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The Australian Securities and Investments Commission
(ASIC)

via email: IDRdata@asic.gov.au

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The FBAA welcomes the opportunity to make a further submission to the proposed changes to licensee IDR obligations and RG271 the replacement regulatory guide for licensee IDR obligations effective from 05 October 2021.

1. We recognise this consultation process specifically relates to data reporting and will address these questions first. We also include some additional points in relation to RG271 after our responses to the data reporting questions as we have some enduring concerns that were not adequately addressed in the previous consultation or subsequent response through Report 665.

2. We note the Attachment 1 to the Media Release issued as part of this consultation makes a number of references to simplifying reporting obligations for smaller businesses. We both thank ASIC for recognising that small business needs simple solutions and also encourage ASIC to continue to keep streamlined and efficient solutions as its priority when developing further guidance around IDR handling and data reporting.

3. Overall we still believe the changes to IDR handling and data capture go much further than they should. Many of the submissions in response to CP311 raised concerns about the significant additional burden the proposed changes will have on businesses and particularly on smaller businesses. Reducing the data set from 37 to 23 does not offset the enormous impact of potentially shortening complaint handling times, significantly increased data capture, regular reporting to ASIC, monitoring additional channels of potential complaints to almost proactively ask people to complain and then dealing with requests from AFCA where matters escalate beyond IDR. We are concerned that the new IDR handling obligations are overengineered and fail to take into account the fact that IDR handling obligations are just one of the dozens of obligations licensees must manage whilst also trying to operate a profitable business.

Specific questions for feedback

You are able to provide feedback on any aspect of our proposed data reporting approach, as set out in this addendum, as well as in relation to the draft data dictionary. We also seek your specific feedback to the following questions:

1.Will the draft data dictionary be practical for industry to implement? If not, why not?

There are still too many data fields. Many are for data capture for purposes entirely unrelated to the services provided by licensees or the complaint they have to respond to.
As strange as it may sound, identifying gender is not always straightforward and can take some time to identify. Some names are indeterminant and it can take time looking through records in data bases to identify either the correct title or a photo identification to confirm gender. A simple question such as gender sounds straightforward to answer but could take minutes to answer. Licensees often do not capture data about whether clients identify as are Aboriginal or Torres Strait Islander so the answer to

Q6 will commonly be “Not stated or unknown”. Where questions produce unreliable outcomes it is better to remove them.

Q10 complaint status is missing an option for “did not proceed”. Where a complainant has not re-engaged with the licensee or provided further substantiation to a complaint it is often more correctly identified as being invalid or not properly made (such that it was never a genuine complaint) rather than “withdrawn”. We are concerned that the 4 classification options under Q10 complaint status of *open*, *reopened*, *withdrawn* or *closed* assumes every complaint is legitimate.

Q20 Adviser number. Use of adviser numbers is different for credit and financial services. Only credit representatives have unique identifiers. Employees do not have adviser numbers.

We recommend this question be removed. The data provided to ASIC is industry level data and if ASIC has specific concerns with a licensee or complaints reported then it should take them up directly. If the question remains as it is, advisers and credit representatives are unfairly singled out where employees are not.

2.If your financial firm has multiple business units or brands under the one licence, would you prefer to report the complaints data separately or as one single file?

The FBAA makes no submission on this question.

3.The data dictionary captures multidimensional data by allowing each complaint to have one product or service, up to three issues and up to three outcomes. Where there are multiple issues and outcomes, this is captured using in-cell lists, rather than multiple rows or columns. Is this approach appropriate?

The FBAA makes no submission on this question.

4.Do you support quarterly reporting of IDR data? If not, what are the additional costs of reporting data on a quarterly rather than half yearly basis?

We support less frequent reporting. Every reporting obligation imposed on licensees has an impact. There is the amount of time it takes to compile and submit information but also the pressure of tracking reporting requirements, meeting deadlines and worrying about the consequences of overlooking an obligation.

There are no other licensee obligations that have them reporting even half yearly at the present time. We think quarterly reporting is too onerous and is unnecessary.

We also question whether ASIC has the capacity to analyse and process data reported on a quarterly basis or whether half yearly reporting is still going to deliver large volumes of current data that will be more than enough for ASIC’s needs.

5.Do you support the two proposed additional data elements that would capture consumer vulnerability flags and the channel via which the complaint was received? If not, why not?

We do not support a consumer vulnerability flag. Consumer vulnerability is a very subjective issue.

We need more information about what ASIC would propose to define as vulnerability flags before we can comment further. It is a vexed issue however.

