



09 August 2019

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Dear Ms Rush

## ABA response to ASIC Consultation Paper 311 Internal Dispute Resolution: Update to RG 165

The Australian Banking Association (**ABA**) welcomes the opportunity to provide our response to the Australian Securities & Investment Commission (**ASIC**) Consultation Paper 311 on the proposed update of *Regulatory Guide 165 Licensing: Internal and external dispute resolution (RG 165)*.

The ABA has developed our response with a focus on ensuring that RG 165 and the internal dispute resolution (**IDR**) framework delivers efficient, fair and effective outcomes for customers. Below we provide background on the banking industry's approach to IDR and highlight our views on key issues.

### Dispute resolution in the banking industry

The banking industry is committed to making it easier for customers when things go wrong by providing effective and efficient complaint handling and dispute resolution mechanisms. This approach is focused on having complaints or disputes between a bank and a customer resolved as fairly and quickly as possible through the IDR or external dispute resolution (**EDR**) framework.

#### Internal Dispute Resolution processes

ABA member banks have developed IDR processes in compliance with relevant statutory obligations, regulatory guidance contained in RG 165, standards in effective complaints handling<sup>1</sup>, and the ABA's Banking Code of Practice (**BCOP**).

When a consumer or small business is unhappy with a bank product or service, ABA member banks offer a free and transparent IDR process. Under the BCOP, ABA member banks have clear obligations in how they handle these complaints<sup>2</sup>, including:

- having free and accessible IDR processes, that comply with ASIC guidelines, available to consumers and small businesses
- publicising information about their IDR processes through branches, telephone banking services and digital platforms
- acting fair and reasonably when handling complaints, including a commitment to keeping a consumer or small business informed of the progress of a complaint and providing the name of the contact person within the bank
- providing written responses to complaint investigations, including information on the outcome, the right to take the matter to AFCA as the EDR provider and its contact details
- commitments on resolution of complaints within specific timeframes – if a complaint is not resolved within 45 days, the bank has obligations to provide the complainant reasons for the delay, the date an outcome is reasonably expected and give monthly updates on progress.

<sup>1</sup> AS/NZS 10002:2014 Guidelines for complaint management in organizations

<sup>2</sup> See Chapters 46 to 48, *Banking Code of Practice 2019*.



Feedback from a number of ABA member banks highlights that in their systems over 98% of consumer complaints are successfully resolved at the IDR level.

### Key issues in CP311

The ABA provides a summary below of the key issues we have identified in ASIC's review of RG 165.

#### Maximum timeframes

The ABA strongly supports maintaining the current timeframe of 45 days for IDR standard complaints and calls on ASIC to reconsider its proposal to reduce this to 30 days. This is the overwhelming consensus view of ABA member banks.

Complaints that take longer than 30 days to resolve are characteristically more complex and often involve special circumstances (e.g., family and domestic violence / financial abuse matters) or are more complicated issues needing resolution (e.g., responsible lending). We are concerned that a reduced timeframe for resolving these more complex complaints will not drive any significant efficiency gains and may in fact result in poorer customer outcomes, given the extra 15 day period can result in a greater proportion of these being successfully resolved without going to EDR.

The proposal to reduce the timeframe comes at a time when ASIC is also seeking to reduce the reliance on IDR delay notifications by requiring them to be only used in "exceptional circumstances". The ABA submits that these will be crucial in ensuring complex complaints can be resolved fairly and we provide a set of factors we believe should be considered as "exceptional circumstances".

We are also concerned that a reduced timeframe for resolving complaints may also require firms to submit more breach reports to ASIC for failing to comply with their Corporations Act obligations.

#### Definition of 'complaints'

The ABA accepts that customer complaints made through a firm's social media channels should be dealt with through IDR. We also support ASIC's guidance in the draft updated RG 165.37 that this extends only to complaints on a firm's own social media platform and/or the customer is identifiable.

We support ASIC's proposal to provide further guidance on what constitutes a complaint for the purposes of IDR but believe that more detail needs to be inserted into the draft updated RG 165. In our response to question B2Q2, we outline a set of additional factors that we submit ASIC should insert into its guidance on what does not constitute a complaint.

#### Customer Advocates

The ABA is concerned that there is some misunderstanding of the role that Customer Advocates play in our member banks. We therefore would appreciate the opportunity to further consult with ASIC before any of its proposals in this area are finalised.

We note that the Customer Advocate function is relatively new and is still being embedded into banks. It is important to acknowledge that the Customer Advocate was not designed to be, and has not been, a part of the IDR process. Customer complaints cannot generally be referred to a Customer Advocate without having completed the IDR process and received a formal determination.

The Customer Advocate function is meant to operate outside of IDR, with one aspect of the role being it serving as an optional pathway for customers who are not satisfied with an IDR outcome. This quite rightly falls outside of the scope of RG 165. However, we note that the bulk of the Customer Advocate's work is not post-IDR decision review of complaints. As outlined in Appendix B, Customer Advocates also perform a number of other valuable roles within our member banks.

Customer Advocates are committed to ensuring that their function is operating effectively. The recent post-implementation review of Customer Advocates undertaken by Deloitte recommended a number of improvements and the industry has unanimously agreed to implement them over the 18 months.



The ABA will be conducting a further review of the Customer Advocate role in 18 months to 2 years and we intend to invite ASIC to contribute to the development of the terms of reference. We submit that it would be more appropriate to consider any regulation of the Customer Advocate function following the completion of this next review.

The ABA's detailed comments on key issues regarding Customer Advocates is at Appendix B.

### Implementation timing

The ABA has strong concerns about the transition periods proposed by ASIC for financial firms to make the necessary and significant changes to their internal processes, staffing and systems that will be required to comply with the updated RG 165.

Given the updated RG 165 will not be finalised and released until at least December this year, we strongly submit that financial firms will need longer transition periods in order to meet the new requirements, particularly given the significant amount of other regulatory changes facing industry.

The ABA submits that the industry should have a transition period that is sufficient to ensure that system based changes can be fully implemented, appropriately tested and that manual work arounds are limited in order to minimise errors and ensure that consumers obtain the full benefit of the changes as soon as possible. The ABA proposes that that ASIC should re-consider its implementation timeframes on the following basis:

- **B4** – changes to recording of complaints: implementation no earlier than 31 December 2020
- **B5** – unique identifier and data set: implementation no earlier than 31 December 2020
- **B7** – IDR reporting requirements: implementation no earlier than 31 December 2021
- **B11** –IDR response timeframes: while the ABA strongly opposes the proposed change for the maximum timeframe for standard complaints, if ASIC decides to proceed, we suggest implementation no earlier than 31 December 2020.

### Enforceability

The ABA notes ASIC's intention to issue a legislative instrument to make the "core IDR requirements" set out in RG 165 enforceable. The consultation paper does not indicate what ASIC will likely deem the core requirements of RG 165. It also does not outline the consequences for a firm in not complying with their IDR obligations in the guidance (i.e., civil contravention, civil penalty or offence).

The ABA will continue to consider the practical and legal consequences of the proposal and request that ASIC consider further industry consultation on enforceability provisions before they are finalised.

