



NAB RESPONSE TO ASIC CONSULTATION PAPER CP311

Internal Dispute Resolution: Update to
RG 165

9 August 2019

TABLE OF CONTENTS

NAB RESPONSE TO CONSULTATION PAPER 311

ASIC Proposal B1	3
ASIC Proposal B2	4
ASIC Proposal B3	5
ASIC Proposal B4	5
ASIC Proposal B5	6
ASIC Proposal B6	7
ASIC Proposal B7	7
ASIC Proposal B8	8
ASIC Proposal B9	9
ASIC Proposal B10	9
ASIC Proposal B11	10
ASIC Proposal B12	12
ASIC Proposal B13	14
ASIC Proposal B14	15
ASIC Proposal B15	15

B1 ASIC Proposal

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.**

A firm's own social media channels

NAB agrees that complaints made through a financial firm's own social media channels should be dealt with under its IDR processes, provided that the complainant is both identifiable and contactable.

NAB notes that when a firm captures complaints via social media channels, it should not be compelled to resolve any issues via those same social media channels. While a firm may elect to engage with a customer via its social media channels, it should be permissible for a firm to direct the maker of a social media complaint to contact the firm via one of its other established IDR channels (such as a call centre) in order to have the complaint resolved.

Third party social media channels

NAB does not support the proposition that it should be required to handle complaints made on third party social media channels, or on third party media channels more broadly (such as television, radio, or print media).

While a financial firm may voluntarily elect to monitor third party social media channels for commentary or complaints about that firm, it should not be obliged to do so because:

- It is reasonable to expect customers to contact a financial firm directly to make and resolve a complaint, provided that the firm offers and maintains appropriate channels for customer complaints (in addition to its own social media).
- Firms already provide a number of different channels for a customer to easily make a complaint (i.e. in person, online, by telephone or by a firm's social media). The introduction of further complaint channels (via third party social media) would not necessarily improve customer outcomes, in circumstances where the existing channels (including a firm's social media) are effective.
- The scope of the obligation would be almost impossible to define due to constant changes in the number, popularity and functionality of social media platforms.

NAB notes that question B1Q1 seeks to draw a distinction between a firm's own social media platform and an "external platform". The term social media "platforms" can be interpreted to mean a service, site or method of delivering social media (for example, Facebook may be referred to as a social media platform). NAB does not operate any proprietary social media platforms.

Rather, NAB controls accounts on third party social media platforms (the “accounts” are also referred to as “channels” in this response). For this reason, we have interpreted question B1Q1 to be distinguishing between social media accounts / channels controlled by a financial firm, and social media accounts / channels controlled by third parties.

B2 ASIC Proposal

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?

NAB considers that the guidance in draft updated RG 165 on the definition of “complaint” will assist with identifying complaints. However, NAB considers that additional guidance is critical (as set out below in response to B2Q2), including guidance on what ASIC does not consider to be a complaint. NAB believes that this guidance would significantly improve the consistency in and quality of how customers’ complaints are managed across the industry.

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.**

NAB believes that further guidance is required in the following areas:

- **Feedback** – In draft updated RG 165 at RG 165.35, ASIC has identified survey feedback as a forum in which a customer may express dissatisfaction about a firm’s products, services, staff or handling of complaints, without it being required to be considered as a complaint. NAB agrees with this guidance, and believes that the scope of feedback should be expanded to include unprompted or unsolicited feedback (i.e. feedback not provided in response to a survey or questionnaire). NAB would still take this feedback into account but would not treat it as a complaint. Individuals may use social media channels to express negative opinions about a financial firm or its products, services staff, or handling of complaints. NAB considers that, unless a specific issue is raised by the individual, such negative opinions and general social media commentary should not be treated as a complaint.
- **Definition of social media platform** – As noted in the response to B1Q1, the definition of a “social media platform” is ambiguous. In draft updated RG 165 at RG 165.37, ASIC states that it expects a firm’s IDR processes to deal with complaints made “on a firm’s own social media platform(s)”. NAB interprets this to mean social media platforms controlled by the firm, irrespective of whether the platform is owned by the firm or a third party. Further guidance on this matter is required.
- **Timeframes** – When complaints are received via social media channels, it may be practically difficult to identify the complainant in the first instance. For example, as complainants rarely use their full names or real names on social media. In draft updated RG 165 at RG 165.37, ASIC provided guidance that it expects a firm’s IDR processes to deal

with complaints when the complaint is made on a firm's own social media platform(s) and by a complainant who is both identifiable and contactable.

