FINANCIAL SERVICES COUNCIL

INTERNAL DISPUTE RESOLUTION

Submission to ASIC

9 August 2019

About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost $3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

Background

In May 2019, the Australian Securities and Investments Commission ("**ASIC**") released Consultation Paper 311 titled "Internal Disputes Resolution: Update to RG 165 ("**CP311**") with attached draft updated Regulatory Guide 165 "Internal Disputes Resolution". CP311 outlines ASIC's proposed changes to the pre-existing Internal Disputes Resolution (**IDR**) requirements, as part of its oversight role of the Australian Financial Complaints Authority (**AFCA**); and invited feedback by way of submission by 9 August 2019.

FSC submission to ASIC

We thank you for the opportunity for the FSC to make this submission which includes FSC's feedback on CP311. Whilst, our Members are supportive of CP311 in principle, this submission includes comments and suggestions on their behalf with a view to improving the new regime.

We would welcome the opportunity to discuss further any queries ASIC may have in connection with FSC's submissions.

Dated: 9 August 2019

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FSC Submission on CP311

Introduction

In summary, we note that CP 311 proposes to update the existing IDR requirements in RG 165 to:

(a) align with the new statutory requirements for IDR;
(b) reflect the standards for effective complaints handling in AS/NZS 10002:2014 *Guidelines for complaint management in organizations* (AS/NZS 10002:2014); and
(c) refine the IDR requirements in some key areas based on ASIC's experience in administering the policy.

As noted above, FSC Members are supportive of CP315 in principle. In this submission we raise issues of concern and suggest changes to address these concerns to make the new regime more practical and to ensure that it sets the right balance between workability from the industry perspective and improving consumer outcomes.

The following paragraphs set out our feedback in relation to some of the specified questions referred to in CP311 as well as some general comments. Please note that the terminology used in this submission, other than as defined in this document for convenience, is consistent with the terms used in CP311 and attached updated RG165, as applicable.

1. **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.**

Our Members acknowledge that complaints made on a firm's own social media platforms can be monitored and dealt with under IDR processes provided that the complainant is identifiable and contactable.

In practice, it is noted that some customers may choose to express dissatisfaction on a firm's social media platform, rather than directly, to maintain anonymity or because they do not want to participate in an IDR process. In this regard, Members believe that they should be permitted to initially reply to these customers via social media to determine the extent of the feedback, how best to address it and if there is an expectation of further response or action from the customer before initiating the IDR process, if applicable.

In particular, it is likely to be impossible to manage expressions of dissatisfaction made anonymously. Guidance is sought from ASIC to confirm that an anonymous expression of dissatisfaction is not to be treated as a complaint, as the anonymity precludes the expectation that a response is sought. Further, where a consumer who has made an anonymous expression of dissatisfaction agrees to be identified so that the firm may deal with the concerns raised, guidance is sought from ASIC that the timeframe for responding

would start when the consumer is identified and not from when the anonymous expression was first made.

Our Members are concerned that RG 165.36 and RG165.37 suggests that firms may be expected to proactively monitor social media external to the firm's own social media platforms. RG165.37 says 'at a minimum' a firm is expected to deal with complaints on its social media platform. Further, the proposed definition of complaint has changed to include expressions of dissatisfaction made "about" a firm. These appear to imply that ASIC may come to expect that firms actively search social media external to the firm; however, it is not clear in the proposed regulatory guide whether ASIC holds that expectation, the extent of any expectation as to how broadly a firm may be required to search the internet nor whether ASIC will have different expectations for larger firms than smaller firms.

Further, broadening the definition to include "about" is likely to result in increased subjectivity in what may be considered a complaint. This may lead to inefficient complaints handling. Staff that could respond to direct complaints may be redirected to monitor external platforms for expressions of dissatisfaction. Stress on resources may be further increased in determining what constitutes a complaint under the more subjective definition.

FSC firmly submits that social media channels external to the firm should not be in scope. It would create a significant overhead for funds to monitor 'external' social media sources and create considerable uncertainty as to the scope of this obligation. For the reasons stated above, this open-ended responsibility is impractical and would be very difficult to comply with. In this regard, we note that the definition of "complaint" is not aligned with the current international standard ISO 10002:2018.

