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

Equifax appreciates the opportunity to consult on [the oversight of the newly formed Australian Financial Complaints Authority](#).

Equifax is a provider of credit information and analysis in Australia. Our range of products caters for individuals, small businesses and companies. Given we hold data on more than 16.4 million credit-active individuals, 3.4 million sole traders and 3.6 million companies throughout Australia, we are actively involved in day to day credit reporting, analysis and correction of bureau files as well as protecting both the security and access of individual's personal information.

One of the key aspects of a credible financial system is having reliable credit information surrounding all transactions occurring within the financial system. Equifax totally supports the establishment of a dispute resolution body with a framework that enables equitable outcomes for both consumers and financial service providers.

We have provided our responses to the proposals listed below

[List of proposals and questions by ASIC:](#)

**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.

**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.

**B2 Q1 Do you agree with our broad approach to AFCA reporting? If not, why not?**

**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.

**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.

**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.

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

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

**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.

**B6Q2** Should we provide transitional relief from external dispute resolution disclosure obligations in the lead up to AFCA commencement?

## Equifax feedback on ASIC's specific Consultation Paper Questions:

### RE: B1Q1. Timing of reports to be made by AFCA to ASIC

Most medium to large sized entities have procedures that are built in to their overarching governance process. This involves the initial identification of issues, investigation and analysis and reporting. Where an incident that is more serious is uncovered this requires escalation to either the compliance committee, the board and in some instances a regulator.

To ensure that matters which are reported to ASIC are only those that meet the description of a serious contravention, we would propose that ASIC re-phrase the requirement so that matters that have been confirmed as serious contraventions or breaches are reported within 30 business days. This gives all entities involved sufficient time frame to identify the issue, clarify the scope of work in remediating the issue and have a plan in place to rectify the problem.

### RE: B2Q1. Broad approach to AFCA's Reporting

Equifax agrees that there should be reporting to ASIC by AFCA on matters that are serious contraventions. We also propose that ASIC sets out the criteria for what matters should be reported by AFCA as this will give both customers and financial entities more clarity on expectations from AFCA's investigations and assessments. The benchmark for reporting criteria should consider current systemic issues or serious contraventions that have been identified under the existing EDR schemes.

### RE: B3Q1. Primary role of the independent assessor

The current set up of the EDR schemes is that their decisions are binding on the financiers but are not binding on consumers. This results in instances where vexatious litigants continually open up new dispute claims, in some instances even having concurrent dispute claims open while not accepting the decisions of the EDR body. This also has a negative effect as each dispute claim is free for the consumer however it results in a payment from the financier, even when the EDR body has found there to be no fault by the finance entity.

In instances where the EDR body reviews a matter which falls outside its terms of reference and given a binding resolution which is wrong from a legal standpoint, the independent assessor needs to be able to recommend that AFCA to amend its initial findings and also report these instances to ASIC.

### RE: B4Q1. What is outside the role of the independent assessor

The key issue with not allowing the independent assessor authority to reverse incorrectly determined disputes is that even in instances where AFCA has failed to consider a certain aspect of the law, it then provides precedence for other disputes to be assessed and possibly determined in a similar erroneous manner.

While Equifax agrees with the approach of having an independent assessor to respond to complaints, identify and report on issues, there is still a gap in the process or the governance in that identifying and recommending changes to the EDR body is not a guarantee of addressing reviews that have already been performed. This needs to be clearly outlined as a responsibility for either the independent assessor or ASIC.

#### RE: B5Q1. Requirements for the independent assessor

Equifax agrees with the proposed requirements for the independent assessor but would also like to see the sufficient powers stipulated to include a merits review of AFCA's dispute findings in instances where disputes have been escalated. This would enable AFCA to operate at a greater level of transparency as compared to the current EDR schemes. Currently the level of visibility on the existing EDR bodies does not include performance assessment reports or independent reviews of disputes. The current reporting seems focused on the number of disputes lodged with an EDR body and the classification of these disputes.

