24 November 2026

CS 66 consultation
Australian Securities and Investments Commission

Via Email only: rri.consultation@asic.gov.au

Dear Sir/Madam,

RE: CS 66 – Proposed update to ASIC's guidance on AFCA oversight

The Australian Collectors & Debt Buyers Association appreciates the opportunity to provide the attached Submission in response to ASIC's consultation CS 66, Proposed update to ASIC's guidance on AFCA oversight.

ACDBA supports updating Regulatory Guide 267. Our Submission seeks to preserve the safeguards supporting independent scrutiny of AFCA and to clarify how ASIC's oversight responds to recurring concerns about the scheme's operation. We also address the assessment of material changes and the need for funding and performance measures that demonstrate fair and efficient outcomes for complainants and financial firms.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely,



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Summary of recommendations

ACDBA recommends the following changes to draft RG 267 and ASIC's oversight arrangements.

1. Independent scrutiny

Retain ASIC's approval of reviewer selection, review scope and timetable in paragraph 267.106. Review arrangements should provide for consultation on the terms of reference and allow confidential or anonymous submissions directly to the reviewer. Preserve Independent Assessor safeguards and strengthen Board appointments through published skills gaps, invitations for nominations and independent input.

2. Implementation and results

Retain the requirement in paragraph 267.107 to explain partial acceptance or non-adoption of recommendations. Set clear expectations for progress reporting, evidence of implementation and results assessed against stated baselines, with independent verification where appropriate. The 2027 review should test earlier reforms, the Forward-Looking Review Mechanism and decision quality.

3. Material changes

Amend paragraph 267.72 to address consultation and cross-refer to paragraphs 267.32–267.34. Explain how ASIC assesses the practical and cumulative effects of Approaches and Operational Guidelines, including their legal basis and application to earlier conduct. Preserve jurisdictional limits and ensure replacement guidance is available when the revised guide commences.

4. Recurring concerns

Explain how ASIC receives confidential reports and examines recurring concerns about jurisdiction and the application of the Rules. Paragraphs 267.21 and 267.27–267.34 should address corrective action, use of oversight powers where statutory conditions are met, and reporting of supervisory themes. Paragraph 267.105 should explain when an earlier targeted review may be warranted.

5. Jurisdiction

Clarify ASIC's expectations for jurisdictional limits and court exclusions in paragraphs 267.41–267.49 and 267.57–267.59. Distinguish protective steps permitted under Rule A.7.1(b) from action requiring consent under Rule A.7.2, including consideration of prejudice to both parties. Under paragraphs 267.82–267.83, address historical time limits, the applicable law and responsibility for the conduct in dispute.

6. Timeliness and information

Under paragraphs 267.69–267.71, specify expectations for published service standards and monitoring of jurisdictional assessments and urgent protective requests, with escalation before relevant deadlines or loss of rights. Under paragraphs 267.40 and 267.54–267.56, explain how ASIC assesses the effectiveness and timeliness of information about IDR, jurisdiction, continuing interest and hardship assistance.

7. Systemic inquiries

Set expectations for proportionate inquiry scope and a reasonable opportunity for firms to respond. Under paragraphs 267.137–267.138, explain how ASIC and AFCA identify overlap early and determine what additional information or remediation is necessary, taking account of work already completed and the lawful sharing of existing records.

8. Funding and fees

Under paragraph 267.96, specify reporting expectations for expenditure, material variances, cost allocation and the five-complaint allowance. Seek worked examples covering all charges and clear explanations of fee classification and correction. Require evidence of separate scams funding, including the allocation of shared expenditure and the treatment of government funding.

9. Paid representatives

Seek an independent assessment of whether charging paid representatives would improve outcomes, compared with better enforcement of existing Rules. The assessment should consider consumer outcomes, the risk of fees being passed on, and exemptions for financial counsellors, legal aid and community services. Preserve free direct access to AFCA.

10. Performance reporting

Retain quarterly reporting as the ordinary expectation in paragraph 267.149. Extend paragraph 267.49 to cover exclusion requests that are refused, with reasons and timing. Seek median and 90th-percentile determination times, open-case ageing, causes of delay and sector costs. Reporting should distinguish settlements from findings and explain responsibility for the conduct in dispute.

11. Appropriate offers

Examine whether the thresholds, delegations, referral arrangements and extent of file review allow Rule A.8.3(e) to support early resolution, with sufficient evidence and procedural fairness. Where complaints continue, compare subsequent remedies, time and costs. Distinguish AFCA's assessment of an offer from the complainant's decision to refuse it.

12. AI-assisted complaints

In paragraphs 267.69–267.71 and 267.150, explain how ASIC assesses AFCA's response to unsupported allegations, repetitive material and related proceedings. This should include verification of authorities, assistance and opportunities to correct material, and appropriate use of existing merits powers. Assess the effects on handling time, costs and consumer outcomes.

Introduction

The Australian Collectors & Debt Buyers Association (ACDBA) was established in 2009 for the benefit of companies who collect, buy and/or sell debt. Our members (refer Appendix 1) represent the majority of the collection market in Australia and include specialist debt purchasers and contingent collection agencies operating throughout Australia.

Members purchasing regulated consumer credit contracts generally hold Australian Credit Licences and are members of the Australian Financial Complaints Authority (AFCA). A debt purchaser acquires the creditor's rights and administers the account in its own right. In a contingent collection arrangement, ownership remains with the creditor and the agency acts on its behalf. Our members investigate disputes, administer hardship arrangements and assist in resolving unpaid accounts originating with banks, other lenders, utilities, telecommunications providers and trade creditors.

