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Dear Ms Quinn

Client review and remediation programs

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide comments to the Australian Securities and Investments Commission (**ASIC**) on *Consultation Paper 247: Client review and remediation programs and update to record keeping requirements*.

With the active participation of 23 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Introductory remarks

As noted in our initial submission of October 2015, the banking industry supports a high level principles based approach to ASIC guidance for Australian Financial Services Licensees (**Licensees**) in relation to the design and operation of client review and remediation programs (**CRRPs**). We also support an approach which aligns with the existing regulatory framework as it relates to dispute resolution (RG165) and does not duplicate or replicate External Dispute Resolution (EDR) processes.

The ABA, and our member banks, are pleased that our initial feedback was given due consideration in the development of CP247 and that ASIC has aimed to achieve a principles based framework with a level of flexibility. We acknowledge that ASIC has recognised nature, scale and complexity as some factors that can shape a review and remediation program. This acknowledges that review and remediation programs have unique characteristics and come in all shapes and sizes.

We are also pleased that CP247 recognises that CRRPs should be aligned with Internal Dispute Resolution (IDR) systems and in effect complement that activity (rather than replacing or co-mingling the two) given the different roles that CRRPs and IDR programs play. As IDR systems are built to respond to complaints initiated by clients, while CRRPs are generally initiated and require proactive action by the Licensee, it is appropriate that they not overlap but adopt a similar principles based approach to design and operation. The alignment of guidance for CRRPs with existing mechanisms will assist in minimising duplication and unnecessary compliance costs.

In terms of applicability, the consultation paper notes that the guidance applies to Licensees who provide personal advice to retail clients. The ABA supports this approach. However, we note the guidance also allows for extension beyond both personal advice (i.e. in the case of administrative errors) as well as products other than Tier 1 financial products.

As noted in our initial submission of October 2015, the banking industry considers that guidance should relate to personal advice on Tier 1 financial products; that is Licensees providing 'financial planning' services or advice on products other than basic banking products, general insurance products and consumer credit insurance. We note that this scope is consistent with the scope of the Financial Advisers Register (**FAR**), and recognises the unique risks that arise in relation to the provision of personal advice on complex financial products and the additional consumer protections relevant for retail clients. In addition the way in which CP247 is structured more aligns to personal advice on Tier 1 financial products. See further comments below and at B3 in Attachment A.

In comparison to Tier 1 financial products there is a lower risk for consumers of personal advice on Tier 2 financial products. Tier 2 financial products are simple, easily understood and lower risk to consumers. These financial products do not involve investment decisions or have longer-term investment implications for consumers. Additionally, CRRPs on Tier 1 financial products may involve more complex considerations in relation to identifying appropriate response strategies and remediation solutions. We consider that personal advice on Tier 1 financial products is more difficult to review and remediate and that is where guidance is most needed. It is appropriate that this regulatory guidance focus on this area.

We note ASIC intends to issue the Regulatory Guide (guide) and amended Class Order in May 2016. Due to the considerable effort required to adjust policies and systems to implement CRRPs, industry seeks a reasonable transition period, following publication of the final guide, of at least 12 months. This transition period would allow Licensees adequate time to prepare and make any necessary changes, including updating systems and procedures, making internal policy changes, and training staff. Confirmation as to whether the guide will apply to either new remediation programs from a given date onwards or advice after a certain date would also assist implementation by Licensees.

Specific comments

Consultation Paper 247 poses a number of detailed questions. Responses to these questions are set out at Attachment A. High level comments are set out below.

Review and remediation program – definition, systemic issues, application of guidance

Definition of systemic issue

CP247 outlines a definition of systemic issue as "an issue that may have implications beyond the immediate rights of the parties to a complaint or dispute" [1]. We note that CP247 states that this is consistent with ASIC's policies on dispute resolution. We consider the wording should be tightened so that it is fully aligned with RG139 and the Financial Ombudsman Services' (FOS') Terms of Reference (and guidance).

In addition, we ask that ASIC considers applying a materiality threshold as well as wording that goes to a "pattern or volume" of cases, as FOS guidance has previously indicated.

We consider a materiality threshold is required as not all systemic breaches/errors will necessarily involve incorrect advice or financial loss. For example, this will be the case where a template letter error is sent to clients and where there is no loss as a result of the error. An error such as this, which could involve a substantial number of clients, could be resolved without a CRRP by sending an updated letter. The addition of a materiality threshold would ensure that only serious and material issues are captured by the guidance, and thus minimise unnecessary compliance costs of establishing a CRRP for non-material breaches/errors.

