



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 298

Oversight of the Australian Financial Complaints Authority: Update to RG 139

March 2018

About this paper

This consultation paper sets out our proposals for two aspects of our oversight role regarding the Australian Financial Complaints Authority (AFCA). It also seeks feedback on whether financial firms need any transitional relief from external dispute resolution disclosure obligations in the lead up to commencement of AFCA.

We seek the views of interested stakeholders, including scheme, industry and consumer representatives.

Attached to this paper is a draft updated version of Regulatory Guide 139 *Oversight of the Australian Financial Complaints Authority* (draft RG 139).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 5 March 2018 and is based on the Corporations Act as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

We are consulting on the proposals in this paper for a period of four weeks.

This consultation focuses on a limited number of issues to support an effective transition to the commencement of AFCA. This is because our updated guide retains long-standing policy positions that the Review of the financial system external dispute resolution and complaints framework (Ramsay Review) and the Australian Government have endorsed.

Our consultation is designed to give clarity to stakeholders about our proposed approach and to minimise overlap between this consultation and other processes leading up to the commencement of AFCA—in particular, the AFCA board led consultation on the scheme's terms of reference, which will occur during the transition period.

As we will not reissue RG 139 until AFCA starts accepting complaints (no later than 1 November 2018), we will be able to take into account any issues that emerge from these other consultation processes.

We are also keen to hear from you on any other issues you consider important. Your comments will help us develop our policy on our oversight of AFCA.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at www.asic.gov.au/privacy for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 6 April 2018 to:

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What will happen next?

Stage 1	5 March 2018	ASIC consultation paper released
Stage 2	6 April 2018	Comments due on the consultation paper
Stage 3	1 November 2018	Updated regulatory guide released

A Background to the proposals

Key points

The *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018* (AFCA Act) creates a new, single external dispute resolution (EDR) scheme for all financial services, credit and superannuation complaints. The scheme is to be known as the Australian Financial Complaint Authority (AFCA).

The AFCA Act implements the Australian Government's response to the Review of the financial system external dispute resolution and complaints framework (Ramsay Review), the first comprehensive and independent review of the financial services dispute resolution framework.

We are updating our existing dispute resolution guidance to align with the new statutory framework for EDR.

Establishment of AFCA

- 1 The AFCA Act introduces Pt 7.10A into the *Corporations Act 2001* (Corporations Act) and implements practical reforms to the EDR framework. The key elements of the reforms are that:
 - (a) there is now only one EDR scheme, AFCA, for all financial firms (including superannuation);
 - (b) AFCA is operated by a company limited by guarantee and funded by all member firms;
 - (c) the Hon. Kelly O'Dwyer MP, Minister for Revenue and Financial Services, authorises the AFCA scheme, will appoint a minority of the initial board—including the independent chair to the scheme operator—and can impose conditions of approval;
 - (d) superannuation complaints are subject to specific legislative provisions, which largely preserve the decision making and legal rights of parties under the Superannuation Complaints Tribunal (SCT);
 - (e) ASIC has an ongoing oversight role regarding AFCA, which includes approving any material changes to the scheme; and
 - (f) ASIC has a new general directions power over AFCA, and an explicit directions power to increase monetary limits and ensure the scheme is adequately financed.

Note: A reference to the AFCA Act is a reference to the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017, as passed by both Houses of Parliament on 14 February 2018. The AFCA Act amends the Corporations Act and other financial services and credit laws and repeals the *Superannuation (Resolution of Complaints) Act 1993*.

- 2 The AFCA Act implements the Australian Government’s response to the Ramsay Review, the first comprehensive and independent review of the financial services dispute resolution framework. This was the culmination of extensive consultation, including the release of an issues paper and interim report that resulted in more than 185 public submissions.

Note: See Ramsay Review, [Review into dispute resolution and complaints framework: Issues paper](#), September 2016 and Ramsay Review, [Review of the financial system external dispute resolution and complaints framework: Interim report](#), December 2016.

Superannuation complaints

- 3 Under AFCA, superannuation complaints remain subject to an unlimited monetary jurisdiction, as has always been the case under the SCT. The Hon. Kelly O’Dwyer MP, Minister for Revenue and Financial Services, has announced higher monetary limits and sub-limits (monetary limits applying to complaints about specific products and services) for financial services and credit complaints to take effect from commencement of the scheme. The Minister has also announced new ‘small business’ and ‘primary producer’ definitions, which will shape AFCA’s jurisdiction.

