



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 23

Licensing: External and internal dispute resolution procedures

June 2001

Your comments

You are invited to comment on the proposals and issues for consideration in this paper. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential.

Comments are due by Thursday 5 July 2001 and should be sent to:

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You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

What this policy proposal is about

1 This policy proposal paper deals with the obligation under 912A(g) of the *Financial Services Reform Bill 2001* (the Bill) for a financial services licensee to have **external** and **internal** dispute resolution procedures approved by ASIC. To give context to the policies raised in this paper it is important you read this paper in conjunction with Policy Statement 139 *Approval of external complaints resolution schemes* [PS 139].

Note: We expect that regulations will be issued under 912A(g), 919A(e) and 1017G concerning the basis upon which ASIC is to approve external and internal dispute resolution procedures. We will review the proposals contained in this paper, once the content of those regulations becomes more certain.

2 A licensee can satisfy the obligation to have **external** dispute resolution procedures approved by ASIC, by being a member of an ASIC approved scheme which provides such procedures, ie an alternative dispute resolution (ADR) scheme. In this paper, we will refer to external dispute resolution procedures as “**ADR schemes**”.

3 Section A of this paper discusses our approach to ADR schemes including:

- (a) the status of ADR schemes approved under Policy Statement 139 *Approval of external complaints resolution schemes* [PS 139];
- (b) our approach to the approval of ADR schemes and transitional arrangements (of primary interest to ADR schemes and relevant industry bodies);
- (c) the monetary and product coverage of the approved ADR schemes;
- (d) a licensee’s obligation to belong to an approved ADR scheme and the transitional arrangements;
- (e) the obligation of members of a declared professional body to belong to an approved ADR scheme;
- (f) the obligation of an unlicensed product issuer to belong to an approved ADR scheme; and
- (g) other issues relating to the operation of ADR schemes and their approval.

4 Section B discusses our approach to approving **internal** dispute resolution procedures. In this paper, we will refer to these procedures as “**IDR procedures**”.

Important note: To give context to the proposals in this paper it is important you read it in conjunction with:

- Policy Statement 139 *Approval of external complaints resolution schemes* [PS 139]; and
- our other FSRB policy proposal papers, which give detailed guidance on compliance measures for other licensee obligations including competency and honesty; non-financial and financial resources; training and supervision and risk management systems: see the list at the end of this paper under “Related papers”.

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Policy proposals

We have two sets of policy proposals – **Section A** (external dispute resolution procedures) and **Section B** (internal dispute resolution procedures). For each of these proposed policies we have listed various aspects of those proposals that we are considering and have raised issues that we would like you to comment on. The corresponding Explanation section provides some explanation and background to our proposals as well as guidance on related issues.

Special note: We want to provide you with guidance about our plans for policy and processes as soon as we can to help you plan effectively. While we have done our best to cover the main issues, you will need to make your own preparation plans. It is possible we have missed some issues or have not taken into account the way the new legislation will affect specific industry situations. *We are keen to hear from you on our general approach, and what might be missing from it, as well as your answers to specific questions.*

A External dispute resolution procedures (ADR schemes)

Policy proposal	Your feedback
<p>ADR schemes currently approved under [PS 139]</p> <p>A1 We anticipate that Policy Statement 139 <i>Approval of external complaints resolution schemes</i> [PS 139] will continue to form the basis for our approach to ADR scheme approval under the Bill, in conjunction with the policies proposed by this paper. We will reassess the requirements in [PS 139] when the regulations under the Bill are issued.</p> <p>A2 On this basis, ADR schemes already approved under [PS 139] will be regarded as approved ADR schemes under the Bill, subject to any modifications required as a result of the difference in coverage anticipated under the Bill: see policy proposal paragraphs A7 to A11.</p> <p>Approval of new ADR schemes during the transition</p> <p>A3 ADR schemes which do not have an existing [PS 139] approval, and wish to be approved for the purposes of the Bill before the end of the anticipated 2 year transitional period under the Bill, will need to apply for approval from ASIC by lodging their application with us within 12 months of the start of the transitional period. This will guarantee that the application is assessed and if standards are met, approval granted, before the end of the transitional period. Approval of an ADR scheme is not guaranteed. The approval processes to date have typically</p>	<p>A3Q1 Will this proposed timing for dealing with ADR scheme applications for approval cause any practical problems? If so, what are they and how can they be overcome?</p>

Policy proposal	Your feedback
<p>taken more than 6 months to complete.</p> <p>A4 We will assess applications from ADR schemes based on the requirements in [PS 139] and the policies proposed in this paper, taking into account any further requirements under the Bill (including those relating to the product or monetary coverage of the scheme).</p> <p>A5 In addition to the requirements set out in [PS 139], our approval of ADR schemes will take into account:</p> <ul style="list-style-type: none"> (a) a scheme’s ability and expertise to deal with the particular products and services it intends to cover; (b) consistent complaints handling and monetary coverage across schemes; and (c) the link between the members’ IDR procedures and the ADR scheme. <p>A6 We will require that, upon request, approved ADR schemes must promptly issue members with a confirmation of their membership. This confirmation must show the duration of the membership.</p> <p style="padding-left: 40px;">Note: It is likely that a copy of this confirmation will need to be provided to ASIC by an applicant for an Australian financial services licence: see policy proposal paragraph A11.</p>	<p>A5Q1 Are there any other relevant factors we should take into account? If so, what are they and why should they be considered?</p> <p>A5Q2 Is more guidance required on links between members’ IDR procedures and ADR schemes?</p> <p>A6Q1 What form, if any, should confirmation of membership take?</p>
<p>Coverage of the ADR schemes</p> <p><i>What is an “eligible complaint”?</i></p> <p>A7 Consistent with 912A(g), we consider that an ADR scheme must be able to resolve a complaint by a retail client in connection with the provision of financial services to the client by a licensee who is a member of the ADR scheme (an “eligible complaint”).</p>	<p>A7Q1 Does this definition cause any practical problems for industry? If so, what are they and how can a different definition overcome them while still ensuring consumers are</p>