We also consider pattern or volume is also important as under the present wording, a 'systemic issue' could capture conduct that affected only two clients. In such instances, establishing a CRRP would be unnecessary and a significant compliance cost. Furthermore, it may result in a process which would otherwise be more protracted than necessary in the particular case.

[1] ASIC Consultation Paper 247, *Client review and remediation programs and update to record-keeping requirements*, para 36, 37.

To align the definition with RG139 and to capture materiality, we suggest that instead of the wording "an issue that may have implications", to use "an issue that **has material adverse implications** beyond the immediate rights of the parties to a complaint or dispute". We also suggest that ASIC consider adding wording that goes to "pattern or volume" of cases. For example, that Licensees could determine whether an issue is systemic by reference to certain factors including:

- Pattern of similar disputes/incidents (consistent with FOS guidance)
- Volume of incidents
- Number of clients potentially impacted
- Number of advisers potentially involved

We also note that the current definition of systemic issue referring to "parties to a complaint or dispute" also may not adequately capture situations where an issue is identified by the licensee proactively investigating an incident, rather than by reason of a customer complaint an actual dispute arising.

Application of guidance

As noted above, we agree with CP247 that the framework should only apply to personal advice to retail clients. This is because personal advice is more difficult to review and remediate and it is appropriate that the guide focus on this area.

We note, however, that at paragraphs 43 to 45 the guidance appears to capture non-personal advice related CRRPs, such as those established to review and remediate administrative errors. We consider that this guidance should not apply in those circumstances as it would involve significant and unnecessary compliance costs to business in establishing CRRPs where correction of administrative errors are relatively straightforward.

Removal or clarification of these provisions would ensure the guide is clear and that Licensees are aware of the extent of their obligations. Should ASIC consider it wishes to apply guidance to CRRPs that do not relate to personal advice or to products other than Tier 1 these should be clearly separated out in the guidance.

Aim of remediation

CP247 states "The aim of the program is to place affected clients in the position they would have been in had the misconduct not occurred".[2]

We consider that there needs to be clarification of the aim of remediation where there is no financial impact on the client (i.e. in the case of non-monetary loss). Remediation may not result in compensation but require actions to be taken by the Licensee with the adviser, such as consequences management.

Establishing a program and interaction with IDR and EDR obligations

IDR obligations

CP247 discusses IDR obligations, and timeframes, at paragraphs 54 to 57. We consider that these provisions would benefit from further clarification as it is unclear what role IDR can play in respect of matters which are subject to a CRRP. For example, there are numerous communications with clients as part of a CRRP. Any point throughout these communications could result in an obligation to escalate a matter to IDR (due to the definition of a 'complaint'). In the past, ASIC has provided relief to Licensees so that complaints do not unnecessarily cause a gridlock in the IDR system given the potentially large number of clients involved in CRRPs. Does ASIC envisage that only complaints relating to non-substantive issues in respect of CRRPs can be addressed through IDR?

[2] Ibid, para 7.

Similarly, banks would like clarity on the 45 day rule. CP247 states that "A final response must still be provided to these clients within 45 days."[3] It is unclear what would constitute a final response, given that a decision on the substantive matter may not have been made (particularly in large and complex CRRPs). It is unclear what benefit there might be for a consumer to access IDR on a substantive matter related to CRRP when there may be little to no likelihood of a resolution within 45 days.

Determining scope of a program

The banking industry is concerned with the requirement to review advice as far back as a licensee has records[4]. We note that seven years is the legal requirement for retaining records. If the records of some clients have been kept longer this would necessarily entail an unequal treatment of clients. The requirement would also operate as a disincentive for licensees to retain records for longer than the required seven years.

Design and implementation

90 days for decision making

CP247 specifies that advice should be reviewed in a timely way and as quickly as possible without compromising the quality of the review. It states that, as a guide, Licensees should make a decision about whether to remediate an affected client within 90 days of notifying the client that they are within the scope of a CRRP.[5]

We acknowledge and understand the policy intent of setting timeframes to provide certainty for clients who are part of a CRRP. We also acknowledge that CP247 states 90 days is also a 'guide'. However, we consider that the timeframe is still too prescriptive, particularly for large and complex CRRPs.

Banks have advised the ABA that a decision in large and complex CRRPs would take on average longer than 90 days given that such programs could run for 12 months or more. The duration of a CRRP is to ensure all legal and other matters are giving due consideration and the treatment of all clients is fair. In the case of CRRPs, banks have advised the ABA that the object is to undertake the review thoroughly and not compromise on the quality of the review.