### Detailed comments

We note there are inconsistencies in using business and calendar days within the draft updated RG 165. In our view, it would be preferable in terms of consistency if it used business days only as this aligns with current industry practice.

The ABA provides its response to each of ASIC's questions in Appendix A below.

The ABA looks forward to working with AFCA through this consultation process. Please contact me on [REDACTED] or at [REDACTED] if you require anything further.

Yours sincerely

Justin Mining  
Policy Director

## Appendix A – Response to specific questions

The ABA's response to ASIC's proposals and questions relevant to the banking industry are contained below.

### ASIC Proposal B1

B1 We propose to update RG 165 to require financial firms' IDR processes to apply to complaints as defined in AS/NZS 10002:2014. 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.*

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).

Question	Feedback
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.	<p>The ABA accepts the principle that an "expression of dissatisfaction" made on a financial firm's own social media channels by an identifiable consumer should be considered a complaint and dealt with under IDR processes. We understand that this is in line with existing practice for ABA member banks dealing with consumer complaints on their social media platforms.</p> <p>However, the ABA is concerned with ASIC's proposal to amend the definition of complaint to include expressions of dissatisfaction made "about" an organisation. On a plain reading of the wording and given the broad nature of this definition, this could require financial firms to respond to complaints made beyond its own social media platforms or other forums not practically subject to their supervision.</p> <p>We support ASIC's clarification in part 165.37 of its draft updated guidance that the obligation only extends to a financial firm's own social media platforms. It is impractical to expect a firm to monitor other channels outside of their control. In addition, we submit that the firm seeking to respond to such matters would raise privacy concerns as the consumer has elected to not contact the organisation directly to express dissatisfaction.</p> <p>Further, we also support ASIC's clarification that the obligation for a financial firm to deal with a complaint on its own social media platform through the IDR process only extends to where a customer is identifiable and contactable. Due to the nature of social media, people can often provide comments in an anonymous form and a financial firm can only take a number of reasonable actions in order to identify a consumer. The firm will often only be able to proceed in the event that the consumer responds with their details and further information.</p>



## ASIC Proposal B2

B2 We propose to introduce additional guidance in draft updated RG 165 to clarify: (a) the factors a financial firm should, 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.

Question	Feedback
B2Q1 Do you consider that the guidance in draft updated RG 165 on the definition of 'complaint' will assist financial firms to accurately identify complaints?	The ABA supports ASIC providing further guidance in draft updated RG 165 on what constitutes a complaint for the purposes of IDR. However, we believe that the guidance should be further expanded to provide further clarity on the definition, particularly in relation to what does not constitute a complaint (see B2Q2). This will ensure that financial firms adopt a consistent approach to identifying complaints, which is particularly important given moves towards more comprehensive IDR data collection and reporting.
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.	<p>Under the updated definition, a financial firm is expected to consider circumstances in which a response or resolution is 'implicitly' expected by a customer. This creates uncertainty for firms, and we suggest ASIC consider providing examples where a response or resolution is implicitly expected.</p> <p>The ABA believes that there are a number of additional factors that ASIC should insert into its guidance on what does not constitute a complaint, including:</p> <ul style="list-style-type: none"> <li>• Generic statements made about a firm that do not relate to a product / service / staff member or handling of a complaint (e.g., "I hate you...")</li> <li>• Pro-forma style feedback that can be more readily categorised as political or social activism type commentary (e.g., online petition / social media protests)</li> <li>• Dissatisfaction expressed by an applicant through a talent acquisition process.</li> <li>• Disputed transactions through a card scheme credit or debit card as these will be dealt with under the ePayments Code or card scheme rules, and</li> <li>• Expressions of dissatisfaction made on a third-party social media platform or any forum not linked to the financial firm itself.</li> </ul>

## ASIC Proposal B3

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:



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*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.*

Question	Feedback
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.	<p>The ABA acknowledges ASIC's proposal to modify the definition of 'small business' in the Corporations Act to align with the definition in the AFCA Rules.</p> <p>While we understand the suggested rationale of aligning the definition of small business across both IDR and EDR, we note the difficulty that this will raise for ABA member banks given it differs from the definition adopted as part of the new BCOP. The BCOP definition came into effect on 1 July 2019 after extensive consultation with stakeholders and is part of the version approved by ASIC. The BCOP definition will be subject to a full review after 18 months of operation.</p> <p>Given that this proposal will mean that ABA member banks will need to navigate the different definitions, we submit that ASIC should consider maintaining the current definition, at least until the BCOP review is completed in 18 months.</p> <p>The ABA is also concerned about ASIC's stated intention of amending the small business definition in the Corporations Act without impacting on other provisions. We would request that ASIC carefully review its drafting of the change to ensure that there are no flow on effects to other small business-related provisions in the Corporations Act or other unintended consequences.</p>

### ASIC Proposal 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.

Question	Feedback
B4Q1 Do you agree that firms should record all complaints that they receive? If not, please provide reasons.	<p>The ABA supports ASIC's proposal to require firms to record all complaints, regardless of the timeframe within which they are resolved. Currently, there are some varied practices among ABA member banks with some recording all complaints irrespective of origin or timing whilst others meet the current requirement within existing RG 165 of recording all not resolved within five business days in some form (e.g., some member banks record complaints not resolved within a shorter period of time).</p>

We note that this proposal will require many of our member banks to implement significant changes to their IT systems and processes, which will take time to design and implement as well as come at a considerable cost.

## ASIC Proposal B5

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).

Question	Feedback
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.	<p>The ABA supports ASIC's proposal that financial firms be required to assign a unique identifier to complaints received. We agree that this identifier should be unique to each complaint and not be reused by a financial firm for other complaints, even after matters are resolved.</p> <p>It is currently common practice for ABA member banks to attach unique identifiers or some form of reference number to those complaints they record within their complaint management systems. We support this becoming a mandatory requirement to ensure consistency across industry.</p>
<p>B5Q2 Do you consider that the data set proposed in the data dictionary is appropriate? In particular:</p> <p>(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?</p>	<p>The ABA notes that ASIC's proposal for data set collection is a significant change from existing practice and is concerned about some key aspects.</p> <p>Under the proposal, financial firms will be required to collect a comprehensive amount of personal information from a complainant, including gender, age, whether he or she is an Aboriginal/Torres Strait Islander. We note that the collection and handling of this information by financial firms will likely give rise to privacy obligations. Complainants may be reluctant to provide this information particularly when it is not immediately apparent why it is needed to investigate and resolve their complaints. Therefore, the ABA suggests that ASIC re-consider whether the collection of this demographic data should be a mandatory requirement for individual complainants.</p> <p>The ABA is also concerned that the highly prescriptive nature of the data set requirements will limit the ability of financial firms to integrate them into their existing IDR systems. This will mean that many firms will be required to undertake significant changes to their IT complaint handling systems and customer-facing staff processes.</p> <p>We have some specific comments on parts of the IDR data dictionary:</p>



- **Data item 12** – addition of a “not stated/unknown” field for circumstances where a complainant’s age cannot be identified, or they are unwilling to provide it
- **Data item 32** – an example of how the codes are not mutually exclusive, which may lead to inconsistent data capture and inaccurate analysis (e.g., such as in this case where a complaint about a bank’s decision to decline hardship could be categorised as a ‘financial service provider decision’ or as ‘financial difficulty’)
- **Codes for issues and compensation** – these need to be expanded to enable firms to clarify if or what a complainant was requesting as a financial settlement as opposed to what was provided.