6.When we publish the IDR data, how can we best contextualise the data of individual firms? Are there any existing metrics of size and sector that would be appropriate for this purpose?

ASIC would have greater visibility over the range of service providers than we do. It is likely that ASIC will need to rely on multiple factors to aggregate groups to allow for fair comparison. Past attempts to "contextualise" data have been quite controversial. Attempting to take information from a wide range of licensees engaging in a broad spectrum of activities and to homogenise it creates misleading outcomes. We argued this is what occurred in ASIC's Rep 516 on Mortgage Broker Remuneration in 2017.

We believe that all of the attributes listed below can be material to interpreting data between multiple licensees with a view to gaining some understanding of relative performance:

- total number of customers
- total number of number of transactions
- average deal size
- number of representatives
- nature of business activities
- geographical locations

Even this list does not mean that comparison will be valid.

7.Which IDR data elements do you think will be most useful for firms to benchmark their IDR performance against competitors?

This is a difficult question to answer. For many businesses the very low number of complaints they receive in a year likely make benchmarking and comparison to competitors not worthwhile. Each sector will have different levers.

Other Matters arising from proposed IDR guidance

We take this opportunity to reinforce views that have been presented in earlier submissions and for which there appeared significant support from other submissions made to CP311.

Recording all complaints

ASIC consider that all complaints must be recorded in order to have a full dataset that will meet the Australian Government's policy objectives.
The Australian Government also has policy objectives to support small business and reduce red tape.

There are very valid reasons for not recording complaints that are quickly resolved. Quite often they are resolved verbally and with a simple apology or a fee reversal or some other action that can be completed easily and which fully addresses the customer's issue. There can be no benefit in requiring a licensee to fill out a register every time a staff member quickly resolves an issue for a client. The issues are trivial. The data that trivial complaints will produce cannot be meaningful and is likely to be very inaccurate. We expect that recording will be inconsistent because licensees will not recognise them or will not have the time to complete the data entry.

As it is proposed to identify firms by name in reporting, there is further disincentive to record too many complaints.

The FBAA maintains that complaints resolved to the satisfaction of the consumer within 5 days should still be omitted from the comprehensive IDR data reporting obligation.
ASIC recognised in Rep 665 at para 37 the need to retain relief from providing final written responses to complaints that are resolved quickly. This same recognition of providing relief to licensees from the burden of providing written responses on the quickly resolve complaints must also apply to entering such complaints in the register.

If ASIC were determined to try to collect data on complaints that are quickly resolved, licensees could provide a simple count of the number of the number of complaints that were resolved within the 5 day window without providing any further data. It would need to be recognised this would be quite unreliable because many minor complaints will never be captured because they are addressed by frontline staff or in call centres or through other brief interactions where the issues are quickly dealt with. If the complaint is not dealt with to the customers satisfaction they can pursue their complaint which will then be captured in true IDR statistics.

It simply is not practical to require a licensee to complete entries in a data table requesting more than 20 points of information every time they address an issue raised by a customer. In highly transactional businesses small errors relating to payments and customer account handling happen frequently. Human error and data input errors are common but easily rectified. Accounts errors such as reversing system applied late fees where the customer said they'd be late paying or updating an email address after a customer complains they are not receiving emails are other examples.

Social Media

We appreciate the clarification around the obligations that arise when a complaint is made via social media.
"We have clarified that our intention is that the definition of complaint should only include '[complaints made] on a social media channel or account owned or controlled by the financial firm that is the subject of the post, where the author is both identifiable and contactable': see RG 271.32(a)."

As we raised in our 2019 submission to RG165, we believe any licensee attempting to exclude a complaint because it fails to use certain keywords such as "complaint" or that it is made via the wrong channel is already failing to comply with their IDR obligations. Thus a reasonably coherent complaint on social media is as valid as one expressed through any other medium.

The concern expressed in our 2019 submission was that social media introduces a fundamentally different interface for people to communicate. Social media channels make it much easier to vent, fabricate and remain anonymous. People who have never even dealt with an entity can still post negative reviews and derogatory information. Competitors unfortunately also use social media to their competitive advantage. Requiring a licensee to chase every negative statement as a potential complaint would be unreasonable.

We welcome the inclusion of the clarificatory words "where the author is both identifiable and contactable" but remain of the view that it needs to go one step further.

In addition to the author needing to be identifiable and contactable, we believe a licensee's complete IDR response need only be to invite the complainant to contact the licensee through other private channels to advance their complaint. If the customer does not respond to this then the licensee should be able to treat the matter as closed.