As an alternative, we consider that ASIC might consider mandating a timeframe of 90 days for small to medium sized CRRPs and a separate timeframe for large and complex CRRPs (determined on a case–by-case basis). However, the timeframes should ideally be set as touch points for proactively contacting a client to update them on the progress of the review. In addition, the guide should provide a mechanism for when a timeframe could be extended by ASIC or a Licensee in dialogue with ASIC.

Client access to external review of decisions

Engagement with EDR

CP247 anticipates that Licensees should engage with their EDR scheme when establishing a CRRP, so that relevant documentation, timelines and other arrangements are agreed upfront. CP247 notes that this will facilitate the streamlined consideration, review and decision by the EDR scheme when necessary as well as offer assistance to clients who wish to obtain their own independent advice.[6] We consider that this proposed requirement is unclear and are unsure how such a provision could operate. We are concerned that this process may result in unnecessary duplication, inefficiency and confusion.

[3] Ibid, para 55.
[4] Ibid, para 87.
[5] Ibid, p48 and para 116.
[6] Ibid p48 and para 181.

For example it appears that the provisions assume or anticipate that EDR schemes could act in a quasi-regulatory role, by having an input into the establishment of a CRRP and agreeing upfront with the Licensee certain requirements, including process, documentation and timelines. We consider that this is not the role of an EDR scheme, but the role of ASIC, and we therefore question the necessity of engaging with the EDR scheme at the establishment stage of a CRRP.

In addition, there are also practical impediments as EDR schemes have no such jurisdiction. EDR schemes are bound by their Terms of Reference and Constitution which provide that their role is to function as a dispute resolution body to consider customer initiated disputes that fall within their Terms of Reference. Licensees are bound by decisions made by EDR schemes in relation to such disputes.

Even if this could be overcome, for example by way of change to the Terms of Reference and Constitution, we submit that this is not the role of EDR schemes. In addition, such activity could compromise the independence of EDR schemes if those agreed timelines, documentation and other arrangements themselves become subject to a complaint/dispute which are subject to a decision of an EDR scheme.

At present, the ABA understands that banks have on occasion provided informal notice to an EDR scheme where they have established a large CRRP. This has been as a courtesy to notify the EDR scheme should there be some increase in the number of disputes at some future point in time and to also ensure that the EDR schemes can assist in directing clients to the CRRP underway. We are not aware of how this information is utilised.

The industry agrees that customers should be informed about the options available via EDR schemes as this is part of the normal process of complaints handling and dispute resolution. We also consider there may be a benefit to providing some form of notification to EDR schemes where a large and complex CRRP has been established. However, we do not consider that an EDR provider can or should play a role in how a CRRP is structured.

If ASIC considers that there is benefit in formalising a notification requirement to EDR schemes in relation to the establishment and operation of a CRRP, then the guide should make it clear it is a notification requirement only and at the discretion of Licensees.

Other

Settlement deeds

CP247 outlines guidance on settlement deeds. Paragraph 186 envisages that the client should still be able to seek advice if they have concerns about the manner in which their matter has been reviewed even if a settlement deed has been entered into.

We are uncertain as to the purpose of these provisions and seek clarity on their intent.

While settlement deeds should not restrict a client from speaking with regulatory agencies, an EDR scheme, professional associations, or legal representative, we consider that the guide would be enhanced by making it clear that by doing so it does not alter the final and binding nature of a deed of release. For example, a client cannot later bring a dispute at an EDR scheme regarding their case where they have already signed a valid deed of release.

In practical terms, once a client has received an offer of remediation they can choose to either: accept, decline or seek further advice. If they decline they can also choose to go to an EDR scheme or to litigate via the courts. The options to decline, seek further advice, go to an EDR scheme or court are all available prior to a client choosing to accept a settlement and signing a deed. Once a deed is signed, however, it is and should be final and binding.

Strong banks – strong Australia

Concluding remarks

Thank you for the opportunity to provide input into CP247. We look forward to the opportunity for further discussion on this issue.

