Enforceability of core IDR requirements

RG 165.11 states that the core IDR requirements of the guide are enforceable. ASIC intends to issue a legislative instrument in order to implement this.

ASIC has not specified what it considers to be the core requirements of RG 165. It is also not explained what legislative mechanism will achieve this. For example, whether it will be through section 912A or 926A of the Corporations Act. Further, it is not clear what consequence ASIC proposes for failure to comply with RG 165 – whether it be a civil contravention, civil penalty or offence.

Once this detail is available, we consider it would be fair to consult with firms regarding the proposed enforceability of RG 165, including the appropriateness of any sanctions proposed for non-compliance with RG 165.

Definition of complaints

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).

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.

ANZ understands from Consultation Paper 311 (**CP 311**) that a key rationale for broadening the definition of 'complaint' is to capture complaints made by identifiable consumers on a firm's own social media platforms.

ANZ agrees with the principle that complaints made through social media channels should be dealt with under internal dispute resolution (**IDR**) processes. However, we consider the existing definition already captured complaints made to ANZ via social media.

We are concerned that the proposed expansion to include expressions of dissatisfaction made 'about' an organisation is very broad. This goes beyond complaints made on a firm's own social media platform and could be read as extending to a public complaint made to another organisation such as a letter to the editor of a newspaper.

In terms of how ANZ currently deals with complaints made through social media channels, ANZ monitors interactions across ANZ's Facebook, Twitter and Instagram platforms in order to identify and resolve complaints. ANZ does not monitor third party or external platforms.

In ANZ's experience, there are practical difficulties associated with managing complaints and expressions of dissatisfaction on social media that are worth noting. For example:

- A user's social media profile or handle, while arguably providing a means to contact and identify them, will not always be associated with the user's name. In these circumstances, ANZ's social media team will provide general information and assistance to the extent possible and request that the user provide personal details via direct message. If the customer does not take this next step, then ANZ cannot take any further action.
- Because of the public and accessible nature of social media, there are occasions when large numbers of users will make a generalised expression of dissatisfaction about an issue, either in their own post or as a comment on another user's post. This can be as simple as a "me too". In these scenarios we acknowledge the customer's dissatisfaction and explain how ANZ came to its position. Where a user responds indicating, implicitly or explicitly, that they wish to receive a response or resolution we will refer the matter to ANZ's IDR process. We do not follow this process when a user merely "likes" another user's complaint.

With this in mind, it may be beneficial if ASIC provides additional guidance around:

- when a customer is contactable and identifiable per 165.37(b); and
- when a firm should deem that a response or resolution is expected, particularly in the context of social media.

Further, ASIC may want to consider whether the wording in the proposed RG 165.36 should be amended to accord with the requirement in RG 165.37; by, for instance, including the words 'on *a firm's* social media platforms' (emphasis added) where it states that ASIC 'expects firms to be proactive in identifying complaints made on social media platforms'.

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.
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? **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.

ANZ considers the guidance in draft updated RG 165 will assist financial firms to identify complaints, however, as per our comments above in respect of social media complaints, additional guidance would assist to clarify what is caught and not intended to be caught by the definition of 'complaint'.

In terms of additional guidance, ASIC could consider including the following additional examples at RG 165.35 of matters that do not need to be dealt with through IDR processes:

- A complaint made to a third party's social media platform or other third party platform.
- A disputed transaction, being a claim made by a customer to 'chargeback' a charge on their debit or credit card. These claims are subject to the credit or debit card scheme chargeback rules which have their own timeframes for response (generally disputed transactions are resolved within 35 days but the rules allow up to 90 days) . Due to their specific nature, disputed transactions are managed by a specialist team within ANZ.
- A complaint made in the context of remediation (see below for further discussion of the interaction of IDR with remediation processes).

Further, in the proposed RG 165.35, which provides guidance on 'what is not a complaint', it specifies 'simple requests for information.' ANZ considers the use of 'simple' in this context requires clarification and suggests the word be removed, such that any and all requests for information are excluded from scope. Further, ANZ considers that extending this exclusion to include 'requests for clarification' would also be appropriate and beneficial.

We would also benefit from clarification on the circumstances in which a response or resolution is 'implicitly' expected. In ANZ's experience, expressions of dissatisfaction can be interpreted as a statement or opinion rather than a complaint requiring a response and it can be difficult to distinguish which it is. This is particularly so in areas of the business where customers often display a degree of antagonism, even in routine interactions, such as collections.

