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Jacqueline Rush
Senior Policy Adviser
Australian Securities and Investments Commission

9 August 2019

By email: IDRSubmissions@asic.gov.au

Dear Ms Rush

**CONSULTATION PAPER 311 – UPDATE TO RG165: INTERNAL DISPUTE RESOLUTION**

The Australian Finance Industry Association [AFIA] welcomes the opportunity to provide feedback on ASIC's **Consultation Paper: 311 Update to RG165 - Internal Dispute Resolution** [the **Paper**].

**AFIA BACKGROUND**

AFIA is the voice of a diverse Australian finance industry. AFIA supports our Members to ensure a fair, equitable and competitive market for customers through representation, insights and connectivity. AFIA is uniquely placed to respond given our diverse Membership of over 100 financiers operating in the consumer and commercial markets (including small-medium business and Agri-finance). These include a broad range of entities: bank/non-bank; ASX-listed to niche players; and operating through various distribution channels: direct, intermediated and digital. Further detail on AFIA is set-out below and available from: www.afia.asn.au.

**AFIA'S INSIGHTS – PROCESS**

To inform our submission, AFIA engaged with a broad range of entity type and mix of consumer and small business commercial finance providers. Key outcomes are summarised below and a more detailed response is included in Attachment A. While Members have contributed to inform this response, from an organisational view, the positions being put by AFIA may not reflect every Member's specific position on all the issues.

**AFIA KEY POSITIONS SUMMARY**

AFIA and its members:

- support the provision of finance to a standard that meets community expectations
- acknowledge that the community expects financiers to have a robust, accessible complaints-handling process that has integrity. This includes an internal process [IDR]. For complaints unable to be resolved through IDR, it should also provide an accessible avenue to raise these externally and have considered by an independent External Dispute Resolution entity ([EDR] such as AFCA)

- understand that the community expects financiers to make finance decisions that strike a reasonable balance between the goals of:
    - avoiding the incidence of customers (consumer or small business) entering into a contract where they are unable to meet their contractual obligations; and
    - enabling access to finance for customers (consumers and small business) who have the desire and ability to service it;
- note the important distinction between consumer and commercial finance and consequently that the balance referred to above may vary depending on whether the customer is a consumer or a small business
- appreciate ASIC's engagement on this topic and makes the following recommendations

**AFIA RECOMMENDATION 1:**

- *As Members believe there is an important difference between an 'enquiry', an 'expression of dissatisfaction' and a 'complaint', they are concerned that the definition, as drafted, is too broad. They welcome the opportunity for a workshop with ASIC to discuss these differences and get agreement on a way forward that delivers:*
    - *Improved customer and small business outcomes*
    - *Reduced data arbitrage*
    - *Improved accuracy of benchmarking by regulators and say AFCA*
    - *More accurate insights being gleaned about culture, conduct, product design and distribution practices and reduced 'noise' due to interpretational differences*

**AFIA RECOMMENDATION 2:**

- *While the data set in the proposed dictionary is a good start, Members recommend that it be reviewed further as some of the proposed fields may be seen as intrusive to the customer and unlikely to add additional extra value. Various examples are included in Attachment A*

**AFIA RECOMMENDATION 3:**

- *Members react quickly and aim to resolve issues in the shortest possible timeframe. However, they recommend not reducing the maximum IDR timeframe "for all other complaints" from 45 days to 30 days.*

  *Key reasons for this are:*
    - *Complaints can be complex often requiring multiple interactions with customers*
    - *Members are increasingly having to involve third parties in order to better understand the basis and facts behind a complaint. The ability to control the response timeframes*

*of these parties is generally beyond our Members by likely integral to their response and therefore impacts the overall timing*

- *Inclusion of internal and external customer advocates is increasing. Reducing the timeframe they have to understand the complaint informed by customer and financier input to be in a position to resolve matters (thereby minimising the need for an EDR escalation) could limit their effectiveness*

**CONCLUSION + NEXT STEPS**

AFIA Members' are committed to working with ASIC to ensure a robust IDR process operates in a way that strikes a reasonable balance between the goals of minimising risk of customer harm while enabling access by customers (both consumers and small business) that have the desire and ability to service finance to support their own and Australia's economic future.

We welcome the opportunity to discuss the contents of this submission further.

If you have any questions, please contact me at [redacted] or Karl Turner, Executive Director, Policy and Risk Management at [redacted] or both via 02 9231 5877.

Kind regards

Helen Gordon
Chief Executive Officer

**AFIA Background**

AFIA is the voice of a diverse Australian finance industry. AFIA supports our Members to ensure a fair, equitable and competitive market for customers through representation, insights and connectivity. AFIA is uniquely placed to respond given our broad and diverse Membership of over 100 financiers operating in the consumer and commercial markets (including small-medium business and Agri-finance).