Complaints can span the life of an account and involve several businesses. The originating creditor may hold application and lending records, while a purchaser or collection agency holds later correspondence, payment arrangements and collection records. Establishing the disputed conduct and each party's responsibility identifies what needs investigation and where the evidence can be obtained. Unresolved questions can cause delay and cost without progressing the dispute.

These practical difficulties underpin ACDBA's longstanding concerns about jurisdictional certainty, complaint costs and accountability. Our submissions to the 2021 Treasury review and the 2022 funding consultation addressed the consequences for members of delayed resolution and disproportionate costs.[1]

AFCA must be independent when deciding complaints. That independence does not mean immunity from scrutiny of its governance, expenditure, performance, future direction or compliance with the scheme's statutory requirements. Where a business's licence requires AFCA membership, participation in and funding of the scheme are compulsory, making independent examination a practical safeguard. ASIC should test how AFCA applies its Rules in practice, having regard to the statutory framework's requirements and the principles of fairness, efficiency and accountability.[2]

ASIC has stated that the revised Regulatory Guide 267, Oversight of the Australian Financial Complaints Authority (RG 267), is intended to preserve its core oversight expectations.[3] The guide should distinguish legislative requirements, AFCA's Rules and ASIC's supervisory expectations. It should explain how ASIC satisfies itself that statutory requirements are met, assesses performance and material changes, and receives evidence of recurring problems. Where detailed safeguards are shortened or omitted, members need to know whether their substance has been retained and where it can be found.

Recommendation 1: Independent scrutiny

Commissioning independent reviews

Current paragraph 267.223 expressly requires ASIC approval of the reviewer's selection, the review's scope and its timetable. Draft paragraph 267.106 refers to consultation with ASIC, including scope and timing, without expressly retaining approval or reviewer selection. This leaves uncertainty about the extent of ASIC's involvement in the decisions that establish the review's independence and determine what it can examine.[4]

A reviewer needs sufficient expertise to test explanations for the scheme's performance and understand how its procedures affect different businesses. For debt purchase and contingent collection, that includes the different responsibilities and records described above.

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[1] Australian Collectors & Debt Buyers Association, Submission to the Treasury Review of AFCA (26 March 2021), pp 5–19. ACDBA, Feedback on AFCA's Proposed Funding Model (21 April 2022), pp 1–3.

[2] Corporations Act 2001 (Cth), ss 1051(4)(b), 1051A, 1052A, 1052C and 1052D. ASIC, draft RG 267, paras 267.12, 267.21 and 267.27–267.34.

[3] ASIC, CS 66 Proposed update to ASIC's guidance on AFCA oversight (27 October 2026), consultation scope and purpose.

[4] ASIC, RG 267 (September 2021), para 267.223, p 46. ASIC, Attachment 1 to CS 66, Draft RG 267 (27 October 2026), para 267.106, p 21.

ACDBA recommends retaining the current approval expectation. If ASIC considers different wording necessary to distinguish its statutory powers from its expectations, the final guide should explain the change and identify the arrangements that provide equivalent assurance. Consultation with ASIC before appointment needs to cover independence, qualifications, relevant expertise and conflicts, as well as the terms of reference and timetable.

AFCA's preparations for its 2027 Independent Review provide an immediate opportunity to apply these safeguards. ASIC should ask AFCA to release draft terms of reference, invite comments from members, consumer bodies and other scheme users, and publish the final terms with an explanation of the principal changes. Scheme costs and the handling of complaints brought by paid representatives warrant specific examination. The terms should specify when these findings will be available, so that stakeholders can comment on both the proposed scope and the reporting timetable.[5]

In a small sector, removing a name may leave a contributor identifiable from account circumstances or a description of the firm. Confidentiality arrangements need to address that risk. The reviewer should explain who can access evidence, how contributors may be contacted for clarification and how findings will be reported without identifying them. Members should be able to give evidence directly to the reviewer, in confidence without AFCA officers present or anonymously. These arrangements should enable the review to examine how the scheme operates across different business models and complaint types, including debt purchase and contingent collection.

The Independent Assessor

The Independent Assessor examines concerns about AFCA's service, providing a means for financial firms and complainants to have those concerns assessed separately from the staff handling the complaint. ACDBA recommends retaining the expectations concerning the Assessor's independence, adequate resources and accessibility. The detailed safeguards in current paragraph 267.215 should remain readily identifiable in the revised guidance or through references to the governing documents.[6]

Board appointments and experience

Under section 1051(3), directors with experience in the businesses of scheme members must be equal in number to directors with experience representing consumers. The benefit of that balance depends on how relevant experience is identified and brought into appointments. AFCA has an independent Chair, a Nominations Committee and a Board skills matrix. Members need to understand how these arrangements produce a Board able to assess the scheme's operations and expenditure with knowledge of the businesses that fund and use it.[7]

For each vacancy, ACDBA recommends publication of the experience sought and the gap it would fill, invitations for nominations from industry associations and consumer organisations, and independent input when candidates are shortlisted. Identifying the gap before nominations would help those organisations put forward candidates whose experience meets the need. Operational management, technology and control of expenditure need to be visible in the assessment because they equip the Board to scrutinise the resources used to deliver the scheme's services. The 2027 reviewer should examine whether the arrangements produce a sufficiently broad field of candidates, including whether a shortlist nominated by industry would improve appointments to the industry positions.