We submit either that ASIC align the definition of complaint to ISO 10002:2018 to remove the requirement to address expressions of dissatisfaction made "about" a firm or that it clarify in the regulatory guide that the requirement to identify complaints on social media be limited to social media platforms owned and managed by the firm for all firms regardless of size.

2. **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?**

Please refer to our response to question B1Q1 and B2Q2.

[Query – Members have not provided any comment on this question to date, - please advise if you wish to make any comment now – last opportunity!]

3. **B2Q2 Is any additional guidance required about the definition of 'complaint'? If yes, please provide: details of any issues that require clarification; and any other examples of 'what is' or 'what is not' a complaint that should be included in draft updated RG 165.**

Draft RG 165 provides examples of what is not a 'complaint'. It would be helpful to include examples of what is a 'complaint' and additional guidance both as to how ASIC interprets the term "expression of dissatisfaction" and in what circumstances ASIC considers that a

response is “implicitly” required. For example, front line staff in call centres or claims teams may encounter frustrated or upset customers. Interpretation as to when the line is crossed from: a) information such as that a document was missing from a letter or a request for information or clarification; b) feedback such as that the customer needs something explained to them; or c) an expression of emotion such as upset at an image in a document to an expression of dissatisfaction may differ between firms. As ASIC is proposing that firms record all complaints, including those resolved immediately or within five business days which would capture these types of complaints, clarification on ASIC’s expectations on these types of situations would be beneficial.

Also, it would very helpful if there were additional related guidance on:

(a) what is not a complaint: this will lead to better consistency throughout the industry, for example: the expression of negative opinions per se;
(b) a clear definition of “social media platform”
(c) timeframes and what would comprise reasonable steps to identify and contact the member where a complaint is made via social media (noting that people may not use their actual name on their social media accounts);
(d) the meaning of the words “or about” in the definition of “compliant” – which we submit that this should only be taken to mean complaints via a fund’s social media accounts that they administer *(please refer to our B1Q1 response above)*, and;
(e) clarification whether an objection to a proposed decision about the distribution of a death benefit by a superannuation trustee should be treated as a complaint or not. For the reasons set out below, the FSC believes that this should not be the case.

CP311 notes at paragraph 40 that superannuation trustees appear to differ in whether they treat an objection to a decision about the distribution of a superannuation death benefits as a complaint or not. We believe there are valid reasons why objections are not treated as complaints, including for the following reasons:

- As part of the claim staking process, the trustee forms a preliminary decision on how and to whom the trustee proposes to pay the benefit. This proposal is sent to all potential beneficiaries explaining that they may object to the proposal by writing to the trustee within a specified period of time after receiving the letter. At the point that an objection is lodged, the Trustee has not made a final decision and no action has been taken to release any of the benefits.

- The Trustee has obligations to consider the interests of all potential beneficiaries - not just the beneficiary who may be objecting. This is why the Trustee sends a letter to each person with an interest in the payment of the death benefit to ensure all information and evidence has been considered before making the final decision.

- Not all objections are ‘expressions of dissatisfaction’. An objection may in fact be a query about a determination, or to request that a payment is made to an estate instead of an individual.

- The Trustee will not only consider the interests of the person(s) objecting but any impact the information the objector provides on an eligible beneficiary such as minor children and any beneficiary with a disability, financial dependency or an interdependent relationship.

- Dealing with objections is a highly specialised area, often requiring subject matter expertise. Trustees are also bound by the Trust Deed and relevant legislation in determining whom they can make payments to.

- At the conclusion of the objection review process, a letter is sent to the objector and all prospective beneficiaries informing them of the decision and the reasons for the decision:

    - where the original decision is amended, a further period of time is provided for any further objections to be lodged. If objections were considered to be complaints, it may not be possible to close the complaint until any further objections have been received and resolved;

    - where the original decision is not amended, the Trustee issues a final determination affirming the decision and providing details for escalation of the matter to IDR processes or to AFCA.

