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## Consultation Paper 311

### Internal Dispute Resolution

Dear Jacqueline,

Prospa Advance Pty Limited (“Prospa”) welcomes the opportunity to provide feedback on ASIC’s Consultation Paper 311 (“the Paper”) regarding the update to RG165 Internal Dispute Resolution.

#### 1. About Prospa

Prospa is currently Australia’s #1 Online Small Business Lender<sup>1</sup>, operating out of our Sydney headquarters. Prospa has to date supported small businesses with funding of more than \$1 billion and employs over 250 people in Australia.

Prospa offers Small Business Loans between \$5,000 to \$300,000, a revolving Line of Credit facility up to \$25,000 and Small Business No Interest Payment Plans. All customers of Prospa are small businesses with all funding decisions achieved by assessing more than 450 data points, including turnover, profit & loss, business tenure, size and industry sector.

Prospa uses a sophisticated risk-based scoring methodology developed over our more than seven years of lending to small businesses. We verify the specifics of every small business applicant using data from sources such as (but not limited to): ASIC’s own website, Equifax, bankstatements.com and the Australian Tax Office.

#### 2. General observations and feedback

Prospa supports and strongly endorses the need for an efficient and effective method of listening to customer feedback, acting on insights and mutually resolving disputes in a timely manner that achieves a fair resolution and long-term benefit for all parties.

We make the following high level observations:

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<sup>1</sup> Market position for online balance sheet lenders to Australian small businesses, based on Prospa’s volume as a percentage of total market volume in 2017 as reported in KPMG “The 3rd Asia Pacific Region Alternative Finance Industry Report”, November 2018; USDAUD FX rate of 0.767.

## **Small business is different from consumer**

Prospa is encouraged the Paper addresses many aspects of the current RG165 outdated or misaligned details. However, there are still areas within The Paper that require a deeper understanding of the practical implementation challenges and an acknowledgement around how consumer based disputes are very different - and therefore need to be treated differently - to disputes raised by a small business owner.

## **Acknowledging ASIC's competition mandate**

ASIC must take care not to define standards that a large organisation with many resources and substantial budgets can meet, and which sub scale or start-up organisations are unable to. Creating barriers for sub scale organisations to be able to demonstrate good IDR conduct would have the effect of causing damage to their reputation when in reality they are making every effort to do the right thing by their customers. This reputational damage would be exacerbated if AFCA or ASIC were permitted to 'name and shame' organisations not meeting a very high industry-wide threshold. It could also impose such a high regulatory burden that potential market entrants may elect not to enter the market, hence reducing competition and customer choice.

## **Conducting business with confidence**

ASIC's RG165 is about compliance with the law, while AFCA is in the process of issuing guidance on the application of that law. This could lead to inconsistencies and/or situations where AFCA is essentially creating subjective precedent that is narrow or incorrect, and which becomes the new industry standard (AFCA are required to consider past decisions when making a determination). Lenders need to be able to conduct business with confidence. We ask ASIC to ensure AFCA guidance is consistent with the intent of current legislation and regulation and does not create new regulatory requirements or hurdles by default.

## **Borrowers have obligations too**

It is widely accepted there is a generally low level of financial literacy in Australia. In addition to guiding lenders to deliver consistent and fair treatment of customers, we believe ASIC should consider educating borrowers about their obligations. The development of a Code of Practice for Borrowers, similar to that [developed by the FSF in New Zealand](#), would go a long way to ensuring borrowers understand what is expected from them at every step, including if they make a complaint about their lender. As a lender, Prospa would be very happy to promote such a Code on our website and loan documentation material as we believe it will ensure a lower number of complaints in the first place (amongst other outcomes) and faster resolution times if a complaint is made.

## **Industry consultation results in better outcomes for all parties**

Prospa appreciates the opportunity to provide feedback. We would be happy to provide further input, data or case studies to help build and implement a successful internal dispute resolution framework that caters for specific customer and contract typologies, and also the differing scale of lender participants.

## **3. B1Q1**

When a complaint is raised through an owned social media site and is identified through our social media monitoring, and the complainant has had a genuine experience with Prospa, then the complaint would be captured and dealt with accordingly.

The issues requiring consideration here are as follows:

- Whether an organisation has the resources to monitor their owned social media platforms and become aware of complaints in a sufficiently timely manner to enable them to meet resolution deadlines. For example, while this is not the case for Prospa, some smaller organisations might only monitor their own social media platforms weekly or twice weekly; and only on business days. Simply because new technology exists doesn't mean a financial firm can afford to use it. This would impact timeliness of response.
- In relation to non-owned social media platforms, some organisations may be able to afford monitoring tools that include keywords relating to their business, but in all likelihood they will not be monitoring the names of the organisations' staff. If a complaint is made about a person and the company name is not referenced, this would not be picked up.
- Comments or reviews made on third party social media sites such as Trustpilot can often be ineligible to be deemed a complaint, as in they are posted by someone who has not had a genuine experience with the business. These third party sites have their own criteria and timeframes for allowing organisations to appeal the validity of a review and if an appeal is upheld will remove the review. In this instance the review would not be eligible to be deemed a complaint. This timeframe needs to be accommodated for.
- In many cases social media contributors use an alias, so being able to identify genuine customers with a complaint, and make contact with them, can be extremely difficult.
- If a complaint comes through an external platform, it is usually not possible for a company to easily monitor content, and in this type of situation, such complaints would not be identified or acted on. In some cases, privacy laws may prevent being able to contact customers. There is currently no obligation for a site operator to advise a company when a complaint is made on their platform about that company.

It should also be noted that social media pages are often used by the general public and customers to share views on virtually anything. In Prospa's case, should any dissatisfaction be expressed, and the contributor be confirmed as a customer and is able to be contacted, we do attempt to make contact to achieve an appropriate resolution. We are also happy to register these as complaints under the new definition.

