



AUSTRALIAN COLLECTORS &
DEBT BUYERS ASSOCIATION

6 April 2018

Ms Clare McCarthy
Behavioural Research & Policy Unit
Australian Securities and Investments Commission

Email: policy.submissions@asic.gov.au

Dear Ms McCarthy

Consultation Paper 298 Oversight of the Australian Financial Complaints Authority: Update to RG 139

The Australian Collectors & Debt Buyers Association (ACDBA) is pleased to provide this Submission in response to the above Consultation Paper.

Proposal	Our 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><u>RESPONSE:</u></p> <p>Yes</p>

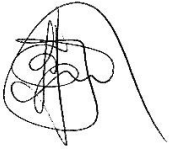
Proposal	Our feedback
<p>B2 We propose to give guidance in draft RG 139 that:</p> <ul style="list-style-type: none"> (a) a contravention will be 'serious' (and therefore reportable by AFCA to ASIC) if there are sufficient facts or information to found an objectively reasonable belief that it is serious. 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><u>RESPONSE:</u></p> <p>Yes</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> <p><u>RESPONSE</u></p> <p>Whilst agreeing with this proposed guidance, we submit there is also a specific need for the independent assessor to look at and review the expediency of complaint handling by AFCA</p>
<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><u>RESPONSE</u></p> <p>Although agreeing with this proposed guidance we submit there remains a very significant deficiency in the proposed processes of AFCA in the absence of any appeal process for errors in fact and law other than for superannuation complaints</p>

Proposal	Our feedback
<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><u>RESPONSE</u></p> <p>Yes</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><u>RESPONSE</u></p> <p>This is a sufficient timeframe <u>provided</u> the scheme starts on 1 November 2018. Any change to the proposed date of commencement of operations would reasonably warrant an appropriate adjustment to the timeframe for financial firms</p> <p>B6Q2 Should we provide transitional relief from external dispute resolution disclosure obligations in the lead up to AFCA commencement?</p> <p><u>RESPONSE</u></p> <p>No</p>

Any enquiries in respect to this Submission can be directed to the writer.

Yours sincerely,

AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

A handwritten signature in black ink, appearing to be 'Alan Harries', written over a circular stamp or logo.

Alan Harries

CEO

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