Similar considerations arise for decision-making processes which involve a financial firm providing procedural fairness to a customer prior to a decision being made, or a request for a further assessment of a claim upon provision of further information. In those circumstances, the FSC believes that no complaint should be registered, as these processes represent claim processes, and are subject to claim timeframes.

In summary, there is a clear and well-defined legislative process for objections in the context of death benefits. The complaints process should not be overlaid on this position. This would give rise to confusion amongst trustees and members and inefficiencies and be inconsistent with the legislative intent.

4. *B4Q1 Do you agree that firms should record all complaints that they receive? If not, please provide reasons*

The FSC generally supports this proposal.

The FSC notes that there are considerations regarding the extent of the additional obligations the regulatory guide seeks to impose on complaints made at first point of contact and which can be dealt with in 5 days or less. In particular, the FSC considers that a reduced data set may be appropriate in these circumstances. For example, it is impractical and may create a negative customer experience to collect all of the proposed demographic data on a customer during a relatively simple complaint as to customer service. The administrative burden of later searching internal systems for all of the data points is likely to be considerable and highly disproportionate to the resolution of the complaint which has significant negative implications for resourcing and workflow, particularly for smaller firms.

These requirements may negatively impact overall service levels leading to diminished member outcomes.

The FSC also refers to the answer to B2Q2, and seeks from ASIC greater clarity in the regulatory guide as to the criteria for a complaint which will reduce minimise subjectivity being applied by front line staff handling customer complaints and drive greater consistency in complaints handling across the industry.

5. ***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.***

The FSC generally supports this proposal.

The FSC does seek guidance from ASIC as to whether its expectation is that one unique identifier be required to be assigned to a complaint where is it handled more than once. For example, it is quite possible that different systems may be employed by firms to records complaints handled by front line staff within 5 days, compared to complaints that are required to go through the formal IDR response process. It is possible that a complaint could be assigned a unique identifier at the front line stage, a different unique identifier at the IDR stage and potentially another unique identifier at the EDR stage if the complaint progresses that far.

The FSC submits that it would impose a considerable financial and technological burden on firms to require the use of a single system for all complaints when each stage of the complaint process, front line, IDR and EDR, have substantially different requirements and may be ill suited to management through a single system. It poses considerable technological and process difficulties to require different systems to force the assignment of a unique identifier from an earlier process particularly as it is likely that most systems will assign identifiers sequentially and forcing the IDR system to adopt the same number as the front line system may prove difficult as the number of front line complaints is likely to be significantly greater than the number of IDR complaints, so the assignment of identifiers is not likely to be aligned.

The FSC submits that ASIC should clarify that a complaint may be assigned different unique identifiers at different stages of the complaint lifecycle – front line, IDR and EDR – provide that these unique identifiers can be cross referenced to allow a complaint to be tracked across those different stages. It is expected that firms make take different approaches to assigning unique identifiers depending on their size, complexity, process and systems and the FSC submits that the requirement for a unique identifier ought not be too prescriptive to impose unnecessary system changes on firms provided that each complaint can be identified and tracked throughout its entire lifecycle.

6. ***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?***

The FSC agrees that the proposed data set and data dictionary are generally appropriate however it does have comment on some of the specific categories as follows:

- As discussed above in the response to B4Q1, it is likely to be impractical to capture large amounts of data when dealing with front line complaints (those resolvable within 5 days) and later data entry is likely to require disproportionate effort. FSC members request that ASIC give consideration to a significantly reduced data set, particularly involving customer demographics and other details which may need to be collected directly from consumers, for complaints resolved at first contact and within 5 days.
- In addition, we propose that for the demographic data collection additional codes be included for "Unknown" for circumstances where it proves impossible or impractical to accurately collect this data in the course of the complaint.
- Table 2, Number 9: We refer to the response to B5Q1 above regarding the assignment of unique identifiers.
- Table 4: We refer to our comments below in relation to the alignment of data collection, particularly data in relation to the complaint details, status and outcome, to the APRA Claims Data Collection (LRS 750). This ongoing data collection and publication by APRA in conjunction with ASIC includes the collection of data on IDR complaints.
- Table 4, Number 19: Guidance is requested in that data dictionary as to how withdrawn complaints are defined. Guidance is sought as to when firms can determine contact with the complainant has been lost and how this interacts with proposed RG165.87, which states that "complaint files should not be closed and categorised as resolved without adequately assessing the complainant's level of satisfaction with the actions taken by the firm".
- Table 4, Number 29 to 31: Guidance is sought from ASIC as to what ASIC's expectation is where a customer holds multiple products and the complaints encompasses more than one product. FSC members note that AFCA generally does not share the data coding it assigns to these complaints with the firm, for example, these codes are not listed in the AFCA Secure Portal.
- Table 4, Number 32: Guidance is sought from ASIC as to whether it proposes to set guidelines for determination of the primary issues. For example, declinature of a life insurance claim may be coded as either 5 or 7 or a complaint about delay in making a claims decision may be coded as either 7 or 9. It is considered that without more specific codes or further guidance from ASIC, there is a considerable risk of inconsistent reporting across firms.
- Table 4, Number 34: It is suggested that a further code for negotiated or settled outcomes be included. Further, guidance is sought on how, when distinguishing between outcomes in favour of the complainant in full or in part are to be determined

by comparison of the complainant's expectations of the desired outcome with outcome reached. This is a highly subjective assessment and prone to misinterpretation and inconsistency between firms.

- Table 4, Number 36: Guidance is sought from ASIC as to whether this is intended to capture the insurance benefit or other compensatory payment or other related payments including interest and costs. Guidance is also sought as to whether, where the complaint outcome is that the claim is reassessed afresh by the claims team, if a decision is made to pay the benefit whether this ought to be captured as a financial remedy given the decision is made as part of a new assessment of the claim and not as part of the complaint resolution.

In terms of the data collected, in general the FSC members that the data ought to be aligned where possible to the APRA Claims Data Collection. This is important to members both for the implications in relation to publication, which are discussed in the response to B6Q1 below, and in relation to the internal collection of data. Where the data sought by ASIC is different to the definitions and metrics required in the APRA Claims Data Collection, this will require members to not only commit times and resources to investing in additional systems to capture the additional data but also require staff to enter similar data points in slightly different ways for each complaint using different definitions and coding. In additional to the unnecessary duplication, this increases the risk of data errors by substantially increasing the amount of data that is required to be manually captured for each complaint.

7. ***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?***

We refer to the response to B5Q2 in relation to the proposed data elements to be collected for individual complaints. FSC members also seek clarification on whether the data reporting is for all complaints or solely for those which proceed through the IDR process (that is, excluding complaints resolved at the point of first contact within 5 days).

We consider production of data in CSV format is acceptable although, until this data is collected and prepared in a CSV format, FSC members are unable to determine whether a 25MB file limit is reasonable. This is particularly so for large firms who may have business units spanning insurance, superannuation, advice, banking or other combinations. FSC members submit that, in the interests of ensuring adequate capacity for the submission of data, ASIC consider whether a 50MB file limit is possible.

The FSC considers that all open complaints should continue to be reported to ASIC in the proposed data collection, even where the status has not changed for some period.

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

The FSC notes that further consultation on publication is likely to take place which is appropriate as the guiding principles for publication are very much dependent upon the positions reached on other matters in the proposed regulatory guide and upon which ASIC has sought feedback.

As a starting proposition, we submit it is necessary for ASIC to explore, say through consumer testing or other market research, what data in relation to complaints is of benefit to consumer in making decisions about financial products, and that the key objectives in relation to publishing IDR data are clearly defined. FSC members are concerned that the proposal, at face value, may result in publication of highly granular and specific data which is far in excess of what consumers really need, would understand, or may in fact want in informing themselves of decisions about financial products. In particular, it is submitted that it would be counterproductive to publish data that is beyond the understanding of those without a detailed understanding of the financial industry or which is so voluminous as to be impenetrable to ordinary consumers.