- **“Or about”** – NAB requests further guidance on the addition of the words “or about an organisation” at the end of the first phrase of the proposed definition of a complaint. NAB considers that “or about” should be interpreted to only capture complaints made on a firm's own social media channels. It should not be interpreted to capture complaints made on third party social media channels or on any other third party media platforms (such as television, radio, or print media).
- **Disputed transactions** – Customer complaints about disputed transactions should not be captured as a complaint unless the customer indicates they are unhappy with how their transaction dispute has been handled.

B3 ASIC Proposal

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.

NAB supports the proposed modification to the small business definition in the Corporations Act. NAB agrees that it would be sensible to harmonise the definition in RG 165 with the AFCA definition to ensure consistent access for small business complaints to both IDR and EDR.

NAB notes that B3Q1 indicates that the change to the definition of “small business” would be made for IDR purposes only. NAB would welcome an opportunity to consult on ASIC's proposed amendments to s761G of the Corporations Act to understand how this would be given effect. This would also provide an opportunity to consider how the proposed amendments would interact with the definition of small business in the Banking Code of Practice.

B4 ASIC Proposal

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.

NAB generally supports the proposition that a firm record the complaints it receives, including complaints that are immediately solved at first point of contact.

However, given the nature of resolution at first point of contact it may be that errors in recording of complaints occur. NAB requests that ASIC provide further guidance on (i) what would constitute full compliance with this obligation (including by providing examples); and (ii) what type of assurances ASIC would expect to rely on from firms.

The issue of compliance is particularly relevant in light of ASIC's proposed changes to s912A of the Corporations Act (which would require firms to have *and comply* with an IDR system that complies with RG 165), and the associated implications for breach reporting, including under s912D.

Consistent with our response in section B11Q1, NAB requests that ASIC provide guidance (by way of an example) in ASIC's RG 78 on what may constitute a breach or likely breach of section 912A(1)(g)(i) of the Corporations Act.

B5 ASIC Proposal

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.

NAB sees merit in financial firms assigning a unique identifier to each complaint received and captured.

However complying with this requirement is likely to have an associated time and cost impact, as existing systems and processes may need to be changed. For some financial firms, including NAB, this is likely to be significant. Further detail about the complexities and timeframes around changing NAB's systems and processes is set out in the response to B15 below.

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?**

NAB generally considers that the data set proposed in the data dictionary is appropriate, subject to the following comments about specific data elements:

- "Financial hardship" is included as one of the issue codes. NAB does not consider financial hardship to be a category of "complaint". While financial hardship may be a factor taken into consideration when addressing a customer's complaint, it is not the "issue" on which a complaint (or its resolution) is based.
- NAB considers that the issue code "service and/or administration" is too broad and is unlikely to provide meaningful insight.
- The issue code "Financial service provider decision" should include guidance to clarify that this includes decisions regarding credit-related activities.

- The issue code “charges” should be changed to “Fees, charges and interest”, with subcategories for “unhappy with amount” and “incorrectly charged”.

B6 ASIC Proposal

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?**

NAB’s views on the proposed requirements for IDR data reporting are:

- **Data elements** - NAB’s comments on the adequacy of the data variables / data elements set out in the Data Dictionary are set out in the response to B5Q2.
- **File size** - NAB considers that the proposed maximum size of 25 MB for the CSV files is adequate.
- **Reporting no status change** - NAB agrees that an open complaint should still be reported to ASIC for periods when there has been no change in the status of the complaint.
- **Six monthly reporting** – NAB expects that all financial firms will provide IDR data reports to ASIC on the same period (e.g. 1 January to 30 June, and 1 July to 31 December). This will aid comparability and consistency of data across firms, as any seasonal or periodic influences on complaint volumes that affect the industry as a whole will be equally reflected in firm’s reports.

B7 ASIC Proposal

We propose to publish IDR data at both aggregate and firm level, in accordance with ASIC’s powers under s1 of Sch 2 to the AFCA Act.

B7Q1: What principles should guide ASIC’s approach to the publication of IDR data at both aggregate and firm level?

