

12 February 2021

Australian Securities and
Investments Commission
GPO Box 9827
Brisbane QLD 4001

By email: IDRdata@asic.gov.au

Dear IDR Data team

**Feedback on proposed internal dispute resolution data reporting requirements
(Addendum to Consultation Paper 311: Internal dispute resolution: Update to RG164)**

Thank you for the opportunity to provide feedback on the proposed approach to internal dispute data reporting requirements, as outlined in the *Addendum to Consultation Paper 311: Internal dispute resolution (Update to RG 164) (Addendum)*.

The Queensland Law Society (QLS) appreciates being consulted on this important issue.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals and assist the public by advocating for improvements to laws affecting the community.

This response has been compiled by the QLS Banking and Finance Law Committee, whose members have substantial expertise in this area.

Executive Summary:

We understand that the purpose of the Addendum document is to outline the approach for gathering useful data, on a regular basis, on consumer and small business complaints to the Australian Financial Complaints Authority (AFCA).

We make the following comments:

- QLS has identified some additional items for consideration by ASIC when establishing the new standards and requirements for internal dispute resolution, including for the reporting of internal dispute resolution data (IDR).
- In relation to the IDR Data Dictionary released with the Addendum, we raise a number of queries for consideration by way of comments in the footnotes (see **enclosed** annotated IDR Data Dictionary).

Feedback on proposed internal dispute resolution data reporting requirements (Addendum to Consultation Paper 311: Internal dispute resolution: Update to RG164)

QLS considers that these additional items will contribute to the quality of data collected and the analysis of trends in consumer and small business complaints.

Context of comments

The Addendum has been published following consultation with industry during 2019 and 2020 about the proposed new standards and requirements for IDR, including for the collection, lodgement and publication of IDR data by financial firms.

The Addendum has been prepared taking into account feedback received during the earlier consultation process and outlines ASIC's preliminary position on a number of issues related to data reporting.

QLS has outlined below further suggestions for improving the quality of the data collection, in light of the following context:

- Membership of AFCA is mandatory for all Australian Financial Services Licence (**AFSL**) holders (and their "authorised representatives") and Australian Credit Licence (**ACL**) holders (and their "credit representatives").
- Members of AFCA are bound by the AFCA Complaint Resolution Scheme Rules (**AFCA Rules**).
- Membership of AFCA (and the holding of the above licenses) generally is not compulsory for those who broker or provide finance solely for unregulated purposes (being generally finance to small businesses)
- Specifically, "brokers" and others involved in solely unregulated finance, are not caught as either "authorised representatives" or "credit representatives":

Entities who are involved in unregulated finance are therefore not required (or even possibly permitted) to be members of AFCA.

However, they are caught (but not required to be members of AFCA) as "Financial Firms" under the definition in the AFCA Rules.

This means that a complaint cannot be made against such entities, unless the complaint is also made against an ACL or AFSL holder. By way of example, the functionality of the AFCA website does not allow a complaint to be lodged against such brokers (as they are not AFCA members). We understand that the broker can be joined in a complaint, although no determination is able to be made against them by AFCA.

The AFCA Rules also enable complaints to be made by small businesses and primary producers and certain guarantors (see definition of Eligible Person and other terms in the AFCA Rules and the comments in the **enclosed** annotated IDR Data Dictionary).

Additional data sets for reporting

Detailed comments have been made in the annotated IDR Data Dictionary enclosed with this letter.

Feedback on proposed internal dispute resolution data reporting requirements (Addendum to Consultation Paper 311: Internal dispute resolution: Update to RG164)

In summary, QLS suggests that it would be useful for ASIC also to identify and/or collect the following data in respect of IDR processes:

1. how much the AFCA complaints resolution scheme saves in costs and time for the courts and complainants;
2. If a complainant is not a natural person, then should it be indicated whether the complainant is owned wholly, or a majority, by female or male etc. This would assist in identifying any potential gender related complaint levels against a licensee which might indicate a systemic problem with their systems or product;
3. the initial claims the subject of the complaints (by both the complainant and the AFCA member) versus the eventual resolution/ outcome;
4. additional "complaint issues" to be added to Table 13 in the IDR Data Dictionary (see notes in **enclosed** annotated IDR Data Dictionary), and
5. some additional fields, to identify possible trends in systemic issues, such as:
 - i. identity theft, and
 - ii. fraud or forgery,

including any trends in light of the increased use of electronic signatures under changes made to the Electronic Transactions laws due to COVID, etc.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED].

