

Submission: Consultation Paper 311: Internal dispute resolution: Update to RG 165

Australian Timeshare and Holiday Ownership Council

The Australian Timeshare and Holiday Ownership Council (**ATHOC, we, our, or us**) is the industry body for the timeshare industry. ATHOC is a not-for-profit industry body established in 1994 to represent all interests involved in the Australian timeshare industry, and to work toward national industry best practice.

ATHOC operates nationally with an elected board representing a range of membership categories covering resorts, timeshare owners, developers and promoters, marketers, exchange companies and organisations providing professional advice to the timeshare industry.

ATHOC aims to foster a high standard of ethics and adherence to industry best practice amongst its members and to maintain good standing with all stakeholders (by requiring its members to abide by a code of ethics and a code of practice), to continually promote the benefits of the industry and to protect the goodwill of both members and consumers, and to assist members to achieve growth and profitability.

ATHOC's members include several AFS licensees, in particular responsible entities of timeshare schemes and sellers of timeshare and this submission is made on behalf of those members. These licensees are subject to the requirement to have IDR processes that comply with standards and requirements made or approved by ASIC and are also members of the Australian Financial Complaints Authority (**AFCA**).

Consumers who acquire timeshare products from a responsible entity may obtain a loan to assist fund such purchase. The lender will hold an Australian credit licence and while such entities are not members of ATHOC they are related to, or work in conjunction with, a responsible entity of a timeshare scheme. Credit licensees are also subject to the requirement to have IDR processes that comply with standards and requirements made or approved by ASIC and are members of AFCA.

ATHOC has consulted with a number of its AFS licensee members and makes the following submissions on behalf of those members.

Questions for discussion	Response
<p>Proposal B1</p> <p>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:</p> <p><i>[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</i></p> <p>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).</p>	
<p>B1Q1</p>	<p>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:</p> <p>(a) how you currently deal with complaints made through social media channels; and</p> <p>(b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm's own social media platform or an external platform</p> <p>ATHOC agrees that complaints made through a financial firm's own social media platform should be dealt with under the IDR processes where:</p> <p>(a) the consumer is identifiable; and</p> <p>(b) the consumer is a retail client to whom the financial firm has provided financial or credit services.</p> <p>ATHOC considers that item (b) reflects the requirements of section 912A(2)(a) and it is necessary to specify this restriction in the context of complaints made via social media platforms. This is because traditional complaints channels, such as email and phone, are advised to retail clients via PDSs, FSGs and other communications (that is, retail clients to whom financial services are provided or offered are given such details but they are not generally sought out by the wider public).</p> <p>In contrast, social medial platforms are used to communicate with, and typically accessible by, the public at large and the updated RG 165 should clarify that not only must the consumer be identifiable but they should be a retail client to whom financial or credit services are provided.</p> <p>Financial firms which have their own social media platforms use such platforms as a means of communicating with clients (as well as the wider public) and receiving feedback from clients. As such feedback may include complaints, it is appropriate that a financial firm's own</p>

Questions for discussion	Response
	<p>social media platform be a channel through which complaints may be made.</p> <p>However, ATHOC does not consider financial firms should be obliged to monitor external social media platforms for the purpose of identifying complaints and dealing with such complaints under the IDR processes. In this context, ATHOC understands that, for example, a financial firm’s own social media platform is their own Facebook page or Instagram account and an external social media platform would be the Facebook page or Instagram account of a third party.</p> <p>ATHOC believes such obligation would be unduly onerous and that a distinction needs to be drawn between a financial firm’s own social media platform (the purpose of which is to communicate with clients and the wider public) and external social media platforms (which are not operated or promoted by a financial firm for the purpose of communicating with clients).</p> <p>ATHOC also notes that, as with other complaints, complaints made via a social media platform will only be required to be dealt under the IDR process if a response or resolution is explicitly or implicitly expected or legally required.</p> <p>Currently, some ATHOC members who utilise social media platforms monitor their platforms for complaints and where the consumer is identifiable and a retail client to whom financial services are provided, such complaint is dealt with under IDR processes. However, those ATHOC members do not monitor external platforms for the purpose of identifying and resolving complaints.</p>