NAB considers that the following principles should guide ASIC's approach to the publication of IDR data both at aggregate and firm level:

- **Purpose** - ASIC should consider the purposes for publishing each data field, and the behaviour it is intending to drive at both a consumer and firm level. For example, if the intention is to provide a comparison point for consumers, then publishing each firm's complaint rate per customer may be sufficient to achieve this goal.
- **Comparability** – in order to ensure that published data elements can truly be of use to the industry and consumers, the numbers need to be comparable across the financial firms that have provided them (also see NAB's response to B6Q1). In general, publishing relative or proportionate figures (such as the complaint rate per customer) should be preferred over publishing absolute figures (such as total number or complaints). Better insights may also be derived if data is reported at an entity (i.e. product issuer), level rather than a parent company level.
- **Integrity** – before publishing any firm specific data, ASIC should provide the firm with a reasonable opportunity to review and comment on the data to ensure that it is accurate and not open to misinterpretation.
- **Confidentiality and privacy** – the confidentiality and privacy of each complainant's information must be protected and respected. Customer's personal data cannot be published without their consent. NAB acknowledges that personal information (such as complainant's name and address) will not be reported to ASIC. However, consideration should also be given to the size and content of data sets and the ability to re-identify individuals using analytics. Consider whether there should be a minimum number of complaints reported in a category before it is published at a firm or product issuer level.

NAB notes ASIC intends to have a further consultation on the publication of complaints data. NAB looks forward to engaging in that consultation process and notes that the views expressed above may evolve as a result.

B8 ASIC Proposal

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:

- identifying and addressing all the issues raised in the complaint;*
- setting out the financial firms' finding on material questions of fact and referring to the information that supports those findings; and*
- 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?

NAB considers it important to provide customers with comprehensive and targeted responses to their complaints. For this reason NAB believes that ASIC's proposed minimum content requirements for IDR responses are sensible and in the interests of customers.

NAB's view on the proposed minimum content requirements is predicated on the guidance included in draft updated RG 165, specifically that:

- The level of detail in an IDR response should reflect the complexity of the complaint and the nature and extent of an investigation conducted by the firm (RG 165.76). This is important, as not all complaints will require a detailed response.
- If a firm resolves a complaint to the complainant's satisfaction by the end of the fifth business day after receipt, the firm does not need to provide an IDR response to the complainant, unless an exception applies (RG 165.84). This is particularly important for complaints that are handled by front line staff or resolved at the first point of contact as it reflects customer's preferences and is consistent with NAB's experience and ASIC's research.¹

Two additional issues that NAB believes require further consideration are:

- There may be limits on the information that a firm can include in an IDR response. For example, a firm cannot provide customers with any information that would result in the firm being in breach of section 123 (the 'tipping off' provision) of the Anti-Money Laundering/Counter-Terrorism Financing Act 2006 (Cth) (such as in relation to customer exit requirements). There may also be limitations for providing information to joint account holders in certain situations (such as domestic violence).
- If a customer is satisfied that their complaint has been resolved verbally (e.g. at first point of contact for example) ASIC may wish to consider providing customers with an opportunity to verbally opt out of a written communication provided the opt out is recorded by the firm. Similarly, ASIC may wish to consider allowing customers to opt out of receiving a unique identifier or case reference number where the complaint is resolved at first point of contact.

B9 ASIC Proposal

We do not propose to issue a legislative instrument specifically addressing written reasons for complaint decisions made by superannuation trustees.

B9Q1: Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, please provide reasons.

NAB does not consider there is a need to issue a separate legislative instrument as set out in ASIC's proposed approach.

B10 ASIC Proposal

We propose to include the content of IDR responses as a core requirement for all financial firms, including superannuation trustees, in the legislative instrument making parts of RG 165 enforceable: see paragraph 22.

B10Q1: Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary?

¹ ASIC and Nature, "Report 603: The Customer Journey through the Internal Dispute Resolution process of financial service providers" 10 December 2018.

NAB does not consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees.

B11 ASIC Proposal

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.**

NAB's experience is that customer's want timely resolution of any complaint to a financial firm. This is also consistent with ASIC's research.²

For this reason NAB generally agrees with ASIC's proposal to reduce the maximum IDR timeframes for all complaints (excluding complaints related to the provision of personal financial advice ("**Advice Complaints**"), superannuation complaints, complaints about trustees providing traditional services and credit complaints as per RG165.94) from 45 days to 30 days. In fact, NAB already resolves a large proportion of its customer complaints within 30 days.