Yours faithfully

[REDACTED]

Elizabeth Shearer
President

Enclosure: Annotated IDR Data Dictionary

IDR data dictionary

Complaint identifying information

Table 1: Object class—Complaint identifying information

Number	Data Element name	Description	Permissible values	Guide for use	Codes
1.	Entity's complaint unique identifier	Entity's unique identifier for each complaint ¹	Text and numeric	Mandatory field The identifier must be unique to each complaint reported and never be re-used by the entity	Not applicable
2.	Name of subsidiary, brand or superannuation fund that the complaint is about	Name of subsidiary, brand or superannuation fund that the complaint is about	Text and numeric	Mandatory field For entities that have multiple subsidiaries, brands or superannuation funds operating under a single licence: Enter the name of the subsidiary, brand or superannuation fund that the complaint is about. For entities that do not have multiple subsidiaries, brands or superannuation funds operating under a single licence: Enter 'Not applicable'.	Not applicable

¹ Does this require the AFS licensee and its authorised representative, and ACL licensee and its credit representative, in each complaint, to use the same number to uniquely identify the complaint if made in relation to either?

Complainant demographics

Table 2: Object class—Complainant demographics

Number	Data Element name	Description	Permissible values	Guide for use	Codes
3.	Complainant type ²	Who made the complaint	Numeric only (see Codes)	Mandatory field	1 = Individual 2 = Small business ³ 9 = Not stated or unknown
4.	Complainant gender	Gender of the person raising the complaint	Numeric only (see Codes)	Conditional field A response is required if data element 3 'Complainant type' equals 1 (Individual). Use 3 (Indeterminate) if the complainant does not exclusively identify as either male or female (i.e. a person of a non-binary gender). They may use a variety of other terms to self-identify.	1 = Male 2 = Female 3 = Indeterminate ⁴ 9 = Not stated or unknown
5.	Complainant date of birth ⁵	The complainant's date of birth	Date	Conditional field A response is required if data element 3 'Complainant type' equals 1 (Individual). Date must be presented in the format DD/MM/YYYY.	Not applicable

² As AFCA can also receive small business' complaints, and from guarantors, the field should have additional sub categories to cover each of the persons who can be an "Eligible Person" under the AFCA Rules" eg "Consumer Credit", and "Business Finance", and sub-sub categories of whether the complaint arises from "Business Finance", a "Small Business" or a "Primary Producer", and further whether the complaint is made in their capacity as a "Guarantor" or as a "borrower"

³ Suggest clarification of what is a "small business" under this code? FYI the AFCA Rules described "small business" as being "means a Primary Producer or other business that had less than 100 employees at the time of the act or omission by the Financial Firm that gave rise to the complaint." A suggested useful addition would be to require inclusion of the ABN, ARBN, ARSN, ACN, ABN and name/s and date/s of birth (if sole trader or partnership of individuals – see also item number 5 below) of the complainant small business. This would possibly assist in tracking any systemic issues (eg multiple complaints for same or similar reasons by the same or related complainants against one or more licensees) and also vexatious complainants/ related complainants

⁴ If a complainant is not a natural person, then should it be indicated whether the complainant is owned wholly, or a majority, by female or male etc. This would assist in identifying any potential gender related complaint levels against a licensee which might indicate a systemic problem with their systems or product.

⁵ See also comments as to item 3 above

				If the complainant's date of birth is not stated or unknown, enter '01/01/1900'.	
6.	Aboriginal or Torres Strait Islander descent	Is the complainant of Aboriginal or Torres Strait Islander descent?	Numeric only (see Codes)	Conditional field A response is required if data element 3 'Complainant type' equals 1 (Individual) If the complainant is of both Aboriginal and Torres Strait Islander descent, enter both codes separated by a comma (i.e. '2,3')	1 = No 2 = Yes, Aboriginal 3 = Yes, Torres Strait Islander 9 = Not stated or unknown
7.	Complainant postcode	Postcode of the complainant's postal address ⁶	Numeric only	Mandatory field If complainant is located overseas, enter '0001'. If postcode is not stated or unknown, enter '0009'.	Not applicable

⁶ Or in the case of a small business or primary producer (as defined under AFCA Rules), their "principal place of business"

