

16 August 2019

The Secretary
Tasmanian Small Business Council
Level 1, 116 Bathurst Street
HOBART TAS 7000

Email: [REDACTED]

Dear Sirs,

RE: Consultation Paper 311 Internal Dispute resolution: Update to RG 165

Thank you for inviting comment in response to ASIC Consultation Paper 311 Internal Dispute Resolution: Update to RG 165.

Banks that adopted the 2003, 2004 and 2013 Codes of Banking Practice had to comply with the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*. There is evidence that banks and the bank funded organisations have not complied with legislative and ethical obligations under the above codes, in relation to resolution of disputes, monitoring and sanctions.

Banks should be required to comply with the IDR processes that were in place at the time customers signed loan contracts. The IDR process requires the banks to meet the Australian Standards or any other industry disputes standard or guideline which ASIC declares applies to the Code.

The AS ISO 10002:2006 Guidelines for complaints handling in organisations was introduced by a Memorandum of Understanding with the Commonwealth Government. Standards Australia is recognised as Australia's peak non-government national standards body, and the 2006 guidelines were drafted following consultation with:

- Australian Chamber of Commerce and Industry;
- Australian Competition and Consumer Commission;
- Australian Law Reform Commission;
- Australian Securities and Investments Commission;
- Banking and Financial Services Ombudsman;
- Consumers' Federation of Australia;
- Independent Chairman;
- Insurance Brokers Disputes; and
- Insurance Council of Australia.

The guidelines for complaints handling and ASIC Regulatory Guide 165 since 2001 have required banks to have a complaints handling process, as does the revised 2003 Code and the modified 2004 Code, which require banks to provide effective disclosure of information (clause 2.1(b)(i)).

Australian financial services licensees have been required to comply with the Australian Standards and ASIC regulatory guidelines since August 2003. This response to the list of proposal and questions incorporates my understanding of the above standards and guidelines.

B1Q1 *Do you consider that complaints made through social media channels should be dealt with under IDR processes?*

Yes.

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?*

There should be a uniform definition relied on by ASIC, APRA and AFCA, which is the definition given in AS/NZS 10002:2014:

'An expression of dissatisfaction made to or about an organisation—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.'

B3Q1 *Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only?*

There should be one definition incorporated in the Corporations Act, AFCA Rules, ASIC and APRA.

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

Firms should always provide a copy to the customer, and the relevant government body if there is any evidence of misconduct and a complaint is being investigated by ASIC, APRA or AFCA.

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.*

Yes and the unique identifier should be unchanged and remain constant during any investigations by ASIC, APRA or AFCA.

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?

AS/NZS 10002:2014, RG 165 and the 2019 Code should also include a standard requirement for a disclosure clause to cover any other products and services which a financial firm offers.

(b) Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail?

The data set only deals with general complaints, not specific ones that would have escalated since the revised 2003 Code was introduced.

B6Q1 *Do you agree with our proposed requirements for IDR data reporting? In particular:*

The data reporting issues should be referred to farmers and small business organisations and ASIC, APRA and AFCA to make recommendations that comply with AS/NZS 10002:2014, RG 165 and the 2019 Code.

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

The principles set out in AS/NZS 10002:2014, RG 165 and the 2019 Code and all ASIC regulatory guides.

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

The minimum content requirements should include the appropriate IDR requirements set out in the Australian Standard and the ASIC regulatory guidelines when the loan contract was signed by the customer.

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.*

There is evidence that there are a number of complaints that have been referred to the customer advocates in recent years and many advocates have not acted independently of the banks or dealt with specific breaches of the Australian Standards. Furthermore, there has been no inquiry into why the ABA and banks did not provide a free copy of the standard when farmers and small business customers signed loan contracts since August 2003.

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.*

The evidence we have obtained from customers demonstrates the customer advocate process is not sufficiently independent to deal with compliance with the relevant Australian Standard and the ASIC regulatory guidelines set out above.

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.*

All reports carried out by customer advocates should have complied with the relevant banking code, Australian Standard and ASIC regulatory guide (the governance principles). If there is evidence that the customer advocates have not complied with the governance principles the advocate should be referred to ASIC, APRA and the appropriate government

authority. The farmers and small business organisations should not have to fight for accountability, which has failed them since August 2003.

This response relates to all of the proposals in B13(a-e).

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 IDR process should require bankers to be bound by their licenses and self report misconduct. All reports should include the names of the executives and board members who have been required to implement and address ethical and legal responsibilities under the Corporations Act. This should be mandatory.

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.*

Table 2 does not provide sufficient information to answer this question.

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

Damages caused to bank customers since August 2003 should be acknowledged by the Australian Bankers' Association, subscribing banks and the Code Compliance Monitoring Committee (the bank funded organisations). Collectively these organisations should accept responsibility for the non-compliance by them to comply with Australian Standards and ASIC regulatory guides.

Redress has to take into account the damages caused by the bank funded organisations as a result of misconduct, where there is evidence that they have not complied with the relevant standard and the regulatory guidelines.

Clarification of each feedback point to the consultation paper is available if requested.

Yours sincerely,

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