Yours sincerely

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	Agree/ Agree in Part	Disagree	Comments
Proposal B1 We propose the guidance set out in paragraphs 31–35 on how we will define a 'review and remediation program'. *Your feedback* B1Q1 Have we appropriately defined a 'review and remediation program' for the purposes of this guidance? If not, please give details. Please also provide alternatives.	Agree that the definition of a 'review and remediation program' is acceptable.		
Proposal B2 We propose the guidance set out in paragraphs 36–41 on how we will define a 'systemic issue'. *Your feedback* B2Q1 Have we appropriately defined a 'systemic issue' for the purposes of this guidance? If not, please give details. Please also provide alternatives.	B2Q1 – Agree in part As outlined in the body of the submission, whilst the definition of systemic issue is similar to RG 139, we consider that the definition should be tightened and aligned with RG 139 and FOS Terms of Reference. In addition, that ASIC consider it also include a materiality threshold and go to pattern or volume of cases. Further, we suggest that instead of the wording "an issue that may have implications", to use "an issue that has material adverse implications beyond the immediate rights of the parties to a complaint or dispute".		FOS has said it looks for a "pattern of disputes" in its assessments. We submit that the Guide should consider a similar principle in determining whether an issue is systemic. For example, that the test for 'systemic issue' is as outlined as "an issue that has material adverse implications beyond the immediate rights of the parties to a complaint or dispute". We also suggest that Licensees could determine whether an issue is systemic is by reference to certain factors including: ▶ Pattern of similar disputes/incidents (consistent with FOS guidance) ▶ Volume of incidents

		We do not consider that para 40(a) of CP247 should be an example of a systemic issue (misconduct by one adviser that may affect several clients).	▶ Number of clients potentially impacted ▶ Number of advisers potentially involved
Proposal B3 We propose the guidance set out in paragraphs 42–45 on when our proposed guidance will apply. *Your feedback* B3Q1 Do you agree with how we have described the application of the proposed guidance? If not, why not? B3Q2 Do you agree that the principles in this guidance should apply to programs not relating to personal advice? If not, why not? B3Q3 Are there circumstances when the principles should not apply? If so, please give details. Please also specify whether, and how, these principles could apply with alterations.	B3Q1 – Agree in part The Guide should be limited to CRRPs for personal advice to retail clients on Tier 1 products only.	B3Q2 – Disagree As discussed in the main body of the submission, the Guide should be limited to review and remediation programs for personal financial product advice only. We submit for such a Guide to have value it needs to be clear. If the application is extended to other areas and drafted to suit those areas as well, it would lose clarity. In addition, there would be significant cost to business in establishing CRRPs unnecessarily.	B3Q3 – As noted in the main body of the submission, and in relation to paragraph 43, the Guide should only apply to personal Tier 1 advice. We submit it should be made clear that remediation for "administrative errors" are not within the scope of the Guide. These types of errors can be adequately remediated outside a formal review and remediation program. For example, there may be situations where a large number of clients have been affected (e.g. template letter error) but there is no loss as a result of the error and these can be resolved without a CRRP by sending an updated letter.
Proposal C1 We propose the guidance set out in paragraphs 48–51 on when it is appropriate to establish a review and remediation program. *Your feedback* C1Q1 Have we appropriately defined the threshold when a review and remediation program may be appropriate? If not, please	C1Q1 - Agree in part As submitted in the main body of the submission in relation to "Systemic issue" – we submit the threshold is too low.		Further guidance on how to identify a systemic issue is requested. ASIC should consider whether obligations to report significant breaches or likely breaches (under RG 78) should be the threshold for assessing whether something is a systemic issue [noting the Guide discusses the interaction with breach reporting obligations on page 20]. C1Q2 – where the level of non-financial loss does not impact on the client's decision based on the

give details. Please also provide alternatives. C1Q2 Are there circumstances, other than those set out at paragraphs 50–51, when a review and remediation program would not be appropriate? Please specify examples. C1Q3 Are there other factors that advice Licensees should consider when deciding whether to establish a review and remediation program? C1Q4 Please provide feedback on any costs or savings to your business as a result of the threshold at which a review and remediation program would be appropriate Proposal C2 We propose the guidance set out in paragraphs 52–57 on how a review and remediation program interacts with the advice Licensee's IDR and EDR obligations. *Your feedback* C2Q1 Do you agree with the way we have described the relationship between a review and remediation program and the advice Licensee's IDR and EDR obligations? If not, why not? C2Q2 Will advise Licensees have difficulty in meeting their IDR obligations if complaints are included as part of a review and remediation program? If so, what could be done to assist Licensees?		C2Q1 – Disagree in Part - We consider there is benefit in additional clarity regarding the interaction between a CRRP program and IDR. CP247 says where a client has made a complaint to the licensee and that complaint is within the scope of the CRRP program, the IDR obligations will apply. But there will be many scenarios where in the course of dealing with customer remediation under a CRRP program, the customer may provide feedback to the Licensee which falls under the definition of a complaint under RG 165 (which is a very broad definition). It would be useful to	financial service they received. Eg lack of file notes. C1Q3 – We consider that other factors should be whether the clients are disadvantaged and whether a CRRP is the best way to remediate them. .