Policy proposal	Your feedback
<p>Who can complain?</p> <p>A8 An approved scheme must be able to handle complaints from retail clients.</p> <p>Note: The retail client definition in 761G includes a product/value test (except in the case of general insurance, superannuation and Retirement Savings Account (RSA) products where there are no monetary limits). The Explanatory Memorandum to the Bill states that the prescribed amount of the product/value test will be set by regulation. The Explanatory Memorandum goes on to state that the prescribed amount will initially be set at \$500,000 although the regulations will allow the amount to be varied in particular circumstances.</p> <p>Is there a monetary limit for complaints?</p> <p>A9 The Bill does not prescribe any monetary limit for complaints that can be dealt with by approved ADR schemes. This issue may be dealt with in the regulations. We will review the monetary limits of ADR schemes taking into account any regulations which are issued.</p> <p>A10 When approving ADR schemes, we will take into account the monetary limits of those ADR schemes.</p> <p>We believe it is appropriate for ADR schemes to have some monetary limits. We believe the current monetary limit of some schemes is low, however, we appreciate that sudden increases may cause difficulties for some members. We generally support sensible increases in monetary limits and believe that such increases need to be done in reasonable increments with consideration given to the relative costs and benefits for industry and consumers.</p>	<p>protected?</p> <p>A9Q1 What issues should we consider when reviewing the monetary limits of ADR schemes?</p> <p>A10Q1 Does our approach to the increase of the monetary limits of ADR schemes cause any practical problems for industry? If so, what are they and how can monetary limits of ADR schemes be sensibly increased?</p>

Policy proposal	Your feedback
<p>Licensee’s obligation to belong to an approved ADR scheme and transitional arrangements</p> <p>A11 If you are a member of an ADR scheme that has been approved under [PS 139], then your membership of that ADR scheme (subject to any modification to scheme coverage) satisfies your obligation to be a member of an approved ADR scheme. You will need to provide evidence of this membership in your licence application.</p> <p>A12 If you are an existing member of an ADR scheme that has <i>not</i> been approved under [PS 139], you will not be granted a licence. You can satisfy the obligation to belong to an approved ADR scheme if:</p> <ul style="list-style-type: none"> (a) the ADR scheme you are a member of gains approval; or (b) you join another ADR scheme that has already been approved by ASIC. <p>Approval of an ADR scheme is not guaranteed. The approval processes to date have typically taken more than 6 months to complete.</p> <p>A13 Some applicants for licences may be in the position where they believe they satisfy all the requirements for a licence, except that the ADR scheme they are currently a member of is unapproved. These applicants will not be granted a licence while their ADR scheme remains unapproved. We appreciate that this may cause practical difficulties during the transitional period. However, to ensure compliance with the law and adequate consumer protection, we propose to only grant licences after all the requirements under the Bill have been met.</p>	<p>A13Q1 Does our approach cause practical problems for industry? If so, what are they and how can they be overcome while still protecting the interests of consumers?</p>

Policy proposal	Your feedback
<p>Other entities and ADR schemes</p> <p>A14 Members of Declared Professional Bodies (DPBs) that provide financial product advice (see 918B(2)) to retail clients must belong to an ADR scheme approved by ASIC in accordance with the regulations: see 919A(e).</p> <p>A15 Members of a DPB may join an existing approved ADR scheme or the DPB may seek to have its own ADR scheme approved by ASIC.</p> <p>A16 An unlicensed product issuer must be a member of an approved ADR scheme to resolve complaints about alleged contraventions of Part 7.9: see 1017G.</p> <p>A17 In approving ADR schemes for DPBs and unlicensed product issuers, we will apply the approach set out in this paper with any necessary adaptations. We will provide more detailed guidance on the obligation of DPBs and unlicensed product issuers to belong to an approved ADR scheme and the processes involved when the regulations are issued.</p> <p>What happens if a licensee ceases to be a member of an approved ADR scheme?</p> <p>A18 You must provide us with a written report as soon as practicable and no later than 3 days after becoming aware that your membership of an approved ADR scheme is no longer current. This includes when:</p> <ul style="list-style-type: none"> (a) you do not renew your membership of an ADR scheme and you intend to remain a licensee; (b) you change your membership from one 	<p>A17Q1 What is the simplest way for an unlicensed product issuer to demonstrate it is a member of an ADR scheme before it makes available its products for acquisition?</p>

Policy proposal

ADR scheme to another; or

- (c) your membership of an ADR scheme is terminated.

The written report should detail the reasons for your failure to renew, your change in membership or the termination of your membership.

Note: Under 912D of the Bill a licensee must provide ASIC with a written report as soon as practicable and in any event no later than 3 days after becoming aware that it can no longer meet, or has breached, an obligation under 912A or 912B.

What if your activities are covered or partially covered by the Superannuation Complaints Tribunal (SCT)?

A19 If part of your activities are covered by the SCT but you also provide financial advice or deal in products that are beyond the jurisdiction of the SCT, you must join an approved ADR scheme which can handle any complaints about that advice or dealings in those products.

What must an applicant demonstrate to satisfy their obligation to belong to an approved ADR scheme?

A20 An applicant for a licence must be able to show us that it belongs to an approved ADR scheme.

A21 When applying for a licence, an applicant will need to:

- (a) provide us with proof of its membership of an approved ADR scheme, including details of the period of membership and the name of the ADR scheme (eg a letter

Your feedback

A19Q1 Do you think this will cause any practical problems for industry or consumers? If so, what are they and how can they be overcome?

A21Q1 Are there any other kinds of information that ASIC should require from an applicant, relating to membership of an ADR scheme?

Policy proposal

confirming the applicant is a member of the ADR scheme);

- (b) provide us with details of the officer of the applicant responsible for the relationship between the licensee and the ADR scheme (including their position within the organisation); and
- (c) answer a series of questions about its procedures for managing its relationship with the operator of the ADR scheme (including procedures aimed at providing timely assistance to the operator of the ADR scheme).

Your feedback

If so, what information and why should we ask for it?

Explanation

ADR schemes currently approved under [PS 139]

1 ASIC has approved a number of ADR schemes under [PS 139]. You can get a copy of [PS 139], which was issued on 8 July 1999, from the ASIC website at www.asic.gov.au.