Note: See the Hon. Kelly O’Dwyer MP, Minister for Revenue and Financial Services, and the Hon. Craig Laundry MP, Minister for Small and Family Business, the Workplace and Deregulation, [Consumers win as a one-stop-shop for financial complaints passes through parliament](#), joint media release, 14 February 2018.

Authorising AFCA

- 4 In authorising AFCA, the Minister must take into account the mandatory requirements in s1051 of the Corporations Act, the general considerations for an EDR scheme in s1051A and any other matters the Minister considers relevant: s1050(1)–(2).

Note: All references are to the Corporations Act, unless otherwise specified.

- 5 The mandatory requirements in s1051 are:

- (a) organisational requirements;
- (b) operator requirements;
- (c) operational requirements; and
- (d) compliance requirements.

- 6 The general considerations in s1051A are:

- (a) the accessibility of the scheme;
- (b) the independence of the scheme;
- (c) the fairness of the scheme;
- (d) the efficiency and effectiveness of the scheme; and
- (e) the accountability of the scheme.

7 The general considerations are based on the principles in the [Benchmarks for Industry-Based Customer Dispute Resolution](#) (EDR Benchmarks), published by the then Department of Industry, Science and Tourism in 1997 and updated and reissued by Treasury in 2015.

8 These benchmarks formed the basis of our approach to approving the previous, industry-based EDR schemes: see [Regulatory Guide 139 Approval and oversight of external dispute resolution schemes](#) (current RG 139). The updated draft Regulatory Guide 139 *Oversight of the Australian Financial Complaints Authority* (draft RG 139) retains much of our guidance that is based on these established EDR principles. We have not re-opened long-standing policy settings for EDR where those policy positions are reflected in the legislation or are consistent with the Ramsay Review analysis and recommendations accepted by the Australian Government.

Note: See the appendix of draft RG 139 for further information on the EDR Benchmarks.

Proposed updates to RG 139

9 Updated draft RG 139 is attached to this paper.

10 In making its recommendations for reform to the dispute resolution framework, the Ramsay Review noted that there were a number of important strengths of the existing EDR framework that should be retained and enhanced.

Note: See Ramsay Review, [Review of the financial system external dispute resolution and complaints framework](#), May 2017, p. 10.

11 In our update to RG 139 we have aligned our guidance with the legislative changes introduced by the AFCA Act. We have also taken into account Treasury's consultation on AFCA: see Treasury, [Establishment of the Australian Financial Complaints Authority: Consultation paper](#), November 2017 (Treasury consultation).

12 On 14 February 2018, the Minister announced that AFCA would commence no later than 1 November 2018 and requested a proposal for a not-for-profit company to operate the AFCA scheme be lodged by 15 March 2018.

Note: See the Hon. Kelly O'Dwyer, Minister for Revenue and Financial Services, and the Hon. Craig Laundy, Minister for Small and Family Business, the Workplace and Deregulation, [Consumers win as a one-stop-shop for financial complaints passes through parliament](#), joint media release, 14 February 2018.

13 We are consulting on our updated guidance now, to support an effective transition to the commencement of AFCA, by clarifying how we will perform our ongoing oversight role. Table 1 summarises the key changes we are making in updating RG 139.

Table 1: Summary of updates to RG 139

Updates to RG 139	Reference in draft RG 139
Introduce the broad concept of 'financial firm' members of AFCA.	Table 1 of draft RG 139
Explain ASIC's new directions and guidance powers.	Draft RG 139.28–RG 139.32
Examples of material changes to the AFCA scheme that must be approved by ASIC.	Draft 139.33–RG 139.36
Set out the new reporting regime requirement that AFCA: <ul style="list-style-type: none"> • identify the names of financial firms, representatives and employees in reports of serious contraventions and systemic issues; and • make these reports promptly to ASIC and other regulators. 	Draft RG 139.37–RG 139.59
Introduce the concept of the 'refer back' arrangements. The Ramsay Review recommended that, generally, all complaints received by AFCA should be referred back to the financial firm for a final attempt at resolution (superannuation death benefit complaints are a key exception).	Draft RG 139.170–RG 139.180
Set out the role of the independent assessor, including our expectations about when and how they will report to ASIC.	Draft RG 139.187–RG 139.191
Update our existing policy on independent scheme reviews, taking into account the Ramsay Review recommendation (Recommendation 6) and the Treasury consultation. We have retained the five-year periodic review timeframe from the current RG 139, while noting that: <ul style="list-style-type: none"> • the Minister must request an independent review of the operation of the AFCA reforms as soon as practicable after 18 months from commencement (cl 4(1) of the AFCA Act); and • if there is a need to request AFCA to undertake a specific or targeted review within any ongoing five-year period, then ASIC now has powers to direct the scheme to do this. 	Draft RG 139.192–RG 139.201