More specifically, AFIA Members:

- include banks (major, regional and mutual/community-owned) and non-banks;
- range from ASX-listed public companies through to small businesses providing finance;
- operate via a range of distribution channels including bricks and mortar premises, intermediaries (finance brokers, dealerships, suppliers) through to online / digital access
- collectively operate across all states and territories in Australia in capital cities through to regional and remote areas: the majority operating across at least one border;
- have customers from all demographics, all age groups (legally able to borrow) in support of Australia's diverse and multi-cultural community with:
    - consumers ranging from high to low-income earners (including some whose main income source may be government welfare); many with substantial assets, others with few; single borrowers through to blended families; covering the whole range of employment scenarios, full-time, part-time, seasonal or casual employment.
    - commercial entities ranging from sole traders and partnerships through to the more complex corporates (e.g. trusts, corporate group) and government-entities some with no employees through to others with hundreds (if not thousands) of employees.
- provide a broad range of finance products:
    - consumer: from personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), loans secured by land or personal property; consumer leases of assets (including household/electrical/IT or cars); retail finance and buy now pay later solutions
    - commercial: asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); working capital solutions (online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards) together with more sophisticated and complex finance solutions.

Further detail is available from: www.afia.asn.au

**Attachment A:**

| **CP311 Proposal** | **CP311 Feedback Questions** | **Member comment:** |
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| B1 We propose to update RG 165 to require financial firms' IDR processes to apply to complaints as defined in AS/NZS 10002:2014.<br><br>It sets out the following definition of 'complaint' at p. 6: [An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.<br><br>The AS/NZS 10002:2014 definition expands the concept of 'complaint' to include expressions of dissatisfaction made 'to or about' an organisation. We consider that this should capture complaints made by identifiable consumers on a firm's own social media platform(s). | B1Q1 Do you consider that complaints made through social media channels should be dealt with under IDR processes? If no, please provide reasons. Financial firms should explain: (a) how you currently deal with complaints made through social media channels; and (b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm's own social media platform or an external platform. | • Current practice is that if a Member's social media site is the medium upon which the complaint originates then complaints coming through these channels are captured<br>• However, if complaints come through an external platform or a site that is not operated by a Member, then as it is not possible to monitor that site's content, AFIA submits those complaints should be excluded<br>• In addition, Members note that current legislation limits the ability to contact customers coming through external platforms. Requiring them to do so may not therefore be achievable |
| B2 We propose to introduce additional guidance in draft updated RG 165 to clarify: (a) the factors a financial firm should, | B2Q1 Do you consider that the guidance in draft updated RG 165 on the definition of 'complaint' will assist financial firms to | • Members ask that staff grievances / human resource concerns and whistle-blower reporting be specifically excluded from the definition of a complaint |

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| and should not, consider when determining whether a matter raised by a consumer is a complaint; and (b) the point at which a complaint must be dealt with under a financial firm's IDR process. See draft updated RG 165 at RG 165.32– RG 165.37 at Attachment 1 to this paper. | accurately identify complaints?<br>B2Q2 Is any additional guidance required about the definition of 'complaint'? If yes, please provide: (a) details of any issues that require clarification; and (b) any other examples of 'what is' or 'what is not' a complaint that should be included in draft updated RG 165. | |
| B3 We propose to modify the definition of 'small business' in the Corporations Act to align it with the small business definition in the AFCA Rules: 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. | B3Q1 Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only? If not, you should provide evidence to show that this modification would have a materially negative impact. | • Members note that there are multiple definitions of small business, so any harmonisation is welcome<br>• However, Members note:<br>o When complaints are made, it is not always clear if the complainant is complaining as a consumer or a small business or both – depending say if they were also a guarantor<br>o When loan applications are being prepared, a small business customer does not generally include the number of employees working in the business, which makes it difficult to determine if it is a small business<br>o Irrespective of whether they are banks or non-banks, from a practical perspective (such as when Unfair Contract Term Legislation was introduced for small business), compliance settings will be based on delivering 'scale outcomes' which will likely add further cost into processes and challenge Members to be able to |

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| | | deliver material value add to customers or small business<br><br>Some scenarios from ASIC on when to treat as small business would be beneficial |
| B4 We propose to update RG 165 to require financial firms to record all complaints, including those that are resolved to a complainant's satisfaction at the first point of contact. Note: Firms will not, however, be required to provide an IDR response for complaints resolved to a complainant's satisfaction within five business days of receipt. | B4Q1 Do you agree that firms should record all complaints that they receive? If not, please provide reasons. | No<br>• Members believe there is an important difference between an enquiry (e.g. why have I been charged so much interest), an expression of dissatisfaction (e.g. I don't want to pay that much interest, I think that I have been charged too much), and a complaint (e.g. the interest you have charged me doesn't match the agreed rate) which needs to be further defined and clarified.<br>• Members are concerned that the definition, as drafted, is too broad. They also note that it seems to differ to ASIC's own guidance on the process required for lodging a complaint (here) which indicates that it should be only occur after, a conversation has taken place with [front line] staff, and after customers have escalated it up a level<br>• As this is such a determinative factor for the process, Members would welcome the opportunity to discuss these differences further with ASIC<br>• From a practical perspective, Members also believe that it is very important for front line staff to remain empowered to resolve enquiries and expressions of dissatisfaction promptly and not to have these defined or reported on as complaints. |