2 At this stage no regulations have been drafted about our approval of external (or internal) dispute resolution procedures. The commentary on the Exposure Draft of the Bill issued in February 2000 states at paragraph 5.50, in relation to regulations about dispute resolution:

“External dispute resolution procedures: it is proposed that regulations will be made based on the guidelines set out in s12FA(2) of the Australian Securities and Investments Commission Act 1989 (ASIC Act). Section 12FA of the ASIC Act will be repealed.”

Note: We expect that relevant regulations are still proposed, even though there was no similar statement in the Explanatory Memorandum to the Bill.

3 As [PS 139] is based on s12FA(2) of the ASIC Act, we anticipate that [PS 139] will continue to form the basis for our approach to ADR scheme approval under the Bill in conjunction with the policies proposed by this paper.

Approval of new ADR schemes during the transition

4 Under the Bill, there will be a transitional period of 2 years starting from the date the Bill commences. An ADR scheme which does not have existing [PS 139] approval and wishes to be approved for the purposes of the Bill before the end of the 2 year transitional period, will need to apply for approval from ASIC by lodging their application with us within 12 months of the start of the transitional period. Alternatively it may integrate its operations with another scheme that is approved for the purposes of the Bill.

5 We will publish a register of approved ADR schemes and a register of ADR schemes seeking approval on our website. We will not publish a register of unapproved schemes which have not lodged an application for approval with ASIC.

6 Approval of an ADR scheme is not guaranteed and the approval process may take several months. We have the power to revoke approval of ADR schemes (and IDR procedures).

Coverage of ADR schemes

7 At present, coverage by ADR schemes in the financial services industry is uneven both in terms of product or service and monetary limit. The Bill will require a more consistent approach to the coverage of products and services so that complaints about advice, transactions and insurance claims will all be covered.

8 The jurisdiction of external dispute resolution schemes across the finance sector is generally expanded under the Bill in relation to:

- (a) types of products and services;
- (b) types of eligible complaints; and
- (c) monetary limits.

9 Some existing ADR schemes may wish to consider extending their complaints coverage to take into account the increased range of products and services covered by the Bill. For example, currently a licensee must be a member of a scheme that can hear complaints about financial advice to retail clients. Under the Bill, a licensee must belong to an approved ADR scheme that can handle complaints about each type of consumer transaction the licensee engages in, including transactions that may not include advice. Online broking activities, for example, must be covered by a scheme. If a single approved ADR scheme does not cover the full range of possible complaints against a licensee, that licensee will need to be a member of more than one approved ADR scheme.

What is an “eligible complaint”?

10 For the purposes of approving ADR schemes, and consistent with the language of 912A(g), we have defined an “eligible complaint” to include a complaint by a retail client in connection with the provision of financial services to the client by a licensee who is a member of the ADR scheme. This is so that we can:

- (a) define the scope of matters which can be handled by approved ADR schemes; and
- (b) maximise the consistency of coverage between schemes.

This definition is consistent with the definition of eligible complaint for the purposes of IDR procedures.

Who can make a complaint?

11 An approved scheme must be able to handle claims from retail clients. The retail client definition includes a product/value test (except in the case of general insurance, where there is no monetary limit). The Explanatory Memorandum to the Bill states that the prescribed amount of the product/value test will be set by regulation. The Explanatory Memorandum goes on to state that the prescribed amount will initially be set at \$500,000, although the regulations will allow the amount to be varied in particular circumstances.

Is there a monetary limit on complaints?

12 The Bill does not prescribe a monetary limit for complaints that can be dealt with by ADR schemes, however this may be addressed in the regulations. It should be noted that in practice the definition of retail client will have implications for the monetary value of complaints handled by ADR schemes.

13 All the ADR schemes currently operating in the financial services industry have monetary limits, however these limits vary from scheme to scheme.

ADR schemes and Codes

14 Under the Bill, ASIC has a Codes approval power: see 1101A. For proposals about the operation of this power see our policy proposal paper *Approval of Codes* (June 2001). When exercising our power to approve Codes we will take into account the coverage of ADR schemes and their capacity to enforce the provisions of Codes.

Licensee's obligation to belong to an approved ADR scheme and transitional arrangements

15 Financial services licensee must be a member of an approved ADR scheme: see 912A(g) of the Bill. This obligation only applies where a licensee provides financial services to retail clients.

16 You will have to have procedures to ensure that all relevant activities relating to retail clients can be dealt with by an approved ADR scheme. If no one scheme provides complete coverage for the range of services and/or products you provide, you will have to belong to more than one approved ADR scheme to ensure that the full range of possible complaints by retail clients is catered for.

17 If you are a member of an unapproved ADR scheme or are not a member of an ADR scheme, you will not be granted a licence under the Bill. During the transitional period under the Bill you can continue to operate under the existing regulatory regime under which you are licensed, registered or exempt from licensing or registration. However, after the transitional period has ended you will only be able to continue to operate if you have a licence issued under the Bill.

18 If you wish to apply for a licence during the transitional period and you are not an existing member of an ADR scheme then you must join an approved ADR scheme, or if there is no existing approved ADR scheme, an ADR scheme that is in the process of seeking approval. Under the latter circumstance you will only be granted a licence once and if that ADR scheme is approved. There is no guarantee that all schemes will gain approval and the approval process may take several months.

19 If you apply for a licence after the 2 year transitional period you must also be a member of an approved ADR scheme before you are granted a licence.

Adequate compensation arrangements and approved ADR schemes

20 When assessing whether a licensee has adequate compensation arrangements under 912B, we anticipate we will take into account whether it is a member of an approved ADR scheme.

Note: At the time of issuing this paper, no draft regulations had been issued for the purposes of 912B. We will monitor the development of regulations dealing with compensation arrangements for their implications, if any, for the approval of ADR schemes.

Other entities and ADR schemes

21 Members of declared professional bodies (DPB) that provide financial product advice (see 918B(2)) to retail clients must belong to an ADR scheme approved by ASIC in accordance with the regulations: see 919A(e).

22 An unlicensed product issuer is a person:

- (a) who is not a financial services licensee; and
- (b) who issues financial products which may be acquired by retail clients.

Unlicensed product issuers must be a member of an approved ADR scheme so that complaints about alleged contraventions of Part 7.9 can be resolved: see 1017G.