Recommendation 2: Implementation and results

An independent review can identify a problem without securing a response that addresses it. Draft paragraph 267.107 retains publication and a response to each recommendation, with an implementation timetable, but omits the current guide's express requirement to explain non-adoption. Without reasons, ASIC and members cannot assess whether AFCA disputes the underlying finding, considers the proposed remedy unsuitable or intends to address the issue in another way.[8]

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[5] AFCA, AFCA has started preparations for its Independent Review (updated 22 September 2026).

[6] ASIC, RG 267 (September 2021), para 267.215, p 44. Draft RG 267, paras 267.99–267.103, pp 20–21.

[7] Corporations Act 2001 (Cth), s 1051(3)(d), (da) and (e). AFCA, 2025–26 Annual Review, Corporate governance, Board appointments and skills matrix.

[8] ASIC, RG 267 (September 2021), paras 267.224–267.225, p 46. Draft RG 267, para 267.107, p 21.

Where a recommendation is partly accepted or declined, AFCA's response should explain its reasons and identify any alternative action, including how that action addresses the review's finding. The response must also distinguish a recommendation still under consideration from one that will not be implemented.

Paragraph 267.107 should expressly retain these explanations and require progress reporting against the implementation timetable, including material delays and changes in the proposed response. AFCA should support any claim of implementation with records showing what changed and when, and case sampling or other evidence that the change is operating in practice. Results should be assessed against the intended improvement using a stated baseline, with any limitations explained. Independent verification should be obtained where appropriate.

Recommendation 3: Material changes

Draft paragraphs 267.32–267.34 recognise that a material change may arise outside the formal Rules, while new paragraph 267.72 describes AFCA's Approach documents. The connection between these provisions matters because an Approach can change the way firms need to respond to complaints even where the Rules have not been amended. Its practical effect therefore needs to be considered when deciding whether a change requires ASIC's approval.[9]

A different interpretation of the records needed to establish an assigned debt, responsibility for conduct before assignment or the circumstances in which enforcement must be paused can affect a substantial number of accounts. Members may need to alter systems, retrieve additional historical records or revise their handling of an entire class of accounts.

The final guide should explain how those consequences enter the materiality assessment, with examples covering changes to jurisdictional boundaries, access to exclusions, time limits and significant evidentiary expectations. The assessment also needs to consider the cumulative effect of related changes made through Approaches or Operational Guidelines. Treating each document in isolation could overlook a substantial change in the position firms are expected to meet.

The assessment must also identify the basis for the position being adopted. ACDBA's September 2026 submission on AFCA's Approach consultation schedule sought a clear distinction between legal obligations, applicable codes and the exercise of fairness discretion. Identifying that basis enables members to understand the reasoning they must address and the standards relevant to their conduct. An Approach should explain the framework within which AFCA acts; it should not expand jurisdiction or introduce obligations that require a change to legislation or the Rules.[10]

Consultation before an Approach is finalised allows these consequences to be tested while the proposal can still be changed. Firms can explain the records they hold, the obligations applying at the relevant time and the work needed to apply a proposed interpretation. Treasury's 2021 review recommended consultation before each Approach is finalised.[11]

ACDBA recommends that paragraph 267.72 expressly address consultation and cross-refer to the material-change provisions. Where AFCA considers public consultation unnecessary for a material change, it should explain the reason. Published changes should identify whether they clarify an existing interpretation or adopt a different position, state their basis and commencement, and explain their application to existing complaints and earlier conduct. Members can then assess the changes required to their procedures and which position applies to an account. Later guidance should not be used to impose obligations that did not apply when the relevant conduct occurred.

Finalising the guidance

Where detail is moved out of RG 267, direct references to the relevant Rules, Operational Guidelines or other governing documents are needed to show where the safeguard continues to operate. Members should be able to distinguish a change in presentation from a change in ASIC's expectations. The separate webpages dealing with membership and cooperation obligations should be available when the revised guide takes effect.

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[9] ASIC, Draft RG 267, paras 267.32–267.34 and 267.72, pp 10 and 16.

[10] ACDBA, Submission on AFCA's FY2026–27 Approach consultation schedule (14 September 2026), pp 4–7.

[11] The Treasury, Review of the Australian Financial Complaints Authority (August 2021), Recommendation 11, p xiii.

Recommendation 4: Recurring concerns

A concern raised in one complaint may reveal a problem in the way AFCA applies its Rules or administers the scheme. An individual member may see only its own matters, while an industry association can identify comparable issues across several businesses. ASIC needs a clear means of receiving that information if recurring problems are to inform its oversight.

The existing review mechanisms do not all address the same questions. AFCA assesses jurisdiction internally, but the Independent Assessor cannot review substantive jurisdictional decisions. The Forward-Looking Review Mechanism also excludes jurisdictional issues and does not reopen determinations. A recurring concern about the interpretation of a jurisdictional boundary may therefore remain unresolved by those processes. This is where information from members and associations can assist ASIC to assess whether further examination of the scheme is required.[12]

ACDBA recommends that RG 267 identify the contact or reporting channel for these concerns and explain the information ASIC needs to assess them. The relevant Rules, AFCA's reasons, the recurrence of the issue and the outcome of attempts to resolve it would provide a basis for considering the concern against the statutory requirements. Members should be able to supply commercially sensitive material confidentially, so that the need to protect account and business information does not prevent a properly supported concern from being examined.