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| | | • If the current drafting remains, Members are concerned it could lead to:<br>  o Reduced customer and small business outcomes<br>  o Data arbitrage<br>  o Reduced accuracy of benchmarking by regulators and say AFCA<br>  o Inaccurate insights being gleaned about culture, conduct, product design and distribution practices and increased 'noise' due to interpretational differences |
| B5 To facilitate the effective operation of the IDR data reporting regime, we propose to require all financial firms to: (a) record an identifier or case reference number for each complaint received. The identifier must be unique to each complaint and not be reused by the financial firm (see draft updated RG 165 at RG 165.58 at Attachment 1 to this paper); and (b) collect and record a prescribed data set for each complaint received (see draft updated RG 165 at RG 165.61–RG 165.62 at Attachment 1 and the IDR data dictionary at Attachment 2 to this paper). | B5Q1 Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.<br><br>B5Q2 Do you consider that the data set proposed in the data dictionary is appropriate? In particular: (a) Do the data elements for 'products and services line, category and type' cover all the products and services that your financial firm offers? (b) Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail? | B5Q1<br>• As highlighted above, if an amended definition of complaints is considered that focuses on 'genuine' complaints then using a unique reference number is satisfactory. However, some allowance would need to be provided for mobile lending staff as they will not be able to physically log on and get the reference number<br>• If this is not undertaken, then the data and cost impost of collecting potential 'false positive' data cannot be underestimated<br><br>B5Q2<br>The data set is a good start. Members believe that any capture should be as seamless as possible.<br>In terms of a) – the data elements, Members:<br>• See some of the proposed fields as intrusive to the customer, will add minimal extra value and if left unchanged, will likely cause frustration to the complainant (e.g. no.11 - |

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| | | complainant gender, no.12 – complainant age, no.13 whether the complainant is indigenous),<br>• in addition, no.18 will be time consuming as it will be necessary to merge ASIC portal data numbers with Member's own complaints data<br>• Members will also:<br>o not know if the issue is possibly systemic or a regulatory breach. They note that such a request also impacts upon their existing processes and reporting requirements<br>o have challenges if the name say of director is captured on the database not the name of the small business lodging the complaint<br>o for the reasons outlined earlier, not be able to deal with complaints that come through non-Member controlled social media channels<br>• Members ask that no.34 aligns with AFCA's system and they suggest that, to improve data accuracy and consistency, Items 33 and 37 be changed from free form text to a 'drop down/selection' box |
| B6 We will issue a legislative instrument setting out our IDR data reporting requirements. We propose that all financial firms that are required to report IDR data to ASIC must: (a) for each complaint received, report against a set of prescribed data variables (set out in | B6Q1 Do you agree with our proposed requirements for IDR data reporting? In particular: (a) Are the proposed data variables set out in the draft IDR data dictionary appropriate? (b) Is the proposed maximum size of 25 MB for the CSV files adequate? (c) When the status of an open | • Members ask that ASIC clarify what it intends to include in its IDR Core Requirements (CP 311.22/RG165.11) and what powers it intends to use in this situation<br>• Members question the value and benefit of ASIC issuing a legislative instrument to set IDR data reporting. They suggest ASIC guidance is sufficient |

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| the draft IDR data dictionary available in Attachment 2). This includes a unique identifier and a summary of the complaint;<br>(b) provide IDR data reports to ASIC as unit record data (i.e. one row of data for each complaint);<br>(c) report to ASIC at six monthly intervals by the end of the calendar month following each reporting period; and<br>(d) lodge IDR data reports through the ASIC Regulatory Portal as comma-separated value (CSV) files (25 MB maximum size). | complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status? | • They also suggest that if the reporting comes in, then they should not have to duplicate and report the same information as part of their annual ACL compliance certificate. ASIC's confirmation of this would be appreciated |
| B7 We propose to publish IDR data at both aggregate and firm level, in accordance with ASIC's powers under s1 of Sch 2 to the AFCA Act. | B7Q1 What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level? | Members suggest that any set of principles to the publication of IDR data:<br>• Needs to be focused on ensuring consumer protection. If they are not, then Members question the value and note that it may potentially expose them to say unscrupulous legal action or class actions<br>• Should focus on the benefit to be derived from publication not just publication for publication sake<br>• Should be based on using a consistent data set such that it will allow meaningful and valid insights to be derived and limit data arbitrage wherever practical<br>• Should not name Members as part of Determinations unless they relate to systemic issues. Please refer to attachment B which is the submission AFIA made to AFCA in relation to this issue |