C2Q3 Are there any barriers to advice Licensees directing clients to an EDR scheme if they have a complaint about the program or a decision of the Licensee? If so, what could be done to assist Licensees?		clarify that in those instances the customer concerns are still to be dealt with under the CRRP program and not IDR; ie provided the “complaint” follows the Licensee initiated review and remediation program it stays outside IDR and therefore outside RG 165. In addition, as noted in the submission, it is unclear what the role the EDR plays at the establishment of a CRRP. We question the appropriateness and necessity of the EDR in playing a role at the establishment of the CRRP. C2Q2 - As discussed in the main body of the submission we seek clarity on the provisions relating to the interaction between IDR and a CRRP and 45 day timeframe. We consider that IDR and CRRP should not be co-mingled. Whilst we understand the policy intent of ensuring client’s receive prompt resolution of complaints, we consider that where a complaint has been raised through the process of a CRRP it should be handled in line with the remediation program timeframes as agreed with ASIC and through the CRRP. As in past cases, relief from IDR processes should be granted where appropriate so as not to overwhelm IDR systems with complaints where there may be no chance of resolution within the IDR timeframes. It would not allow for consistent treatment if some CRRP clients were dealt with through IDR and CRRP, whilst others were dealt with through a CRRP. CRRPs need to provide a consistent and robust approach to the review and	

		remediation for all affected clients. This is particularly the case for large and complex CRRPs. As the investigation may cover a large volume of files a systematic approach is required and any compensation needs to be calculated consistently and fairly.	
Proposal C3 We propose the guidance set out in paragraphs 58–73 (including Example 1) on how a review and remediation program interacts with an advice Licensee's general AFS licensing obligations. *Your feedback* C3Q1 Do you agree with how we have described a program's interaction with the AFS Licensee obligations? If not, why not? C3Q2 Will the establishment of a review and remediation program, and a subsequent decision to remediate clients, affect an advice Licensee's ability to make claims under its professional indemnity (PI) insurance? If so, please explain how. C3Q3 If your answer to C3Q2 is yes, what alternatives or alterations to a review and remediation program, as described in this consultation paper, could be adopted by advice Licensees that hold PI insurance to enable claims to continue to be made?	C3Q1 – Agree – that the interaction between the program and the AFSL obligations is accurate. C3Q2 – Agree – The establishment of a remediation program may impact claims under PI. Licensees must have arrangements for compensating persons for loss or damage suffered because of breaches of the relevant provisions of the Corporations Act.		C3Q2/C3Q3 - Banks advise that under a traditional PI policy it is difficult to see how many elements of the proposed CRRP will be covered, which would result in a large portion of program costs and remediation payments being uninsured. A PI policy is based on an adversarial situation where cover is triggered by a third party making a "claim" against the Licensee for compensation or loss. A program that requires the licensee itself to identify and review client files does not readily fit within the definition of a "claim" particularly where, after the review, it is determined there was no wrongdoing and therefore no compensable loss. If there is no "claim" then there is no cover under the PI policy. By far the largest exposure will involve the costs of external expert oversight and the costs of running the program including increased salaries, notifying clients, locating files, reviewing files (which may require external contractors e.g. case assessors), information technology, occupancy and equipment. It is difficult to see how many of these elements would be covered by a PI policy which typically will cover only the legal costs and expenses

			involved in investigating, settling and defending a “claim”. Similarly any payments to clients for an independent opinion may not be covered unless it could be shown that these form part of the legal costs of the person making a claim for which the licensee is legally liable. Other identified issues are as follows: ▶ Insurers typically have the contractual right to assume conduct of the defence or management a “claim”. This may result in delays and could create tension where the statutory obligation is on the Licensee to conduct the CRRP efficiently, honestly and fairly. ▶ Under a PI policy a Licensee must not admit liability, settle any claim or incur any costs or expenses without first obtaining the written consent of insurers. The timeframes imposed by CP247 and the very nature of a CRRP would make this very difficult to achieve. ▶ A PI policy will only pick up coverage where there is an underlying civil liability to pay a client. Waiving of monetary or statutory time limitations could impact coverage. The issues identified above require consultation with the insurance industry to provide greater clarity surrounding coverage under a PI policy for CRRPs. The concern is that if insurers do agree to provide cover for CRRPs, this will significantly escalate premiums or result in even more insurers exiting what is already