Questions for discussion		Response
<p>Proposal B2</p> <p>We propose to introduce additional guidance in draft updated RG 165 to clarify:</p> <p>(a) the factors a financial firm should, and should not, consider when determining whether a matter raised by a consumer is a complaint; and</p> <p>(b) the point at which a complaint must be dealt with under a financial firm’s IDR process.</p> <p>See draft updated RG 165 at RG 165.32– RG 165.37 at Attachment 1 to this paper.</p>		
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?	ATHOC considers that the guidance provided in draft RG165.32-37 assists in clarifying what constitutes a complaint.
B2Q2	Is additional guidance required for 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.	ATHOC does not believe that any further guidance is required.
<p>Proposal B3</p> <p>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</p>		
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	ATHOC has no objection to the proposed modification to the definition.
<p>Proposal B4</p> <p>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.</p> <p>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.</p>		
B4Q1	Do you agree that firms should record all complaints that they receive? If not, please provide reasons.	ATHOC is concerned that requiring firms to record complaints which are resolved to a complainant’s satisfaction within five business days

Questions for discussion		Response
		<p>of receipt will impose an unreasonable administrative burden. Timeshare schemes provide holiday accommodation for their members, with such accommodation typically located at hotels and resorts. Given the broad definition of complaint, ATHOC's concern is that minor accommodation-related complaints from members such as that lack of cutlery, insufficient number of towels, bathroom cleanliness, etc. which are resolved immediately, would need to be recorded and this would impose any unnecessary administrative burden on hotel or resort staff.</p> <p>ATHOC submits that the requirement to record all complaints should exclude complaints which are resolved to the complaint's satisfaction immediately (i.e. within 24 hours). Alternatively, ASIC should clarify that the IDR process relates only to complaints about financial services and products. ATHOC believes that either approach will ensure that the complaints recording obligation does not create an unreasonable administrative burden while making certain that the complaints recording process captures sufficient data to assist financial firms with identifying potential issues in the provision of financial services and to improve the client experience.</p> <p>In addition, please refer to our submission on proposal B5Q2 relating to the extent of information recorded.</p>
<p>Proposal B5</p> <p>To facilitate the effective operation of the IDR data reporting regime, we propose to require all financial firms to:</p> <p>(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</p> <p>(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)</p>		
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	ATHOC agrees with each complaint that is recorded being allocated a unique identifier (noting the submission in B4Q1 regarding complaints which should not be required to be recorded).

Questions for discussion	Response
<p>B5Q2 Do you consider that the data set proposed in the data dictionary is appropriate? In particular:</p> <p>(a) Do the data elements for 'products and services line, category and type' cover all the products and services that your financial firm offers;</p> <p>and</p> <p>(b) Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail?</p>	<p>ATHOC submits that the following data sets are inappropriate and should not be required to be recorded or required for IDR data reporting purposes:</p> <p>(a) complainant gender;</p> <p>(b) complainant age;</p> <p>(c) Aboriginal or Torres Strait Islander; and</p> <p>(d) complainant geographic state.</p> <p>In relation to timeshare clubs, a complainant may not always be the member and it could be a person appointed as an agent or attorney of the member. Accordingly, the licensee may not know the complainant's gender, age or the state in which they reside. In terms of Aboriginal or Torres Strait Islander status, timeshare clubs do not collect this information from their members.</p> <p>ATHOC is concerned that a complainant, particularly a complainant whose complaint is resolved to their satisfaction within 5 business days, may be offended if asked for this information (as they will likely view it as irrelevant for the purposes of considering and resolving their complaint). Indeed, requesting such information may itself trigger an expression of dissatisfaction from the complainant resulting in a further complaint to be addressed.</p> <p>ATHOC acknowledges that the proposed data dictionary includes an 'Unknown' code. However, as the obligation will be to collect and record the prescribed data and ASIC proposes to modify the law to require financial firms to comply with the IDR standards (including the complaint recording obligations), ATHOC is concerned that a failure to collect some information will be a breach by the financial firm of its statutory obligations (i.e. using the 'Unknown' code will constitute a breach of the requirement to collect that information). Further, ATHOC does not consider that the collection of such information is necessary or required in order to resolve disputes or assist in identifying potential systemic issues.</p>