Finally, ANZ considers that further thought should be given to whether any exceptions should apply where the customer is 'relationship managed' (i.e. where a small business and/or high net worth consumer has been provided the contact details of a banker to deal directly with them in relation to any issues, including complaints, that arise as a result of their relationship with the bank). Relationship managed customers are typically more financially literate customers with complex needs who value being able to have a single contact point within the bank and expect their relationship manager to resolve issues, such as interest rate negotiations. A robust conversation between a relationship manager and their customer may meet the technical definition of complaint (i.e. 'I am not happy with this interest rate and want you to reduce it') but the customer concerned is merely seeking to negotiate better commercial terms rather than go through an IDR process. To reflect this, ANZ suggests there be a mechanism whereby firms do not need to deal with an expression of dissatisfaction (that meets the definition of 'complaint' in RG 165.28) from a relationship managed customer through their IDR process if the complaint is resolved to the customer's satisfaction within 10 business days.

<u>Interaction of IDR with remediation processes</u>

While ASIC has not specifically sought feedback on the proposed RG 165.46-50, we consider these paragraphs fall within the scope of proposal B2 as they relate to the point at which a complaint must be dealt with under IDR processes. The interaction of IDR with remediation processes is nuanced and we believe it requires further consideration, with clarification and/or expansion of the proposed standard in this regard. We raise the following points for ASIC's consideration in the understanding that, where practicable and unless there is a clear benefit from doing otherwise, ASIC will be seeking to align its guidance in the updated RG 165 with 'Regulatory Guide 256: Client review and remediation conducted by advice licensees' (**RG 256**).

RG 165.49 requires that where a complainant has made a complaint to a financial firm and that complaint is within the scope of an existing review and remediation, the IDR requirements set out in RG165 (including maximum IDR timeframes) will generally apply to that matter. While this requirement is somewhat qualified by the use of the term 'generally', it is not clear in which circumstances the firm would not be expected to apply the IDR processes. This requires clarification.

ANZ is concerned that this requirement, as currently worded, will entrench a need for ANZ to provide a bespoke resolution to a single a customer within IDR timeframes regardless of a broader remediation program. We question whether this is the best approach if a customer makes a complaint but ANZ is in the early stages of investigation or working through calculations and not ready to 'go live' with a large scale remediation. In particular, we query whether there should be scope for the complaint to be closed and recorded as 'Closed - part of remediation program'. The customer would be informed there is a remediation process underway which will be applied to them.

We consider that to require remediation cases to be resolved where a complaint is made within IDR timeframes creates, or increases, a risk that we may not be consistent in our approach to remediating all affected customers. If customers are pulled out of the cohort of impacted customers and remediated individually before we fully understand the issue, there is a risk the application of compensation to their account will not be consistent with the subsequent remediation program. A customer's remediation may need to be subsequently re-handled to correct any inconsistencies.

RG 165.50 requires that if a consumer complains about a decision made by a firm as part of its remediation process, the consumer should be directed to AFCA and not to the firm's IDR process. RG 256, which has the same requirement, applies only to advice remediation. For advice remediation, it is more likely that the financial firm has engaged with the customer during the course of the remediation than, for instance, a remediation relating to fees charged. ANZ considers that there should be an opportunity for the customer to engage with ANZ to seek to resolve their concerns following a remediation outcome, before ANZ directs them to AFCA.

RG 165.50 assumes that, in most cases, the firm has already reviewed a particular consumer's circumstances such that there would be little value in the firm considering their complaint. However, in a large-scale remediation, the customer may not be aware of the issue, or that they have incurred a financial loss, until the remediation payment is made. Therefore, there may be value in permitting the firm and the customer to engage at this point so that the firm can explain its approach to the remediation, how a remediation payment was calculated and whether the remediation has been undertaken under guidance from AFCA or ASIC. If a customer were to take the matter directly to AFCA, it could take significantly longer for the customer to obtain this information which may have been sufficient to resolve their complaint.

Of course, where a customer has already been through our IDR process, and still is unhappy with the remediation outcome, we would refer the customer to AFCA.

Definition of small business

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.

ANZ considers it is important to define 'small business' consistently across key legislation and in the rules used by regulatory bodies and we appreciate the logic in aligning the definition of 'small business' for the purposes of IDR and external dispute resolution (**EDR**) processes. Inconsistent definitions can lead to confusion for both customers and staff and unnecessary operational complexity.

However, we note that ASIC has engaged in extended industry discussion about the Banking Code of Practice (**BCOP**) definition of a small business customer (which came into effect on 1 July 2019 and differs to that proposed) and agreed to setting up a process for collecting data from industry to inform a review in 18 months. Rather than have the Corporations Act amended to adopt the definition in the AFCA Rules, our preference is to adopt the definition used in BCOP (noting that it is subject to review) or maintain the current definition while industry consultation continues.

It is not presently clear to ANZ how ASIC intends to change the definition of 'small business' in section 761G of the Corporations Act for IDR purposes only, without creating confusion or impacting other uses of the term throughout Chapter 7 of the Corporations Act. This approach could have potential flow on effects to the application of other obligations under the Corporations Act, and by implication the ASIC Act.