However, a quick resolution of a customer complaint may not always lead to a satisfactory outcome for customers. This is particularly the case for complaints that contain a high degree of complexity or sensitivity due to customer vulnerability. In these cases, NAB expects that a firm would be required to identify the complexity and/or potential delay at an early stage and issue a delay notification to the customer. A firm would nevertheless be required to use its best efforts to resolve the complaint within 30 days.. NAB considers it critical that the exceptional circumstances in which a delay notification is appropriate are clearly recognised within updated RG165.

As stated, NAB also considers Advice Complaints, superannuation complaints, complaints about trustees providing traditional services and intractable complaints should not be subject to the 30 day maximum IDR timeframe.

A more detailed explanation of NAB's position is outlined below.

Delay notifications

The updated RG 165 at RG 165.118 provides that a financial firm unable to respond to a complaint within the prescribed maximum timeframe must send an IDR delay notification to the complainant. However, ASIC expects this to only occur in "exceptional circumstances".

² ASIC and Nature, "Report 603: The Customer Journey through the Internal Dispute Resolution process of financial service providers" 10 December 2018.

It is unclear what is meant by “exceptional circumstances”. However, as explained above, it should be broad enough to cover all instances where it is not in a customer’s interests to expedite a resolution, or it is beyond a firm’s control to meet the maximum IDR timeframe. At a minimum, NAB would expect this to include:

- complaints that contain a high degree of complexity and sensitivity due customer vulnerability (including financial hardship);
- complaints related to a matter that is aged (historical complaints are often highly complex to investigate and respond to); and
- circumstances where the firm is waiting on the customer to provide relevant information or documents, where the firm has made reasonable efforts to contact the customer or obtain the information from its own databases.

Advice Complaints

NAB considers that the maximum time frame for complaints related to the provision of personal financial advice (“**Advice Complaints**”) should remain 45 days for the following reasons:

- There has been an increased level of complexity in Advice Complaints over recent years, with the shift from simple service complaints to more complex complaints. NAB estimates that at least a third of its Advice Complaints are complex, and this year that is on the rise.
- NAB’s Advice Dispute Resolution Team receives a high volume of complaints in respect of which the root cause relates to advice to take up a regulated superannuation product and SMSF. These types of complaints require a similar level of investigation to the level that the trustee of a regulated superannuation fund requires to reach the right outcome. On this basis, NAB proposes that firms be subject to the same maximum IDR timeframes as trustees of regulated superannuation providers (i.e. 45 days) when those firms are handling Advice Complaints.
- NAB is concerned that reducing the maximum IDR timeframe to 30 days for Advice Complaints will result in compromised customer outcomes for impacted customers. Firms require sufficient time to investigate and respond to Advice Complaints in a considered and thorough manner.
- In the period between October 2018 and June 2019, a substantive response to 99 per cent of Advice Complaints was provided within 45 days, however it was only possible to provide 2.5 per cent of Advice Complaints with a substantive response within 30 days. NAB considers it critical to have that additional 15 days to ensure a thorough consideration of these kinds of complaints.

Intractable complaints

In a small number of cases, customers may have exhausted all IDR and EDR avenues available to them, but remain dissatisfied with the outcomes they have received and persist with their complaint. Given the strength of feeling and persistence which these customers typically apply to their complaints, it may not be feasible for a firm to refuse to engage in any further interaction or negotiation regarding that complaint, especially where the customer has sought recourse to media or political representatives.

Any further dealing with these types of intractable complaints should not be considered part of a firm’s “IDR” process (as a final IDR and EDR response has already been provided), and therefore should not be subject to the maximum IDR timeframes in RG165. NAB recommends that ASIC provide specific guidance to clarify that intractable complaints are outside the scope of RG165.

Failure to meet timeframes

In CP 311 at paragraph 97, ASIC has indicated that it 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. NAB strongly encourages ASIC to provide this guidance.

NAB recommends that ASIC provide this guidance by including specific examples in RG 78 on what may constitute a significant breach, or likely breach, of s912A(1)(g)(i) of the Corporations Act.