			a limited market for financial planners.
Proposal C4 We propose the guidance set out in paragraphs 74–76 on ASIC's role in review and remediation programs. *Your feedback* C4Q1 Do you require further guidance on ASIC's role in relation to review and remediation programs? If so, please specify what guidance you would like.			No further guidance required on this issue.
Proposal D1 We propose the guidance set out in paragraphs 79–89 on how to identify the scope of a review and remediation program. *Your feedback* D1Q1 What are some examples of how an advice Licensee can determine the scope of a program? D1Q2 Do you agree with our proposed factors for consideration? Are there others? If so, please specify. D1Q3 Do you agree that advice Licensees should review advice as far back as the Licensee has retained records? If not, what is a reasonable timeframe? D1Q4 How can advice Licensees test the appropriateness of the	D1Q2 –Agree	D1Q3 – Disagree - We disagree that Licensees should be required to review advice as far back as records are retained. As noted in the submission, this obligation is onerous and would entail inconsistent treatment of clients. Effective remediation needs a logical end date. Seven years is	D1Q1 – An example of how Licensees determine scope of program are: Initial in-scope assumes a broad scope of clients/advisers depending on the nature of the incident or the suspected root cause; data analytics is then used to identify the total population of potentially affected clients; once in-scope population is defined a process is applied to systematically examine advisors and/or clients to determine who should be excluded where there is objective evidence that they are not impacted, or have not suffered detriment.

criteria used to determine the scope of a program? D1Q5 Are there any types of retail clients that should be excluded from a review and remediation program? If so, please specify. D1Q6 Are there any circumstances where wholesale clients should be included in a review and remediation program? If so, please specify. D1Q7 Please provide feedback on any costs or savings to your business as a result of the proposed guidance on determining the scope of a review and remediation program.		the legal requirement for all clients and this provision should be consistent with this time frame. D1Q6 – Disagree	
Proposal D2 We propose the guidance set out in paragraphs 90–92 (including Example 2) on when it is appropriate to invite other clients to participate in a review and remediation program. *Your feedback* D2Q1 Do you agree that advice Licensees should identify a group of clients that are within the scope of a program and, only in limited circumstances, seek interest from other clients in participating in the program? Please provide reasons for your answer. D2Q2 Are there any other instances when it would be appropriate to invite additional clients to	D2Q1 – Agree		

participate in the program? If so, please specify.			
Proposal D3 We propose the guidance set out in paragraphs 93–96 (including Example 3) on when it is appropriate to revise the scope of a review and remediation program. *Your feedback* D3Q1 Do you agree that the scope of a program may need to be revised when new information becomes available? If not, why not?	D3Q1 – Agree – that the scope of a program may need to be revised when new information becomes available.		
Proposal E1 We propose the guidance set out in paragraphs 99–104 on how to design a review and remediation program. *Your feedback* E1Q1 Are there any other key factors an advice Licensee should consider when designing a program? If so, please specify.			
Proposal E2 We propose the guidance set out in paragraph 105–111 (including our proposed key principles) on developing the processes for a review and remediation program. *Your feedback*			

E2Q1 Are there any other key principles an advice Licensee should consider when developing the processes for a program? If so, please specify. E2Q2 Please provide feedback on any costs or savings to your business as a result of the proposed guidance on the processes for a review and remediation program. E2Q3 Are there other areas we should give guidance on? If so, please specify.			
Proposal E3 We propose the guidance set out in paragraphs 112–131 (including Example 4) on how advice should be reviewed for a review and remediation program. *Your feedback* E3Q1 Is it reasonable for advice Licensees to make a decision on whether to remediate a client within 90 days of the client being notified that they are within the scope of the program? If not, what other timeframe would be appropriate? If a timeframe is not appropriate, are there other ways to ensure advice is reviewed in a timely way (e.g. regular reporting to the public or clients)? E3Q2 What types of remediation (monetary or non-monetary) should advice Licensees provide to clients? Are there any types of remediation licenses should not provide?		E3Q1 – Disagree – As noted in the submission, it is unreasonable for Licensees to be required to make a decision about whether to remediate a client within 90 days of notifying the client they are in the program scope. This is particularly the case in large scale / complex programs, where short, prescriptive time frames may not be achievable. Banks advise that a decision in large and complex CRRPs would take on average longer than 90 days given that such programs could run for 12 months or more. In the case of CRRPs, banks advise that the object is to undertake the review thoroughly and not compromise on the quality of the review. As an alternative, we consider that the guidance should provide more flexibility. For example, considering mandating a timeframe of 90 days for small to medium sized CRRPs and a separate timeframe for large and complex CRRPs (determined on a case–by-case basis). However, the timeframes should ideally be set as touch points for proactively contacting a client to update them on the progress of the	E3Q2 - remediation for non-monetary loss will be difficult to assess. We note the FOS will only order damages for non-monetary loss in special circumstances and then only up to $3,000.