FSC members strongly consider that to fully realise any potential benefit to all stakeholders, it is imperative that any comparisons are done on a like-for-like basis and are as transparent as possible. The data published by ASIC needs to be clear, easily interpreted and helpful to stakeholders. The published IDR data needs to be presented in a manner which minimises the risk of that data being misinterpreted or misapplied so that the published data is beneficial to consumers and is meaningful in assisting them to make choices about financial products that suit their personal circumstances. If the published data does not meet this basic requirement, in terms of simplicity and relevance, it could well be counterproductive to the ends which ASIC is seeking to advance by such publication.

The FSC also submits that the publication of data must also be fair to members and support the sustainability and integrity of the market for financial products. As noted above, the mere publication of voluminous data to consumers, without consumers fully understanding what complaints handling encompasses and the many variables that will impact complaints data between firms, could paint a picture to consumers that is not based in fact and which undermines confidence in the industry. This would be patently unfair to the reputation of members and of no benefit to consumers or members. In particular, the publication of complaints data, without a full understanding of the size of organisations involved and some form of comparative measure, may potentially be damaging to the reputation of larger organisations. If consumers are unaware of the relative size of firms, they will not appreciate that higher numbers of disputes for one organisation is not abnormal nor a sign of any particular concern where it involves a greater customer base than another firm.

A further issue is that the publication of data should be aligned to other published data, including data published by AFCA and in particular the APRA Claims Data Collection. FSC members are concerned that publication of data collected on different bases and applying different metrics is likely to cause confusion and uncertainty among consumers particularly

where it is published side-by-side on related ASIC websites. Such confusion and uncertainty is also likely to damage the reputation and integrity of the industry.

The FSC strongly supports ASIC's proposal to conduct targeted consultation on this issue. For the reasons detailed above, FSC members are concerned that publication of data has the potential to cause confusion to consumers and damage to the financial services industry if not carefully thought through and tested prior to undertaking an initiative with such a significant public profile. The FSC and its members look forward to contributing to the consultation process.

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

The FSC agrees that IDR responses should set out the issues raised in the complaint and reasons should be given. However, the requirement that there should be "enough detail for the complainant to understand the basis of the decision and to be fully informed" leaves this requirement open for interpretation and lacks objectivity. This is a concern for financial firms as the potential for differences between a firms interpretation and ASIC's expectations creates the risk of possible action by ASIC despite the firms interpretation not being unreasonable having regard to the subjective guidance in the proposed regulatory guide.

Also, whilst reasons for a decision are important, a description of the evidence which summarises the relevant issues and facts shouldn't be taken to mean that this means the firm has not considered other information not summarised in the IDR response itself. The FSC submits that if the expectation is that every relevant fact and issue needs to be covered, the IDR responses may become very long (say, over 20 pages) and become very difficult for some consumers to understand. The FSC submits that this may result in the unintended consequence of poor customer outcomes in order to ensure compliance with the regulatory guide.

ASIC's requirement to give 'enough detail' can be significant as it merges into the domain of the need to set standards (as we have seen with the common law's approach to procedural fairness) so as financial firms can understand what is 'enough detail'. Given the objective is to give information to the consumer so as they can make a fully informed decision, then perhaps ASIC's expectation should be that financial firms should be able to identify the information relied upon, such as by listing all the information and offering to make it available to the consumer or by attaching the documents or some combination of approaches. The FSC considers this is likely to produce simpler and more cogent explanations of the complaint outcome than a requirement to summarise and refer to every issue, fact and piece of evidence in the IDR response itself.

We should therefore recommend that IDR responses:

a. Identify the issues;

b. Address all the issues;

c. Set out the decision;

d. Provide reasons for the decision; and

e. Reference the material information and documents relied on, and either attach or otherwise make these documents available to the consumer.

The FSC further submits that it should be made clear in the regulatory guide that it is reasonable for firms to tailor the level of detail required in the IDR response to be proportionate to the complexity of the complaint.

10. ***B9 - Q1 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.***

The FSC considers that this approach appears to be appropriate given the core requirements of RG165, including the minimum content requirements, will apply to superannuation trustees and will be enforceable.

Please also note our response in relation to B2Q2, requesting clarification from ASIC on whether objections should be treated as complaints under IDR processes.

11. ***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.***

The FSC does not consider there is a need for additional minimal content requirements for IDR responses provided by superannuation trustees

12. ***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.***

The FSC supports reducing IDR timeframes for complaints about trustees, including superannuation trustees, from 90 days to 45 days. We do not support the reduction in timeframes to 30 days for other complaints.