What happens if a licensee ceases to be a member of an approved ADR scheme?

23 If your membership of an approved ADR scheme is not renewed or is terminated and you are not a member of an alternative approved ADR scheme which can deal with all your complaints, then you will have breached a condition of your licence and we may consider taking action against you.

24 Under 912D a licensee must provide ASIC with a written report as soon as practicable and in any case within 3 days after it becomes aware that it can no longer meet or has breached an obligation under its licence.

25 It is a condition of approval of an ADR scheme that the operators of the scheme inform ASIC of any non-compliance by a licensee and of any licensee membership that is terminated. Under [PS 139] operators of the scheme must inform ASIC of systemic issues and serious misconduct. Under [PS 139], ADR schemes have the power to terminate the membership of a non-compliant member. However, [PS 139] stipulates that a scheme should not terminate a member without informing ASIC. This is important because ASIC may need to consider further action against the licensee.

26 We want to prevent a licensee whose membership has been terminated by one scheme from simply joining another scheme without our knowledge. Upon being informed that a licensee has:

- (a) been non-compliant with the rules of a scheme;
- (b) been terminated from membership of a scheme; or
- (c) failed to renew their membership with a scheme,

we have a number of options for dealing with that licensee, including in the most serious cases, suspending or cancelling their licence after offering them a hearing.

27 We will undertake surveillance checks from time to time to make sure licensees are members of an approved ADR scheme.

What if your activities are covered or partially covered by the Superannuation Complaints Tribunal (SCT)?

28 If you are covered by the SCT but you also provide financial advice or deal in products that are beyond the jurisdiction of the SCT, you must join an approved ADR scheme which can handle any complaints in relation to that advice or dealings in those products.

29 The commentary to the Exposure Draft of the Bill issued in February 2000 anticipates the need for multiple scheme membership by some trustees if the jurisdiction of the SCT is not extended. It states at paragraph 5.52 that:

“(a) ... Where only part of an applicant’s services are covered by the SCT they would also be required to be a party to an external mechanism capable of handling complaints that may arise that will not be covered by the SCT.”

Note: The Explanatory Memorandum to the Bill did not contain any further comments on this topic.

30 There is scope in the *Superannuation (Resolution of Complaints) Act* (SRC Act) for referrals by the SCT to appropriate dispute resolution bodies.

31 On 11 February 2000 the Minister for Financial Services and Regulation, Mr Hockey, stated in a press release:

“Where a financial service provider engages only in activities that come within the Tribunal’s jurisdiction, there will be no requirement that the provider be a party to any other external dispute resolution body. However, where part only of the provider’s activities is covered by the Tribunal, the provider will also be required to be a party to another external dispute resolution body that is capable of handling those complaints which fall outside the Tribunal’s jurisdiction.”

B Internal dispute resolution (IDR) procedures

Policy proposal	Your feedback
<p>Our approach to IDR procedures</p> <p>B1 To satisfy their licence obligation to have approved internal dispute resolution procedures under 912A(g), we consider that licensees must implement IDR procedures that are in accordance with the Australian Standard on Complaints Handling AS 4269–1995.</p> <p>B2 We believe that, although AS 4269–1995 is a useful starting point, it has limitations because of its age (it is now six years old) and its generality (it is drafted broadly to apply to any industry body so is not specifically designed for financial services). We believe that further guidance is needed about these Australian standards and how they might apply to a financial services licensee.</p> <p>B3 Over time, we will review AS 4269–1995 and, in consultation with industry, develop standards for IDR procedures in the financial services industry.</p> <p>B4 Until we develop and issue a set of IDR standards customised for financial services licensees, we will take into account the proposals set out in this paper and AS 4269–1995 when we assess IDR procedures for approval. The Schedule to this paper addresses the elements of AS 4269-1995 and is designed to help you decide what IDR</p>	<p>B3Q1 What should ASIC focus on in its review of AS 4269–1995 and its development of standards for IDR procedures in the financial services industry? Why?</p>

Policy proposal	Your feedback
<p>procedures will be necessary to meet the basis for our approval.</p> <p>Other entities and IDR procedures</p> <p>B5 Members of declared professional bodies (DPBs) that provide financial product advice (see 918B(2)) to retail clients must have IDR procedures approved by ASIC in accordance with the regulations: see 919A(e).</p> <p>B6 An unlicensed product issuer must have IDR procedures approved by ASIC in accordance with the regulations to resolve complaints about alleged contraventions of Part 7.9: see 1017G.</p> <p>B7 In approving IDR procedures for members of DPBs and unlicensed product issuers, we will apply the approach set out in this paper with any necessary adaptations. We will provide more detailed guidance on the obligation of members of DPBs and unlicensed product issuers to have approved IDR procedures and the processes involved when the regulations are issued.</p>	
<p>IDR procedures for licensees</p> <p>B8 When deciding whether your IDR procedures are adequate, as well as considering AS 4269–1995, we will take into account:</p> <ul style="list-style-type: none"> (a) the size of your business; (b) the type of business activities undertaken; (c) the likely number and complexity of complaints you receive; and (d) the procedures for informing a complainant about an ADR scheme and the mechanisms for the referral of a complaint to an ADR scheme. 	<p>B7Q1 What is the simplest way for an unlicensed product issuer to demonstrate the adequacy of its IDR procedures before it makes available its products for acquisition?</p> <p>B8Q1 Are there any other issues ASIC should take into account when deciding whether your IDR procedures are adequate?</p>

Policy proposal

B9 We believe that it is important for you to tell the complainant about how they can contact your ADR scheme at the time that you respond to their complaint, as well as including a reference to the ADR scheme in your Financial Services Guide and Product Disclosure Statement. If a complainant is not satisfied with your response to their complaint, you should tell them that they can refer their complaint to the ADR scheme of which you are a member.

Note: You must include details about both your IDR procedures and the ADR scheme of which you are a member in your Financial Services Guide (see 942B(2)(h) and 942C(2)(i)) and Product Disclosure Statement (see 1013D(1)(g)).

What should the IDR processes cover?