Paragraphs 267.21 and 267.27–267.34 should explain how ASIC responds to evidence of recurring concerns about AFCA's application of its jurisdictional framework and Rules. This should include engagement with AFCA, monitoring of corrective action, independent review and material-change approval, and use of regulatory requirements or directions where the statutory conditions are met. An acknowledgement and an explanation of how the concern will be considered would allow the contributor to understand whether it has reached the appropriate part of ASIC and whether further information is needed. Public reporting on recurring themes and resulting supervisory work would show how this information contributes to oversight without identifying individual complainants.

A persistent rise in comparable costs, or evidence that a recurring issue remains unresolved through ordinary supervision, may justify a targeted review before the next five-year review. Paragraph 267.105 should explain the circumstances in which ASIC would consider an earlier review.

Recommendations 5 and 6: Jurisdiction, timeliness and information

Our September 2026 AFCA submission raised continuing concerns about the relationship between AFCA complaints, judgments and enforcement. Where an issue has already been determined by a court, the applicable exclusion and any exception need to be resolved before the parties are drawn into a further examination of that issue. A distinct allegation about later collection conduct or the accuracy of credit information requires its own assessment, even where it concerns the same account.[13]

These distinctions have immediate practical consequences. A creditor may be responding to AFCA while complying with a court order and giving instructions about enforcement. Uncertainty about which issues AFCA can consider can leave the parties unclear about what recovery action is permitted and what must be paused. ACDBA recommends that paragraphs 267.41–267.49 and 267.57–267.59 explain ASIC's expectation that AFCA demonstrates consistent application of the relevant Rules and exceptions, supported by precise cross-references distinguishing proceedings still on foot from matters already determined.

[12] AFCA, Jurisdiction and powers, section on jurisdictional assessment. AFCA, Independent Assessor, scope of review. AFCA, The Forward-Looking Review Mechanism, scope and access criteria (all accessed 2 November 2026). ASIC, draft RG 267, paras 267.21, 267.27–267.34 and 267.148–267.150.

[13] ACDBA, Submission on AFCA's FY2026–27 Approach consultation schedule (14 September 2026), p 7.

Recurring disagreements about these boundaries should inform ASIC's oversight and its assessment of material changes. They should also inform the 2027 Independent Review, together with ACDBA's existing proposals for clearer jurisdictional limits, stronger mandatory exclusions and more effective review arrangements. The review should examine whether the present provisions give the parties sufficient certainty to distinguish a new dispute from an issue already resolved.[14]

Triage and timely jurisdictional decisions

The timing of that assessment can be as important as its outcome. If delay prevents a creditor from taking a necessary step to preserve enforcement or recover the debt, an eventual decision that the complaint is outside jurisdiction may arrive after the opportunity has been lost. ASIC should therefore expect AFCA to demonstrate that early triage identifies both the threshold jurisdictional question and any court deadline or other circumstance requiring urgent attention.

The Rules provide means of protecting legal rights while a complaint is being considered. Rule A.7.1(b) permits the minimum steps necessary to preserve legal rights in debt recovery proceedings begun before the complaint was submitted. Rule A.7.2 provides for specified action with AFCA's consent, including commencement where limitation is about to expire, preservation of assets and enforcement of a default judgment. An urgent request under these provisions may need a decision before the wider jurisdictional issue can be resolved.[15]

Members nevertheless report that AFCA insists on prior consent for any step in existing proceedings, including minimum procedural steps to preserve their legal position, and warns members against proceeding without it. They also report that requests for consent are routinely refused without sufficient consideration of the prejudice that may result.

ACDBA recommends that paragraphs 267.57–267.59 expressly distinguish the minimum protective steps permitted under Rule A.7.1(b) from action requiring consent under Rule A.7.2. ASIC should expect AFCA to explain the basis for treating a proposed step as outside the A.7.1(b) exception, and demonstrate that consent decisions consider the prejudice to each party if the action is permitted or refused.

Paragraphs 267.69–267.71 should also state ASIC's expectation of published service standards for jurisdictional assessment and urgent protective requests, with escalation tied to the relevant court deadline or other identified risk. ASIC should monitor performance against those standards, including whether both parties receive reasons and an updated timeframe when a standard cannot be met, and whether decisions are made while protective action can still serve its purpose.

Historical credit complaints

For an older account, identifying the conduct in dispute is also necessary to determine the applicable time limit. A complaint about the original decision to lend, an allegedly unjust transaction and the conduct of a later holder of the account can raise different questions. Treating them as interchangeable can obscure both whether AFCA can consider the complaint and which firm holds the information needed to answer it.

The special time limit for a qualifying complaint under B.4.2.1 illustrates why the date of the loan alone is insufficient. The relevant dates are two years after the contract ends and, where applicable, two years after an IDR response given before lodgement, with the later limit applying. An account still on foot may therefore be treated differently from one discharged years earlier. The contract, its discharge and the timing of the IDR response need to be considered alongside the substance of the allegation.[16]

Under paragraphs 267.82–267.83, ASIC should expect AFCA to explain the applicable rule, the material dates and any exception relied upon where jurisdiction is disputed. The assessment must also identify the law applying when the conduct occurred; a later responsible lending obligation should not be applied to an earlier advance merely because the complaint is expressed in those terms. This explanation would allow a purchaser to distinguish a challenge to the original lending decision from a complaint about its own collection conduct and obtain the relevant records. Recurring disagreement about the choice of time limit should be examined in the 2027 review.