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In this consultation paper, we are specifically seeking stakeholder feedback on two aspects of our oversight role regarding AFCA:

- (a) the timing of reports to be made by AFCA to ASIC (see proposals B1–B2); and
- (b) the role of AFCA's independent assessor (see proposals B3–B5).

- 15 We are also consulting on whether the transition period to the commencement of AFCA allows sufficient time for financial firms to comply with their EDR disclosure obligations (see proposal B6).
- 16 Stakeholders may provide feedback on other aspects of draft RG 139, but in doing so should consider that our approach to reviewing this guidance has been to both align it with the new legislative requirements and to retain longstanding policy positions that the Ramsay Review and Australian Government have endorsed.

Timing of update to RG 139 and further consultation

- 17 As the existing ASIC-approved EDR schemes—the Financial Ombudsman Service and the Credit and Investments Ombudsman—will continue to operate during the transition period, we will not reissue the updated RG 139 until AFCA starts accepting complaints (no later than 1 November 2018).
- 18 Transitional steps that will take place before AFCA commences operations include:
- (a) Ministerial authorisation of AFCA; and
 - (b) AFCA board led consultation on the scheme terms of reference.
- 19 During this transition period, ASIC will consult with the Australian Prudential Regulation Authority (APRA), the Commissioner of Taxation and the authorised AFCA scheme about practical implementation of the new legislative reporting requirements.
- 20 We will also separately consult on the internal dispute resolution (IDR) reforms that were introduced by the AFCA Act. These include that firms must report IDR performance data to ASIC on an ongoing basis. This consultation will take place after AFCA commences.

B Issues for consultation

Key points

We are seeking stakeholder feedback on our approach in draft RG 139 to the:

- reporting requirements that apply to AFCA—that is, time in which reports should be made to ASIC;
- role of the independent assessor; and
- EDR disclosure obligations.

Referring matters to appropriate authorities

- 21 The AFCA Act includes a number of statutory provisions that have governed the operation of the SCT: see the *Superannuation (Resolution of Complaints) Act 1993*. It includes a new reporting regime for AFCA that is largely modelled on the SCT’s reporting regime, with some important enhancements—including extending systemic issues reporting to superannuation complaints.
- 22 Section 1052E requires that AFCA report, among other matters, particulars of:
- (a) a serious contravention of any law;
 - (b) a contravention of the governing rules of a regulated superannuation fund or an approved deposit fund;
 - (c) a failure or refusal to give effect to a determination;
 - (d) settlements that may require investigation; and
 - (e) systemic issues arising from the consideration of complaints.
- 23 AFCA must give particulars of the contravention, breach, refusal or failure to APRA, ASIC or the Commissioner of Taxation (as appropriate). ASIC has power under the AFCA Act to issue legislative guidance for s1052E.
- 24 We expect that serious contraventions reportable to ASIC under s1042E will include serious contraventions of financial services and credit laws.
- 25 For more than 15 years, the ASIC-approved EDR schemes have reported ‘serious misconduct’ to ASIC in accordance with the longstanding policy settings in the current RG 139. This concept has been applied to include fraudulent conduct, grossly negligent or inefficient conduct, wilful or flagrant breaches of relevant laws, and non-compliance with scheme decisions or determinations. The concept of ‘serious misconduct’ has been replaced by the specific requirements in s1052E and supplemented by other ASIC policy requirements (e.g. relating to systemic issues).

Proposal

B1 We propose to require that:

- (a) the obligation to report will apply to serious contraventions by a financial firm, including a licensee, a representative or an employee; and
- (b) AFCA must make reports within a reasonable time, but no later than 30 days, of:
 - (i) becoming aware that a serious contravention has occurred or may have occurred; or
 - (ii) identifying a systemic issue.