Recording of all complaints

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. *ANZ note: current RG 165 encourages, but doesn't require, recording of complaints resolved by end of fifth day*

Though practices and systems differ across business units and there are exceptions, generally a complaint will be escalated to ANZ's dedicated complaints handling team (Customer Resolution Centre, or **CRC**) for recording and management if the complaint is not resolved within two days. Going forward, ANZ intends to record all complaints and will determine a programme to satisfy the revised requirements in the new RG 165 around recording complaints.

Should RG 165 be updated to require all complaints to be recorded, then ANZ suggests consideration be given to the level of detail to be recorded, particularly for complaints resolved to the customer's satisfaction by the end of the fifth day. The current level of detail required in Table 2 will make technology and process changes more complex and the recording process more time consuming for staff (and customers). In our experience, complainants can be reticent to provide a significant amount of information, particularly if their complaint is being adequately addressed in the

interaction. An option could be to waive the requirement for the collection of demographic information for complaints resolved within five days. This would ensure that the firm was obtaining the complaint data to assist it to identify systemic matters without putting customers through an unduly burdensome process. For small matters, a time intensive complaint process may actually deter customers from making complaints. For example, a customer may be reluctant to make a complaint about, and seek a refund of, a relatively small fee if they are concerned about the time it will take to make the complaint and the level of information that will be required to do so.

Further, the exemption for firms to provide an IDR response for complaints resolved to a complainant's satisfaction within five days of receipt is beneficial for simple complaints. However, for small businesses and superannuation, insurance and financial planning customers, complaints are generally more complex given the nature of commercial businesses. Therefore, for complaints from these categories of customers, it may be appropriate to have a different threshold for the provision of a response, such as 10 days.

Recording a unique identifier and prescribed data set for all complaints received

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. **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

ANZ agrees that a unique identifier should be assigned to each complaint received.

ANZ currently provides a reference number for all complaints that are received by CRC. However, elsewhere within ANZ, systems either do not allow for a unique identifier to be provided where a complaint is lodged or there is no process and system to record a complaint that is resolved to the customer's satisfaction within two days at the first contact point. As such, technological and process changes would be required to assign a unique identifier to each complaint in accordance with the proposed new RG 165.

B5Q2

As observed in response to B4Q1 above, the data set to be collected for each complaint is extensive. It may make the recording process cumbersome, time-consuming, and deter complainants from proceeding with their complaint.

In our experience, the mandatory complainant demographics (such as age, gender and whether the complainant is Aboriginal or Torres Strait Islander) are not necessary to resolve a complaint. Complainants can be sensitive about providing personal information of this kind and ANZ does not as a matter of course collect it from complainants. We assume it would be acceptable to select the 'not stated/unknown' code if the complainant declined to provide their gender or Aboriginal or Torres Strait Islander descent. As there is no equivalent code for age, we suggest ASIC consider including an additional 'not stated/unknown' code for data element 12 (if these complainant demographics are to remain mandatory data fields).

We consider some clarification is required as to how and whether the complainant demographics are to be recorded where the complainant is an authorised representative and/or not the person to whom the firm has provided the product or service in question.

Further, we consider that:

- There should be functionality to allow for the selection of more than one 'product and service line, category and type' for a complaint, to accommodate scenarios where a complaint involves more than one product or service.
- The proposed codes for 'complaint issue' need to be expanded to include issues such as 'product performance'.
- While the proposed codes for 'financial compensation' provide adequate detail, the description of 'financial compensation' should be expanded to 'Amount of financial compensation that was paid *or value of a benefit provided*' (additional text in italics), in order to capture scenarios where fees or debts are waived.
- For 'complaint status', there should be an additional code 'Closed – part of remediation program' to be used where a complaint is received about an issue that is already part of a remediation program.

<u>Intersection with the Open Banking regime</u>

The data set proposed in the data dictionary does not appear to fully cater for the forthcoming Open Banking obligations on firms and the application of the Consumer Data Right (**CDR**) and the proposed Competition and Consumer (Consumer Data) Rules 2019 (**CDR Rules**). The draft CDR Rules were published in March 2019 and are expected to be finalised at the end of August 2019. Under the CDR, consumers will be able to access certain data about themselves held by a financial institution or instruct for this data to be shared with accredited, trusted third-parties of their choice.

The current exposure draft of the CDR Rules requires firms to keep records of 'CDR complaint data' and report on the data to the Australian Competition and Consumer Commission (ACCC) and the Office of the Australian Information Commissioner (OAIC). Specifically, firms will be required to record, and report on, the number of 'CDR consumer complaints', 'CDR participant complaints' and 'CDR consumer complaints that relate to privacy or confidentiality'.