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| | | With any data that gets published, Members ask that:<br>• The context behind the data is also provided as without this, it can be misinterpreted<br>• The data be relative, so it adds value when it is published<br><br>Members welcome the opportunity to discuss this further with ASIC |
| B8 We propose to set out new minimum requirements for the content of IDR responses: see draft updated RG 165 at RG 165.74– RG 165.77 in Attachment 1.<br><br>When a financial firm rejects or partially rejects the complaint, the IDR response must clearly set out the reasons for the decision by:<br>(a) identifying and addressing all the issues raised in the complaint;<br>(b) setting out the financial firms' finding on material questions of fact and referring to the information that supports those findings; and<br>(c) providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum. | B8Q1 Do you agree with our minimum content requirements for IDR responses? If not, why not? | • Yes - members agree with the minimum IDR response content requirements. |

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| B9 We do not propose to issue a legislative instrument specifically addressing written reasons for complaint decisions made by superannuation trustees. | B9Q1 Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, please provide reasons. | • N/A from an AFIA Member perspective |
| B10 We propose to include the content of IDR responses as a core requirement for all financial firms, including superannuation trustees, in the legislative instrument making parts of RG 165 enforceable: see paragraph 22. | B10Q1 Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary. | • N/A from an AFIA Member perspective |
| B11 We propose to: (a) reduce the maximum IDR timeframe for superannuation complaints and complaints about trustees providing traditional services from 90 days to 45 days;<br>(b) reduce the maximum IDR timeframe for all other complaints (excluding credit complaints involving hardship notices and/or requests to postpone enforcement proceedings and default notices where the maximum timeframe is generally 21 days) from 45 days to 30 days; and<br>(c) introduce a requirement that | B11Q1 Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide: (a) reasons and any proposals for alternative maximum IDR timeframes; and (b) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line. | Members confirmed they react quickly and aim to resolve issues in the shortest possible timeframe. For 'simple' complaints, this can and will likely occur within 45 days. But a significant number of complaints are not simple. Their complexity and need to maximise the opportunity for the investigation to result in resolution giving integrity to the IDR process, means members do not agree with the proposal to formally reduce the maximum IDR timeframe "for all other complaints" from 45 days to 30 days.<br>Key reasons for this are:<br>• Complex issues often require multiple interactions with customers which very often go over 30 days<br>• Potential systemic issues take time to investigate and may require the need for |

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| financial firms can issue IDR delay notifications in exceptional circumstances only. | | external legal sign off which is unlikely to be able to be achieved within 30 days<br>• Sending traditional mail correspondence to customers often takes 5 days in each direction so potentially 10 of the 30 days could be absorbed with 1 interaction<br>• Members sometime have to involve third parties in order to better understand the basis and facts behind a complaint which adds time to the process<br><br>Members ask that ASIC define 'exceptional circumstances' and in addition, clarify what happens to IDR timeframes if a complaint is referred to AFCA – for example, would any timeline be suspended |
| | B11Q2 We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints (other than the exceptions noted at B11(b) above). Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now? | Members agree that there is merit in applying a single IDR maximum timeframe, however, for the reasons outlined above believe this should be set at 45 days |
| B12 We propose to require customer advocates to comply with RG 165 (including meeting the maximum IDR timeframes and minimum content requirements for IDR responses) if they:<br>(a) act as an escalation point for unresolved consumer complaints; or | B12Q1 Do you agree with our approach to the treatment of customer advocates under RG 165? If not, please provide reasons and any alternative proposals, including evidence of how customer advocates improve consumer outcomes at IDR. | No<br>• Inclusion of internal and external customer advocates is increasing. Reducing the timeframe they have to understand the complaint informed by customer and financier input to be in a position to resolve matters (thereby minimising the need for an EDR escalation) could limit their effectiveness |

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| (b) have a formal role in making decisions on individual complaints. | | • Similarly, with external customer advocates, in most instances, the financier is not able to manage the timeframe for responses from these parties so it would limit their value if they were held to a 45 or 30 days timeline |
| | B12Q2 Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position. | As above, Members do not think that customer advocates should be required to comply with RG165 |
| B13 We propose to introduce new requirements on financial firms regarding systemic issue identification, escalation and analysis: (a) Boards and financial firm owners must set clear accountabilities for complaints handling functions, including setting thresholds for and processes around identifying systemic issues that arise from consumer complaints. (b) Reports to the board and executive committees must include metrics and analysis of consumer complaints including about any systemic issues that arise out of those complaints. (c) Financial firms must identify possible systemic issues from complaints by: (i) requiring staff who record new complaints and/or manage | B13Q1 Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons. | • Members agree with requiring strength in the accountability framework, particularly for all staff directly involved with reviewing and resolving complaints.<br><br>• However, members do not agree that prescriptively applying accountability to the same extent across all staff will be effective.<br><br>• Specifically, Members believe that requiring any complaints initially recorded or handled by sales and front-line staff to identify systemic issues (as part of Financial Firm Staff), should not be a requirement as they do not have the necessary skills and capability to identify these issues. |