Questions for discussion		Response
		<p>The data elements for 'products and services line, category and type' cover the products and services offers by ATHOC's licensee members. However, if ATHOC's recommendations at B4Q1 are not accepted and all complainants are required to be recorded (including those resolved immediately and complaints not related to financial services) then a majority of complaints to timeshare providers will be characterised as complaint type (item 32) 'Other' which will then detract from the usefulness of complaint data for both the licensee and ASIC.</p> <p>ATHOC considers the 'complaint issue' and 'financial compensation' codes provide adequate detail.</p>
<p>Proposal B6</p> <p>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:</p> <p>(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;</p> <p>(b) provide IDR data reports to ASIC as unit record data (i.e. one row of data for each complaint);</p> <p>(c) report to ASIC at six monthly intervals by the end of the calendar month following each reporting period; and</p> <p>(d) lodge IDR data reports through the ASIC Regulatory Portal as comma-separated-value (CSV) files (25 MB maximum size).</p>		
B6Q1	<p>Do you agree with our proposed requirements for IDR data reporting? In particular:</p> <p>(a) Are the proposed data variables set out in the draft IDR data dictionary appropriate?</p> <p>(b) Is the proposed maximum size of 25 MB for the CSV files adequate?</p> <p>(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?</p>	<p>As stated at B5Q2, ATHOC submits that the gender, age, Aboriginal and Torres Strait Islander and geographic state demographic data elements in Table 3 are not appropriate for the reasons stated at B5Q2 and should not be included.</p> <p>ATHOC believes the maximum CSV file size is adequate.</p> <p>ATHOC submits that open complaints which have not changed over a reporting period should not be included in the ASIC report.</p>

Questions for discussion		Response
<p>Proposal B7</p> <p>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.</p>		
B7Q1	<p>What principles should guide ASIC’s approach to the publication of IDR data at both the aggregate and firm level?</p>	<p>ATHOC considers a key guiding principle for publication of IDR data should be the confidentiality of the identity of the financial firm. The purpose of the data should be to provide information about the nature, number, status, etc. of complaints which can be analysed by sector, product type, etc.</p> <p>ATHOC submits that identifying the financial firm is not necessary in order to provide financial firms and consumers meaningful information regarding complaints.</p>
<p>Proposal B8</p> <p>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:</p> <p>(a) identifying and addressing all the issues raised in the complaint;</p> <p>(b) setting out the financial firms’ finding on material questions of fact and referring to the information that supports those findings; and</p> <p>(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.</p>		
B8Q1	<p>Do you agree with our minimum content requirements for IDR responses? If not, why not?</p>	<p>ATHOC agrees with the minimum content requirements.</p>
<p>Proposal B9</p> <p>We do not propose to issue a legislative instrument specifically addressing written reasons for complaint decisions made by superannuation trustees.</p>		
B9Q1	<p>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.</p>	<p>ATHOC has no comment on this query as it is not applicable to ATHOC’s members.</p>

Questions for discussion		Response
<p>Proposal B10</p> <p>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.</p>		
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	ATHOC has no comment on this query as its members are not superannuation trustees.
<p>Proposal B11</p> <p>We propose to:</p> <p>(a) reduce the maximum IDR timeframe for superannuation complaints and complaints about trustees providing traditional services from 90 days to 45 days;</p> <p>(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</p> <p>(c) introduce a requirement that financial firms can issue IDR delay notifications in exceptional circumstances only</p>		
B11Q1	Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide: (a) reasons and any proposals for alternative maximum IDR timeframes; and (b) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line.	<p>ATHOC's licensee members generally provide a final response within the proposed maximum IDR time frame of 30 days. However, there are circumstances where the final response takes longer than 30 days, such as where additional information is required from the consumer in order to properly investigate and consider the complaint and there are delays in the consumer providing the information, or the complaint relates to an issue which occurred a number of years ago and the records are stored offsite or information is required from various stakeholders.</p> <p>Accordingly, ATHOC submits that if the maximum IDR time frame is reduced to 30 days that the ability to issue IDR delay notifications should apply in exceptional circumstances or where the delay is due to the complainant or a third party not providing information or documents required to respond to the complaint in a timely manner (and, in such circumstance, the final response should be provided within 5 days of receiving the information or documents or, in any event, within 45 days of the complaint being made).</p>