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[14] ACDBA, Submission on AFCA's 2025 Rules consultation (13 June 2025), pp 2–4. ACDBA, Submission to the Treasury Review of AFCA (26 March 2021), pp 15–19.

[15] AFCA Rules, A.7.1(b) and A.7.2(a), (c) and (f). ASIC, draft RG 267, paras 267.57–267.59 and 267.69–267.71.

[16] AFCA Rules, B.4.2–B.4.4. AFCA Operational Guidelines, B.4.2.1, including examples concerning lending complaints.

Information for complainants

Delay in establishing jurisdiction can also leave the complainant in a worse financial position. AFCA already advises borrowers that interest and fees will usually continue while a complaint is open and that missed repayments can increase arrears. If a person waits for AFCA to resolve the account before discussing hardship or a payment arrangement, a later decision that AFCA cannot consider the complaint may leave the debt larger without having brought resolution any closer.[17]

ACDBA therefore recommends that paragraphs 267.40 and 267.54–267.56 explain how ASIC assesses the effectiveness of AFCA's initial information for complainants. ASIC should expect evidence that this information explains when the issue must first be raised with the firm, any threshold uncertainty about AFCA's ability to consider it, and the possible effect of continuing interest, with prompt direction to available hardship assistance where needed. The assessment should test whether the information reaches complainants in time to inform those decisions.[18]

Recommendation 7: Systemic inquiries

An inquiry covering a wider group of accounts requires a member to establish which records and practices need examination. Its scope also determines what historical material the member may need to obtain from the originating creditor. ASIC should expect AFCA to identify the suspected common cause, the population and period involved, and why the information requested is proportionate. Where a complaint indicates a common problem, wider examination may be necessary to identify other affected customers.

Draft paragraph 267.137 recognises that requests for the same information can impose a further burden. Paragraph 267.138 provides for AFCA to discontinue its systemic investigation where a regulator is acting on the same issue and seeking the same outcome. The practical benefit depends on identifying that overlap before a member incurs the cost of parallel exercises.[19]

A member dealing with both bodies should be able to establish what it still has to provide or do. RG 267 should explain how ASIC and AFCA coordinate their information and remediation requirements at the outset, and review them when the inquiry's scope changes. Existing material should be reused where lawful and common remediation coordinated. Where either body needs separate work, it should explain what remains outstanding and why.

Members' responses can help establish whether the suspected issue extends to other accounts and test the basis for broader findings. ASIC's oversight should examine whether firms receive a reasonable opportunity to respond to the proposed scope and findings before broader conclusions are reached.

Recommendation 8: Funding and fees

Draft paragraph 267.96 addresses fair and efficient funding. For ACDBA members, the practical test is whether the cost of resolving a complaint allows the disputed issue to be properly examined. For a chargeable complaint closed at the ordinary Decision stage, AFCA's FY27 schedule lists a fee of $9,947.89 excluding GST. The funding model also includes an annual user charge, and the member must meet its own costs of investigating the complaint, locating records and preparing responses.[20]

Where the disputed balance is only a few thousand dollars, continued defence can become uneconomic even when the firm considers its position well supported. In a credit reporting complaint, many of which can be after closure of the account, the pressure to obtain a commercial resolution may extend to altering otherwise accurate information. ACDBA has previously explained why a settlement reached in those circumstances does not establish that the complaint would have succeeded. The cost of that decision extends beyond the individual dispute if it affects the information available to other credit providers. For the creditors our members serve, disproportionate complaint costs can also make smaller unpaid accounts uneconomic to pursue despite the need to investigate the dispute and provide a fair response.[21]

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[17] AFCA, Credit, finance and loan complaints, information on repayments, interest and arrears while a complaint is open.

[18] AFCA, Make a complaint. AFCA, How we resolve complaints and our Rules, information for complainants about interest and debt recovery.

[19] ASIC, draft RG 267, paras 267.126–267.138. AFCA, Systemic issues process, investigation and opportunity to respond.

[20] AFCA, Fee structure, FY27 complaint fee schedule and description of the funding model (accessed 2 November 2026).

[21] ACDBA, Submission on AFCA's FY2026–27 Approach consultation schedule (14 September 2026), pp 2–4.

Treasury's 2021 review recognised this concern. Recommendation 7 addressed funding incentives that discourage firms from defending complaints they consider lack merit, while Recommendation 8 addressed fee transparency. Together, they provide a basis for assessing whether subsequent funding changes have improved the position. That assessment needs to establish what drives the expenditure members fund, how the burden is distributed and whether the resulting incentives support fair and proportionate resolution.[22]

The distinction between expenditure and its allocation is particularly important for the user charge. The AFCA Board oversees an annual budget, and the user charge allocates a share of that budget among members by reference to weighted complaint fees, subject to exclusions. Finalising a member's share after the relevant complaints have closed can change the amount payable. A member receiving a different charge therefore needs to understand both whether the budget changed and whether its share of the complaint activity used in the calculation changed. ASIC should expect an annual comparison of budget and actual expenditure, reasons for material variances and an explanation of the Board's action on material overruns.[23]

AFCA reports that in 2025–26, 99% of members were liable only for their annual registration fee and 446 paid a user charge. Its model allows each member five complaint closures without a complaint fee each year. That allowance may keep participation affordable for occasional users, but members bearing the balance need to understand its effect on their charges and on incentives for early resolution. To assess whether the allocation is fair, members need to see which costs are being recovered from each group.[24]

For that assessment, ACDBA asks ASIC to expect a breakdown of registration fees, complaint fees and user charges by sector and volume of use, together with the Board's explanation of shared-cost allocation. The cost associated with complaints covered by the five-complaint allowance should be identified. A worked example, using consistent budget and caseload assumptions, should show how the distribution of charges would change without the allowance.