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| complaints to consider whether each complaint involves potentially systemic issues; (ii) regularly analysing complaint data sets; and (iii) conducting root-cause analysis on recurring complaints and complaints that raise concerns about systemic issues. (d) Financial firm staff who handle complaints must promptly escalate possible systemic issues they identify to appropriate areas for action. (e) Financial firms must have processes and systems in place to ensure that systemic issue escalations are followed up and reported on internally in a timely manner. See draft updated RG 165 at RG 165.128– RG 165.133 at Attachment 1 to this paper. | | |
| B14 We propose to update our guidance to reflect the requirements for effective complaint management in AS/NZS 10002:2014: see Section F of draft updated RG 165. | B14Q1 Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons. | While in principle, Members agree with the proposed application of the AS/NZS they ask that RG165.145 to '*provide training to all staff, not just complaints management staff, about the IDR process*' be amended to exclude staff who never deal with customers |
| B15 We propose that financial firms must comply with the requirements set out in the draft updated RG 165 and supporting legislative instruments immediately on the publication of the updated RG 165, | B15Q1 Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide | No – Members do not support the proposed transition periods.<br>They suggest that:<br>• There is a single implementation date for all aspects of the legislation with one cut-off date for all items instead of the proposed staggered, transitional implementation |

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| except for the requirements listed in Table 2. | specific detail in your response, including your proposals for alternative implementation periods. | • Transition/implementation is linked to the finalisation of the legislation, for example, a transition period of 6 months from the date of proclamation would be most effective<br>• Transition / implementation timelines do not inadvertently lead to spikes to External Dispute Resolution workloads at time when AFCA is still bedding down its systems and processes and increased scope |
| | B15Q2 Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide | • Member feedback was that a simple transition period and single implementation date enabled more effective change management and communications. |

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Mike D'Argaville
Australian Financial Complaints Authority

20 June 2019
By email: submissions@afca.org.au

Dear Mr D'Argaville

**Consultation Paper – AFCA rule changes to identify financial firms in published Determinations**

The Australian Finance Industry Association [AFIA] welcomes the opportunity to provide feedback on AFCA's proposal to change its rules to identify financial firms in published Determinations as outlined in its Consultation Paper [the **Paper**].

**AFIA Background**

AFIA is the voice of a diverse Australian finance industry. AFIA supports our Members to ensure a fair, equitable and competitive market for customers through representation, insights and connectivity.

AFIA is uniquely placed to respond given our broad and diverse Membership of over 100 financiers operating in the consumer and commercial markets (including small-medium business and agri-finance). Many are subscribers to AFCA including both consumer and small business financiers. For some this reflects a legislative obligation (e.g. consumer credit providers). For others (e.g. our Code Compliant Online Small Business Lenders and others looking to differentiate from market competitors on the basis of customer service) it delivers a self-regulatory commitment to provide their small business customers access to an ASIC-approved External Dispute Resolution Scheme as part of a robust complaint-handling process.

More specifically, AFIA Members:

- include banks (major, regional and mutual/community-owned) and non-banks;
- range from ASX-listed public companies through to small businesses providing finance;
- operate via a range of distribution channels including bricks and mortar premises, intermediaries (finance brokers, dealerships, suppliers) through to online / digital access
- collectively operate across all states and territories in Australia in capital cities through to regional and remote areas: the majority operating across at least one border;

- have customers from all demographics, all age groups (legally able to borrow) in support of Australia's diverse and multi-cultural community with:
    - consumers ranging from high to low-income earners (including some whose main income source may be government welfare); many with substantial assets, others with few; single borrowers through to blended families; covering the whole range of employment scenarios, full-time, part-time, seasonal or casual employment.
    - commercial entities ranging from sole traders and partnerships through to the more complex corporates (e.g. trusts, corporate group) and government-entities some with no employees through to others with hundreds (if not thousands) of employees.
- provide a broad range of finance products:
    - consumer: from personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), loans secured by land or personal property; consumer leases of assets (including household/electrical/IT or cars);
    - commercial: asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); working capital solutions (online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards) together with more sophisticated and complex finance solutions.

To examine this key issue and provide insight to shape AFCA's consideration, AFIA engaged with a significant number of member representatives from a broad range of entity type and mix of consumer and commercial providers (over 40). The outcome is detailed below.

While Members have contributed to inform this, from an organisational view the position being put by AFIA may not reflect their specific position on all the issues. These will get captured through the relevant Member's organisationally-targeted submission.

**AFIA's Position on the Proposed Change to AFCA's Rule to Identify a Financial Firm in Published Determinations**

At the macro level, AFIA and its Members support the provision of finance to a standard that meets community expectations. Members recognise there will be occasions where a customer will be dissatisfied with the service or product the member has provided. A process to raise, have considered and resolve that issue is seen as an essential component.