In specifying requirements, we will consult with APRA, the Australian Taxation Office (ATO) and AFCA, with a view to harmonising and streamlining reporting arrangements.

Your feedback

B1Q1 Do you agree with our proposed timeframe for AFCA to report serious contraventions or systemic issues? If not, why not?

B2 We propose to give guidance in draft RG 139 that:

- (a) a contravention will be 'serious' (and therefore reportable by AFCA to ASIC) if there are sufficient facts or information to found an objectively reasonable belief that it is serious. We consider that a reasonable belief will be formed if a reasonable person would expect AFCA to report the matter to ASIC, or if AFCA in good faith forms the view that a serious contravention of the law may have occurred;
- (b) the particulars of the contravention, for the purposes of s1052E, will include the identity of the financial firm, including the licensee, representative or employee; and
- (c) AFCA should consult with ASIC if they are unsure about whether they should refer a matter to ASIC.

Your feedback

B2Q1 Do you agree with our broad approach to AFCA reporting? If not, why not?

Rationale

26 The reporting regime set out in draft RG 139:

- (a) takes into account the text of the Explanatory Memorandum to Treasury Laws Amendment (Putting Consumer First—Establishment of the Australian Financial Complaints Authority) Bill 2017 (Explanatory Memorandum) at paragraph 1.87, which states that:

In relation to serious contraventions of law, it is intended that this will generally relate to laws relevant to the subject matter and circumstances of

- a complaint made to AFCA and the complaint handling processes, rather than necessarily to a contravention of *any* law (emphasis added);
- (b) confirms that the particulars of reports of serious contraventions and systemic issues, as required under s1052E, includes the name of the financial firm, licensee or representative, or employee involved (as relevant);
 - (c) requires AFCA to make reports to ASIC within 30 days of becoming aware that a serious contravention has or may have occurred, or about the existence of a systemic issue.
- 27 Draft RG 139 acknowledges that AFCA may identify contraventions that do not meet the threshold for reporting to ASIC. We encourage AFCA to consult with ASIC if it is uncertain about whether the reporting threshold is triggered in any specific case.
- 28 We have set out ASIC’s legal view that ‘particulars’, for the purposes of s1052E, includes the names of financial firms or individuals that are the subject of a report. We recognise that previous operational policy was not to require ASIC-approved EDR schemes to report names of firms, particularly in relation to systemic issues, at first instance to ASIC. We consider that this legislative reform will increase transparency and the effectiveness of reporting to ASIC. We will also be able to more readily identify if a particular issue identified by AFCA has already come to our attention (e.g. through licensee breach reporting or a report of misconduct).

Role of the independent assessor

- 29 It is a mandatory requirement that AFCA have an independent assessor. The Explanatory Memorandum states at paragraph 1.48 that:
- the scheme must have an independent assessor to assess the handling of complaints, with a focus on reviewing the service provided to users in the handling of the disputes (if the assessor determines that the complaint was not handled satisfactorily, the assessor may recommend that AFCA take certain actions).
- 30 In its consultation paper, Treasury noted that the function of the independent assessor:
- will not be to review the merits of an AFCA decision, but to review complaints about service issues in AFCA’s dispute handling. Where the independent assessor determines that a dispute, or series of disputes, was not handled satisfactorily, the assessor may recommend that the EDR body take certain actions, including making an apology, providing compensation to the affected user and/or recommending a change to a scheme process or procedure, for example.

Note: See [Treasury consultation](#), p. 13.

Proposal

- B3** We propose to clarify in our guidance that the primary role of the independent assessor is to:
- (a) respond to complaints about how AFCA dealt with an individual complaint or series of complaints; and
 - (b) identify, address and report on issues affecting the AFCA's complaints handling operations and performance; and
 - (c) as appropriate, make recommendations about or provide remedies for identified issues in complaints handling operations and performance.

Your feedback

B3Q1 Do you agree with our proposed guidance on the primary role of the independent assessor? If not, why not?

- B4** We propose to clarify in our guidance that it is *not* the role of the independent assessor to:
- (a) undertake a merits review of an AFCA decision, including a jurisdictional decision; or
 - (b) re-open a complaint or the outcome of a complaint.

Your feedback

B4Q1 Do you agree with our proposed guidance on what is outside the role of the independent assessor? If not, why not?