B10 When deciding whether your IDR procedures are in accordance with AS 4269–1995, you should consider the size of your organisation, the types of financial products and services provided under your licence and your retail client base. The processes should be sufficient to deal with:

- (a) the range of products or services you offer; and
- (b) any complaint from a retail consumer about those financial products or services. This should include complaints about marketing, advertising, supply (including refusal to supply), or sale of your financial products or services, or the conduct or representations engaged in or made by your employee or agent in relation to those products or services.

What is an “eligible complaint”?

B11 An “eligible complaint” includes any complaint by a retail client in connection

Your feedback

B11Q1 Does this definition cause any practical problems for

Policy proposal

with the provision of financial services to the client by the licensee but, for the purposes of the IDR procedures, should exclude any complaint that is immediately resolved to the satisfaction of the consumer and the licensee.

Note: This definition is consistent with our definition of “eligible complaint” for the purposes of approving ADR schemes: see policy proposal paragraph A7.

Documenting the procedure

B12 Under 912A(g) and consistent with AS 4269–1995, we propose to approve IDR procedures that document the following:

- (a) the procedures for:
 - (i) receiving complaints;
 - (ii) considering and responding to complaints; and
 - (iii) investigating complaints; and
- (b) the remedies for resolving complaints.

We consider a licensee should provide a relevant copy of the procedures to staff when necessary and retail clients when requested.

B13 Under 912A(g) and consistent with AS 4269–1995, we propose to approve IDR procedures that also document the internal management systems and arrangements relevant to the operation of the IDR procedures, setting out matters such as:

- (a) internal structures and reporting requirements;
- (b) data collection;
- (c) complaints analysis; and
- (d) procedures for staff to report compliance or systemic issues.

Your feedback

industry? If so, what are they and how can a different definition overcome them while still ensuring consumers are protected?

Policy proposal	Your feedback
<p>What must an applicant demonstrate to satisfy their obligation to have approved IDR procedures?</p> <p>B14 An applicant for a licence must be able to show us that it has in place adequate IDR procedures (ie for the purposes of our approval).</p> <p>B15 When applying for a licence, an applicant will need to certify that:</p> <ul style="list-style-type: none"> (a) it has established IDR procedures; (b) for the purposes of our approval, its IDR procedures satisfy the minimum requirements in this policy proposal paper, and are in accordance with AS 4269–1995, including providing for: <ul style="list-style-type: none"> (i) timely response to complaints; (ii) transparency in decision-making; and (iii) promotion of external ADR procedures. <p>Note: We intend to approve an applicant’s IDR procedures as part of the process for grant of a licence.</p> <p>B16 At the time of the application, an applicant will also need to:</p> <ul style="list-style-type: none"> (a) provide us with details of the officer of the applicant responsible for the operation of the IDR procedures (including their position within the organisation); and (b) answer a series of questions about the applicant’s IDR procedures and how the applicant has satisfied itself that its IDR procedures are consistent with the minimum requirements in this policy proposal paper, and are in accordance with AS 4269–1995. 	<p>B15Q1 Are there any other kinds of information that ASIC should require from an applicant, relating to the adequacy of its IDR procedures? If so, what and why should we ask for this information?</p>

Explanation

Our approach to internal dispute resolution procedures

1 Under the Bill, licensees, members of declared professional bodies (DPBs) and unlicensed product issuers must have in place IDR procedures that are approved by ASIC in accordance with the regulations: see 912A(g), 919A(e), 1017G. For licensees, the IDR procedures must enable a licensee to resolve complaints made by any retail client about the provision of financial product advice or any financial services covered by the licence.

2 At this stage, no regulations have been drafted about ASIC's approval of dispute resolution procedures. Discussing this, the commentary on the Exposure Draft of the Bill issued in February 2000 states at paragraph 5.50:

“Internal dispute resolution procedures: it is proposed that regulations will be made requiring licensees to establish internal procedures that comply with Australian Standard AS 4269–1995 or such other recognised Australian standard that applies from time to time.”

Note: We expect that relevant regulations are still proposed, even though there was no similar statement in the Explanatory Memorandum to the Bill.

3 We believe that AS 4269–1995 provides general guidance for entities that intend to establish IDR procedures, but that more specific guidance is needed for members of the financial services industry. We will, over time, develop more detailed guidelines about IDR in consultation with industry members and consumer representatives. Such guidelines would be based on AS 4269–1995 and the regulations under the Bill, which we expect will reflect the principles set out in s12FA(2) of the ASIC Act.

IDR procedures for licensees

4 The majority of consumer complaints will be dealt with through a licensee's IDR procedures. We believe that it is essential for a financial services provider to have effective IDR procedures in place so that consumer complaints are dealt with fairly, efficiently and consistently.

5 It is important that, where possible, complaints be resolved between the individual consumer and the entity that has provided the financial services or products. This promotes confident and

informed participation of consumers and gives industry members the opportunity of resolving complaints and analysing complaints for internal monitoring purposes.

What should the IDR processes cover?

6 We believe that an essential element of an effective IDR procedure is that it deals with the full range of complaints that might be received from retail consumers about the products or services offered by a licensee, declared professional body or product issuer.

What is an “eligible complaint”?

7 We are proposing to apply a definition of an “eligible complaint” that can be applied consistently throughout the industry for both IDR procedures and ADR schemes. At the minimum, an “eligible complaint” should include any complaint by a retail client in connection with the provision of financial services by the licensee but, for the purposes of IDR procedures, should exclude any complaint that is immediately resolved to the satisfaction of the consumer and the licensee.

Documenting the procedure

8 For the purposes of approval, we consider IDR procedures must be documented. We consider documented IDR procedures will help demonstrate that the procedures are in accordance with AS 4269–1995.

What must a licensee do to satisfy their obligation to have approved IDR procedures?

9 You may have existing IDR procedures that you rely on to meet current licensing obligations or industry standards. If so, you will need to review the appropriateness of your current system in light of the licensee obligations under the proposed policies in this paper and AS 4269–1995.

10 When applying for a licence, an applicant must have IDR procedures that satisfy the minimum requirements proposed in this paper and are consistent with AS 4269–1995.

