

Monday 12 August 2019

Jacqueline Rush

Senior Policy Adviser

Australian Securities and Investments Commission

Email: IDRSubmissions@asic.gov.au

Dear Ms Rush,

Re: Internal Dispute Resolution: Update to RG 165

Super Consumers Australia at CHOICE welcomes the opportunity to comment on consultation paper CP311. We support strengthening the obligations on financial services providers and superannuation funds to properly and appropriately address complaints; particularly to improve how boards and trustees identify and address systemic issues.

We support most measures outlined in CP311, but note specific concerns around:

1. The usefulness of the proposed IDR data publication guidelines;
2. The consequences of using 'exceptional circumstances' delays to extend maximum IDR timeframes;
3. The role of customer advocates.

These concerns are outlined in greater detail below.

At **s9(c)** ASIC has explicitly identified the lengthy timeframes for complaints about insurance in superannuation and indicates a program of site visits. In addition to identifying best practice inside firms and funds, this may also be an opportunity to identify systemic issues facing consumers making complaints about insurance in superannuation.

We note the various concerns identified in **s40**. Super Consumers Australia and CHOICE welcome the opportunity to participate in any targeted consultations about complaints about insurance in super.

Recording all complaints received

We note the implications outlined in **s46-53** that boards and trustees are oblivious to consumer concerns, emerging issues, and opportunities to improve customer experience because complaints resolved in five business days are not being recorded. We support the proposal to require all firms, *and all superannuation trustees*, to be required to record all complaints.

Further, it is not clear what the penalties are for failing to record all complaints. In very simple terms, failing to record complaints when there is an obligation to publish them has a market distorting effect.

ASIC should review the effectiveness of this requirement in ongoing random audit activity, and consider the introduction of financial or other penalties for any evidence of failure to record all complaints.

Guiding principles for the publication of IDR data

We have concerns about the practical usefulness of the proposed IDR data publication guidelines, specifically that they will not be able to be used by consumers trying to make comparisons between products.

We recommend that complaints are published as a rate per customer, such as complaints per 100,000 customers. Raw numbers of complaints are meaningless without the context of the number of customers being serviced in a category.

We recommend that complaints are grouped by product name or product distributor, rather than only product provider, as this can render the comparative value of the data useless.

Page 12 of the Data Dictionary would suggest that this may be possible for insurance products (29), but it appears that the proposed categories for superannuation will not allow for any product complaint comparison.

Super Consumers Australia and CHOICE welcome the opportunity to participate in any targeted consultations about approaches to the publication of IDR data.

IDR responses - Superannuation Trustees

A significant proportion of complaints to superannuation trustees relate to claims on group insurance products. This is acknowledged in part at **s40** with reference to insurance claims-handling and complaints processes and how and when a complaint is identified and lodged when it involves both a life insurer and a superannuation trustee.

We note that the minimum content requirements for IDR responses set out in **B8** will apply to superannuation trustees.

Reduced maximum IDR timeframes

There is no compelling reason why superannuation complaints and complaints about trustees providing traditional services should not have the same 30 day maximum timeframe as other AFSL complaints, **B11Q2**.

There is little competitive pressure on trustees to properly and appropriately address complaints or systemic problems with their products and services in a compulsory superannuation system. We can not see the consumer benefit in allowing this complacency to continue.

The maximum IDR timeframe for superannuation complaints should only be reduced from 90 days to 45 days when the complaint relates to (i) insurance in superannuation, because in these cases information needs to be passed between a complainant and potentially an insurer, claim (fund) manager, and a superannuation fund trustee; and (ii) a superannuation death benefit.

We note the concern, at **s86**, about the possibility of timeframes being undermined by the use of IDR to delay notifications and the absence of any penalty for doing so. We suggest that at minimum, any case where a firm or superannuation fund claims that an 'exceptional circumstances' delay is warranted, as proposed at **B11(c)**, that (i) triggers a breach report, as implied at **s97**, and (iii) it is also identified, recorded, and published by ASIC through the new IDR data reporting regime, and (iii) that boards or trustees are informed as part of their IDR process.

ASIC should also review the effectiveness of the maximum timeframes on consumer outcomes after a modest implementation period (six months) and consider the introduction of financial or other penalties for repeated use of the 'exceptional circumstances' delay to expedite systemic changes.

Role of customer advocates

We have concerns about the lack of independence, transparency, and clear responsibilities for customer advocates employed by firms; and the confusion that this causes for consumers. It is essential that customer advocates comply with RG165 to ensure that internal bank processes are not a barrier to accessing EDR.

We note that the customer advocate function has been structured very differently across banks. The ABA has conducted a review of the customer advocate functions of its members but failed to name banks. This means customers and consumer advocates are currently unable to identify which banks have structured the function in a way that adds value to customers and which have implemented poor practices.¹

Should the ABA and its members wish to continue with customer advocate functions, a genuinely independent, comprehensive and transparent review is required. The sector should be working towards consistent structures, responsibilities and powers for all customer advocates. The reporting and complaints handling obligations in RG165 is an important first step to achieving this consistency.

Systemic issues

We have concerns that the proposal to formalise and emphasise an 'escalation model' proposed at **B13**, will not have the desired impact on board and trustee behaviour, or the concerns identified at **s106** and **s107**. It is an important and essential step, but further action is required.

¹ <https://www.ausbanking.org.au/wp-content/uploads/2019/05/Customer-Advocate-Post-Implementation-Review.pdf>

Rather than relying on bottom-up reports alone, we urge boards or trustees to *also* formalise the use of top-down 'problem-seeking models' to monitor, identify, and address complaints and any associated systemic risks. We specifically recommend that random case audits are incorporated into firm and fund IDR process.

Further, it is not clear what the implications or penalties are for failing to formalise IDR systems.

Application to superannuation trustees

We welcome the expansion of IDR requirements to cover superannuation trustees, but it is unclear in several sections of CP311 whether proposed changes that will apply explicitly to AFS licensees will also apply to superannuation trustees:

- Will laws be modified so superannuation trustees are also required to *have and comply with* IDR standards and requirements made or approved by ASIC? **s23(a)**
- Will superannuation trustees also be required to issue a breach report for failing to meet maximum IDR timelines? **s97**
- Will superannuation trustees also be required to record all complaints? **B4**
- Will superannuation trustees also be required to introduce systems for issue identification, escalation, and analysis? **B13**

Who are Super Consumers Australia?

Super Consumers Australia was formed in 2013 as a not-for-profit to advance and protect the interests of superannuation consumers. During its start-up phase Super Consumers Australia is partnering with consumer advocate CHOICE, with plans to secure permanent funding to establish a stand-alone specialist voice for consumers in superannuation.

Yours sincerely,



Cameron Sinclair
Senior Policy Adviser - Super Consumers Australia

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