- B5** We also propose to require that that the independent assessor must:
- (a) be appointed by the AFCA Board, with its role and functions set out in the AFCA terms of reference;
 - (b) have sufficient powers and resources to perform its functions;
 - (c) be independent, with appropriate qualifications and experience;
 - (d) accept service complaints from all users of the scheme;
 - (e) identify, address and report on issues affecting AFCA's complaints handling operations and performance;
 - (f) make recommendations, as appropriate, to the Chief Ombudsman and to the AFCA Board;
 - (g) identify any issues that may benefit from further review or analysis—for example, in an independent review;
 - (h) make quarterly reports to the AFCA Board and ASIC; and
 - (i) make annual public reports on:
 - (i) complaints received;
 - (ii) findings or recommendations made; and
 - (iii) outcomes achieved as a result of recommendations made.

Your feedback

B5Q1 Do you agree with our proposed requirements for the independent assessor? If not, why not?

Rationale

- 31 Our proposed guidance about and requirements for the independent assessor are intended to promote the independent scrutiny of the handling of individual complaints by AFCA.
- 32 We consider that the independent assessor will play an important role in supporting AFCA's quality assurance and accountability frameworks. For example, the independent assessor can:
- (a) identify process errors or communication barriers;
 - (b) identify systems enhancements that may improve complaints handling performance; or
 - (c) help inform the need for, or scope of, a future independent review.
- 33 The independent assessor will also close an important feedback loop for ASIC, particularly where we receive complaints (other than about the outcome of a complaint) that require an independent assessment of scheme services.
- 34 ASIC staff will also meet with the independent assessor on at least an annual basis, and more frequently if required. Draft RG 139 acknowledges that the role of the independent assessor sits within a broader governance and accountability framework at AFCA.

EDR disclosure obligations

- 35 Financial firms, including trustees of regulated superannuation funds, have legal obligations to include relevant EDR information in a range of disclosures and communications to consumers. This includes:
- (a) Financial Services Guides (FSGs) (s942B(2)(h) and 942C(2)(i) of the Corporations Act);
 - (b) Product Disclosure Statements (PDSs) (s1013D(1)(g) of the Corporations Act);
 - (c) Credit Guides (s113(2)(h), 126(2)(e), 127(2)(e), 136(2)(h), 149(2)(e), 150(2)(e) and 158(2)(h) of the *National Consumer Credit Protection Act 2009*);
 - (d) Short-Form PDSs (items 11(1)(c) and 11(2) of Sch 10D to the Corporations Regulations 2001 (Corporations Regulations)); and
 - (e) periodic and exit statements for superannuation products (regs 7.9.75(1)(c) and 7.9.53 of the Corporations Regulations).
- 36 These disclosures and other consumer-facing communications play an important role in raising awareness about access to dispute resolution. They

communicate a consumer's right to make a complaint, and the details of where and how to make a complaint to EDR. Final responses and written reasons about disputes that have gone through IDR especially should contain details of how a consumer can escalate their complaint to the relevant EDR scheme if it is unresolved.

- 37 Where these disclosures and communications refer to a predecessor EDR scheme, they will need to be updated to refer to AFCA by the time that AFCA commences.
- 38 The Australian Government has announced that the AFCA will start receiving disputes no later than 1 November 2018.

Proposal

- B6** Our proposed expectations for financial firms are that, by commencement (no later than 1 November 2018):
- (a) any final response or written reasons financial firms give to a consumer about a dispute at IDR will refer to AFCA;
 - (b) financial firms will update online information and forms to refer to AFCA, as appropriate; and
 - (c) personalised disclosures, including periodic and exit statements, will refer to AFCA.

Your feedback

B6Q1 Is this is a sufficient timeframe for financial firms to update all of their legal disclosures (as set out in paragraph 35) and other consumer communications? If not, why not? Please provide specific detail in your response.

B6Q2 Should we provide transitional relief from external dispute resolution disclosure obligations in the lead up to AFCA commencement? If so, please provide reasons.

Rationale

- 39 We consider that the transition period to the commencement of AFCA (by no later than 1 November 2018) is likely to be sufficient to enable financial firms to satisfy their disclosure obligations in a timely and efficient way, while minimising potential consumer confusion around the consolidation of the three predecessor EDR schemes.