Schedule – IDR procedures and AS 4269–1995

Important notes about this Schedule

This Schedule provides guidance on how ASIC intends to apply AS 4269–1995 to the financial services industry. We give examples of how the standards might operate in practice. We may need to review the Schedule to take into account any regulations expanding on or elaborating on the internal dispute resolution requirements.

ASIC intends to undertake a comprehensive review of AS 4269–1995 in consultation with industry and consumer representatives. However, in the meantime this Schedule will provide guidance on how we plan to apply the standard to approving IDR procedures.

Questions

S1 Are there any parts of the Schedule that are inappropriate or will cause practical problems for licensees? If so, what are they and how can they be overcome while retaining protection for consumers?

S2 Should any parts of the Schedule be amended to more adequately protect consumers. If so, what are they and how should they be amended?

IDR procedures and AS 4269–1995

In this Schedule, we explain the requirements for internal dispute resolution procedures set out more generally in AS 4269–1995. To gain approval from ASIC, your IDR procedures should be in accordance with each of the essential elements of effective complaints handling as outlined in AS 4269–1995. This Schedule provides guidance on how these essential elements might apply to the requirements of a financial services licensee.

AS 4269–1995 provision	Application to financial services licensees
<p>Board commitment (AS 4269–1995, 3.2)</p>	<p>There should be commitment at all levels of an organisation, particularly the higher levels. Commitment by the board level or other relevant governing body to the procedures is essential to ensure IDR procedures are integrated into the culture of the organisation. Such commitment can be demonstrated by:</p> <ul style="list-style-type: none"> (a) ensuring all staff are aware of, and educated about IDR processes; (b) ensuring that adequate resources are allocated to IDR; and (c) implementing management systems and reporting procedures to ensure timely and effective complaints handling and monitoring.
<p>Handling complaints fairly (AS 4269–1995, 3.3)</p>	<p>In the interests of ensuring that complaints are dealt with fairly, IDR procedures should allow adequate opportunity for both parties to make their case. In considering a complaint, you should consider the complainant’s age, sophistication in regards to financial matters, any language issues and any other matter that may impact on the manner in which a complaint can be considered. This might include compliance with codes of conduct if applicable, industry best practice standards and other relevant standards.</p> <p>You should provide adequate reasons for reaching a decision on the complaint. ASIC considers that reasons for a decision should be in writing; should address the issues that were raised in the initial complaint; and should refer to applicable provisions in legislation, codes, standards or procedures.</p>
<p>Allocating adequate resources to IDR (AS 4269–1995, 3.4)</p>	<p>Determining whether a licensee has allocated sufficient resources to its IDR procedures will depend in part on the size of the organisation, the products and services provided and the retail client base of the financial services provider.</p> <p>ASIC considers that at a minimum, when implementing IDR procedures, a licensee should:</p> <ul style="list-style-type: none"> (a) establish a contact point for complainants and inform ASIC when applying for a licence of that person’s position and contact details;

AS 4269–1995 provision	Application to financial services licensees
	<ul style="list-style-type: none"> (b) nominate staff to handle complaints who have sufficient experience, competence and authority to deal with those complaints; (c) ensure adequate systems are in place to handle complaints; and (d) take reasonable steps to handle complaints promptly, fairly and consistently. <p>For larger organisations with a large retail client base, ensuring adequate resources might include such matters as providing a toll free/ local call facility where complaints can be logged and appointing sufficient staff to deal with complaints. Offering complainants assistance with their complaint is appropriate where the licensee is a large organisation with many retail clients.</p> <p>For smaller organisations adequate resources might include ensuring a senior staff member is available to deal with complaints.</p>
<p>Telling customers how to complain (AS 4269–1995, 3.5)</p>	<p>You should take reasonable steps to ensure that complainants know about your IDR procedures and how to make a complaint. It will be a requirement under the Bill to include information about IDR procedures in Financial Services Guides and Product Disclosure Statements, including how the procedures can be accessed. However, you might need to take other reasonable steps to ensure that retail clients are aware of the IDR processes.</p> <p>ASIC considers that it would be reasonable for licensees to include details about their IDR procedures in a convenient and accessible form. The details could be on the website or in a short document that is handed to a retail customer when a complaint is made or on request. The document could set out what a complainant must do to lodge a complaint and how the licensee undertakes to deal with the complaint. Staff who deal with retail clients should have an understanding of the IDR procedures.</p>
<p>Making sure the IDR procedures are accessible [AS 4269–1995, 3.6 and 3.7]</p>	<p>You should have simple and accessible arrangements for making complaints. Complaints do not need to be in writing and in some cases, insisting that complaints are in writing will be a disincentive to the complainant, eg if the complainant has poor writing skills. The IDR processes should enable complainants to make a complaint by any reasonable means, eg letter, telephone, in person or email.</p> <p>For example, organisations that have an Internet site should consider providing complaints access by email.</p>
<p>Time limits for dealing with a complaint (AS 4269–1995, 3.8)</p>	<p>You should ensure that your IDR procedures include clear response times for dealing with a complaint and that a complainant is aware of these response times. A licensee should aim to resolve a complaint as soon as possible. ASIC considers that a licensee should substantially respond to a</p>

AS 4269–1995 provision	Application to financial services licensees
	<p>complainant within a maximum of 45 days, but in a shorter period if possible. If you cannot respond to the complainant within 45 days, then your IDR procedures should provide for you to inform the complainant of the reasons for the delay.</p> <p>By substantially responding to a complaint, ASIC means that a licensee should:</p> <ul style="list-style-type: none"> (a) accept the complaint and, where appropriate, offer redress; (b) offer redress without accepting the complaint; or (c) reject the complaint with reasons. <p>If you are unable to substantially resolve the complaint, a holding response should be sent to the complainant, which explains why you are not in a position to resolve the complaint and gives an indication of when a further response will be made.</p> <p>As an absolute maximum all complaints should be finally resolved or referred to an approved ADR scheme within 90 days. ASIC believes that the following service standards are desirable for different types of complaints:</p> <ul style="list-style-type: none"> (a) administrative complaints: 3–5 days (b) performance related complaints: 5 days (c) advice related complaints: 21 days. <p>Your IDR procedures should also include reasonable procedures about the circumstances in which an extension to the time limit is warranted, and the ability of a complainant to appeal an extension.</p> <p>It may be reasonable for some licensees to consider shorter time frames for different types of complaints, depending on the size of the organisation, the retail client base and the types of products and services offered under the licence.</p>
<p>Cost to the complainant (AS 4269–1995, 3.9)</p>	<p>ASIC considers that IDR procedures should be provided free of charge to complainants where the complaint relates to products or services provided under a licence. Charging for access to an IDR procedure is inappropriate if it is applied as a barrier to access or is an unreasonable disincentive to the complainant making a complaint.</p>
<p>Available remedies (AS 4269–1995, 3.10)</p>	<p>You should consider what remedies you will provide to complainants where a complaint is substantiated. The remedies should be consistent with the remedies available under the relevant laws that apply to licensees and their clients. This will include, as a minimum, compensating a client for any direct loss or damage caused as a result of a breach of the licensee’s obligations when providing a financial product or service. The remedy may</p>