In consequence, AFIA and its members support consumer and small business customers having access to a financial complaints-handling process that is robust and has integrity. Fundamental to this is an internal process to provide our Members a customer-service opportunity to resolve areas of concern. Resolution at the internal level to the satisfaction of the customer may not always be possible.

Consequently, Members' support a process that includes an avenue for escalation to an external dispute resolution scheme to provide a further opportunity for an independent entity (like AFCA) to consider the dispute from the position of both parties with a view to working to achieve a fair outcome.

Members acknowledge customer access to the EDRS complaint avenue is impacted by the cost of the service. Free access by the customer removes that inhibitor enabling utilisation. Imposing cost on the complaint respondents coupled with the separate resource/costs they bear to deal with the complaint and, more importantly, risk to brand from customer dissatisfaction, brings with it an effect of incentivising resolution focus at the internal level.

AFIA members would prefer to work with customers to resolve complaints but accept there will be occasions where a customer will remain dissatisfied. AFIA members support access to AFCA to facilitate independent consideration of those complaints from the position of both parties with the objective of a resolving to achieve a fair outcome. An integral part is AFCA's support to encourage complainants to fully utilise AFIA members' internal processes to have the complaint resolved at the earliest possible opportunity. Also, AFCA's encouragement for the customer to maintain some level of repayment, where appropriate, while the matter is being considered to ensure the customer is not disadvantaged if the process ends with resolution in the financial service provider's favour.

Where resolution at the internal stage may not be possible, a customer should be able to raise the complaint with AFCA and AFIA member subscribers commit to the EDRS process. In practice, AFIA members will look to resolve the complaint with AFCA, often taking a commercial rather than strictly legal position to facilitate expedited resolution without necessitating a formal Determination as a matter of customer service, cost minimisation and importantly management of brand. Complaints that end in an AFCA Determination should be viewed in this context.

A proposal to change AFCA's rules to name the Financial Service Provider that is the subject of a Determination has potentially significant detrimental outcomes both for the Member, but more generally for the EDRS process with flow-ons to consumer and small business access to finance. It warrants evidence-based identification of the benefit or need for the specific change and to provide the basis for the design of a proposed solution that should be proportionate to achieve the outcome.

The basis provided in the Paper, AFCA's April Newsletter and in follow up discussions with AFCA on 19 June 2019 – to illustrate as a transparency measure AFCA's commitment as a new organisation to be open, transparent and more accountable to the public – is in AFIA's view not sufficiently detailed to provide the evidence to justify what is a significant and substantial change given the substantial ramifications both for EDRS but more generally customer access to finance that will flow. Nor is justification positioning AFCA with other EDRS (e.g. international EDRS, like the UK FOS). For example, greater transparency through clear disclosure in standard form contracts is designed to assist customer understanding and minimise allegations of unfairness. It is unclear what the objective of transparently disclosing the Financial Firm respondent to a complaint decided by AFCA is designed to achieve. More detailed commentary on these matters is provided in Attachment A. Fundamentally there is an underlying objective sought to be achieved by adopting a transparency measure.

**Conclusion + Next steps**

In AFIA's view, we encourage AFCA to provide greater detail of what it is endeavouring to achieve by making a material change to its Rule to identify financial firms in published Determinations given the significant ramifications beyond a broad statement of illustrating its commitment to transparency. In its absence, AFIA is challenged to be able to support the change for the detailed reasons provided.

We would welcome the opportunity to work with AFCA as a priority to better understand the basis for the proposed change and collaboratively develop a solution to address that issue while maintaining the integrity of AFCA as an EDRS and, more generally, minimising any detrimental and unwarranted impact to customer access to finance.

If you have any questions, please contact me at helen@afia.asn.au or Karl Turner, Executive Director, Policy and Risk Management at karl@afia.asn.au or both via 02 9231 5877.

Kind regards

Helen Gordon
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**Attachment A: AFIA's Feedback - Consultation Paper – AFCA rule changes to identify financial firms in published Determinations**

In the context of the general comments provided in our covering letter, AFIA members have three overarching concerns about the proposed changes outlined in the Paper:

1. existing AFCA members may potentially disengage in what they perceive to be an unfair process – for example, by not contesting AFCA determinations, paying compensation to customers who complain at the internal or external dispute stage, notwithstanding the robust internal controls, contractual rights and remedies and the evidence the Members have. This is not good from an Australian societal perspective as it diminishes the value of the transaction between the customer and the member by potentially removing the personal accountability of the customer to maintain its side of the bargain with flow on impacts more generally for customers that uphold their bargain).

2. new financiers or existing financiers who are not part of AFCA may delay or defer launching products captured under AFCA rules thus creating disparity of approach which impacts the broader financial market consistently understanding and meeting community expectations – AFIA is aware of many examples of this

3. Members who joined AFCA 'voluntarily' (i.e. it was not a requirement of any licence or legislative obligation), may consider exiting the scheme which will impact AFCA's ability to achieve its stated aims of improving standards and practices

Our submission is broken down into 7 areas:

1. need for greater context behind the change
2. the timing of the change
3. does the change satisfy AFCA's transparency requirements?
4. does the change align with AFCA's rules on fairness?
5. an alternate solution
6. do the Operational Guidelines adequately explain how the Rules as amended will apply?
7. any other comments about the proposed change?