The same information should support consultation on funding changes. Members should be shown the total amount they could expect to pay across registration fees, complaint fees and the user charge, using worked examples for different business models and complaint values. The cost and caseload assumptions and the allocation method should be available so that members can understand what produces the result. Showing all three components together would make clear whether a reduction in one fee is offset by an increase elsewhere and whether the proposed model changes the economics of resolving smaller disputes.

Complaint fees and corrections

The same connection between the work performed and the amount charged needs to be clear at the individual complaint level. AFCA already provides for review and adjustment of complaint fees, including where a complaint was incorrectly progressed. Its published material also identifies circumstances in which the Case Management fee applies although the complaint resolves while awaiting allocation or is closed on merits review. Members therefore need an explanation of the service covered by a fee, when the charge applies and the grounds on which its classification can be corrected.[25]

Funding the expanded scams jurisdiction

The proposed expansion into the Scams Prevention Framework (SPF) makes the treatment of shared costs immediately relevant. AFCA has committed to funding the SPF arrangements without cross-subsidisation. On 17 November 2026, it published a proposed transitional funding model providing for separate tracking of SPF costs and a separate SPF user charge, with interim allocation options for the first year. The model remains subject to consultation.[26]

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[22] The Treasury, Review of the Australian Financial Complaints Authority (August 2021), Recommendations 7–8, p xii; paras 6.19–6.38, pp 65–68.

[23] AFCA, 2025–26 Annual Review, Corporate governance, Board oversight of financial management. AFCA, User charge guide, calculation and exclusions.

[24] AFCA, 2025–26 Annual Review, Our members, including registration fees and user charges.

[25] AFCA, Complaint Fee Guide, version 1.6 (27 June 2024), Invoicing of complaint fees and Fee Adjustments. AFCA, Funding model frequently asked questions, waiting-allocation scenarios and A.8.3.

[26] AFCA, Scams Prevention Framework proposed transitional funding model, consultation paper (17 November 2026), s 3, pp 4–9.

Demonstrating that separation requires an explanation of which costs are attributed to each jurisdiction and why. The final guide should make clear how ASIC expects AFCA to account for establishment and ongoing expenditure, including the allocation of shared technology, staff and governance costs and the treatment of any government funding. Existing members should be able to trace how those allocations affect the costs they are asked to fund and assess whether the commitment against cross-subsidisation is being met.

Recommendation 9: Paid representatives

Funding incentives also need to be considered alongside how complaints are brought and the results obtained for consumers. AFCA recorded 5,878 complaints lodged by paid representatives in 2025–26, down from 9,429 the previous year, while complaints about default listings within that total rose from 275 to 450. The overall reduction therefore does not align with the experience of members dealing with credit reporting complaints. A review should distinguish the conduct of particular representatives and the issues they raise, and examine consumer outcomes after any representative fee. AFCA should also account for the use and effect of its existing powers to address representative conduct, providing a basis for assessing whether further measures are needed.[27]

The United Kingdom Financial Ombudsman Service charges certain professional representatives and reduces the fee in specified circumstances. ACDBA seeks an independent assessment of whether a comparable arrangement would improve practice here. The assessment should compare the expected effect of charging with better enforcement of existing Rules, so that the case for a new charge is considered against what the present framework could achieve.[28]

The assessment should also examine likely fee pass-through and the consequences for consumer access, including exemptions for financial counsellors, legal aid and community services. Direct access must remain free. A charge passed on without improving representative conduct could increase the consumer's costs while leaving the underlying concern unresolved. The reviewer should test that risk alongside the expected benefits to consumers and firms, and publish the evidence for its recommendation.

Recommendation 10: Performance reporting

Timely information for oversight

Effective oversight depends on receiving information while there is still an opportunity to address a developing problem. Current paragraphs 267.74 and 267.76 specify quarterly reporting to ASIC; draft paragraph 267.149 instead refers to regular reports. The revised wording leaves the expected interval less clear. ACDBA supports retaining quarterly reporting as the ordinary expectation, so that significant deterioration can be identified between annual reporting cycles. Where ASIC agrees a different interval, the basis for that arrangement should be clear and it should still provide timely information about emerging problems.[29]

The information must also help ASIC identify what is causing a problem. A delay arising from missing information requires a different response from one caused by case allocation or a lack of specialist capacity. Reporting should distinguish these causes, including the effect of the parties' conduct, and show whether repeated service failings have reduced following action.

Requests to exclude a complaint

Draft paragraph 267.49 asks AFCA to collect information on complaints it excludes. In 2025–26 AFCA reported 11,219 complaints outside its Rules, of which 15% were discretionary exclusions. Those figures omit the wider group in which a firm questioned jurisdiction or sought exclusion but the request was declined or remained unresolved. They cannot therefore show how frequently objections arise, why AFCA continues with those complaints or how much work has occurred before the threshold question is settled.[30]

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[27] AFCA, 2025–26 Annual Review, Complaints lodged by paid representatives. AFCA Rules, A.8.4 and B.6 (representatives).

