

Attachment 1 – List of Independent Review Recommendations

Treasury’s independent review of AFCA concluded in November 2021 with the release of a final report (the Review Report). You can access the Review Report online here treasury.gov.au/publication/p2021-219154.

The Review Report makes 14 recommendations in total which are outlined in the table below.

Number	Review Report Recommendation
1	<p>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>
2	<p>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>
3	<p>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>
4	<p>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>
5	<p>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 communication with parties to a complaint ● focus on improving the timeliness of complaints that remain unresolved beyond 12 months.

Number	Review Report Recommendation
6	AFCA should exclude complaints from sophisticated or professional investors, unless there is evidence that they have been incorrectly or inappropriately classified.
7	AFCA's funding model should not disincentivise financial firms from defending complaints they consider do not have merit and should better take into account the circumstances of small financial firms.
8	AFCA should improve the transparency of its fees for financial firms and how the fees are being used to support AFCA's activities.
9	<p>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>
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.
11	AFCA should ensure consultation is undertaken on each Approach Document prior to final publication.
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.
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.
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.