



6 April 2018

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Dear Ms McCarthy

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

CPA Australia represents the diverse interests of more than 163,000 members working in 125 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia supports the objective of the Australian Financial Complaints Authority (AFCA) of ensuring consumers and small business have access to the practical benefits of free, fast and fair dispute resolution.

We believe in establishing the new framework, it is important that AFCA work with the relevant regulators to promptly identify, and for the relevant regulator to act upon, serious contraventions and systematic issues. This will require clear and open lines of communication to be established and maintained.

It will also require a harmonised and streamlined approach to the new reporting requirements for AFCA between APRA, ATO and ASIC. Therefore, before any regulator finalises its guidance, a common approach must first be reached.

The independent assessor of AFCA will also play an important role in the continuous improvement of the authority. However, for this to deliver real benefits and address common concerns around the consistency of determinations under the current framework, the independent assessor must be able to receive complaints from all parties involved in a dispute, not only a user. Further, they must be able to review AFCA decisions including evaluating both the process and grounds for reaching such decisions.

Including the review of AFCA decisions should lead to more consistency in complaint determinations, which will build trust and confidence in the framework by all participants.

If you have any questions regarding this submission, please do not hesitate to contact Keddie Waller, Policy Adviser – Financial Planning on +613 9606 9816 or keddie.waller@cpaaustralia.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Stuart Dignam', written over a horizontal line.

Stuart Dignam
General Manager – Policy & Corporate Affairs

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

Referring matters to appropriate authorities

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

CPA Australia recommends that the timeframe for AFCA to report serious contraventions or systematic issues to ASIC should be 10 business days.

A key element of the new financial services disputes resolution framework is enhanced accountability and reporting arrangements. This requires AFCA to commit to dealing with and reporting serious contraventions and systematic issues to ASIC, APRA or the Commissioner of Taxation, as appropriate.

It is likely that identified serious contraventions and systematic breaches will require action by one or more of these regulators. It is important that such instances are both identified and acted upon promptly to continue to promote confidence and trust in the regulation of the financial system, as well as potentially prevent future consumer or small business losses.

The introduction of the enhanced Internal Dispute Resolution (IDR) framework requiring financial firms to report their IDR activities, in accordance with ASIC requirements, will also allow ASIC to monitor trends and identify emerging issues. In turn, AFCA can utilise this information to be conscious of such trends and issues when addressing received complaints and utilise this information to identify systematic issues.

However, it is important that there is a harmonised and streamlined approach to the new reporting requirements for AFCA. Therefore, before ASIC finalise its guidance, we recommend that an agreed approach should be reached between APRA, ATO and ASIC.

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

The proposed guidance and approach for AFCA reporting serious contraventions, including the required particulars of the contravention and details of the financial firm, appear appropriate.

In establishing the new financial complaints authority framework, it is important that AFCA work with the relevant regulators to promptly identify, and for the relevant regulator to act upon, serious contraventions and systematic issues.

Having clear and open communication lines will be fundamental for the new reporting obligations to be effective and we therefore support ASIC's proposal for AFCA to consult with ASIC if they are unsure whether they should refer a matter to ASIC.

Collaboration and transparency between AFCA and the regulators should also act as incentive to participants in the financial system to improve compliance and risk frameworks, which in turn should improve consumer and small business outcomes.

Role of the independent assessor

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

While the role of the independent assessor should be to assess processes by which AFCA makes its decisions, it should not be limited to considering complaints and handling of operations in its assessment. Rather it must extend to evaluating the performance of AFCA which would include considering the merits of an AFCA decision.

Excluding this element from its scope significantly limits the value of the independent assessor's role and limits its ability to undertake a comprehensive independent review. It also fails to address ongoing concerns around the consistency of how current determinations are reached.

Importantly, we also believe that a complaint should be able to be lodged by any party involved in a previous or existing complaint including the consumer, small business owner, financial firm or a representative of a financial firm. This is necessary to ensure a fair, balanced, unbiased and wholistic approach to an independent review.

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

Further to our comments above, we do not believe that the independent assessor should be excluded from being able to undertake a merits review of an AFCA decision, including jurisdiction decision. Further, we believe that an independent assessor should be able to re-open a complaint or review an outcome if there were sufficient grounds to do so.

External dispute resolution decisions can have a significant impact on Professional Indemnity Insurance costs. While a review of a decision should not result in a consumer having to repay any compensation received, a reviewed outcome may have a positive impact on a financial firm's ability to access or the cost of Professional Indemnity Insurance. This is an important consideration given the increasing costs faced by this sector, especially for small to medium independent firms.

Including the review of AFCA decisions should also lead to more consistency in complaint determinations, which will build trust and confidence in the framework.

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

CPA Australia agrees with the proposed requirements for the independent assessor.

In addition to all users of the scheme, we also recommend a financial firm or a representative of a financial firm should be able to lodge a complaint with the independent assessor.

We also reiterate our comments above, that the function of the independent assessor should include the review of AFCA decisions, including jurisdiction decisions. Without the ability to review such decisions, the value and effectiveness of the independent assessor will be compromised, as it will focus on only process not outcomes.

EDR disclosure obligations

B6Q1 Is this 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.

While a commencement date 1 November 2018 sounds sufficient for financial firms to update all legal disclosures, including documents, websites and electronic assets, there are a number of factors that should be considered.

Firstly, when AFCA becomes operational. This will impact when a firm can apply and be granted membership. Given the number of participants that need to apply, consideration should be given to how long it may take AFCA to review and approve all applications. A firm will be unable to update its legal disclosures and electronic assets until such time that they have been granted membership. Documents that also need to be redesigned or printed may have longer lead times, due to marketing, compliance and print reviews.

Importantly, ASIC has indicated that it will also publicly consult on new IDR standards and the mandatory IDR reporting requirements that are also contained in the AFCA Act. However, not until after AFCA commences its operations.

If there are amendments to the IDR standards, currently outlined in Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165), this could impact other disclosures such as dispute resolution processes within a FSG.

Cost and efficiency is an important factor for firms, therefore steps should be taken to avoid requiring firms to update documents by 1 November 2018 for AFCA membership and again in the near future for IDR processes.

We recommend that ASIC bring forward its public consultation and review of RG 165 to enable firms to update relevant disclosures and documents at the one time, avoiding unnecessarily duplicating costs.

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

Transitional relief should be considered in the lead up to AFCA commencement. Currently, there is no clear timeframe for AFCA to commence operations and or accept applications for membership. Without a clear timeframe, it is difficult for firms to plan and budget for future changes.

We recommend that ASIC take a flexible and pragmatic approach to this requirement and provide more certain guidance as the establishment of AFCA progresses.