We suggest that ASIC give further consideration to the overlap between two proposed reporting regimes. If necessary, the data set in the data dictionary should be amended to enable firms to use

the one source of data for both the ASIC and ACCC/OIAC reporting regimes. While not exhaustive, this may require:

- expanding the 'complaint issue' codes to include 'CDR consumer complaint' and 'CDR participant complaint';
- expanding 'complainant type' codes to include a code for 'CDR participant' or 'other';
- permitting the selection of more than one 'complaint issue' so both 'CDR consumer complaint' and 'privacy and confidentiality' can be selected where applicable, to enable reporting on the number of CDR consumer complaints that relate to privacy or confidentiality; and
- reconsidering the codes in the complaint demographics section – while the data dictionary states that 'complainant gender' is only required if data element 10 'complainant type' equals 'individual', there is a code for 'not applicable (small business)'. It's not clear in what circumstances this should be used. If it is to be used, then it should be broad enough to cover a CDR participant also.

Reporting on IDR

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).
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 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?

ANZ would need to develop and implement a technological solution in order to capture the proposed IDR data and to meet the reporting requirements. As such, ANZ cannot, at this stage, provide conclusive views on the proposed maximum size of 25 MB for the CSV files. We do, however, consider there is a risk that 25 MB may not be sufficient given the extent of the proposed data variables.

In terms of whether an open complaint should be reported to ASIC for a period when there has been no change in status, ANZ considers it should be. This will support transparency and assist with tracking the progress of complaints through to resolution.

Publication of IDR data by ASIC

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. *ANZ note - AFCA Act states: Information published…may relate to a particular entity, or may be information from which a particular entity may be identified…*
B7Q1 What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level? *ANZ note: ASIC will conduct a separate consultation about its approach to publication of IDR data, but wants to obtain views early to inform planning.*

When determining when and how to publish IDR data, we consider ASIC's guiding principles should be that:

- the publication of the data is of use to consumers, and
- the way in which it is presented maximises intended benefits to consumers.

Therefore, to the extent that data is published at a firm level, steps should be taken to ensure that the relative size of firms (generally, and in respect of products/services) is reflected in how the data is presented, to allow for meaningful comparisons.

There should also be a mechanism in place to enable ASIC to review the effectiveness of the reporting regime and to make changes to refine the regime without necessarily updating RG 165, for instance if it is deemed there is reason to amend or reduce the mandatory data set to be collected.

Content of IDR response

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.
B8Q1 Do you agree with our minimum content requirements for IDR responses? If not, why not?

ANZ generally agrees with ASIC's proposed minimum content requirements for IDR responses.

However, we observe that there is a subjective element to the requirement to provide enough detail for the complainant to understand the basis of the decision. Given the construction of RG 165.75, ANZ assumes that the detail that is to be provided relates primarily to the requirements in the proposed RG 165.75(a) and (b).

Complaints against superannuation trustees

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? If not, please provide reasons.

We agree with the proposed approach.

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?

We agree with the proposed approach.

Timeframes for IDR responses

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.
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. **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?

B11Q1

ANZ supports the goal of improving customer outcomes and experiences through the IDR process, but does not agree that the customer experience will necessarily be improved by reducing maximum IDR timeframes in all of the ways proposed. ANZ agrees with the proposal to reduce the maximum IDR timeframe for superannuation complaints and complaints about trustees providing traditional services from 90 days to 45 days. However, we believe there is merit in retaining a maximum timeframe of 45 days for standard complaints, particularly as ASIC is simultaneously proposing that the timeframe for response can only be extended in exceptional circumstances.

We consider there is logic in affording the same maximum timeframe for standard complaints as what is proposed for traditional and superannuation trustee complaints because, in many cases,

there are parallel complexities for both types of complaint. For instance, an insurance complaint (which is a standard complaint) and a superannuation complaint can be equally complex. It would also simplify the regime to have a single maximum timeframe of 45 days for all complaints (other than those with a 21 days maximum timeframe).

The current 45 day maximum timeframe for standard complaints allows for thorough investigation of more complex complaints, for instance from small businesses. We consider that contracting this maximum timeframe to 30 days may contribute to pressure to respond prior to all facts being considered and receipt of necessary advices (including legal advice), and reduce time for manager review. It may also limit the ability of financial firms to actively engage in meaningful negotiations with complainants.

By way of example the following complaint types often take longer than 30 days to resolve:

- Where the complaint is about financial planning, investments or an insurance claim and complex calculations or medical reviews are required.
- If there is a complex remediation required on a customer account which requires the recreation of a cycle or cycles on a customer account. For example, if the customer has a mortgage account that requires calculation of fees, interest and principal owing over multiple financial years.
- Where a complaint requires data from archived files or reconstructing account information based on multiple sources of data.
- Where new information is provided about the complaint, this may extend the time required to resolve the complaint beyond 30 days, yet it is proposed that the maximum IDR timeframes do not recommence in this situation (see RG 165.83).

Ultimately, ANZ believes that ensuring each stage of the process is managed appropriately, fairly and without undue delay is more important to improving the customer experience than reducing the maximum permissible timeframe. Nevertheless, ANZ acknowledges that the timeliness of responses to customer complaints is a critical part of ensuring a positive experience and fair outcome for complainants and, as such, we have committed to bolstering capability across our complaints handling teams to support this.