A complex complaint can raises a number of issues covering multiple business units and involving a number of stakeholders. For such complex complaints, too short a timeframe to adequately investigate the issues, obtain feedback and instructions from stakeholders, negotiate with the consumer to determine if a mutually agreeable resolution is possible, and craft an appropriately detailed final response may not lead to the best outcome for the consumer. Prioritising timeframes over quality responses is likely to result in the number of complaints referred to EDR schemes increasing, being a more protracted and stressful experience for complainants.

Particularly in the context of life insurance and superannuation, 45 days is likely to prove difficult in many cases due to:

- the complexity of the issues raised (e.g. complaints about financial advice, insurance claims and superannuation often involve complex issues. This is particularly so where a single complaint raises issues across two or even all three of these areas);
- the availability of information from external sources, including the complainant or a third party e.g. medical records or reports
- the historic nature of the issues raised;
- involvement of multiple parties (e.g. multiple complainants or firms);
- involvement of an authorised third party acting on behalf of the complainant;
- difficulties communicating with the complainant that are outside of the firms control; and
- delays at the request of the complainant.

The FSC considers that there are likely to be complaints in some areas that are usually more straightforward and can be dealt with appropriately within 30 days (such as complaints in the banking sector as referenced by ASIC having regard to the banking code compliance reports) however a significant number of complaints are unlikely to be able to be resolved within 30 days and, for consistency across the industry, the FSC proposes that the 45 day timeframe be maintained.

In the case of life insurance, superannuation trustees and insurers are often confronted with complaints requiring both to have input into a final response. This gives rise to two difficulties:

First, the existing and proposed regulatory guide are both silent as to the best way to manage complaints that span more than one firm. In some cases, the insurer and trustee will each provide separate responses and in other cases a single response from one or both may be issued. In some cases, multiple responses are considered to be a suboptimal and potentially confusing outcome for the consumer, however there will often be cases where the issues confronting the insurer and trustee and different and individual responses are unavoidable.

The FSC proposes that ASIC convene a working group with representatives drawn from insurers and superannuation trustees to agree on a process that will provide greater clarity across the industry on the management of complaints involves more than one firm. This process ought to be adopted in the proposed regulatory guide when it is issued in final form. A single process, to ensure all parties are adequately engaged in the complaints process and the timeframes for responses are aligned, will provide clarity and certainty across the superannuation and insurance industries and will enhance consumer outcomes.

13. 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.

Given the Customer Advocate role within financial firms was only recently introduced in many cases, we believe that changes to the Customer Advocate (**CA**) role and function at this stage are premature. We submit that a further review of resolution timeframes and regulation considerations should be conducted once the CA function has further matured and AFCA's Legacy review is complete.

Further, the FSC submits that the regulatory guide should make it explicit that firms are encouraged to use the CA model to enhance its complaints handling function but that it is not mandatory.

14. 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.

Currently, for members that use a CA model, the CA is responsible for enhancing the complaint resolution process. The CA provides a detailed, deep dive review of a complaint escalated to the CA from a customer and often explores the customer's circumstances beyond the articulated complaint enabling members to better assist the customer and draw out the totality of their complaint. This is especially important for vulnerable customers.

The CA acts as a point of escalation outside of the IDR process. All complaints are responded to at the conclusion of the IDR stage providing clear information on escalation options if the complainant is not satisfied with the outcome, by directing them to:

1) refer their complaint to AFCA; or

2) seek a second review from the CA (and then with the clear option to go to AFCA if they remain dissatisfied with the CA review).

We agree that a review by the CA should not impact a customer from exercising their right to access AFCA by presenting the CA as a mandatory step. As we have indicated, this is not the case.

In one FSC member's experience only a small subset of customers chooses to have their complaints reviewed by the CA and these are, on balance more complex cases involving matters such as financial advice and insurance. Approximately 1% of all complaints received are escalated by customers to the CA. This choice of escalation path outside IDR timeframes is an important option for customers, especially in cases where the customer complaint sits outside AFCA terms of reference or the customer is vulnerable.