The ABA also suggests that ASIC provides comment on some additional elements in the data dictionary:

- ASIC should clarify whether the specific code of “financial difficulty” also includes “hardship” and if so, we suggest the field could be renamed “financial difficulty/hardship” - there are specific requirements in RG 165 in relation to complaints about hardship (e.g., these complaints require a final response letter regardless of whether they are resolved quickly or not)
- provision for the specified complaints data that banks must provide under the Open Banking Consumer Data Right.

## ASIC Proposal B6

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 the draft IDR data dictionary available in Attachment 2). This includes a unique identifier and a summary of the complaint; (b) provide IDR data reports to ASIC as unit record data (i.e. one row of data for each complaint); (c) report to ASIC at six monthly intervals by the end of the calendar month following each reporting period; and (d) lodge IDR data reports through the ASIC Regulatory Portal as comma-separated value (CSV) files (25 MB maximum size).

Question	Feedback
B6Q1 Do you agree with our proposed requirements for IDR data reporting? In particular:	The ABA suggests that ASIC ensure that the new guidance allows the flexibility for it to review the new reporting regime after 18 months and to make any necessary changes without having to update RG 165. This could include reviewing the timing, content and method of reporting as well as the prescribed data set.



(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 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?

a) The ABA again notes our concern around some of the personal information that ASIC is requiring to be collected as part of the draft IDR reporting requirements. We have general concerns around a customer's right to privacy, particularly in relation to sensitive complaints. This would be particularly exacerbated where information is to be loaded into free text fields and could lead to complainants being identified. The concern is not easily alleviated as it will be complex and difficult for financial firms to manually redact personally identifiable data before issuing reports.

c) The ABA supports complaints being reported to ASIC for the periods where there has been change in status as reporting should be representative of all complaints at a point in time. ASIC could consider including additional fields for "number of days opened" for complaints not closed as well as status categories (e.g., "open", "closed", "complaints closed since prior period") for 6 month reports.

The ABA also requests that ASIC consider providing further guidance for how firms should report on complaints arising as a result of large-scale remediation projects.

## ASIC Proposal 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.

Question	Feedback
B7Q1 What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?	<p>The ABA notes ASIC's intention to conduct a separate, targeted consultation about its approach to the publication of IDR data following the finalisation of its data reporting requirements and before the first round of IDR data reports are submitted.</p> <p>We look forward to providing feedback during that consultation process. As part of its consultation, it would assist if ASIC could provide a sample publication containing proxy data that would better inform industry on what it intends to publish.</p> <p>In terms of assisting ASIC plan its targeted consultation, the ABA submits that its approach to publication of data should primarily focus on ensuring that consumers are presented with clear and accurate information that allows them to appropriately review and compare the performance of financial firms.</p> <p>We propose that the publication of IDR data be guided by the following principles:</p> <ul style="list-style-type: none"> <li>• <b>Privacy:</b> the publication of data should be in accordance with protecting a customer's right to privacy. Financial firms are required to comply with the Privacy Act when collecting and handling customer information. These requirements have been developed to ensure that firms protect a customer's right to privacy, and this should also be a key consideration in publishing</li> </ul>

IDR data. We suggest that ASIC should liaise closely with relevant agencies such as the Office of the Australian Information Commissioner in finalising its approach

- **Consistency:** IDR data should be published by ASIC in a consistent manner across industry
- **Context:** IDR data should be presented with appropriate contextual information to ensure consumers can review and compare performance appropriately (e.g., guidance is given on number of complaints proportionate to firm size, product category etc)
- **Accuracy:** ASIC should implement a process to allow financial firms to validate data before publication to ensure it is accurate, particularly for any market sensitive data
- **Consumer friendly:** IDR data should be published in a structure and format that is consumer friendly and using plain English – the ABA suggests that ASIC should conduct market testing of any draft proposals before finalisation.

## ASIC Proposal B8

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. When a financial firm rejects or partially rejects the complaint, the IDR response must clearly set out the reasons for the decision by: (a) identifying and addressing all the issues raised in the complaint; (b) setting out the financial firms' finding on material questions of fact and referring to the information that supports those findings; and (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.

Question	Feedback
B8Q1 Do you agree with our minimum content requirements for IDR responses? If not, why not?	<p>The ABA supports ASIC's proposal to set new minimum content requirements for IDR responses.</p> <p>Under clause 203 of the BCOP, ABA member banks are required to provide a written response to a customer when an investigation of a complaint is completed, which includes:</p> <ol style="list-style-type: none"> <li>the outcome of the investigation</li> <li>the right of the customer to take the complaint to AFCA, and</li> <li>the name and contact details of AFCA.</li> </ol> <p>We believe that setting minimum requirements across all regulated financial firms is a positive step toward ensuring that customers understand how their complaints have been dealt with and improving the IDR process.</p>

We do request that ASIC consider issuing further guidance for a financial firm to meet the subjective requirements in the proposed RG 165.75 relating to what is “enough detail” for a complainant to understand the basis of the decision.

Further, we submit that ASIC should provide relevant exemptions in the updated RG 165 for circumstances where firms may be prevented from providing certain information in IDR responses due to legal restrictions (e.g., tipping off provisions, Suspicious Matter Reporting under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and where there may be ongoing law enforcement investigations).

## ASIC Proposal B11

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; (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 (c) introduce a requirement that financial firms can issue IDR delay notifications in exceptional circumstances only.

Question	Feedback
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.	<p>The ABA does not support ASIC’s proposal to reduce the maximum IDR timeframe for ‘standard complaints’ from 45 to 30 days. We do not believe that this change will result in better outcomes for customers. This is the overwhelming consensus view of ABA member banks.</p> <p><b>BCOP obligations</b></p> <p>Under the ASIC-approved BCOP, ABA member banks have committed to very clear timeframes for handling customer complaints, including:</p> <ul style="list-style-type: none"> <li>• if unable to resolve a complaint within 21 days, the bank will inform the customer that it needs more time to investigate (clause 205), and</li> <li>• if unable to resolve a complaint within 45 days, the bank will do a number of things: <ul style="list-style-type: none"> <li>▪ notify reasons for the delay</li> <li>▪ notify the date by which an outcome can be reasonably expected</li> <li>▪ provide monthly updates on progress, and</li> <li>▪ provide a name and contact details of an EDR provider (clause 206).</li> </ul> </li> </ul>



These BCOP obligations are on top of ABA member banks meeting their IDR regulatory obligations.

### **Efficient and fair resolution**

The ABA does not accept ASIC's premise that reducing the maximum timeframes will driver "greater efficiency within firms' IDR processes and improve the consumer experience". Only a very small proportion of complaints are not resolved within 30 days.