AS 4269–1995 provision	Application to financial services licensees
	<p>be financial or non-financial.</p> <p>ASIC considers that when determining the appropriate remedy and the extent of loss or damage, you should consider relevant legal principles, relevant codes of conduct, concepts of fairness and relevant industry best practice.</p>
<p>Keeping data about complaints (AS 4269–1995, 3.11)</p>	<p>Your procedures and management systems should include provisions for keeping details about the complaint received. Complaints handling data is a useful means of tracking compliance issues or risks: see our FSRB Policy Proposal Paper No 2 <i>Licensing: Organisational capacities</i> (April 2001).</p> <p>ASIC may require you to produce complaints data in certain circumstances. You should keep this data in accessible form.</p> <p>It will be important for monitoring the IDR procedures and compliance to be able to analyse complaints according to categories, such as, complaints about advisers, products, types of complaints, and outcomes.</p> <p>The IDR procedures should include provision for dealing with complaints about serious misconduct or breaches in accordance with your supervisory and reporting obligations. You will be required to report misconduct of an authorised representative to ASIC where the misconduct constitutes a breach of the relevant legislation, including misconduct, which falls outside your authority. In these circumstances, it might be appropriate for ASIC to consider further action against the individual.</p>
<p>Addressing systemic issues and recurring complaints (AS 4269–1995, 3.12)</p>	<p>You should ensure that the IDR procedures enable you to address systemic issues or recurring complaints identified in the complaints data. It is useful for you to classify complaints with sufficient detail to be able to adequately identify specific breaches of the law. This will encourage the identification of compliance issues or risks, which can be investigated to determine their causes and enable their rectification.</p> <p>Having the proper monitoring mechanisms for complaints should ensure compliance failure trends are recognised so that those trends can be rectified and systemic issues dealt with appropriately.</p> <p>For larger organisations, reporting systems that allow compliance failures to be reported to senior officers can be a useful check to ensure that compliance issues are addressed. Corrective action needs to be taken to address systemic compliance problems: see our FSRB Policy Proposal Paper No 2 <i>Licensing: Organisational capacities</i>.</p> <p>Complaints may be classified according to breaches of law, such as:</p> <ul style="list-style-type: none"> (a) failure to provide PDS;

AS 4269–1995 provision	Application to financial services licensees
	<ul style="list-style-type: none"> (b) failure to disclose remuneration; (c) failure to provide appropriate advice; (d) failure to meet consumer protection standards or codes of conduct; (e) fraud.
<p>Accountability (AS 4269–1995, 3.13)</p>	<p>Reports about complaints should be prepared for senior management of a financial services provider. This should assist officers of the licensee to take action in their area of responsibility to address complaints in accordance with the licensee’s IDR procedures.</p>
<p>Reviewing the IDR procedures (AS 4269–1995, 3.14)</p>	<p>You should review your IDR procedures every 2–3 years to ensure that the complaints systems are operating effectively. Depending on the size of the financial services provider and the retail client base, some licensees might benefit from an independent review of their IDR operations and procedures every 2–3 years as against the requirements of AS 4269–1995 and the policies proposed in this paper.</p>

Regulatory and financial impact

We have considered the likely regulatory and financial impact of the policy proposals in this paper. Based on the information that we currently have, we believe that our proposals strike an appropriate balance between facilitating financial services activity and investor protection. To ensure that we have achieved an appropriate balance, we are also developing a Regulatory and Financial Impact Statement (RIS).

The RIS will address the following seven key elements:

1 Issue / problem

This will discuss the nature and magnitude of the problem.

2 Objective(s) / analysis of the problem

The objective(s), or the outcome sought in relation to the identified issue / problem, will be addressed.

3 Options / solutions

This will identify all the alternative options that could achieve the objective(s) stated above for dealing with the issue being considered (eg no specific action; ASIC policy proposal; media release; information statement; self regulation/quasi regulation; codes of conduct; and co-regulation, compliance and enforcement strategies).

4 Impact analysis (costs and benefits) of each option

Impact analysis will include:

- (a) analysis of the benefits and costs of the options, including any restriction on competition for different persons affected;
- (b) identification of persons or bodies affected by the problem; and those that will be affected by the solutions or options identified (ie applicant/proponent of issue; other interested parties, consumers, business and government);
- (c) a consideration of how each of the proposed options will affect existing law, regulations or policies;

- (d) identification and categorization of the expected impacts of the proposed options as likely benefits or likely costs against each of the persons/bodies identified as likely to be affected;

We will try to quantify these effects where possible (for example, will there be any restriction on competition as a result of the proposed regulation?)

Costs to business affected by a regulatory initiative might include: administrative costs; complying with new regulatory standards; licence fees; delays etc.

Costs to consumers affected could also include higher prices for goods and services; reduced utility of goods and services; delays and more difficult or expensive options for seeking redress.

- (e) benefits of the options will also be identified (even where they are not quantifiable); and
- (f) the data sources used and assumptions made in making these assessments will be identified.

5 Consultation

The consultation undertaken in the policy process will be detailed.

6 Conclusions and recommended option

The preferred option(s) will be given, and reasons why.

7 Implementation and review

This will discuss how the proposed option will be administered, implemented, or enforced (eg instrument of relief; policy statement; practice note; no action letter).