Importantly, the CA operates with a broader Terms of Reference than AFCA and so provides a service for customers who might otherwise not have an escalation option available to them other than a court. In some cases, customers seek a CA review after an AFCA

determination in order to address the issues that AFCA could not consider. Examples include complaints where:

- the AFCA deadline of 2 years since IDR letter has already expired;
- the complaint relates to historical dealings beyond AFCA's legacy complaints review (which covers conduct that occurred on or after 1 January 2008);
- court orders have been sought, such as possession orders or bankruptcy proceedings (in particular where these are undefended or not well defended, meaning there has been no real review by a court of the merits of the customer's case) and family court orders; or
- the complaint relates to issues outside AFCA's remedy scope e.g. cases where compensation being sought exceeds AFCA compensation caps or relates to areas AFCA cannot resolve e.g. provision of credit or the reversal of an exit decision.

Any proposal to treat the role of the CA as part of the IDR process, particularly in relation to timeframes, is likely to lead to further pressure on AFCA's resources. This is on the basis that the unintended consequence of this proposal may increase referrals to AFCA, that could be more efficiently and effectively dealt with by the CA, particularly those involving vulnerable customers.

In the interim, the FSC encourages ASIC to take initial steps to deliver greater consistency and clarity to customers in relation to the role and function of CAs.

15. 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.

Whilst the FSC agrees that it is appropriate for boards and financial firm owners to set clear accountabilities for complaints handling functions, the FSC has some concerns about the prescriptive nature of the proposal, specifically:

- The requirement in (b) of paragraph B13 in CP311 that complaints to the board and executive committees must include metrics and analysis of consumer complaints, including any systemic issues, does not clearly specify the metrics required and may, in some cases, impose an unreasonably onerous obligation on the financial firm. The FSC submits that it should be made clear in the regulatory guide that the level of reporting and detail required is proportionate to the size and complexity of the firm.
- While the FSC agrees that firms ought to be required to identify systemic issues and seek to understand and resolve such issues, it is considered to be unreasonable to require all staff who record new complaints and/or manage complaints to consider whether each complaint potentially raises a systemic issue. This places an unreasonable burden on front-line staff, who in most cases will not have the appropriate training, analytical skills or access to information in order to determine

whether an individual complaint raises a potentially systemic issue. Further such staff will necessarily not be aware of broader issues and trends across the entire business. For example, complaints handling staff in the underwriting unit of an insurer will not necessarily be aware of issues in other units such as claims, nor are they likely to be fully aware of all issues raised within their own unit. For example, there are likely to be separate underwriting teams for the retail and group channels and they may well not have visibility of the issues in other channels nor whether those issues are relevant to their own area.

- The FSC submits that given the potential for over-reporting of systemic issues by front line staff which may cause significant strains on resourcing, the responsibility for analysing complaints to determine whether an issue is potentially systemic should lie with the financial firm itself through centralised incident management processes, root-cause analysis and reporting. This would allow for a more consistent and "whole of business" perspective and hence the more reliable identification of systemic issues from staff appropriately trained and experienced in data analytics working alongside suitable risk management staff with the skill and expertise in incident investigation and management.
- Whilst the FSC agrees that the requirement in (d) for financial firm staff who handle complaints to promptly escalate possible systemic issues is reasonable in principle, the FSC considers that it would be inappropriate for ASIC to dictate the manner in which issues are escalated. The method and manner of escalation depends on the size and structure of the financial firm, and what is reasonable and workable may differ between firms depending on their size, structure and complexity. Further, as noted above, it should be made clear that systemic issues may be identified by front line staff where it is apparent that such an issue has occurred but generally systemic issues will be identified through centralised data analysis and risk management teams.

16. 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.

The FSC agrees in principle with ASIC's approach to apply AS/NZS 10002:2014 other than in relation to the definition of "compliant" – *please refer to our B1Q1 and B2Q2 responses above*.

17. 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.