Questions for discussion		Response
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.	ATHOC agrees that if a decision is made to reduce the maximum IDR time frame to 30 days then it should apply to all financial firms (other than the exceptions noted at B11(b)).
<p>Proposal B12</p> <p>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:</p> <p>(a) act as an escalation point for unresolved consumer complaints;</p> <p>(b) have a formal role in making decisions on individual complaints.</p>		
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.	ATHOC's members do not currently utilise consumer advocates. However, ATHOC supports ASIC's position that the involvement of consumer advocates should not result in the IDR process being extended beyond the applicable maximum IDR time frame or prevent complainants from exercising their right to access AFCA.
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	ATHOC does not consider such model will improve consumer outcomes as consumer will still perceive a consumer advocate as being aligned with the financial firm (as the advocate will be employed or engaged, and therefore remunerated, by the financial firm) and complaints handling staff are trained to treat each complaint on its merits, including to assist consumers to explain or articulate their complaint where necessary.

Questions for discussion	Response
<p>Proposal B13</p> <p>We propose to introduce new requirements on financial firms regarding systemic issue identification, escalation and analysis:</p> <p>(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.</p> <p>(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.</p> <p>(c) Financial firms must identify possible systemic issues from complaints by:</p> <p>(i) requiring staff who record new complaints and/or manage complaints to consider whether each complaint involves potentially systemic issues;</p> <p>(ii) regularly analysing complaint data sets; and</p> <p>(iii) conducting root-cause analysis on recurring complaints and complaints that raise concerns about systemic issues.</p> <p>(d) Financial firm staff who handle complaints must promptly escalate possible systemic issues they identify to appropriate areas for action.</p> <p>(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.</p> <p>See draft updated RG 165 at RG 165.128–RG 165.133 at Attachment 1 to this paper.</p>	
B13Q1	<p>Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.</p> <p>ATHOC notes that its licensee members, as responsible entities who maintain a compliance committee, currently have processes in place to analyse complaints to identify potential systemic issues and to report any actual or potential systemic issues to the compliance committee and/or board.</p> <p>Accordingly, ATHOC supports the new requirements proposed by ASIC. However, in relation to paragraph (b), ATHOC recommends that the body to whom the analysis of complaints and any potential systemic issues is reported be the board, executive committee or compliance committee to recognise that the body responsible for considering and analysing complaints differs between financial firms depending on the type of financial or credit services provided and the nature, scale and complexity of the financial firm.</p>

Questions for discussion		Response
<p>Proposal B14</p> <p>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.</p>		
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.	ATHOC agrees with this approach.
<p>Proposal B15</p> <p>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.</p>		
B15Q1	Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your proposals for alternative implementation periods	<p>ATHOC considers a six month transition period to be appropriate (i.e. an application date of 30 June 2020 on the basis the updated RG 165 and accompanying legislative instrument are issued in December 2019).</p> <p>ATHOC submits the transition period for all new requirements should be consistent (other than the requirement to report IDR data to ASIC as this will be subject to further consultation). Accordingly, the application date for the reduced maximum IDR timeframes should also be 30 June 2020 (instead of 31 March 2020).</p>
B15Q2	Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.	ATHOC recommends that a six month transitional period apply for all the new or amended requirements proposed by ASIC (other than the reporting of IDR data to ASIC), including the revised definition of complaint (including extension to social media channels), enforceability of RG 165, application of the updated AS/NZS 10002:2014, proposed new systemic issue requirements and other items listed in table 1 of CP 311. This will enable financial firms to, upon the release of the updated RG 165 and accompanying legislative instrument, identify all new requirements and have a single process and consistent time frame for reviewing and updating internal processes and systems and training staff.