[28] UK Financial Ombudsman Service, Case fees, 2026/27. Corporations Act 2001 (Cth), s 1051(2)(d) (free access for complainants).

[29] ASIC, RG 267 (September 2021), paras 267.74 and 267.76, pp 22–23. Draft RG 267, paras 267.148–267.152, pp 29–31.

[30] AFCA, 2025–26 Annual Review, Complaints outside AFCA's Rules.

ACDBA therefore seeks reporting by metrics that distinguish objections raised by firms from matters AFCA identified itself. Within each group, the reporting should show whether the objection was upheld in full or in part, declined, withdrawn or pending, together with the main reasons and the stage and time at which it was resolved. Mandatory and discretionary exclusions should be reported separately, including separate identification of Rule C.2.2(d), concerning frivolous, vexatious, misconceived or insubstantial complaints.

Timing must be considered alongside the outcome. An objection upheld after substantial work may reveal an opportunity for earlier intervention, while a prompt refusal explains the basis on which the complaint will proceed. Consistent definitions over several years would allow the Board and ASIC to assess whether assessment is occurring earlier and why outcomes differ.

Interpreting complaint outcomes

AFCA reports an average of 69 active days to close complaints in 2025–26, down from 79 the previous year. Because that average combines complaints closed at different stages, it can fall as more matters resolve early even if determination times do not improve. A member deciding whether to continue needs information about the complaints that actually require a determination, including those taking substantially longer to resolve.[31]

ACDBA seeks an age profile for the open caseload, separating complaints still to be allocated from those awaiting a jurisdictional decision or substantive consideration. This would show where delays are accumulating before they enter closure statistics. For each complaint stream, the time from lodgement to determination should be reported in calendar and active time, showing the median and 90th percentile.

For closures beyond referral, reporting should show costs per closure by sector and explain changes in case mix. These measures would help distinguish more demanding work from changes in the cost of handling comparable complaints. Settlements must also be distinguished from determinations on the merits and interpreted in light of the commercial pressures discussed above. Settlement rates and amounts paid do not, on their own, establish the quality of a firm's conduct or the fairness of the process.

Comparisons between firms also require context about account volumes, complaint types and the stage at which a member became responsible for an account. A purchaser or collection agency may have to respond to an allegation concerning an earlier event involving another firm. Without that context, complaint volumes and outcomes can be attributed to the responding member in a way that obscures the conduct actually in question. Reporting should distinguish what was alleged, what was established and which party was responsible, so that ASIC and the public can interpret the information without treating an unadjusted comparison as a finding of misconduct.

Recommendation 11: Appropriate offers

In 2021 ACDBA asked that an offer meeting the complainant's stated remedy trigger consideration of the offer without requiring the firm to incur the cost of progressing further through the scheme. Further progression can consume time and resources without improving the remedy available. Since July 2024, Rule A.8.3(e) has expressly allowed AFCA to cease considering a complaint where the firm has offered an appropriate remedy or compensation. That discretion concerns a complaint within jurisdiction, so its operation needs to be assessed separately from jurisdictional exclusions.[32]

The practical benefit of Rule A.8.3(e) depends on the threshold applied. If AFCA requires review equivalent to a determination, or an offer better than the outcome it considers likely, much of the opportunity to avoid further work may already be lost. Through supervision and independent review, ASIC should test whether the discretion operates consistently with the Rule and at the earliest stage the facts permit, examining the threshold, staff delegations, referral requirements and extent of file review needed. Earlier assessment must still rest on sufficient evidence and a fair opportunity for both parties to respond.[33]

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[31] AFCA, 2025–26 Annual Review, Closed cases.

[32] ACDBA, Submission to the Treasury Review of AFCA (26 March 2021), pp 5–7, Recommendation on reasonable offer. AFCA Rules, A.8.3(e) and A.8.5–A.8.6. AFCA, 1 July 2024 Rules amendments.

[33] AFCA Rules and Operational Guidelines, A.8.3(e) and A.8.5–A.8.6. AFCA, 1 July 2024 Rules amendments, appropriate settlement offers. AFCA, Member Forum Q&A (27 May 2026), Merits assessments and Rule A.8.3.

Reporting should record the date of the firm's request, the offer, AFCA's decision and reasons, whether further information was needed, and the result of any objection. AFCA's decision to continue must be distinguished from the complainant's decision to decline an offer: refusal alone does not show whether AFCA assessed the offer as an appropriate remedy.

For complaints that continue, the eventual remedy should be compared with the offer. Where both are monetary and comparable, the reporting should show how often the complainant received more, the same or less, and the dollar difference. Non-monetary remedies need separate treatment because, for example, removal of a default listing cannot sensibly be compared with a cash payment alone. The comparison should cover both settlements and determinations, identify complaints withdrawn or still open, and distinguish improvements supported by new evidence.

That comparison should include the additional elapsed time after AFCA decided to continue and any increase in the complaint fee attributable to further progression. The annual user charge and the firm's own costs should be identified separately, so the whole cost of the complaint is considered alongside the continuation decision. Together, these measures would help ASIC assess whether earlier use of the Rule could have delivered an equivalent remedy sooner and freed resources for complaints requiring further investigation, allowing for differences in the evidence and remedy.