In terms of the proposal that financial firms can issue IDR delay notifications in exceptional circumstances only (see RG 165.78), we consider this note should be expanded with additional guidance on what constitutes 'exceptional circumstances'. For instance, is it exceptional circumstances if the complainant has not responded to a request to provide further information, or if information is required from a third party such as an accountant?

RG 165.75(b) requires that, if a firm rejects or partially rejects the complaint, the IDR response must set out findings on material questions of fact. Therefore, perhaps at a minimum it should be specified that a delay notification can be issued when:

- a determination has yet to be made on material questions of fact (the reasons for which are exceptional and provided to the complainant); or
- a complainant has provided new information raising new issues and/or material facts.

In the event the maximum timeframes are reduced as proposed, ANZ suggests that consideration be given to providing a mechanism to stop the clock or extend the response period in certain circumstances. This is the case for complaints about a hardship notice or request to postpone enforcement proceedings where the firm requires further information (see RG 165.101).

B11Q2

Please refer to ANZ's answer to B11Q1 above for reasons as to why ASIC should not set a maximum 30 day timeframe for all IDR complaints now.

Role of customer advocates

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.
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. **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.

ANZ's Office of the Customer Advocate (**Customer Advocate**) was established in 2002 to help facilitate fair complaint outcomes for ANZ customers.

A core and critical component of the Customer Advocate's function is to provide an additional and voluntary avenue for complainants to have their complaint reviewed by the bank itself when it has been through ANZ's IDR process but the complainant remains dissatisfied with the outcome. Engagement with the Customer Advocate is optional and there is no requirement that a complainant engage with the Customer Advocate prior to exercising a right to EDR. While ANZ is bound by the Customer Advocate's decisions, complainants retain their right to refer their complaint to AFCA at any stage, including after the Customer Advocate has proposed a resolution.

In practice, once ANZ has made a determination on the complaint, ANZ provides the complainant with a written response containing the outcome and information regarding their entitlement to refer an unresolved complaint to AFCA. This concludes the IDR process, which is conducted in accordance with the requirements of RG165, including maximum timeframes for responses. IDR response letters also advise complainants that they may approach the Customer Advocate if they would like their IDR outcome to be reviewed by ANZ.

Should a complainant seek a review by the Customer Advocate, the Customer Advocate will review and, as required, overturn ANZ's IDR decisions. This process may include thorough and detailed analysis, meeting with the parties, root cause analysis, and reporting to management and boards. With the benefit of a different perceptive, the Customer Advocate also plays an important role in identifying systemic issues. The Customer Advocate shares insights with the board, executives and business leaders to foster awareness of customer concerns and drive improvement in the customer experience.

In exceptional cases, the Customer Advocate may complete the initial investigation of a complainant's complaint. In these instances, the Customer Advocate adheres to all RG165 requirements.

ASIC has proposed requiring Customer Advocates to comply with RG165 (including meeting the maximum IDR timeframes and minimum content requirements for IDR), where they:

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

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

Firstly, ANZ supports the proposal in RG 165.117 (b) that firms must ensure that any involvement of customer advocates in management or consideration of individual complaints does not prevent complainants from exercising their right to access AFCA by, for example, presenting the customer advocate as a mandatory step in the IDR process.

However, ANZ does not agree with ASIC's proposed approach in RG 165. 117 (a) to require customer advocates to comply with RG 165, in particular the maximum IDR timeframe. We consider the proposal fails to acknowledge the structural and operational independence that the Customer Advocate has within ANZ and the benefits to complainants that arise because this function sits outside the IDR process.

ANZ considers that it is not practically possible, nor in consumers' interests, to mandate that Customer Advocate reviews be conducted within the maximum IDR timeframe of 45 days. We consider an obligation to comply with RG 165 would largely exclude the Customer Advocate from being able to review matters at a complainant's request. This would be exacerbated should the maximum timeframe for standard complaints be reduced to 30 days.

There are a number of reasons why ANZ considers it is not in consumers' best interests to require all reviews by the Customer Advocate to be conducted within the maximum IDR timeframes:

- In ANZ's experience, complainants take some time to digest and consider the IDR outcome before they make a decision to refer their complaint to the Customer Advocate or AFCA. We believe the proposal would impose an unnecessary constraint on complainants, requiring them to make a decision to seek a Customer Advocate review within a prescribed timeframe that does not reflect current complainant behaviour, or else lose the opportunity to access the Customer Advocate.
- Analysis of matters escalated to ANZ's Customer Advocate shows that there is a correlation between the seriousness of a matter and the time taken by the customer to seek a review. If the proposal is adopted, those customers who would benefit most from a review of their complaint will be most adversely impacted.
- It would result in inconsistent outcomes for complainants because some will continue to be able to access the Customer Advocate should they wish (if their complaint has been determined well within the maximum timeframe), while others will not (if their complaint determination has already taken the maximum time, or thereabouts). This will disproportionally impact customers with more complex complaints.

