary sellers; • credit licensees; • credit representatives; • exempt SPFEs; • regulated superannuation funds (other than self-managed superannuation funds); • approved deposit funds; • RSA providers; • annuity providers; • life policy funds; and • insurers. <p>This may also include financial firms that the AFCA board has accepted as eligible members to the scheme in accordance with its constitution</p>
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
IDR	Internal dispute resolution
independent assessor	A person appointed by the AFCA board to identify, address and report on issues affecting AFCA's complaints handling service or performance
independent review	A periodic review of scheme operations and performance
PI insurance	Professional indemnity insurance
Ramsay Review	Review of the financial system external dispute resolution and complaints framework
s1051A (for example)	A section of the Corporations Act (in this example numbered 1051A), unless otherwise specified
Terms of Reference	Terms of Reference for the Review of the Australian Financial Complaints Authority