***Need for greater context***

Our Members would like to better understand the context, purpose and timing of the proposed change. They are concerned that without that additional detail and opportunity for further engagement, which attempts to address the overarching concerns we set out above, the proposed change may in the longer-term lead to restrict access to credit and impact the broader economy[1].

***Timing of this potential change***

The Ramsay Review undertook a thorough investigation and consultation on EDR and made a number of recommendations relating to the rules which should apply to a consolidated single EDR scheme. The rules for both predecessor ombudsman schemes (FOS and CIO) provided for the publication of only de-identified determinations and the Ramsay process did not identify the need for any change in this area. Given that the new systemic issues power in section 1052E(4) of the Corporations Act, which requires AFCA to report Members with confirmed systemic issues to ASIC, has been in place for less than 12 months and consequently had limited time to be assessed against achievement of its objectives, Members suggest such a change, without supporting evidence of the need or benefit it will bring to all stakeholders, may be premature. To the extent that AFCA is seeking to improve industry behaviour, section 1052E(4) maybe the most appropriate mechanism to do so as it will draw attention to systemic matters, which have affected significant numbers of customers, rather than highly fact-specific, individual complaints which are considered on a case-by-case basis. It also places the decision to publicly name a Member in the hands of the regulator, ASIC, which Members believe is a more appropriate body to have the responsibility and accountability for the consequences that flow from a decision of this nature.

Finally, Members note that ASIC is currently consulting on proposed revision to Regulatory Guide 165 (which deals with changes to Internal Dispute Resolution (IDR) processes and where ASIC proposes to publish IDR data at both aggregate and firm level). Through this process, Member performance in terms of how they handle customer complaints, and their interaction with AFCA, will become increasingly clearer, which will assist transparency to consumers and the broader public.

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[1] AFCA would be aware that post Royal Commission, tighter lending standards have a led to an economic slowdown - figures released by the Reserve Bank of Australia on 31 May 2019 showed housing credit growth in April slowed to its lowest rate since records began in 1977. (here) Business credit growth was also flat. This data comes on top of Australian Bureau of Statistics figures on 30 May 2019 showing business investment as a share of GDP fell to 12 per cent in the three months to March 31 - its lowest level since the mid-1990s - while building approvals dropped 4.7 per cent in April. (here)

When this is coupled with the current requirement for AFCA to report to ASIC systemic issues of identified Financial Service Provider respondents, it may well solve the need or concern AFCA is seeking to address through the proposed change to Rule 14.5 and result in a more effective way to get to the root causes. In addition, it should help regulators gain more valuable insights into how non-financial risks are being managed by a Member.

***Does the proposed change satisfy AFCA's transparency requirements?***

At this stage, and until further detail and opportunity for follow up engagement is provided, we do not think this meets AFCA's transparency requirements

- The publication of Determinations is an accountability measure for the scheme. It is unclear as to the benefit the customer may gain, especially when it may be derived from a potentially skewed data set without further, important context.
- As a result, the identification of a Financial Service Provider in published Determinations resolving individual-case specific complaints may create a misleading impression of a Member's overall approach, culture and system of internal controls. Determinations generally will only have taken into account information relating to a single interaction (not potentially systemic issues) without placing what may be an isolated incident in the context of the size of the organisation, its overall record and compliance approach.
- A Determination provides a point-in-time snapshot of a matter but it will not provide any context of the efforts the Member has taken to resolve the matter in favour of the complainant and any consequential action taken by the Member to prevent recurrence.
- Members are also concerned that, as the subject matter of AFCA disputes in a large number of cases can be over relatively minor matters that relate to misunderstandings or poor service, publicly naming the Financial Service Provider for these minor issues creating an inaccurate impression in the community of a broader more systemic issue with the Provider or the industry more generally may undermine industry efforts to rebuild trust following the Royal Commission.
- In a small business lending sense, financiers and investors may also avoid investment in this sector impacting access or cost of small business finance, if following a complaint to AFCA, the legal framework is not clear and contractual rights are not able to be pursued as legally enforceable.
- If AFCA is looking to promote transparency, Members suggest they publish the details of any complaints escalated to the Independent Assessor, including the Assessor's Determination in respect of each such complaint as this would help educate all AFCA and non-AFCA members

***Does the change align with AFCA's Rule on fairness?***

AFCA's Rules explicitly require that 'we provide procedural fairness to **the parties** to a complaint.' – (emphasis added). AFIA understands this concept generally encompasses the customer complainant and the Member respondent.