ANZ recognises that the length of time taken to resolve a complaint can adversely impact customer satisfaction. This needs to be balanced against the reasonable time required to conduct a thorough initial investigation and, if necessary, review in order to achieve a fair outcome. ANZ considers that the timeframe for considering and accessing escalation options should sit within the control of the complainant.

Should the proposal to apply IDR requirements to the Customer Advocate be adopted, we consider this will curtail the role of Customer Advocate to the detriment of consumers. For instance, the Customer Advocate is an additional source of feedback for staff involved in the IDR process. The ability to synthesise and share insights grounded in personal interactions with complainants and in-depth case reviews is an important component in the Customer Advocate's core responsibility, which is to promote and support fair customer outcomes. We consider that this rich source of feedback will be compromised if the Customer Advocate is effectively limited to desk-top reviews of closed complaints.

ANZ has noted ASIC's concerns about the transparency of the role and function of customer advocates. ANZ is committed to transparency. Information about the operations of the Customer Advocate has historically been included in ANZ's annual public sustainability reporting, including volumes, overturn rates and case studies. Further, we expect that implementing the recommendations in '*Customer Advocate Initiatives: Post-implementation Review*' (Deloitte, May 2019) that were unanimously adopted by the Banking Association Council will improve transparency and foster a clearer consumer understanding about the Customer Advocate function.

Systemic issues

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. See draft updated RG 165 at RG 165.128– RG 165.133 at Attachment 1 to this paper.
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.

On the whole, ANZ considers that ASIC's proposals in this regard are appropriate. While ANZ already has in place methods to assist with identifying systemic issues, we intend to review and strengthen the accountability framework and processes for managing systemic issues and the proposals provide a useful guide in this respect.

We see an important role for staff who record complaints in helping to identify systemic issues; by, for instance, considering 'could this impact another customer' and ticking a box Y or N in order to facilitate systemic issue analysis. However, we query whether it is practical to expect all staff who handle a complaint to be able to determine if a complaint raises potentially systemic issues.

Requiring frontline staff to make this determination will require extra training, add additional pressure and complexity to their role, and may detract from their performance of their core customer service functions.

Even with training, we are concerned that:

- frontline staff do not always have the broader context and perspective to execute this task effectively; and
- it could result in over-reporting and escalation of non-systemic issues.

As such, we suggest that ASIC permit firms some flexibility to determine whether or not certain staff recording a complaint should assess whether it is a systemic issue, depending on the business unit or function where the complaint is first recorded. While this may be a useful means to identify systemic issues in certain circumstances, for firms with thousands of customer-facing staff, the collection of complaint categorisation data and use of artificial intelligence or software that analyses both calls and text is a more efficient and reliable way to identify trends and potential systemic issues.

IDR standards

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.

ANZ does not disagree with ASIC's approach to the application of AS/NZS 10002:2014 in draft updated RG 165. However, changes will be required to ANZ's systems and processes to record and acknowledge all complaints at the first point of contact consistent with ASIC's draft RG 165, including aspects of Section F.

Transitional arrangements for the new IDR requirements

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

B15Q1

As explained in ANZ's responses to proposals B4 and B5 above, ANZ is not currently equipped to record all complaints in accordance with the prescribed data set. In the event RG 165 is implemented substantially in its current form, changes will be required to ANZ's systems and processes. In order do this efficiently, ANZ will need to comprehensively scope the change required and source the best solution. A key consideration in this process will be designing a solution capable of capturing the prescribed data set (which will not be finalised before December 2019). We anticipate a significant amount of work will be required to prepare our internal processes, staff and systems for this reform, and to implement an effective change management process across the many business units and functions impacted.

Therefore, we propose an alternative implementation period for proposals B4 and B5 of 31 December 2020 at the earliest. The data reporting obligations should be delayed by an equivalent period i.e. to 31 December 2021 at the earliest.

B15Q2

As certain of the requirements in Section F of draft updated RG 165 relate to the recording of complaints, we suggest that the period for implementation of Section F (or specific aspects if it) should be consistent with that for proposals B4 and B5.

Maximum timeframe for response

ASIC has sought submissions from stakeholders on the preferred option for maximum timeframes for standard complaints between two possible approaches: (1) maintain 45 days but allow extensions only in exceptional circumstances OR (2) reduce the maximum timeframe to 30 days but with greater flexibility for firms to take more time where there are genuine reasons for doing so.

For the reasons set out in our submission of 9 August 2019, we remain of the view that the maximum timeframe should be 45 days, but that there should be some additional clarification for when this timeframe may be extended (taking into account the matters referred to below).