Complaint information

Table 3: Object class—Complaint information

Number	Data Element name	Description	Permissible values	Guide for use	Codes
8.	Is the complaint about the authorised representative of an AFS licensee ⁷ or an authorised credit representative ^{8,9}	Confirm whether the complaint is about an authorised representative or a credit representative	Numeric only (see Codes)	Mandatory field See the ASIC website for further details on 'Who can be an authorised representative of an AFS licensee' and 'Credit representatives'	1 = Yes 2 = No
9.	Authorised representative or credit representative identifier number ¹⁰	The unique identifier ASIC issued for the authorised representative or credit representative	Numeric only	Conditional field A response is required if data element 8 'Is the complaint about the authorised representative of an AFS licensee or an authorised credit representative?' equals 1 (Yes).	Not applicable

⁷ Authorised representative of an AFS licensee applies where the AFS licence holder and their representatives provide "financial services" to clients. (see <https://asic.gov.au/for-finance-professionals/afs-licensees/do-you-need-an-afs-licence/>). This generally does not apply to commercial business asset loans or finance for equipment or debtor finance. See comments in Footnotes 9 and 10 below in this regard.

⁸ "Credit representatives" are only authorised for credit that the National Credit Code applies to, which is only consumer credit ie small business not included. A credit representative must be a member of AFCA. If the credit representative does not have AFCA membership at the time of authorisation, the authorisation has no effect. If a credit representative ceases to be a member of AFCA, the authorisation ceases to have effect. (see <https://asic.gov.au/for-finance-professionals/credit-licensees/credit-representatives/#monitoring>). See comments in Footnotes 9 and 10 below in this regard.

⁹ What if the complaint does not fall under the AFS license or ACL license regime, but still falls under AFCA complaints process eg complaint by a small business as to a commercial hire purchase product issued by a "financial firm" (under AFCA Rules) who is a finance broker who is not issued a unique ASIC identifier as either an "authorised representative" under an AFSL or "credit representative" under an ACL? A suggested useful addition would be to require inclusion of the ABN, ARBN, ARSN, ACN, ABN and name/s and date/s of birth (if sole trader or partnership of individuals – see also item number 5 above) of each and every of the "financial firms" whom the complaint is in relation to, so as to include all of potential subjects.

¹⁰ What if the complaint does not fall under the AFS license or ACL license regime, and so no "authorised representative" or "credit representative" requirement, but still falls under AFCA complaints process eg complaint by a small business as to a commercial hire purchase product, arising in relation to actions of finance broker? The dictionary at the AFCA Rules includes in the definition of "Financial Firm" "4. for the purposes of rule B.2 and A.7.1, A.7.2 and A.7.6 in relation to a complaint other than a Superannuation Complaint, "Financial Firm" also includes any employee, representative, agent or contractor of the Financial Firm including any person who has actual, ostensible, apparent or usual authority to act on behalf of the Financial Firm or authority to act by necessity in relation to a financial service." Recommend that the identifier be the ABN of the Financial Firm

10.	Complaint status ¹¹	The status of the complaint at the time of reporting ¹²	Numeric only (see Codes)	<p>Mandatory field</p> <p>Use 1 (Open) if the complaint has been opened for the first time and its resolution is in progress.</p> <p>Use 2 (Re-opened) if the complaint has been re-opened (e.g. if a complaint has been referred back from the Australian Financial Complaints Authority (AFCA) or additional information has become available).</p> <p>Use 3 (Withdrawn) if the complaint was withdrawn by the complainant or contact with the complainant has been lost.</p> <p>Use 4 (Closed) if the complaint has been resolved or the entity has provided a final response to the complainant</p>	<p>1 = Open</p> <p>2 = Re-opened</p> <p>3 = Withdrawn</p> <p>4 = Closed</p>
11.	Date received	The date the entity first received the complaint	Date	<p>Mandatory field</p> <p>Date must be presented in the format DD/MM/YYYY.</p>	Not applicable
12.	Date closed	The date the complaint was closed or withdrawn	Date	<p>Conditional field</p> <p>A response is required if data element 10 'Complaint status' equals 3 (Withdrawn) or 4 (Closed).</p> <p>Date must be presented in the format DD/MM/YYYY</p>	Not applicable
13.	Date re-opened	The date the complaint was re-opened	Date	<p>Conditional field</p> <p>A response is required if data element 10 'Complaint status' equals 2 (Re-opened).</p> <p>Date must be presented in the format DD/MM/YYYY.</p>	Not applicable
14.	Reason for reopening	The reason for re-opening the complaint	Numeric only (see Codes)	<p>Conditional field</p> <p>A response is required if data element 10 'Complaint status' equals 2 (Re-opened).</p>	<p>1 = Referred back from AFCA</p> <p>2 = Additional information received or known</p> <p>3 = Other</p>

¹¹ Recommend inclusion of a reference to any related complaints by the same or related complainant/s. This would indicate if complaints might arise from a systemic problem created by either the complainant/s or the financial firm or its agents.