#### *Case study – ABA member regional bank*

An ABA member bank has examined its complaints received and how it resolved them during the 2018/19 financial year and what the impact of a change in the maximum timeframe would be on timing of outcomes.

During the year, it received 32116 complaints. Of these, 31845 complaints (99.16%) were resolved within 45 days or 31610 (98.42%) were resolved within 30 days. In other words, a difference of only 235 complaints (0.74%) may have been impacted if the timeframe of 30 days applied.

### **Poor customer outcomes**

As highlighted in the above case study, a reduction in timeframes would only have a minor change in efficiency term and ASIC has failed to provide a strong case to support its claim that it will drive an improvement in efficiency, at least in a way that overcomes the potential risks in driving poorer customer outcomes as a result.

As we can see with the evidence above, only a very small proportion of matters extend beyond 30 days, but these are complaints involving more complex circumstances or requiring thorough investigation, including:

- particular areas of dispute that are often more complex and difficult to resolve in a short timeframe (e.g., responsible lending and financial advice matters)
- matters that involve difficult personal circumstances for customers (e.g., family and domestic violence)
- complaints over matters requiring the firm and/or customers to access information and documents from archived files
- complex remediation matters that require recreation of data in a customer account (e.g., calculating fees, interest)





- complaints on certain product types that may require third party investigation/reports (e.g., medical reports as part of an insurance claim)
- delays in contacting or receiving a response or information in complaint investigation, including from a customer or a relevant third party
- matters involving particular classes of customers, including vulnerable customers, which may require a firm to consider factors such as the complainant's mental or physical health.

By arbitrarily reducing timeframes for these types of matters, we submit that there would be pressure on IDR teams to make quick decisions with less opportunity for a full review by senior managers. This could result in complainants being pushed prematurely into the EDR process.

This is particularly concerning given feedback from ABA member banks that the extra period of 15 days can result in a greater proportion of these complex complaints being successfully resolved without having to go to EDR. For example, an ABA member bank provided us with feedback that in consumer complaints involving responsible lending matters, their successful resolution rate went from 58% at 30 days to 86% at 45 days.

#### **Exceptional circumstances**

The ABA notes that ASIC proposes to reduce the maximum timeframe to 30 days at the same time that it is seeking to reduce the reliance of firms on issuing delay notifications by requiring them only to be used in "exceptional circumstances". This adds to our concerns on IDR processes being potentially rushed in considering the more complex complaints that need additional time and resourcing.

We are concerned that ASIC has not provided any guidance on what would constitute "exceptional circumstances" so that a firm can issue a delay notification. In the absence of this, the ABA suggests that ASIC should consider developing guidance for the updated draft RG 165 and suggests the following factors should be deemed "exceptional circumstances":

- customers cannot be contacted or fail to provide further information within a specified timeframe
- third parties cannot be contacted or fail to provide further information within a specified timeframe
- significant material questions of fact arise requiring significant further investigation or review (e.g., legal advice needs to be taken)
- customers provide new information or evidence that is material at a later opportunity in the complaints process.

#### **Breaches**



The ABA is also concerned about reducing the maximum timeframe for complaints when there is the possibility that this will require firms to submit breach reports to ASIC for failing to comply with section 912A(1)(g)(i) of the Corporations Act. While it is difficult for us to provide any substantive feedback on this point as ASIC is yet to give guidance, we ask that it be mindful of the complexity involved in resolving many of these IDR matters.

#### **Managing new expectations**

ASIC has proposed significant changes to IDR processes and practices across the banking and wider financial sector, such as the mandatory content requirements proposal at B8Q1. The need to implement and comply with these new requirements reinforces the industry's position that the maximum timeframe for standard complaints should remain at 45 days.

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?

The ABA does not oppose the establishment of a single maximum timeframe for all types of complaints but for the reasons given above, we do not believe that this should be a period of 30 days. We would prefer an approach in accordance with the well-developed timeframe reflected in the ASIC-approved BCOP.

Further, the ABA suggests that ASIC consider providing a means to pause or extend the timeframe for the complex type of complaints outlined above in our response to B11Q1. This would be similar to the mechanism provided for credit complaints involving hardship notices or requests to postpone enforcement proceedings under proposed updated RG 165.101.

#### **ASIC Proposal B12**

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: (a) act as an escalation point for unresolved consumer complaints; or (b) have a formal role in making decisions on individual complaints.

Question	Feedback
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	See Appendix B for ABA's response.

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.

See Appendix B for ABA's response.

### ASIC Proposal B13

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 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

Question	Feedback
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.	<p>The ABA provides our in-principle support for ASIC's proposed new requirements on financial firms regarding IDR systemic issue identification, escalation and analysis.</p> <p>The banking industry is mindful of the failures and misconduct identified through the work of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. This includes inadequate identification and responses to systemic issues impacting negatively on customers.</p> <p>Our members have been working to improve their framework for handling systemic issues and ensuring that they are escalated appropriately. This includes implementing improvements to their own systems and processes as well as bilateral improvements implemented in coordination with ASIC and APRA.</p> <p>A major initiative undertaken in this area is in relation to the implementation of the Customer Advocate function within each ABA member bank. As highlighted in our response to proposal B12 above, the Customer Advocate role is wide ranging and includes driving systemic change within banks to improve</p>

customer outcomes. A key part of this is identifying systemic issues through the IDR process and working with senior executives and the Board to resolve them.

## ASIC Proposal B15

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, except for the requirements listed in Table 2.

Question	Feedback
<p>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 specific detail in your response, including your proposals for alternative implementation periods.</p>	<p>The ABA has significant concerns about the transition periods proposed by ASIC in Table 2 of CP 311 for financial firms to make necessary changes to its internal processes, staffing and systems.</p> <p>As ASIC acknowledges in the discussion paper and as the ABA has referenced in our response, many of these IDR reforms being contemplated will represent significant change for financial firms, particularly in relation to the following:</p> <ul style="list-style-type: none"> <li>• recording of all complaints, including those that have been resolved in a period of less than five days</li> <li>• integrating new prescribed data sets for all complaints received into existing IT systems and staff processes</li> <li>• complying with new IDR data reporting requirements</li> <li>• developing processes to ensure compliance with IDR timeframes and systemic issue identification, escalation and analysis.</li> </ul> <p>Given that the review of RG 165 is not expected to be finalised until at least December 2019, it will be extremely difficult for financial firms to meet the transition deadlines in the first half of 2020. As with all industries, the ability for the financial sector to initiate and complete major change projects in the first part of a calendar year is limited due to Christmas and Summer/school holidays. This is especially pronounced for these changes given banks cannot finalise planning let alone begin implementation until ASIC's review is completed in December.</p> <p>In order to provide context, we outline below the type of work that may be necessary for industry to carry out to meet the new requirements:</p> <ul style="list-style-type: none"> <li>• changes to IT systems in terms of data collection / reporting and analysis</li> </ul>





- changes to the BCOP to meet any new regulatory requirements inconsistent with existing provisions (e.g., reducing maximum timeframe for responses)
- changes to internal policies, procedures and processes to comply with new requirements
- changes to customer collateral including websites / social media platforms / brochures etc.
- resourcing in terms of staff for IT development and complaints handling
- training of staff at all levels of the organisation due to the broad nature of new requirements
- legal changes such as amending terms & conditions in customer materials
- legal advice and review on a range of issues such as privacy concerns / systemic IDR obligations etc.