E3Q3 Should advice Licensees apply the interest rate (to calculate monetary loss) used by their relevant EDR scheme? If not, please provide alternatives. E3Q4 Are there any circumstances, other than those listed at paragraph 129, when it would or would not be appropriate to have advice peer reviewed? If so, please specify.		review. In addition, the guide should provide a mechanism for when a timeframe could be extended by ASIC or a Licensee in dialogue with ASIC.	Paragraph 121 states "the aim is to place the client in the position they would have been in had it not been for the misconduct." We consider greater clarity is required for example to ensure the approach to calculation of compensation is consistent with the approach taken by FOS; ie in cases of inappropriate advice, the aim of financial compensation is to put the client in the position they would have been in had appropriate advice been given. In cases of misconduct, compensation is to put the client in the position they would have been in had the misconduct not occurred.
Proposal E4 We propose the guidance set out in paragraphs 132–138 on the level of independent oversight required for a review and remediation program. *Your feedback* E4Q1 Should all review and remediation programs involve a level of independent oversight? If not, in what circumstances would independent oversight be unnecessary? E4Q2 Do you agree that persons who are internal or external to the advice Licensee are appropriate to provide independent oversight, depending on the circumstances? If not, why not? E4Q3 Do you think an independent person will have a conflict of	E4Q1 – Agree – We support the requirement for independent oversight in many cases, but not for all CRRPs. E4Q2 – Agree – We agree that the degree of independent oversight required will vary according to the unique circumstances of each CRRP, taking into account factors such as scale and size of the program. Not all CRRPs will require independent external oversight	E4Q2 – para 134 - In respect of paragraph 134 we consider having an EDR scheme provide independent oversight (in relation to design and testing) could create conflicts of interest should clients want to complain about how the CRRP is run. E4Q3 – Disagree – we do not consider an independent person will have a conflict of interest in the assisting the design of the program as well as having a general oversight of the program.	We support the requirement for independent oversight (either internal or external). We considered the nature of the independent oversight can vary and be provided by internal or external bodies or experts. E4Q1 – Regarding the definition of systemic issue as presently drafted and its interaction with the requirement for independent oversight. A practical example of how independent oversight would not be warranted in all cases is the case of an incident where one adviser provided inappropriate advice to two clients. This would come within the scope of the Guide as presently drafted even though it would not normally warrant the establishment of a CRRP, nor would it warrant independent oversight.

interest in assisting in the design of a program as well as having a general oversight role of the program? If so, how could this conflict be managed? E4Q4 When should a review and remediation program involve independent oversight that is external to the Licensee (i.e. an 'independent expert')?			
Proposal E5 We propose the guidance set out in paragraphs 139–142 on the governance arrangements of a review and remediation program. *Your feedback* E5Q1 Is there more detailed guidance we can provide on who should be the decision maker in a review and remediation program and who should be overseeing a program? If so, please specify.			We do not consider there is more guidance that can be provided on who should be the decision maker in a CRRP and who should be overseeing a program.
Proposal E6 We propose the guidance set out in paragraphs 143–146 on record keeping in relation to review and remediation programs. *Your feedback* E6Q1 Are there any other types of records that an advice Licensee should keep in relation to a review and remediation program?			We do not consider there are any other types of records that a Licensee should keep in relation to a CRRP
Proposal			

E7 We propose the guidance set out in paragraphs 147–149 on public reporting in relation to review and remediation programs. *Your feedback* E7Q1 Do you agree that advice Licensees should consider reporting publicly on review and remediation programs? If not, why not?			
Proposal F1 We propose the general guidance set out in paragraphs 152–154 (including our proposed key principles) on the factors advice Licensees should consider when communicating with clients as part of a review and remediation program. *Your feedback* F1Q1 Do you agree with our general proposed guidance on what advice Licensees should consider when communicating with clients as part of a review and remediation program? If not, why not? Please provide alternatives. F1Q2 Please provide feedback on any costs or savings to your business as a result of this proposed guidance. F1Q3 Are there other areas on which you would like guidance about communication? If so, please specify.	F1Q1 – Agree		