¹² As AFCA resolutions also have an effect on any court proceedings, additional information as to any court or tribunal proceedings or arbitration commenced at the time of or subsequent to commencement of the complaint is relevant, as well as in what state or territory the proceedings were commenced. This would help identify what disputes are resolved before or after commencement of court proceedings, and so indicate the amount of time and costs AFCA saves the various court systems (if concluded by AFCA process).

15.	AFCA status ¹³	Is the complaint currently, or has it ever previously been, at AFCA?	Numeric only (see Codes)	Mandatory field	1 = Yes 2 = No
16.	AFCA reference number or case unique identifier	AFCA reference number or case unique identifier, where known	Text and numeric	Conditional field A response is required if data element 15 'AFCA status' equals 1 (Yes). If the AFCA reference number or case unique identifier is not known or unavailable, state 'Unknown'.	Not applicable
17.	AFCA date	The date the complaint was received by AFCA	Date	Conditional field A response is required if data element 15 'AFCA status' equals 1 (Yes). Date must be presented in the format DD/MM/YYYY	Not applicable
18.	Product or service	The product or service that the complaint is about	Numeric only (see Codes)	Mandatory field This data element aligns with AFCA's approach to reporting complaints lodged with them.	See Table 4–Table 12
19.	Complaint issue	The issue raised by the Complainant	Numeric only (see Codes)	Mandatory field If the complaint involves more than one issue, input up to three codes separated by commas (e.g. '6,48,60'). This data element aligns with AFCA's approach to reporting complaints lodged with them.	See Table 13 ¹⁴
20.	Adviser number	Provide the financial adviser number that the complaint relates to	Numeric only	Conditional field A response is required if data element 19 'Complaint issue' equals 1 (Advice—Failure to act in client's best interests), 2 (Advice—Failure to prioritise client's interests), 3 (Advice—Failure to provide advice) or 4 (Advice—Inappropriate advice)	Not applicable

¹³ As before, suggested reference to any related complainants would be useful also, so as to assist in identifying any systemic issues, such as fraud or forgery.

¹⁴ The issues identified in table 13 issues are a good start, however additional complaint issues should be added. These might be useful to identify fraud/ forgery arising, especially as to trends surrounding electronic signatures and/or identity theft fraud/ forgery, such as "lack of verification of signatory"; "unauthorized product or service"; "complainant's employee or contractor fraud or forgery"; "Entity's employee or contractor fraud or forgery"; "Entity's authorised representative, credit representative or Financial Firm employee or contractor fraud or forgery"

21.	Outcome in whose Favour	The overall outcome of the complaint	Numeric only (see Codes)	Conditional field A response is required if data element 10 'Complaint status' equals 4 (Closed)	1 = In favour of complainant in full or in part 2 = In favour of entity
22.	Monetary compensation	Amount of monetary compensation provided	Numeric only	Conditional field A response is required if data element 10 'Complaint status' equals 4 (Closed). Provide amounts in Australian dollars. Round to the nearest whole dollar. Do not include dollar signs. If there was no monetary compensation provided, input '0'.	Not applicable
23.	Other outcomes	Whether any other outcomes were provided	Numeric only (see Codes)	Conditional field A response is required if data element 10 'Complaint status' equals 4 (Closed). If the complainant obtained more than one of the listed outcomes, input up to three codes separated by commas (e.g. '2,8,9'). If code 1 (No other outcomes provided) is selected, then no additional codes can be chosen. This data element aligns with AFCA's approach to reporting complaints lodged with them.	1 = No other outcomes provided 2 = Apology 3 = Full/partial waiver of debt/ interest/fees 4 = Capitalisation of arrears 5 = Repayment arrangement 6 = Timeframe for refinance 7 = Timeframe for sale/surrender of asset 8 = Hardship superannuation release 9 Policy/contract altered/voided/cancelled 10 = Other product, service or resolution provided