This comes at a time when banks are already, or will soon be, undertaking significant organisational-wide change programs in a number of areas, including:

- Open Banking regime - implementation
- Whistleblower guidance
- APRA Credit Management – implementation of APS 220 updates
- APRA Counterparty credit risk – implementation of APS 180 updates
- APRA Information security – implementation of new prudential standard CPS234
- APRA BEAR reforms
- APRA Residential Mortgage Lending requirements – implementation of amendments
- Comprehensive Credit Reporting – second bulk supply of data
- Mortgage broking reforms – Combined Industry Forum commitments and impending legislative response to Royal Commission recommendations
- BCOP updates – implementation of changes following Royal Commission recommendations
- ASIC RG 209 Responsible Lending – policy and systems changes upon finalisation of updated guidance.

In addition, the dispute resolution teams across the financial sector already face resourcing and workload pressures through the establishment of AFCA, an increase in the number of complaints following the



recent spotlight of the Royal Commission and the extension of AFCA's remit to consider legacy disputes back to 1 January 2008.

With these factors in mind, the ABA submits that ASIC should re-consider its implementation timeframes on the following basis:

- **B4 – recording of complaints:** implementation no earlier than 31 December 2020
- **B5 – unique identifier and complaint data set collection:** implementation no earlier than 31 December 2020
- **B7 – IDR reporting requirements:** implementation no earlier than 31 December 2021, and
- **B11 – IDR response timeframes:** while the ABA strongly opposes the proposed change for the maximum timeframe for standard complaints, if ASIC decides to proceed, we suggest implementation no earlier than 31 December 2020.

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B15Q2 Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.

The ABA notes that the changes outlined in section F of the revised draft RG 165 relate to requirements requiring significant work by the financial sector to implement such as the recording of complaints. Therefore, we suggest implementation should be required no earlier than 31 December 2020.

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## Appendix B – Customer Advocates

The ABA provides its views on the role of Customer Advocates and ASIC's relevant proposals below.

### 1.1 A new and evolving function

In April 2016 the ABA Council announced its commitment to a new and ongoing mechanism to improve customer outcomes across Australian banks – the appointment of Customer Advocates. Guiding Principles were published in September 2016, with each member committing to appointing an advocate within six months. Member banks have done so and the model has since been adopted by other finance industry sectors (e.g. insurance, funds management) and beyond (e.g. telecommunications, private health insurance).

We direct ASIC to the document 'Guiding Principles – Customer Advocate' (***the Guideline***), which is available on the ABA website<sup>3</sup>. The Guideline is a foundational document which sets out the purpose and intent of the Customer Advocate function. The role of the Customer Advocate is to:

- make it easier for customers when things go wrong
- facilitate fair complaint outcomes; and
- minimise the likelihood of future problems enhance dispute resolution outcomes and processes.

A key aspect of the role is the provision of rich feedback regarding IDR approaches and practices, which supports the enhancement of the internal complaint management system and informs broader internal and external advocacy work.

In practice these roles have evolved to include a strong focus on promoting the standing and significance of customers in business decisions that affect them, not least for customers whose voices may sometimes be hard for banks to hear.

The overarching premise of the role is to promote fair customer outcomes.

All members have recognised the importance of the function, appointing senior representatives who discharge their obligations with authority. The functions are structured to address potential conflicts of interest and represent the customer voice with the most senior bank executives and Board members. A core strength of the model is the option for customers to access the Customer Advocate post IDR.

Three years from the establishment of the role, the ABA Council commissioned an external, post-implementation review (PIR)<sup>4</sup> published in April 2019.

The PIR highlighted the operation of the Customer Advocate function is still at an early stage, noting that it was continuing to evolve and is yet to reach its 'steady state'. The PIR recommended a further review in 18 months to 2 years in order to monitor the continuing efforts of ABA member banks in embedding the function.

The ABA contends the fact that the function is still at such an early stage must be borne in mind when considering the proposed amendments to RG165. We are concerned that formalising the function as an element of IDR at this early stage may undermine the positive impact of the Customer Advocates in better delivering good customer outcomes.

### 1.2 The function of the Customer Advocate

A primary role of the Customer Advocate at most banks is to act as an optional point of escalation for customers who remain dissatisfied after the conclusion of the IDR process. In this capacity, the Customer Advocate provides a post IDR **review** of the unresolved complaint, including a review of the IDR process and outcome.

<sup>3</sup> <https://www.betterbanking.net.au/wp-content/uploads/2017/01/ABA-Customer-Advocate-Guiding-Principles-FINAL-1.pdf>

<sup>4</sup> <https://www.ausbanking.org.au/wp-content/uploads/2019/05/Customer-Advocate-Post-Implementation-Review.pdf>



The Corporations Act clearly sets out two elements of customer complaint resolution: IDR and EDR. The issue is that customers do not behave in such a dichotomous way. Many customers prefer to escalate post IDR unresolved complaints within the bank ahead of engaging in the EDR process. The Corporations Act does not reflect this customer directed behaviour. This is not a new phenomenon, as prior to the establishment of the Customer Advocate function, customers would escalate their request for a review of the IDR outcome with business executives or the bank's CEO or Board. The Customer Advocate function formalises what customers were already doing and enhances customer choice by clearly setting out the alternative escalation pathways.

The **review** of an IDR decision is not part of IDR and falls outside the scope of RG165.

If ASIC is to redefine the boundaries of IDR (as it is proposing to do in CP311), the same logic would need to apply where customers approach the CEO, the Board or other senior executives for a review of a decision. ASIC would also need to standardise requests for reviews of IDR decisions beyond just the banks, as such requests from customers occur across all sectors.

At the conclusion of the IDR process, the final IDR outcome is communicated to a customer in writing by the banks' IDR function. Customers are advised of their right to refer their complaint to AFCA if they disagree with the IDR outcome.

It is at this point that most members highlight to customers the availability of an opt-in Customer Advocate review. No member mandates that a customer must seek a Customer Advocate review before they refer their complaint to AFCA.

The ABA agrees that these choices must be communicated clearly and unambiguously and commits to ensuring that its members will review their IDR outcome correspondence to ensure this is the case.

Banks have highlighted that, while some customers pursue an escalation option immediately, many wait weeks or months before deciding on their course of action. The IDR process is properly governed by strict timeframes however once an IDR outcome has been communicated to the customer, the next course of action and the time taken to initiate that course is and should remain totally within the customer's control.

The Customer Advocates stand ready to respond to requests for a review of an IDR decision in accordance with the timeframe chosen by the customer.

The insights gained by Customer Advocates in the course of engaging with customers and reviewing IDR outcomes is a significant source of credibility and influence and substantially strengthens the function's ability to foster real and long-lasting cultural change.