Superannuation complaints

NAB agrees with ASIC's proposal to reduce the maximum IDR timeframes for superannuation complaints and complaints about trustees providing traditional services from 90 days to 45 days. However, NAB believes that the maximum timeframe for these kinds of complaints should not be reduced any further.

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?

As noted in NAB's response to B11Q1 above, NAB supports a 45 day maximum IDR timeframe for Advice Complaints and superannuation complaints. It also believes that intractable complaints should not be subject to any maximum timeframe.

For this reason, NAB does not support moving towards a single maximum IDR timeframe for all complaints.

B12 ASIC Proposal

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.

NAB has two customer advocates (engaged as consultants, not employees) whose role is to:

- (i) consider and recommend a resolution to NAB in respect of customer complaints that have not been resolved to the customer's satisfaction by the firm's IDR process (or 'specialist complaints teams' as referred to in CP311). NAB's customer advocate cannot review a complaint or matter determined by an EDR process; and
- (ii) undertake thematic reviews of systemic issues across the firm, including those identified through reviews of customer complaint files that have been closed through NAB's IDR process.

Insights from both elements of the customer advocates' role are shared with relevant parts of the firm, including (if appropriate) recommended actions to avoid risk of customer harm, and improve customer experience, in future.

The customer advocates are supported by a small office (known as the Office of the Customer Advocate) of NAB employees who provide additional services to customers seeking a review by the customer advocate. This may include helping a customer to articulate their complaint, particularly if the customer is vulnerable (through age, illness, mental or physical health or disability) or has low financial literacy. The Office of the Customer Advocate can also assist

customers who have complex complaints, which may include gathering documents, contacting third parties or assisting with communication.

NAB considers that, together, its customer advocates and the Office of the Customer Advocate play a critical role in resolving complaints for customers in exceptional circumstances, at the conclusion of the firm's IDR process. As an organisation, NAB is committed to improving its IDR process to provide a genuine, prompt, fair and consistent complaint handling experience to all customers. Feedback and recommendations from (individual and thematic) reviews undertaken by the customer advocates serve to improve NAB's IDR process for *all* customers, and to assist a significantly smaller number of customers in exceptional cases. Given the nature and sequencing of their role, however, it is not appropriate or feasible for the customer advocates to comply with the IDR timeframes (set out in RG165). To do so would be contrary to customer interests.

B12Q2: Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position.

As discussed in its response to B12Q1, NAB considers that there is a role for the customer advocate in reviewing complaints that have not been solved to the customer's satisfaction by its IDR process (or 'specialist complaints team' as described in CP 311). However, this should not take priority to maintaining and improving the IDR process so that it can efficiently and effectively resolve complaints to the satisfaction of the vast majority of customers.

The demonstrated benefits to customer outcomes from a model that permits a complaint review by the customer advocates at the conclusion of the IDR process, are as follows:

- Tailored and effective complaint resolution for customers in exceptional circumstances, who may need specialist support, including to assist with marshalling and communicating relevant facts;
- Extended timeframes to accommodate customers who may need to source documents, or take longer periods to undertake the necessary steps to review complex factual scenarios;
- Highly skilled advocacy based on deep industry experience and capability to review a particular customer's complaint having regard to ethical, legal and regulatory considerations;
- Effective feedback from individual and thematic reviews to fix and improve the IDR process, and other products and services in circumstances where the firm has got something wrong;
- Provides an avenue for review when access to other complaint review forums may not otherwise be available due to the historic nature of a complaint (that is time barred), the cost of access to the judicial system, or the quantum or age of the complaint falling outside the jurisdiction of alternative EDR forums (such as AFCA).

There may be other models, or combinations of models, that a firm could adopt for its customer advocates. Which model, or combination of models, is likely to best improve customer outcomes is ultimately a question for each firm. It's likely that models will continue to evolve and innovate as it and IDR functions mature.

NAB acknowledges ASIC's concerns regarding customer confusion about the role of the customer advocate (this was highlighted for some banks and their customers in the Deloitte Touche

Tohmatus 'Customer Advocate Initiative: Post-Implementation Review'³). NAB has not observed or experienced this confusion with its customers. NAB has been very deliberate in its disclosure about the role of its customer advocate, emphasising that this is an option that is available to NAB customers but that at any time they can refer their concerns to AFCA. Notwithstanding this, NAB has committed to taking steps to further emphasise accessibility to AFCA for an independent review of a complaint, and provide increased information on the role and purpose of the customer advocate (including that this is an internal review).