In the event the maximum timeframe for standard complaints is reduced to 30 days, we suggest that there be a mechanism to stop the clock or extend the response period where it is *necessary and reasonable* to do so, by provision of a delay notification to the complainant. As it's not possible to foresee or prescribe all the circumstances in which there may be legitimate reasons why a firm may require longer than 30 days to resolve a complaint, we suggest ASIC provide guidance of when a delay notification is necessary and reasonable and that such guidance be illustrative, rather than exhaustive.

At a minimum and by way of guidance, ANZ submits that it would be necessary and reasonable to issue a delay notification where:

- a determination has yet to be made on a material question of fact (the reasons for which are exceptional and provided to the complainant in the delay notification)
- a complainant has provided new information that raises a new issue and/or material fact and there has not been sufficient time for the firm to consider that information
- a complainant is yet to provide material information requested by the firm which the complainant has within their knowledge or possession, or is able to obtain (including a response to an offer to resolve the complaint)
- external technical or expert advice (or other information from a third party), which is material to the outcome of the complaint, has been sought by the firm or complainant and is yet to be received
- the complaint involves complex calculations, spanning over a lengthy period of time
- the complaint relates to a transaction or event that occurred more than six years ago (and, consequently, may require data from archived files or the reconstruction of account information based on multiple sources of data).

We consider that any such basis for a delay notification should apply equally to superannuation complaints and complaints about trustees providing traditional services.

We do not support a model where specific types of complaints that are often complex by nature (such as financial planning or life insurance) are carved out/exempted/tiered, as we consider this will add unnecessary complexity in applying RG 165. However, we anticipate that extensions of time may be required where, for example:

- the underlying issues are not purely transactional (such as incorrectly calculated fees) but involve a professional review involving legal and / or industry expertise (such as compliance with the best interests duty)
- the period the subject of the complaint spans a number of years
- expert evidence from a third party is required, such as in insurance disputes

- it involves a disputed transaction where timing is controlled by the scheme rules (and assuming a disputed transaction is not excluded from the definition of a complaint).

It would assist firms if ASIC set out the types of disputes where it considers an extension may be justified.

An alternative approach is to amend RG 165.78 to say that "Financial firms must take all reasonable steps to provide an IDR response to a complainant no later than…" Guidance can then be included as to what constitutes reasonable steps and what is not.

Financial delegations/empowerment of complaints staff

Although not addressed in CP 311, ASIC has indicated it expects that firms equip their complaints handling teams with adequate financial delegations and flagged it will be including guiding principles in the updated RG 165 that complaints handling staff should be able to resolve complaints without recourse to the business unit.

ANZ supports the guiding principle that complaints handling staff should be largely independent from business units in their decision-making about how to resolve a complaint. However, it is not practicable in a business of ANZ's size and complexity to have complaints handling staff that are subject matter experts on all ANZ's products and services, such that all complaints can be resolved without any interaction with the business unit. There will be cases where it will produce the most efficient and fair outcome for a complainant if the complaints handling staff can seek information from the business unit(s) involved.

In terms of financial delegations, rather than providing any specific guidance in RG 165, we suggest that it should be left to individual firms to ensure they have adequate delegations within complaints handling teams to ensure complaints are being resolved in a timely manner and in compliance with the various obligations in RG 165. This is particularly so because the operation of financial delegations within ANZ includes governance and risk management frameworks that support compliance with various other regulations. If ASIC is minded to provide guidance in the updated RG 165 about financial delegations then we would appreciate the opportunity to consider and comment on the specific proposal.

Transitional arrangements period

While there are proposed transitional periods for certain requirements in the updated RG 165, currently all other requirements will be applicable from the date the guide is published.

ANZ considers there should be a general transitional period. It is not practicable or reasonable to expect firms to comply with updated requirements from the date those requirements are published, particularly in circumstances where ASIC has flagged that the final guidance may differ from that proposed - e.g. the obligation for frontline staff to consider whether a complaint raises potential systemic issues. Given ASIC anticipates publishing the updated RG 165 in December 2019 and firms will have a reduced capacity to implement changes during the holiday period in December and January, we suggest an application date of 31 March 2020. We note this is in line with the application date for proposal B11 regarding maximum timeframes for IDR responses.

We also consider that there should be a grace period prior to any core requirement becoming enforceable. This would enable firms to work with the new provisions and make the necessary adjustments, having regard to the complexities and consequences of the changes to personnel, systems and processes, before being in a position where non-compliance could be penalised.

Enforceability of RG 165

It is our understanding that ASIC intends to issue a legislative instrument pursuant to sections 912A(2)(a)(i) and 1017G(2)(a)(i) of the Corporations Act and regulations 7.6.02(1) and 7.9.77 of the Corporations Regulations in respect of making all or key parts of RG 165 enforceable and, as such, subject to civil penalties under s912A(5A). Please let us know if we have misunderstood the enforceability mechanism.