A strong IDR function that provides customers with timely, fair responses is fundamental to the successful delivery of banking services. Customer Advocates have established strong feedback loops to ensure that observations regarding the IDR process are provided to the bank, to drive continuous improvement. This is in addition to observations which are made more broadly that influence changes to policies, processes and systems to reduce the likelihood of future problems.

Customer Advocates also performs a range of strategic activities, including:

- **Acting as the conduit** to ensure feedback on good and poor customer experience is provided on a timely basis to the relevant business units, senior executives, the CEO and Board
- **Providing a liaison point for external consumer advocates**, both in relation to individual matters and more broadly engaging with consumer advocates to understand their perspective and voice this internally. This can also lead to the identification and subsequent rectification of systemic issues, and
- **Internal liaison point** for key decisions including product development, conduct risk, customer vulnerability and customer service matters.

In all these interactions the Customer Advocate gathers 'root cause' pain points, supports the rectification process and provides a mechanism for reporting to the CEO and the Board.





The Customer Advocate's impartial review of IDR decisions is foundational to its ability to undertake this systemic analysis, foster culture change and strengthen the visibility of customers to both the CEO and Board.

## 1.3 RG165

### 1.3.1 Overall comment

The Customer Advocate was not designed to be, and has not been, a constituent part of the IDR process. Generally, customers cannot refer a complaint to a Customer Advocate without having completed the IDR process and received a formal outcome.

In some instances, IDR management may seek the guidance of the Customer Advocate regarding a complex complaint. In these cases, the IDR function retains carriage of the complaint and will ensure compliance with RG165.

In rare cases the Customer Advocate considers complaints at the first instance, for example if the customer is particularly vulnerable. In this instance, the Customer Advocate will be performing the IDR function and will comply with all IDR obligations as set out in RG165.

The Customer Advocate function is designed to sit beyond IDR, providing an optional pathway for customers who remain dissatisfied post the IDR process. The function operates at arm's length from the business and uses the insights gained through a combination of direct complaint reviews, proactive hindsight reviews of IDR outcomes, thematic reviews and engagement with consumer advocates.

The Customer Advocate's ability to interact with IDR is an important element in executing their role. The insights are used to identify underlying root causes and to drive improvements within the IDR process and the wider business.

The Customer Advocate's ability to interact with dissatisfied customers post IDR is an important element in executing their role. It is unworkable and counterproductive for the Customer Advocate's work to be included in the proposed 30-day (or current 45 day) IDR timeframe because the work of the Customer Advocate is not IDR. The detailed reviews undertaken by Customer Advocates are often complex, with issues impacting customers in vulnerable circumstances. The customer must retain control of the timeframe for deciding how and when they want to escalate an unresolved complaint. The ABA acknowledges the importance of a timely review, however does not consider that this should be at the expense of achieving a fair outcome.

### 1.3.2 Response to ASIC questions

This section addresses directly the questions, concerns and observations raised by ASIC in respect to the Customer Advocate function in CP311.

**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.**

***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:***

***(a) act as an escalation point for unresolved consumer complaints; or***

***(b) have a formal role in making decisions on individual complaints.***

- (a) We support Customer Advocates complying with the requirements of RG 165 for complaints if they are dealing with complaints that have not been subject to an IDR determination. However, we do not support this for complaints that have been considered through a bank's IDR process and a final determination has been provided to the complainant.
- (b) This is not supported. As noted above, the role of the Customer Advocate in reviewing an IDR decision is not part of the IDR process. If this line of logic is to be pursued, all requests for a



review of an IDR decision to any part of the organisation (including the CEO and the Board) would become subject to such timelines and would significantly restrict the preferences of customers and the bank's endeavours to resolve complaints.

***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.***

***Para: 100 In some models, the customer advocate reviews individual complaints that have not been resolved to the consumer's satisfaction by the financial firm's specialist complaints team. Some firms that operate these models consider that the work of the customer advocate is separate to the firm's IDR process and, therefore, does not need to comply with RG 165.***

There is good evidence to demonstrate that the Customer Advocate function has demonstrably improved customer outcomes. The following relates to data from one bank:

- 363 requests for a review of IDR decisions made for the period January to July 2019
- 74% of these requests were resolved in favour of the customer (October 2018 to June 2019) with observations provided to IDR regarding improvements in practices and approach
- 144 business improvements across product and distribution channels (October 2018 to June 2019).

***Para 101. We are concerned these models may not be complying with RG 165 (including the maximum IDR timeframes and minimum content requirements for IDR responses) and that they can delay access by consumers to independent review by AFCA. We are particularly concerned that consumers may be confused, or even misled, about when they can take their complaint to AFCA from IDR (e.g. they believe that the customer advocate reviewing their complaint is a compulsory step in the process).***

ABA members take their responsibility to comply with RG165 seriously. As described above, the Customer Advocate function is responsive to customer preferences regarding an optional internal escalation point. To the extent there is any ambiguity regarding the choices available post IDR (including the immediate right to access EDR), all member banks will ensure that the process is clear.

The ABA makes several suggestions below, which may address ASIC's concerns without retrofitting a function that was never designed to be part of the IDR process.

***Para 102 Our consumer research highlighted the impact that the length of time taken to resolve complaints has on consumer satisfaction: see REP 603 at pp. 61–62. Complaint fatigue may lead to the withdrawal of complaints even where the consumer remains unsatisfied with the firm's response.***

Member banks are committed to ensuring that customers receive clear information regarding their post IDR escalation choices. Customers who select the Customer Advocate option do not need to re-initiate their complaint with another organisation. Customer Advocate reviews are generally finalised significantly more quickly than EDR reviews and are not restricted by EDR terms of reference. This allows the Customer Advocate to recommend truly bespoke outcomes, which can be significantly more generous than outcomes available via EDR.

Opting in to a Customer Advocate review provides customers with a genuine choice, without limiting their immediate access to EDR. By consciously exercising this choice, it is considered less likely that a customer will experience complaint fatigue.

***Para 103 We are seeking views on the customer advocate model described in paragraph 100. In our view, it is very difficult for consumers to make an informed decision about the relative benefits of proceeding to further internal review under a customer advocate model, as opposed to taking their complaint directly to AFCA.***

The ABA submits that it would be unhelpful for member banks to be unable to engage with customers who express dissatisfaction with the IDR process or the IDR decision unless the customer escalates to AFCA or a court. This is an important point; under the ASIC proposal once a complaint has been through the IDR process it appears a bank may be restrained from continuing to try to resolve the complaint and the customer will be required to seek external assistance. The ABA considers this will result in many complaints remaining unresolved because not all customers will be inclined to escalate, or will be capable of escalating their complaint externally, particularly vulnerable customers.

## 1.4 Response to Proposal Relating to Customer Advocates

ABA members recognise that the Customer Advocate role is relatively new and continuing to evolve. The members have unanimously agreed to adopt the recommendations made in the PIR, which will further enhance the function.