Recommendation 12: AI-assisted complaints

The increasing use of artificial intelligence has implications for both the content of complaints and how they are pursued. AFCA has identified lengthy submissions containing unsupported allegations and legal references unrelated to the circumstances. It has also advised that generic templates containing vague or unsubstantiated allegations are inappropriate.[34]

Recent work by the NSW Ombudsman identifies further concerns, including the expansion of a specific grievance into numerous allegations, simultaneous complaints to several bodies and repeated challenges to decisions. AI can also reinforce a complainant's belief that their position is sound or that a particular remedy is available, despite weaknesses in the underlying claim.[35] For members, this creates additional work in establishing the actual dispute, checking assertions and responding to successive submissions which may add nothing to its resolution.

Recent Federal Court practice notes address relevance, repetition and responsibility for AI-assisted content. The Administrative Review Tribunal similarly requires verification and may direct that affected material be corrected, replaced or withdrawn. These developments can inform ASIC's assessment of whether AFCA's arrangements address the same practical difficulties.[36]

ACDBA recommends that paragraphs 267.69–267.71 explain how ASIC assesses whether AFCA's arrangements manage these changes efficiently and fairly. ASIC should expect evidence that AFCA establishes the issues and remedy sought early, identifies related proceedings and checks cited authorities before relying on them. The assessment should cover whether requests clearly identify what members need to investigate and answer, expectations for submission length and frequency are proportionate, repetitive material is consolidated, and further submissions identify new information or unanswered matters.

ASIC's assessment should also examine whether complainants receive assistance where needed and a reasonable opportunity to clarify or correct their material. It should test whether AFCA appropriately uses its existing power to cease consideration where the evidence establishes that a complaint is without merit, with the required opportunity to respond. Reporting under paragraph 267.150 should enable ASIC to monitor whether these arrangements reduce unnecessary exchanges, handling time and costs for AFCA and members while supporting timely outcomes for complainants.

[34] AFCA, 2025–26 Annual Review, Overview of complaints, "Artificial intelligence and complaints"; and Member Forum Q&A, 27 May 2026, "Artificial Intelligence" and "Merits assessments and Rule A.8.3".
[35] NSW Ombudsman, Responding to the rise in AI-assisted complaints – challenges for complaint handlers, October 2026, pp 4–7.
[36] Federal Court, Litigants in person Practice Note (GPN-LIP), paras 4.2–4.6 and 4.9–4.10; Use of Generative Artificial Intelligence Practice Note (GPN-AI), paras 4.3–4.6; Administrative Review Tribunal, Generative AI Practice Direction, paras 1.11, 2.4 and 3.6.

Assessing the effect of earlier reforms

AFCA reports that it completed its response programme for the 13 recommendations directed to it following Treasury's 2021 review.[37] Consistently with ACDBA's Recommendation 2, the 2027 Independent Review should verify implementation against supporting records and test whether the changes have improved timeliness, access to review and funding incentives, drawing on the reporting above.

The 2027 Independent Review should examine use, cost and accessibility of the Forward-Looking Review Mechanism to establish how readily the review route can be used in practice. It should draw on the proposed reporting of exclusions and appropriate offers, and assess whether consultation on Approaches has improved consistency. Financial firms and industry associations should be able to provide evidence directly, including concerns that persist after internal review, so that AFCA's records can be considered alongside the experience of those using the revised arrangements. AFCA's account of the reforms' results should be tested against that evidence.[38]

Independent examination of decision quality is also relevant. AFCA's published 2024 review of a sample of 30 determinations rated 27 as good to excellent and none as poor. To assess the experience of our members, continued scrutiny should include sufficient coverage of debt purchase and collection matters. Publication of the method and AFCA's response to recommendations would allow members to assess the coverage and understand how findings have informed practice.[39]

Conclusion

ACDBA asks ASIC to retain independent-review safeguards, provide a clear route for recurring concerns and explain how it assesses AFCA's use of members' funds. The proposed reporting would enable scrutiny of both cost and results, including what happens when a jurisdictional objection is declined or an offer of redress does not conclude a complaint. These matters should form part of the 2027 Independent Review.

As AFCA's responsibilities expand, effective oversight will require evidence that its arrangements operate fairly and efficiently in practice. Reducing avoidable work and delay would release staff time and funds for complaints requiring further investigation, hardship assistance and other productive activity. ACDBA welcomes further engagement with ASIC on the proposed wording and the information that would assist its supervision of the scheme.

For further information, please contact Jacob Maiore, CEO, at ceo@acdba.com or on 02 4925 2099.

[37] AFCA, Independent review: completion of three-year response program, Annual Review, reporting completion in November 2024.

[38] AFCA, AFCA has started preparations for its Independent Review (updated 22 September 2026).

[39] AFCA, Independent decision review confirms AFCA's commitment to fairness and impartiality (updated 22 July 2024). The sample covered determinations made between June 2022 and May 2023.

Appendix 1

Members of Australian Collectors & Debt Buyers Association

- Arbor Knot Holdings Pty Ltd
- Axess Recoveries & Collections Pty Ltd
- CCC Financial Solutions Pty Ltd
- Charter Mercantile Pty Ltd
- Credit Corp Group Limited
- PRA Australia Pty Ltd
- Recoveries Corporation Pty Ltd
- Standard8 Advisory Pty Ltd
- Strategic Collections Pty Ltd

Affiliate Members of Australian Collectors & Debt Buyers Association

- Acceleon
- Collect!
- CreditSoft Solutions
- Equifax
- Experian Australia
- TaleFin Australia
- TCN