This is the minimum effort that should be required of a person to initiate an IDR response. It is fair and reasonable to expect that if a person does not follow through and contact a licensee that they never had an expectation of a response or resolution to their complaint.

Confining complaints to those that can be escalated to AFCA

The FBAA did not advance the position in its 2019 submission that the definition of a complaint should be limited to a complaint that can be escalated to AFCA, however it does pose an interesting issue.

We believe for the most part that a complaint is relatively easy to identify. It is an expression of dissatisfaction. The more difficult aspect of defining when a complaint must be responded to is where the complainant has an implied expectation of a resolution.

Part of the rationale to confine complaints to those that AFCA can entertain relates to the information a licensee is required to provide to a complainant in its final written IDR response. A licensee is required to inform a consumer that if they are dissatisfied with the licensee's IDR response that they may lodge their complaint with AFCA free of charge (refer RG165.87).

We are aware of instances of licensees inflaming disputes with consumers because they have informed the consumer of their right to take their complaint to AFCA to then be told by AFCA that they cannot hear it. The consumer then complains about the licensee telling them they could take their complaint to AFCA and becomes more suspicious of the licensee's IDR response as being incorrect since the information they provided in the final written response also appears incorrect.

Some common-sense must prevail with the prescribed wording on an IDR response so that it does not appear as a promise from the licensee that a consumer can take their IDR response to AFCA in all cases.

Definition of complaint including a refusal to provide a service

We remain vehemently opposed to the guidance continuing to include content suggesting that the refusal of a firm to grant credit *is a complaint*.

ASIC says at para 35 in Report 665 "If these complaints can be immediately resolved by explanation of a firm's reasonable commercial judgement, then certain further requirements will not apply. For more information, see paragraphs 39–41".

There is no information in paragraphs 39-41 that clarify this statement. It is possible the reference should be to paragraph 37 however.

This position is not adequate. To suggest that a licensee must entertain a complaint by a consumer that is not offered credit runs directly counter to the obligations on credit providers to not offer credit unless they have made an assessment that the proposed credit will be not unsuitable. Similar issues are relevant for credit assistance providers in addition to meeting the best interests duty. Credit providers and credit assistance providers are under specific obligations not to provide services unless they are satisfied they can do so responsibly.

Taken directly from RG271:
RG 271.43 At a minimum, an IDR process for credit must be able to handle complaints made *about the credit activities engaged in by the credit licensee* or its credit representatives, or an unlicensed COI lender: s47(1)(h) of the National Credit Act and Sch 2 to the National Credit Regulations. This will involve covering complaints made by consumers of credit, lessees and guarantors as defined under the National Credit Act.

The italicised and underlined words define the issue. Where a credit provider declines to provide credit, they have not engaged in a credit activity. In fact, they have declined to engage in a credit activity. Similarly where a credit assistance provider declines to offer services, they have not engaged in a credit activity.

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It is the absolute right of every services provider whether they be a credit provider, credit assistance provider or any other business to choose not to engage with a particular customer for whatever reasons they see fit (naturally barring issues of discrimination or whether legal obligations require otherwise).

Credit providers are not required to give customers detailed reasons for declining an application for credit. If they provide detailed reasons for declining credit this may educate a customer about what information to leave out of a subsequent application to reapply for credit. It is not uncommon for credit providers to receive more than one application for credit from the same customer and to find discrepancies in their declared circumstances (including number of dependents, other credit commitments etc). A credit provider may commit significant time to assessing a customer application before deciding not to offer credit. Their reasons may be financial or non-financial. Regardless of their reasons, they choose not to offer credit to the customer. Once deciding not to offer credit they have not engaged in a credit activity. The customer is not their customer. Having not received a credit service from the credit provider, the person has nothing to complain about other than the outcome.

Where a customer wants, as a resolution to their complaint, for the credit provider to offer them money, the complaint cannot ever be resolved to the customer's satisfaction.

The credit provider does not need to apologise to a customer for not offering credit and it would be nonsense to open a credit providers IDR processes to an aggrieved person to demand a written apology from a credit provider that has decided not to offer credit.
There is no logical reason why a licensee should have to entertain a complaint from a customer where the complaint is about the licensee not providing services to them. The credit provider will find themselves defending a complaint to AFCA for doing nothing wrong.
We believe ASIC has this aspect of its guidance completely wrong.

Unless a licensee has provided a service, a person should not be able to complain.

End.

Yours faithfully

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