Additional improvements that could be adopted to reduce the risk of confusion about the nature of the role include:

- members to review and as required update their IDR outcome letters to ensure that the escalation path to AFCA is clear and transparent and that the Customer Advocate options, to the extent offered, are explained in a clear and consistent manner
  - the communication will clearly state the customer's right to refer their complaint to AFCA in the event that they remain dissatisfied with the IDR decision
  - where offered, the communication will explain the role of the Customer Advocate as a mechanism for having the IDR decision reviewed, which will not circumvent the customer's right to refer the matter to AFCA
- members to update and confirm that external communications (flyers, posters, brochures, website) are clear and unambiguous in respect to customers' right to refer a complaint to AFCA post IDR
- the Customer Advocates to be bound by RG165 final letter standards in all instances, including when they communicate a post IDR review outcome to a customer
- adoption of transparent reporting across the industry regarding key data related to the Customer Advocate function. Reporting to cover: (a) number of customer requests to the Customer Advocate for review of a decision; (b) the time taken the customer to request a review of the IDR decision from the time the IDR decision was made; (c) Customer Advocate time taken to review IDR Decisions (d) Outcomes of Customer Advocate review showing percentage of cases upholding the IDR decision, enhancing the IDR decision, overturning the IDR decision (e) thematic reporting on the reviewed IDR Decisions (f) value-add insights of the Customer Advocate showing the process or policy improvements in the business and in IDR processes that have been recommended, and
- the ABA to include ASIC as a key stakeholder in the 2021 Customer Advocate review (as per PIR recommendation 5). ASIC to be invited to contribute to the terms of reference of that review.



06 November 2019

Jacqueline Rush  
Senior Policy Adviser  
Australian Securities & Investments Commission  
c/o IDRSubmissions@asic.gov.au

Dear Ms Rush

## Supplementary submission to ASIC Consultation Paper 311: Update to RG 165 Internal Dispute Resolution

The Australian Banking Association (**ABA**) welcomes the opportunity to provide this supplementary submission to the Australian Securities & Investments Commission (**ASIC**) Consultation Paper 311 on the proposed update of Regulatory Guide 165 (**RG 165**).

As outlined in our initial submission, the ABA and our member banks welcome this review and update of RG 165. Our focus remains on ensuring that RG 165 and the internal dispute resolution (**IDR**) framework delivers efficient, fair and effective outcomes for customers.

We appreciate the effort taken by ASIC to consult with industry and other stakeholders through the submission process and roundtables. As ASIC finalises its work, the ABA provides this supplementary submission to further articulate our view on some of the key issues raised through the process.

### 1. Maximum IDR timeframe

The ABA reinforces its strong support for retention of the 45-day timeframe for IDR standard complaints and our concern that the proposal to reduce it to 30 days will not result in better customer outcomes.

As we outlined in our original submission, our member banks have committed to clear timeframes for handling customer complaints under the ASIC-approved *Banking Code of Practice* as well as seeking to meet their IDR regulatory obligations. Our experience shows that most customer complaints are resolved within 30 days, which reflects the commitment of our member banks to efficiently resolve these matters.

We remain concerned that a reduced timeframe may result in compromised customer outcomes, which includes complaints being escalated prematurely and unnecessarily into the EDR process. This would create unnecessary delays for customers and put additional pressures on AFCA resources.

Our experience and data has shown that the complaints that take longer than 30 days to resolve are characteristically more complex (e.g., insurance, advice and responsible lending) and often involve special circumstances (family and domestic violence / financial abuse) or involve complicated issues. This will often need legal or other forms of specialist advice to be obtained and therefore need more time for resolution. We have further consulted with our member banks on this matter since our original submission and we have again confirmed the view that this additional period of time can improve the customer outcome significantly. As we noted in our original submission, one ABA member bank has noted that in consumer complaints involving responsible lending matters, the successful resolution rate went from 58% at 30 days to 86% at 45 days.

Therefore, we submit that the current 45-day timeframe should be retained along with allowing consideration of complaints beyond that time period in “exceptional circumstances” and where a delay notification is advised to the customer.

#### **Reduction to 30 days – circumstances allowing for an extension**

If ASIC does proceed with a reduction in the timeframe to 30 days (or 45 days for superannuation complaints), the ABA submits that it needs to provide very clear guidance on the circumstances where firms can extend the maximum timeframe, including:



- complex areas of dispute that are difficult to resolve in a short timeframe, (e.g., maladministration of lending, insurance and financial advice matters)
- matters involving difficult personal circumstances for customers (e.g., family and domestic violence and financial abuse), particularly where a firm needs to consider factors such as a complainant's mental or physical health
- customers or third parties cannot be contacted or fail to provide further information within a specified timeframe (including delays at the request of customers)
- complex remediation matters that require further action such as recreation of data in a customer account (e.g., calculating fees, interest)
- material questions of fact requiring significant further investigation / review (e.g., legal advice needs to be obtained) or complaints on certain product types that may require third party reports (e.g., medical reports)
- customers provide new information or that is material at a later stage in the complaints process.

This guidance does not need to be prescriptive but take a principles-based approach, providing some examples such as the above factors highlighting circumstances where a firm has taken reasonable steps and acted in good faith to try and resolve a complaint within the timeframe and it is appropriate to extend the period.

As we have previously stressed, the focus should be on ensuring fair outcomes for customers and as far as possible, resolving matters successfully at the IDR level.

## 2. Breach reporting and enforceability

The ABA remains concerned about ASIC's intention to issue a legislative instrument to make the "core IDR requirements" set out in RG 165 enforceable. There is still a lack of clarity on what ASIC will deem the core requirements of RG 165 or the consequences for a firm in not complying with their IDR obligations in the guidance (e.g., civil contravention, civil penalty or offence).

As we have noted above, CP311 proposes some significant changes to RG165 that could have major ramifications for breach reporting in terms of the compliance date and major changes required to systems. For example, for the key change of reducing the maximum time frame for complaint resolution from 45 days to 30 days, the proposed date of implementation for this requirement is 31 March 2020. ASIC states "when we issue the final RG165, we will consider giving guidance on when financial firms that fail to meet the maximum IDR timeframes must submit a breach report to ASIC for failing to comply with s912A(1)(g)(i) of the Corporations Act."

It is unclear whether by making this requirement enforceable ASIC will require a breach report for each occasion that a complaint resolution falls outside the prescribed timeframe. We note that ASIC's guidance on breach reporting as set out in Regulatory Guide 78 remains that a whether a breach is significant or not (so as to trigger mandatory notification to ASIC) will depend on the individual circumstances of the breach. This significance assessment will consider "the nature, scale and complexity" of our business, along with several factors listed in section 912D(1)(b) of the Corporations Act, including:

- the number or frequency of similar previous breaches
- the extent to which the breach indicates the licensee's arrangements to ensure compliance with relevant obligations is inadequate, and
- the actual or potential financial loss to clients arising from the breach.

Additionally, we note that ASIC refers to breach notifications in the context of failing to comply with s912A(1)(g)(i) of the Corporations Act. This requires firms to have a dispute resolution system, including an IDR procedure, that:



- (i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
- (ii) covers complaints against the licensee made by retail clients in connection with the provision of all financial services covered by the license.