Considering that the revised RG165 and legislative instruments are expected to be released by ASIC in December 2019, FSC members consider that the proposed transitional periods do not provide adequate time for firms to prepare for the changes required by RG165. In particular, firms are going to being required to invest substantial time and resources in adopting systems to support the recording of all complaints, both those handled at the point of first contact and resolved within 5 days, and those which progress through the IDR

process. Adopting such systems is expensive, difficult and time consuming. A general timeframe for the acquisition of new technology is set out below to identify the challenges, resourcing requirements and timeframes required for many firms to enhance their systems to meet the proposed data collection and reporting requirements:

- Scoping of the data capture and workflow requirements, mapping of processes, defining the system requirements and a market scan is likely to take up to 2 months.
- In conjunction with the scoping and design, firms ought to do a market scan to explore what suitable products are available, meet potential vendors and to identify suitable software providers to be invited to tender. It is very important that a market scan is completed to determine what is available. It is possible to build a bespoke software solution but that is very difficult, time consuming and the risk of failure is challenging. It is very likely firms will look to existing solutions however assessments will need to be made as to how much each existing software system will need to be modified to accommodate the specific needs of the complaints workflow and data capture, what solutions will integrate best with existing hardware and software and what level of support is offered by the vendors to assist with integration. Time needs to be spent early to get the balance of these issues correct so that the right solution for the firm is adopted.
- Preparing a request for proposal, going to market and collating the proposals is likely to take about 2 months.
- Queries and clarifications on the proposals will take up to 2 additional weeks.
- Reviewing the proposals, short listing vendors, arranging presentations and demonstrations and selecting a preferred vendor will take about 2 months.
- Contract negotiations and settling the commercial arrangements will take up to 4 weeks.
- Implementation of the software package will take 4 to 6 months. This will include customisation of the existing software, implementation and integration with existing systems including sequencing works with the vendors of existing systems to integrate the various systems, and final documentation of processes and system design. This may well take longer depending on the number of systems requiring integration and how many other firms are using the same vendor and software package.

Overall this process will take 13 to 15 months, not including any contingencies. Pressing for a faster build and implementation dramatically increases the risk of an unsuitable product or poor implementation and integration resulting in performance issues and this is likely to impact the delivery of a good customer experience in the complaints process.

In addition, firms will need to invest in additional staff, and most will be seeking suitable staff in the market at the same time which will pose challenges, and investment in training and processes to support the reduced timeframes in IDR and the substantial new data collection requirements across front line complaints and IDR complaints. Thorough and sustained investment in change management over a considerable timeframe will be crucial for firms to successfully implement the new staff, processes and systems.

Accordingly the FSC proposes the following timeframes for the transition period (these are proposed on the assumption that the final version of the Regulatory Guide is issued in December 2019. If this date changes, the FSC requests that the proposed dates shift in alignment with the date of issue of the Regulatory Guide):

Requirement	Reference in draft RG 165	Application date
To provide an IDR response to a complainant within reduced maximum IDR timeframes	RG 165.78-RG165.117	We propose December 2020.
To record all complaints received by the financial firm, including those that have been resolved immediately	RG 165.57	IDR complaints are already recorded under the existing RG 165. For complaints resolved within 5 days, we propose December 2021 (given the time required to recruit and train staff, update processes and particularly to implement new systems).
To assign a unique identifier for all complaints received by the financial firm	RG 165.58	For IDR complaints, we propose a December 2021 (given the time to implement or enhance systems). For complaints resolved within 5 days, we propose December 2022 (given this is a much greater change and the systems changes – as described above – and corresponding process changes will be considerably greater).
To record all prescribed data for every complaint received by the firm	RG 165.61- RG 165.62	For IDR complaints, we propose a December 2021. For complaints resolved within 5 days, we propose December 2022.
To report IDR data to ASIC in accordance with ASIC's data reporting requirements	RG 165.66	For IDR complaints, we propose June 2023.

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

Given the quantity of changes that are proposed to RG165 that will require changes to FSC member's processes and systems, and any further changes that may arise following the consultation process, a transitional period of at least six months from the date of the recording prescribed data for complaints (December 2022 or as adjusted depending on any change to the date of issue of the Regulatory Guide) should be provided to firms to implement the new IDR requirements, outside of the specific transitional periods described above.