- Based on the information contained in the AFCA April Newsletter and our conversation yesterday, we understand the intention is for the proposed change to Rule 14.5 is to be prospective but would appreciate confirmation.
- In addition, it may lead to a poorer customer outcome as potentially, a Member who previously accepted a Determination because it provided a better experience for their customer, even though they did nothing technically wrong, may now have to defend their position (possibly vigorously) because the outcome carries a greater reputational consequence.
- Further Members believe that their naming does not meet this Rule as:
    - Only one party to the complaint is named
    - Members should be able to defend frivolous or vexatious complaints without being overshadowed by concerns around the potential to be named in a final published Determination
    - An approach that seeks to marry the significance of the level of the complaint (e.g. those where Members have done something materially or systemically wrong and AFCA has Determined in the customer's favour) with a significant outcome of being identified in the Determination should be adopted (subject to the other concerns raised)
    - Determinations relating to historic complaints may not reflect a Member's current compliance settings and may present an inaccurate position of how it is now treating its customers, compared to what met standards and expectations at the time
    - There are concerns among the membership that a Determination may be able to be made without procedural fairness being offered to a Member – we would appreciate being able to explore this issue in more detail
    - There are concerns among the membership that Determinations may be based on and include erroneous information, due to a perceived desire to quickly resolve the large volume of complaints that have been received, without potential adequate training and supervision – we would also appreciate being able to explore this issue in more detail
    - Many complaints revolve around 'grey aspects' of the Law and Regulation which are open to interpretation, noting that AFCA does not have a legal or regulatory decision-making power but its Determinations effectively act as measure against which to benchmark compliance
    - Evidence received by AFCA is not tested in the same way as a transparent and robust court process

- Members have no apparent right of appeal or review of an AFCA Determination on its merits; even the ability to challenge the process is complex and costly
- Determinations that relate to delays in resolution of complaints by Members may in part be due to lack of clarity of the timeframe that AFCA commits and adheres to – this is another area that we would appreciate being able to explore in more detail
- Larger Members may have more Determinations made involving them simply because they have a much larger customer base. We note that the publication of complaint statistics provides a fairer and more balanced view of the standards and culture within as they allow consumers to assess the incidence of complaints against the size of the organisation so as to provide a more complete picture for comparative purposes. The statistics also provide an indication of a member's approach to dealing with complaints, by identifying those complaints resolved by agreement
- The decision to name does not take into account efforts made by Members to rectify the problem and promptly compensate the customer. As a result, the publication without this additional context does not provide the complete picture, may unfairly damage reputation, undermine confidence and only present a very partial picture of the Financial Firm respondent to the public

***Alternate solution***

- Members believe that if there is systemic misconduct, the appropriate entity to publicise that and deal with it should continue to be ASIC (or any other relevant regulator), not AFCA, for the reasons set out below.
    - Using its investigation and evidentiary powers, ASIC will consider action following a proper review of a Determination and, in particular, will focus on material compliance issues that fall within the Scheme Rules – e.g. 'serious contraventions and breaches' under the credit laws.
    - ASIC is subject to greater accountability measures, such as government oversight, Freedom of Information access together with the potential for action through the government ombudsman and the Administrative Appeals Tribunal
- Members note that the UK Financial Ombudsmen does publish named determinations. However, it is different to AFCA as it is a statutory entity, with directors appointed by the regulator – the Financial Conduct Authority. Furthermore, as a statutory entity, it is subject to Government transparency measures such as the Freedom of Information Act.

***Do the Operational Guidelines adequately explain how the Rules as amended will apply?***

For the reasons outlined above, we are yet to fully understand the need and objective of identifying Financial Firm respondents in published Determinations.

Until further engagement and dialogue occurs, we do not think it timely to comment on the guidelines other than to ask AFCA to consider:

- providing more information on what 'compelling reasons' mean when a Member requests that a determination is not published. Ideally this would include situations in which publication of the determination would not reveal confidential Member information, or information which would make the Member vulnerable to exploitation of a system fault
- defining 'determination' in plain English so consumers, small business owners and other key stakeholders have a consistent and agreed position about what it means and also, what it does not mean and:
    - ensuring the definition only relates to fully adjudicated matters – not decisions which have been made at any early stage e.g. a written decision that a matter is "outside rules" because it is an excluded complaint or the decision maker otherwise exercises their discretion not to consider a complaint, as such reporting would inflate the number of matters reported in respect to a Member and the reporting may not present the complete picture
    - reviewing the categorisation of complaints to ensure a consistent understanding of, for example, what is 'complex?'

***Do you have any other comments about the proposed change?***

As a procedural matter, we note concerns around the timeframe provided for commentary on what is a material change may be counterproductive to AFCA's comments to the final report on the Royal Commission that 'AFCA will continue to work with our members to improve standards and minimise disputes, improving practices and achieving fair, timely outcomes for consumers and small businesses' (here) and AFIA's objective of Financing Australia's future through a fair, equitable and competitive market for customers.

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