Proposal F2 We propose the guidance set out in paragraphs 155–176 on what advice Licensees should consider when determining when and how to communicate with clients as part of a review and remediation program. *Your feedback* F2Q1 Do you agree that the initial and final communication with a client should always be in writing (see paragraph 161)? If not, why not? Please provide alternative suggestions. F2Q2 Is 10 working days an appropriate timeframe for advice Licensees to follow up in writing any verbal communication of key information to clients (see paragraph 161)? If not, please specify what an appropriate timeframe is. F2Q3 Is there any information other than in paragraphs 165 and 170 that should be included in communication with clients? If so, please specify. F2Q4 When an advice Licensee is seeking interest from a broader group of clients, what additional guidance, if any, could we give at paragraph 167 on what clients should be required to do in order to participate in the program? F2Q5 Is 30 days an appropriate timeframe when requesting that clients respond to communication (see paragraph 173)? If not, please			We note that there are a range of communication methods for providing information and updates to clients including non-responsive clients. For example, regular updates on a specific website established for a CRRP. However we note paragraph 175 states “clients should not be excluded from the program or be denied remediation on the basis of not responding within the specified timeframe.” Banks advise that it is sometimes the case that without sufficient information from the client, they are simply unable to determine whether they are within program scope, or whether the advice was inappropriate for the particular customer. We suggest deleting this paragraph as the following paragraph is sufficient (advice Licensees should have processes in place to review the advice of clients who respond after a review and remediation program has been concluded).

specify what you consider is an appropriate timeframe. F2Q6 Are there other reasonable efforts, in addition to the examples in paragraph 174, that an advice Licensee could make to contact a client who has not responded?			
Proposal G1 We propose the guidance set out in paragraphs 179–184 on the external review of decisions following a review and remediation program. *Your feedback* G1Q1 When would it be appropriate for advice Licensees to waive an EDR scheme's monetary, time or other limits? G1Q2 Should the limits on some forms of compensation not be waived? If so, please specify what limits should not be waived and in what circumstances. G1Q3 Is assistance to clients wishing to seek professional advice required in all circumstances? If not, when would it be required? G1Q4 Are there other types of assistance that advice Licensees could offer clients? Please specify. G1Q5 Please provide feedback on any costs or savings to your business as a result of the proposed guidance on the external review of decisions of review and remediation programs.			G1Q1 – We do not consider that there should be guidance on waiving an EDR's scheme's monetary, time or other limit. Any such decision should be solely at the discretion of the Licensee based on the individual circumstance of the CRRP. G1Q2 – As above. In addition a PI insurer may restrict the waiving of limits under an individual policy. G1Q3/4 – Assistance to seek professional advice should be recommended to clients where appropriate in relevant circumstances. However this should not be prescribed in guidance and should be at the discretion of individual Licensees based on the circumstance of the CRRP.

G1Q6 Are there other areas on which you would like guidance in relation to the external review of Licensee decisions? If so, what should that guidance include?			
Proposal G2 We propose the guidance set out in paragraphs 185–186 on settlement deeds. *Your feedback* G2Q1 Should further guidance be provided on settlement deeds? If so, what should that guidance include?		G2Q1 –Disagree - Settlement deeds are an important part of the remediation process which enable both the Licensee and the client to obtain a degree of finality to the process. We agree that deeds should be relevant to the conduct or matter being remediated. In order to achieve the objective of achieving a resolution and bringing the matter to a close, settlement deeds by their nature need to require that further actions on the same matter are not to be taken. This would include preventing the settled matter to be re-litigated through EDR. As noted in our submission we are concerned that para 186 implies disputes cannot be finalised for any reason. We consider the wording in this provision should be tightened and that ASIC should make it clear that matters can be finalised with only limited exceptions.	
Proposal H1 We propose to amend [CO 14/923] to clarify that, when an advice Licensee or one of its representatives provides personal advice, the Licensee must ensure not only that client records are kept, but also that the Licensee continues to have access to these records during the period in which they are required to be retained. *Your feedback*	H1QI – Agree in part We support this proposal but note there is no statutory obligation on the subsequent Licensee to retain the records and provide access to them to the previous Licensee(s), making the obligation potentially difficult to comply with in practice. H1Q2 - Agree		H1Q1 - We note that a key impediment in the effective management of remediation activities is where the adviser has left the Licensee, including where they have moved to a new Licensee. This impediment occurs in several ways including: ▶ Road blocks on access to files despite contractual obligations to deliver or make available files to the remediating Licensee; and

H1Q1 Do you agree with our proposed amendment to [CO 14/923]? If not, why not? H1Q2 Will our proposed amendment change existing record-keeping practices? If so, please describe the changes involved. H1Q3 Please provide feedback on any costs or savings to your business as a result of the proposed amendment.	We agree that Licensees should have some mechanism to access records after an adviser leaves. We recommend that ASIC make clear its expectation that advisers comply with any request for documents from a former Licensee within a certain time period – or otherwise recommend some obligation being placed on advisers to assist Licensees and to comply with reasonable requests for documents to assist in remediation. It is recommended that Licensees should not be adversely affected by any changes to CO 14/923 due to any potential unintended retrospective application.		▶ Adviser communicating directly with clients in a manner which frustrates the remediation efforts.