#### RE: B6Q1. Timeframe for updating legal disclosures

Most companies work with a set number of internal IT staff to manage day to day support issues as well as critical internal network operations including security and system upgrades. Matters that are not core to daily operations of a firm are outsourced to more suitably qualified contractors or external providers.

We would propose that AFCA provides a longer transition period to enable all the industry players to update not only the manual documents provided to customers but also system generated documents and the related IT systems. Consideration also needs to factor in the various regulatory changes and the impacts to the limited IT resources currently working on various system developments.

#### RE: B6Q2. Transitional relief from external dispute resolution disclosure obligations

We propose that transitional relief from EDR disclosure obligations be provided in the lead up to AFCA's commencement for a period of 12 months. Considering RG 139 is still in draft form and AFCA has not been fully set up, there is limited information that is publicly available for both consumers and finance entities on key contact channels. This also has a limiting effect on how early finance entities can engage with IT specialists in updating disclosure information.

#### Other Matters for consideration:

While there is an emphasis to provide a platform that is more accessible to consumers and small business, there are key issues which still require clarification to ensure all Credit Providers use a similar approach in reporting credit conduct and also ensure that Credit Reporting disputes have as systemized approach for review.

As of March 2014 the Comprehensive Credit Reporting regime mandated that credit reporting bodies could use and disclose positive credit information about a consumer. This included details of a person's overdue payments, defaults, bankruptcy or court judgments. Section 21U of the Privacy Act requires a credit provider to take reasonable steps to ensure information supplied to a credit reporting body is accurate, up to date and complete.

The guidance provided to consumers by the OAIC on hardship ([Privacy fact sheet 38](#)) states that in instances where an individual is having difficulty meeting repayments and a hardship application is accepted by a credit provider, the provider must not disclose this fact to a CRB. This includes information about an overdue consumer credit payment that is part of the hardship request.

There have been [determinations by the Financial Ombudsman Service \(FOS\)](#) regarding disputed default listings by Credit Providers where FOS has used the approach above as per Privacy fact sheet 38 but this is in contrast to the approach credit providers are using by relying on s21U of the Privacy Act where repayment history information on a consumer credit files reflects missed payments.

If repayment history information does not reflect hardship circumstances, there is an undermining of the data provided to Credit Providers who utilize the credit reports to analyze a consumer's financial situation. This would also be the case for hardship applications where a consumer has been granted a moratorium on payments for a period of time due to an unforeseen circumstance.

In instances where individuals miss one or more payments but do not request hardship, the repayment history will correctly reflect the missed payments, this leads to a situation where CRB's information on repayment history is skewed based on whether or not hardship has been applied for by a consumer.

There are multiple structural changes currently occurring in the financial market sector. While these changes are meant to strengthen the Australian finance sector, there needs to be serious consideration to the cost of these changes as well as the effects of regulatory fatigue.

2018 has seen the commencement of the notifiable data breaches scheme under part IIIC of the Privacy Act 1988. Given this scheme applies to all agencies and organizations with existing personal information security obligations under the Australian Privacy Act 1988, this captures all entities in the financial sector that provide credit or credit reports.

In Nov 2018 lenders and dealerships will be implementing new business models to comply with ASIC's formal ban on flex commission arrangements that have been in operation in the car finance industry.

Consultation is also currently underway on the implementation of reforms to the selling of add on insurance to consumers through dealerships. These reforms also involve individual insurers undertaking refunds to consumers, voluntary changes to product design, distribution and sales practices.

In addition to these changes, 2018 will see most of the major banks commence comprehensive credit reporting reform as recommended by the Productivity Commission. Ideally this will allow lenders to identify credit stress, over-commitments and more accurate information on individual's credit behavior with the purpose of bringing about responsible lending across the industry.

As ASIC sets about in formalizing its oversight role of AFCA we believe that consideration of these matters and the need for detailed guidance in some sectors will enable a seamless transition to AFCA and also provide a better governance framework for ASIC to utilize.

Kind Regards,

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