B13 ASIC Proposal

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.

NAB understands the proposal to introduce new requirements on financial firms regarding systemic issue identification, escalation and analysis. However, care should be taken to prevent RG 165 from becoming too prescriptive. For example:

- Draft updated RG 165 at RG 165.129 requires boards and “financial firm owners” (in NAB’s case - its shareholders) to set clear accountabilities for complaints handling functions, including setting thresholds for and processes around identifying systemic issues that arise from consumer complaints. However, it is the role of management to establish and execute the day to day operations of the business, and it is the role of the board to oversee management. Setting thresholds for and processes around identifying systemic issues is an operational matter that should properly be delegated by the board, to the

³ Report Commissioned by the Australian Banking Association, May 2019
<https://www.ausbanking.org.au/wp-content/uploads/2019/05/Customer-Advocate-Post-Implementation-Review.pdf>

CEO, and then to senior management. It is for senior management to provide board reports.

- It may not be appropriate for all “financial firm owners” (in NAB’s case - its shareholders) to be involved in setting accountabilities for complaints handling functions. It does not appear to be ASIC’s intent that shareholders of publicly listed companies should be involved with setting thresholds and processes for systemic issue identification, however it is unclear from the drafting. NAB requests that this matter be clarified.
- Draft updated RG 165 at RG 165.198 requires that staff must provide regular reports about complaints data to the firm’s board covering 12 specific data metrics (including number of complaints received and closed, time taken to acknowledge and resolve complaints, complaint outcomes etc.). NAB’s view is that providing more complaints data to a board may not necessarily result in a board that is better informed or better placed to identify and act on systemic issues. Complaints data is one of many sources of data and insight and must be looked at in context. Whichever set of data is required to be made available to a board, NAB would expect management to be able to consider and present the data in an appropriate manner and with appropriate commentary. This will ensure that the board is provided with the insights needed to address systemic issues and resolve customer harm.

B14 ASIC Proposal

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.

NAB does not have any concerns with ASIC’s approach to the application of AS/NZS 10002:2014 in draft updated RG 165.

B15 ASIC Proposal

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.

Table 2: Proposed transitional periods

<i>Requirement</i>	<i>Reference in draft updated RG 165</i>	<i>Application date</i>
<i>To provide an IDR response to a complainant within reduced maximum IDR timeframes</i>	<i>RG 165.78–RG 165.117</i>	<i>31 March 2020</i>
<i>To record all complaints received by the financial firm, including those that have been resolved immediately</i>	<i>RG 165.57</i>	<i>30 June 2020</i>
<i>To assign a unique identifier for all complaints received by the financial firm</i>	<i>RG 165.58</i>	<i>30 June 2020</i>
<i>To record prescribed complaint data for every complaint received by the firm</i>	<i>RG 165.61–RG 165.62</i>	<i>30 June 2020</i>

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.

NAB's view is that the significant changes outlined in draft updated RG165 will require time for firms to effectively and sustainably implement. In particular, firms will require significant time to:

- design, implement and test any system replacements or upgrades that are deemed necessary. NAB considers that changes to its own systems are likely to be required to facilitate the capture of all complaints (including those resolved at the first point of contact) and to facilitate the reporting of ASIC's prescribed data elements;
- recruit and train people with the applicable skills to support any system upgrade and adopt any process changes; and
- achieve required cultural change – with existing staff and new staff - consistently across a complex organisation.

The time required to achieve the above cannot be compressed into a shorter timeframe if effective results are to be attained.

In light of the above, it is NAB's view that the proposed transition periods in Table 2 are insufficient for NAB to prepare its internal processes, staff and systems, and to achieve the desired cultural change, to meet draft updated RG 165. NAB requests that ASIC grant financial firms to 30 June 2021 to comply with the new requirements with the exception of IDR data reporting requirements under B7 for which NAB requests an implementation date of 31 December 2021.

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

As noted above, NAB considers that longer transitional periods will be required to implement the entirety of the updated RG 165, especially where further changes are made to the draft updated RG165 post this consultation period. NAB also requests that, should ASIC allocate 'core IDR requirements' in the updated RG165 (as referred to in CP311 at paragraph 22) that do not fall within Table 5, the implementation period for those requirements be at least 30 June 2021.