In order for us to fully assess the financial and regulatory impact of our proposals, we invite you to consider possible options that would achieve our objectives, comment on the impact that these policy proposals might have, and in particular, give consideration to the costs and benefits of these proposals. Where possible, we are seeking both quantitative and qualitative data.

Any comments that we receive will be taken into account when preparing our final RIS.

Development of policy proposal

We have developed this policy proposal paper by considering:

- (a) the intention of the Bill as indicated in the Explanatory Memorandum to the Bill and the Second Reading Speech in the House of Representatives on the introduction of the Bill into Federal Parliament;
- (b) the Report on the Bill by the Parliamentary Joint Committee on Corporations and Securities issued in August 2000;
- (c) the Government's response to the Report, issued on 29 March 2001;
- (d) relevant comparisons with current legislative requirements for the regulation of financial services activity under the law;
- (e) a review of existing ASIC policies and practices relevant to the regulation of financial services activity under the law;
- (f) a review of public submissions on the Exposure Draft Bill issued by the Government in February 2000;
- (g) ASIC Policy Statement 139;
- (h) Section 12FA *ASIC Act*; and
- (i) Benchmarks for Industry-Based Customer Dispute Resolution Schemes.

We have considered numerous domestic and international approaches to risk when developing these policy propositions, including:

- (a) the Australian/New Zealand Standard on Risk Management (AS/NZS 4360:1999);
- (b) the relevant regulatory approach in the United Kingdom as implemented by the Financial Services Authority (UK);
- (c) relevant principles of the International Organisation of Securities Commissions; and
- (d) processes developed as part of ASIC's Managed Investment implementation program.

Key terms

In this policy proposal:

“ADR scheme” means an external dispute resolution scheme: see s912A(g);

“AS 4269–1995” means the Australian Standard on Complaints Handling (AS 4269–1995);

“ASIC” means the Australian Securities and Investments Commission;

“Bill” means the *Financial Services Reform Bill 2001*, the Law as amended by the Bill or that Bill as enacted as applicable, and includes regulations made for the purposes of the Bill;

“consumer protection provisions” means the prohibitions contained in Part 7.10 of the Bill, ie misleading or deceptive; unconscionable conduct etc;

“external dispute resolution scheme” means an alternative dispute resolution scheme or an ADR scheme: see s912A(g);

“financial product” means a facility through which, or through the acquisition of which, a person does one or more of the following:

- (a) makes a financial investment: see s763B;
- (b) manages financial risk: see s763C; and
- (c) makes non-cash payments: see s763D;

Note: This definition is contained in 763A

“financial product advice” means a recommendation or a statement of opinion, or a report of any of those things, that:

- (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
- (b) could reasonably be regarded as being intended to have such an influence;

but does not include anything in an exempt document.

Note: This definition is contained in 766B

“financial services licensee” means a person who holds an Australian financial services licence;

Note: This definition is contained in 761A

“IDR procedure” means an internal dispute resolution procedure: see s912A(g);

“Law” means the Corporations Law (including as intended to be replaced by the *Corporations Bill 2001*);

“licence” means an Australian Financial Services Licence under 913B that authorises a person who carries on a financial services business to provide financial services;

Note: This is a definition contained in 761A

“licensee” means a person who holds an Australian financial services licence;

“licensee obligations” means the obligations of a licensee as set out in 912A, 912B and the requirement to be of good fame and character as included in 913B;

“PS 139” (for example) means an ASIC Policy Statement (in this example numbered 139);

“representative” of a financial services licensee means:

- (a) an authorised representative of the licensee; or
- (b) an employee or director of the licensee; or
- (c) an employee or director of a related body corporate of the licensee; or

any other person acting on behalf of the licensee;

Note: This definition is contained in 910A

“retail client” means a client defined as such under 761G;

“we” means ASIC;

“you”, “your” means a person who is a financial services licensee or is applying for a financial services licence;

“982A” (for example) means a clause of the Bill;

“s782” (for example) means a section of the Law.

What will happen next?

Stage 1

6 June 2001 ASIC policy proposal paper released

Stage 2

June 2001 Consultation period on the contents of this policy proposal paper

5 July 2001 Comments due on the policy proposal

13 July to September 2001 Drafting of policy statement

Stage 3

Late September 2001 Policy statement released

Your comments

You are invited to comment on the proposals and issues for consideration in this paper. All submissions will be treated as public documents unless you specifically request that we treat the whole or part of your submission as confidential.

Comments are due by Thursday 5 July 2001 and should be sent to:

**Roxanna Irvin
FSR Project Office
Regulatory Policy Branch
Australian Securities & Investments Commission
GPO Box 4866
Sydney NSW 1042
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You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

Related papers

This policy proposal paper is one of a set of four proposal papers issued together in June 2001 on the implementation of the *Financial Services Reform Bill 2001*. As outlined in our paper *Building the FSRB Administrative Framework* (April 2001), we issued an earlier set of policy proposal papers in April 2001. We intend to issue further policy proposal papers in the coming months all related to the implementation of the Bill.

The policy proposal papers issued together in June are:

- *Licensing: Principals and representatives*
FSRB Policy Proposal Paper No 6
- *Licensing: External and internal dispute resolution procedures*
FSRB Policy Proposal Paper No 7
- *Licensing: Discretionary powers*
FSRB Policy Proposal Paper No 8
- *Approval of codes*
FSRB Policy Proposal Paper No 9

The earlier policy proposal papers issued together in April are:

- *Building the FSRB Administrative Framework – Policy to implement the Financial Services Reform Bill 2001*
- *Licensing: The scope of the licensing regime: Financial product advice and dealing*
FSRB Policy Proposal Paper No 1
- *Licensing: Organisational capacities*
FSRB Policy Proposal Paper No 2
- *Licensing: Adapting IPS 146 to the Financial Services Reform regime*
FSRB Policy Proposal Paper No 3
- *Disclosure: Product Disclosure Statements (and other disclosure obligations)*
FSRB Policy Proposal Paper No 4
- *Disclosure: Discretionary powers and transition*
FSRB Policy Proposal Paper No 5

- *Licensing Process Guideline: How do you get an Australian Financial Services Licence?*

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