C Regulatory and financial impact

- 40 In this paper we are proposing to update our existing dispute resolution guidance to align with the new statutory framework for EDR, introduced by the AFCA Act.
- 41 Treasury prepared a Regulation Impact Statement (RIS) for the Treasury Laws Amendment (Putting Consumers First—Establishment Of The Australian Financial Complaints Authority) Bill 2017 (AFCA Bill): see Chapter 5 of the [Revised Explanatory Memorandum to the AFCA Bill](#).

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to require that:</p> <ul style="list-style-type: none"> (a) the obligation to report will apply to serious contraventions by a financial firm, including a licensee, a representative or an employee; and (b) AFCA must make reports within a reasonable time, but no later than 30 days, of: <ul style="list-style-type: none"> (i) becoming aware that a serious contravention has occurred or may have occurred; or (ii) identifying a systemic issue. <p>In specifying requirements, we will consult with APRA, the Australian Taxation Office (ATO) and AFCA, with a view to harmonising and streamlining reporting arrangements.</p>	<p>B1Q1 Do you agree with our proposed timeframe for AFCA to report serious contraventions or systemic issues? If not, why not?</p>
<p>B2 We propose to give guidance in draft RG 139 that:</p> <ul style="list-style-type: none"> (a) a contravention will be 'serious' (and therefore reportable by AFCA to ASIC) if there are sufficient facts or information to found an objectively reasonable belief that it is serious. We consider that a reasonable belief will be formed if a reasonable person would expect AFCA to report the matter to ASIC, or if AFCA in good faith forms the view that a serious contravention of the law may have occurred; (b) the particulars of the contravention, for the purposes of s1052E, will include the identity of the financial firm, including the licensee, representative or employee; and (c) AFCA should consult with ASIC if they are unsure about whether they should refer a matter to ASIC. 	<p>B2Q1 Do you agree with our broad approach to AFCA reporting? If not, why not?</p>
<p>B3 We propose to clarify in our guidance that the primary role of the independent assessor is to:</p> <ul style="list-style-type: none"> (a) respond to complaints about how AFCA dealt with an individual complaint or series of complaints; and (b) identify, address and report on issues affecting the AFCA's complaints handling operations and performance; and (c) as appropriate, make recommendations about or provide remedies for identified issues in complaints handling operations and performance. 	<p>B3Q1 Do you agree with our proposed guidance on the primary role of the independent assessor? If not, why not?</p>

Proposal	Your feedback
<p>B4 We propose to clarify in our guidance that it is not the role of the independent assessor to:</p> <ul style="list-style-type: none"> (a) undertake a merits review of an AFCA decision, including a jurisdictional decision; or (b) re-open a complaint or the outcome of a complaint. 	<p>B4Q1 Do you agree with our proposed guidance on what is outside the role of the independent assessor? If not, why not?</p>
<p>B5 We also propose to require that that the independent assessor must:</p> <ul style="list-style-type: none"> (a) be appointed by the AFCA Board, with its role and functions set out in the AFCA terms of reference; (b) have sufficient powers and resources to perform its functions; (c) be independent, with appropriate qualifications and experience; (d) accept service complaints from all users of the scheme; (e) identify, address and report on issues affecting AFCA's complaints handling operations and performance; (f) make recommendations, as appropriate, to the Chief Ombudsman and to the AFCA Board; (g) identify any issues that may benefit from further review or analysis—for example, in an independent review; (h) make quarterly reports to the AFCA Board and ASIC; and (i) make annual public reports on: <ul style="list-style-type: none"> (i) complaints received; (ii) findings or recommendations made; and (iii) outcomes achieved as a result of recommendations made. 	<p>B5Q1 Do you agree with our proposed requirements for the independent assessor? If not, why not?</p>
<p>B6 Our proposed expectations for financial firms are that, by commencement (no later than 1 November 2018):</p> <ul style="list-style-type: none"> (a) any final response or written reasons financial firms give to a consumer about a dispute at IDR will refer to AFCA; (b) financial firms will update online information and forms to refer to AFCA, as appropriate; and (c) personalised disclosures, including periodic and exit statements, will refer to AFCA. 	<p>B6Q1 Is this is a sufficient timeframe for financial firms to update all of their legal disclosures (as set out in paragraph 35) and other consumer communications? If not, why not? Please provide specific detail in your response.</p> <p>B6Q2 Should we provide transitional relief from external dispute resolution disclosure obligations in the lead up to AFCA commencement?</p>