We consider there are difficulties in attempting to assert that all of RG 165 should be enforceable, including in respect of those sections of RG 165 that are wholly or partially expressed to be "best practice". For example:

- RG 165.28-29 require that a firm must adopt the definition of "complaint" specified in RG 165 and deal with all expressions of dissatisfaction that meet this definition in accordance with their IDR process, which in turn must meet the requirements set out in the guide. However, despite the additional guidance provided in the revised RG 165 about what falls within the definition of "complaint", we consider that this term is still subject to considerable interpretation and discretion on the part of the individual firm. Making RG165.29 enforceable could also have the unintended effect of making all of the requirements set out in the guide enforceable (whether or not these are designated as core enforceable elements).

- We consider that if provisions in RG 165 are to be enforceable, the language should reflect this. The language throughout proposed RG 165 is not consistently written in terms of mandatory requirements. For example:
    - RG 165.70 sets out that if it is not possible for the financial firm to acknowledge the complaints within 24 hours, the firm should acknowledge it as soon as practicable
    - RG 165.87 states when complaint files should not be closed
    - RG 165.102 refers to when unresolved disputes should be referred to AFCA
    - RG 165.179 states ASIC expects firms to develop processes to ensure that each complaint is managed objectively
    - RG165.207 says that senior management should conduct or arrange regular reviews of the IDR system
    - RG165.131 says ASIC expects financial firms to have an appropriate 'systemic focus'.

- It is difficult to grasp how the majority of the IDR Standards section of RG 165 (beginning at RG165.138) would be enforced, except to require that firms have an IDR standard and/or complaints management policy. This section notes that IDR standards can be adapted to suit the nature, scale and complexity of each individual firm's business, giving considerable discretion to individual firms as to how they comply with this general guidance.

- RG 165.78 states that firms must provide an IDR response to a complaint no later than 30 days after it is received. However, RG 165.82 acknowledges that there are many variables that can affect response times, and that it is "best practice" for firms to regularly meet or out-perform the maximum IDR timeframes specified in the RG. As noted in ANZ's submissions, in a number of cases, there are valid reasons why a complaint may take longer than 30 (or 45 days) to resolve, and customer outcomes may be improved by taking more

time to investigate and respond to these complaints. If the maximum timeframes are to be enforceable, we consider that RG 165 should:

- require financial firms to take all reasonable steps to meet the required timeframe, or
- set out the breadth of circumstances where an extended timeframe is acceptable, and / or
- include a defence to the maximum timeframe which sets out the circumstances in which a delay does not constitute a breach of the relevant provision.

Regardless of whether core elements, or all of RG 165 are deemed enforceable, it would be useful for ASIC to consider and set out the relevant defences available. This may be analogous to section 940B of the Corporations Act, which sets out that it is not a contravention of the requirement to provide a Financial Services Guide, where the providing entity has not had a reasonable opportunity to provide the FSG. Similarly, section 130 of the National Consumer Credit Protection Act sets out that *reasonable* inquiries or verification steps of a consumer's financial situation is required when assessing suitability.

Without such a defence or "reasonableness overlay", the provisions read as strict liability provisions and appear only subject to the court's discretion as to whether a penalty applies (eg s.1317S of the Corporations Act). This creates a high degree of uncertainty for ASIC, firms and the courts, in an area where there are multiple valid reasons why a "requirement" (such as a timeframe) may not be met. In such instances, failure to comply with RG 165 should not mean the firm is liable or exposed to a civil penalty.

In the event ASIC determines that only certain core obligations should be enforceable, we consider these should be limited to those that directly support customer protections.

Finally, consideration should be given as to whether it is intended for individuals to be responsible for breaches of RG 165, rather than the financial firm. For example, RG 165.198 states that "Staff responsible for a financial firm's IDR process must provide regular reports about complaints data to senior management." RG 165 should make it clear, unless ASIC otherwise intends, that it is the financial firm and not the individuals that would be liable for any breach of RG 165.

Remediation

In our submission of 9 August 2019, we set out the:

- reasons the stipulated timeframes should not apply for remediation complaints
- the benefits of permitting an IDR process, even where the complaint was part of a remediation.

ASIC's premise for requiring remediation complaints to be immediately referred to AFCA is based on an assumption that the financial firm would already have engaged with the complainant through the remediation process. For the reasons set out in our earlier submissions, this is not necessarily the case.

Further, as we understand it, AFCA, based on a similar assumption, generally does not refer remediation complaints back to the financial firm prior to entering the case management stage. (Standalone complaints are sent back to the financial firms for a further 21 days where they have already been through IDR and 45 days if they have not). As we understand it, AFCA also does not necessarily issue a recommendation for remediation complaints but rather expedites such

complaints straight through to determination. This means that once a remediation complaint is referred to AFCA there may be little opportunity to engage with the complainant, compared to the usual standalone dispute.

It may be beneficial for ASIC to consult with AFCA to ensure that the combination of ASIC's new RG 165, its review of RG 256 and AFCA's process for remediation complaints do not result in complainants and firms missing out on an opportunity to resolve a remediation complaint at an early stage.