By virtue of the requirements in ss912D(1)(b) and 912A(1)(g), we believe that a breach report should only be required where it is considered that the IDR procedures do not comply or provide adequate systems and processes to enable complaints to be resolved within the maximum IDR timeframes, as opposed to considering individual instances of non-compliance. The number or frequency of non-significant breaches may however, suggest that a firm does not have adequate systems to comply with the requirements under RG165.

We call on ASIC to confirm this approach in its guidance and confirm that there is no expectation that ASIC will require a breach report for each occasion that a complaint resolution falls outside the prescribed timeframe. If not, we would suggest that a separate consultation should be conducted by ASIC on the enforceability matter.

### 3. Customer Advocates

The ABA has welcomed the opportunity to further engage with ASIC on the role of Customer Advocate in the IDR process and within ABA member banks more generally. We acknowledge a number of ASIC's key concerns on the operation of the function at some member banks:

- lack of clarity for customers in having the right to choose to take a matter straight to the EDR process when receiving a final IDR determination
- high rate of Customer Advocate reviews resulting in complaints being overturned or enhanced and this creating a form of 'two tiered' dispute resolution process
- delays around the timeframe for Customer Advocate handling of complaints
- Customer Advocate involvement in unresolved complaints is dominating workload under some models and reduces capacity for broader systemic and cultural role.

We address these concerns below.

#### **Deloitte Post-Implementation Review (PIR)**

As we indicated in our original submission and at the roundtable, the ABA commissioned an external PIR of the Customer Advocate initiative, which was completed in May 2019<sup>1</sup>. The final report highlighted that the function was still at an early stage in its development, noting that it was continuing to evolve.

The PIR final report made 16 recommendations (see pages 59-63), including:

- improving communication with customers about the roles, including providing clearer contact information on websites, and better clarity about the right to access AFCA (Recommendations 8 and 14)
- reviewing the role and resourcing of Customer Advocates on a regular basis (Recommendation 1)
- ensuring systemic issues raised by Customer Advocates receive the appropriate attention, accountability and resolution (Recommendation 15).

Since the final report, the ABA Council has considered and fully endorsed all recommendations. Member banks are now implementing internally, and the ABA is coordinating industry wide work where appropriate.

Overall, as shown in the Deloitte PIR final report and the observations of many stakeholders including consumer groups, the Customer Advocate function is making a tangible difference and acting as an

<sup>1</sup> <https://www.ausbanking.org.au/wp-content/uploads/2019/05/Customer-Advocate-Post-Implementation-Review.pdf>

agent of change within banks and this is already improving practices. Admittedly, the Customer Advocate functions within each bank are at different stages on maturity and establishment. However, they will all continue to develop and evolve over time, with different models being used depending upon the strategic priorities of each bank and the maturity and performance of their respective IDR processes.

The ABA believes that over time, the concerns raised by ASIC over rates of Customer Advocates overturning IDR decisions, delays in reviews and less focus on systemic issues will be gradually overcome as they drive improvements in the organisations. Further, the implementation of the PIR recommendations will specifically require actions to address these issues. In the view of some of our member banks, bringing the Customer Advocate function into the IDR process in a wholesale manner could undermine their ability to continue to deliver the necessary change.

### Further work

Following on from the recommendations of the PIR final report and other stakeholder feedback, the ABA is currently addressing a number of aspects of the Customer Advocate function, including:

- **Customer collateral:** the ABA has commenced a process with our member banks to develop standard language across member banks for inclusion in all IDR collateral to make customer rights more explicit, including:
  - communication will clearly state the customer's right to refer their complaints to AFCA in the event that they remain dissatisfied with the IDR decision
  - where offered, the communication will explain the role of the Customer Advocate as a mechanism for having the IDR decision reviewed, which will not circumvent the customer right to refer the matter to AFCA
  - members to update and confirm that external communications (flyers / posters / brochures / website) are clear and unambiguous in respect to customers' right to refer a complaint to AFCA post IDR
  - seek ASIC feedback before finalising changing language.
- **Customer Advocate reporting:** adoption of transparent reporting across the industry regarding key data related to the Customer Advocate function, including factors such as time taken to review decisions and review outcomes (these may be tailored depending on the model and stage of maturity of the CA function).
- **Complying with RG 165:** the ABA supports Customer Advocates complying with the requirements of RG 165 for those complaints that have not been subject to an IDR determination – Customer Advocates will be bound by RG 165 in all instances. To address ASIC's timing concerns, the ABA would welcome further engagement on whether an additional defined period could be set to conduct a Customer Advocate review (e.g., beyond the IDR timeframe). This would balance the need for Customer Advocates to have additional time to conduct customer-escalated reviews post-IDR and ensuring an efficient process for customers.
- **Further PIR:** the ABA will commission a further PIR to commence in early 2021 to consider progress made on recommendations and we will seek ASIC input.

## 4. IDR financial delegations

The ABA and our member banks support ASIC including a requirement for financial firms to have appropriate financial delegations in place to facilitate the fair and efficient resolution of complaints.

Although this proposal was not contemplated in CP 311, we understand that ASIC intends to insert this requirement into the updated RG 165. This follows feedback received from some stakeholders and observations made by ASIC in its consumer complaints management onsite visits.



The ABA submits that the guidance setting out this requirement should be principles-based and allow firms to decide how to set the level of actual delegations on the basis of their business model and risk appetite.

## 5. Implementation timing

In our original submission, we outlined our strong concerns about the proposed timing by ASIC in requiring firms to make the necessary and significant changes to their internal processes, staffing and systems in order to comply with the updated RG 165.

We therefore welcome ASIC's decision to delay the issuing of the guidance and requiring compliance for IDR data collection and reporting obligations until mid-2020, including those requirements to:

- record all complaints, including those resolved immediately or within five business days
- record a unique identifier for each complaint
- collect and record prescribed data for each complaint
- record prescribed data to ASIC in accordance with ASIC's requirements.

The ABA and our member banks look forward to further consulting with ASIC on these important changes.

We note that ASIC also noted transitional timeframes for some specific requirements in RG 165 – such as changes to timeframes – but proposed that all other policy requirements would take effect immediately upon release of the updated RG 165. This was also of significant concern to industry due to the difficulty in requiring firms to comply immediately given the major work required.

With this in mind, we appreciate ASIC's confirmation that it will be providing appropriate transitional relief in the final guidance. As we have no further detail on what this relief is at this stage, the ABA would again note that industry should be granted an appropriate transition period that is sufficient to ensure that system based changes and staff training can be fully implemented, appropriately tested and that manual work arounds are limited in order to minimise errors and ensure that consumers obtain the full benefit of the changes as soon as possible.

As noted in our original submission, the ABA proposes that ASIC consider implementation timeframes on the following basis:

- **B4** – changes to recording of complaints: implementation no earlier than 31 December 2020
- **B5** – unique identifier and data set: implementation no earlier than 31 December 2020
- **B7** – IDR reporting requirements: implementation no earlier than 31 December 2021
- **B11** – IDR response timeframes: implementation no earlier than 31 December 2020.

Please contact me on [REDACTED] or at [REDACTED] if you require anything further.

Yours sincerely

Justin Mining  
Policy Director