It's also worth noting some social media contributors just want a platform to present a contrarian view with no real desire or expectation of contact other than sparking up a thread with other social media contributors. Prospa expects ASIC will consider that by its very nature social media may require allowing a conversation or thread to run its course without interference, despite the user trying to provoke a response. These instances we would not consider eligible to register as complaints.

We believe a certain level of fairness towards lenders should be considered in constructing the regulatory guidance, in that lenders cannot be expected to register or remedy expressions of dissatisfaction that are not made directly to the organisation as complaints. If a customer believes a response is expected, then it is fair for a lender to expect that complaint to be made directly to the lender ie by phone, email or on an owned social media platform. Views expressed on sites not 'owned' or 'managed' by the lender should not be considered to be complaints. This approach would provide reasonable expectations that even sub scale organisations could adhere to.

## 4. B1Q2

Proposed definition of a "complaint": *"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"*.

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We believe there is an important difference between an ‘enquiry’, an ‘expression of dissatisfaction’ and a ‘complaint’, and we are concerned that the definition, as drafted, is too broad. We would welcome the opportunity for a workshop with ASIC to discuss these differences and get agreement on a way forward.

As examples:

## **“...made to or about an organization...”**

This means a complaint can be an expression of dissatisfaction made to another organisation about Prospa, that does not come to us first, and may or may not be brought to our attention by the third party. For example, a complaint made to an introducer or a comment made by a third party (such as a journalist) in a published article would be classified as a complaint under this definition.

If a complaint is made about an organisation to AFCA and not to the organisation, then we would expect AFCA to refuse to register this as a complaint until the complainant has provided evidence they have provided that same complaint directly to the organisation first. This would have the effect of ensuring an organisation has the opportunity to attempt to revolve the situation via IDR in the first instance.

We believe a complaint made to a third party distribution partner can be caught under this definition if the introducer is acting as an agent of the organisation. Service level agreements would need to reflect the need to pass on feedback in a timely manner so that it can be addressed.

As mentioned above, we believe a certain level of fairness towards lenders should be considered in constructing the regulatory guidance, in that lenders cannot be expected to register or remedy expressions of dissatisfaction that are not made directly to the organisation or a recognised agent of the organisation. If a customer believes a response is expected, then it is fair for a lender to expect that complaint to be made directly to them ie by phone, email, to a recognised agent, or on an owned social media platform. Views expressed on sites not ‘owned’ or ‘managed’ by the lender should not be considered to be complaints.

## **“...implicitly expected”**

This requires subjective judgement. Further guidance would be required from ASIC around how this should be quantified which can then be used to inform staff training, so complaint data is captured accurately and consistently. Another consideration here is other bodies such as regulators or AFCA would need to apply the same definition to their own business activities.

The definition is silent on whether the complainant needs to be an actual customer and have experienced an organisation’s products or service. For example, a competitor could make a vexatious complaint to an industry body. Understanding ASIC’s expectations in this regard would be helpful.

Prospa would also like more guidance around how ASIC expects entities to capture and account for complaints raised by employees about their own organisation, especially if they are raised under the veil of “Whistle Blower” protections.

## 5. B3Q1

Currently, there are multiple definitions of “small business”, so Prospa would encourage ASIC use a consistent definition that flows through all its existing and emerging guidance and aligns with the definition outlined with Hayne’s Report post the royal commission into Australia’s Banking, Superannuation and Financial Services sector<sup>2</sup>.

Prospa seeks clarification across legislation and regulation including how the definitions of consumer and small business used here are intended to relate to the definition of retail client and wholesale client under **s761G(1) and (7) of the ASIC Act.**

## 6. B4Q1

Prospa believes empowering frontline staff to resolve complaints quickly and at the first point of contact is an excellent customer outcome. Five business days is a reasonable amount of time to provide for a complaint to be handled at this first line, before it requires an IDR response. This is especially the case with small business owners where things change quickly and fast responses are highly desirable.

However, in our experience, many small business owners are extraordinarily hard to get hold of (such is the time poor nature of someone working long hours in and on their small business). Prospa proposes the five business days starts from the point at which we are able to actually make contact with a customer in response to their complaint. This is especially relevant if we need to speak to the customer to understand their feedback properly and determine whether it should actually be classified as a complaint or whether it is simply an initial hardship request or request for re-finance or similar. Making borrowers aware of their obligations would be useful in supporting a good outcome.

## 7. B5Q1

In line with the above, Prospa’s view is that only when a customer’s concern cannot be addressed adequately by front line staff, should a “dispute” be registered within the IDR case management portal. Upon registration of that dispute, a unique identifier would be raised. If this initial ability for front line staff to resolve a customer’s enquiry is not in place, the data will be artificially inflated, preventing reliable, accurate reporting. That has a significant impact on one’s ability to identify and/or substantiate any potential systemic issues that may be occurring and will create many examples of “false positives” being reported.

## 8. B5Q2

Prospa disagrees with the proposal to capture some data sets as proposed on the basis they add no tangible value to the assessment and subsequent lifecycle serving of small business funding. Prospa feels some of the data sets are invasive in nature and may hamper the overall customer experience. For example asking whether a small business owner borrower or guarantor is indigenous either during the initial on-boarding process or during the assessment of a dispute is intrusive, could be construed as racial discrimination or a breach of privacy and should have no bearing on the outcome. As an example, Prospa

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<sup>2</sup> F na Report Roya Comm ss on nto M sconduct n the Bank ng, Superannuat on and F nanc a Serv ces Industry: Sect on 5 Lend ng to sma and med um enterpr ses.

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does not request gender, country of origin or indigenous background when assessing the suitability of a small business for a loan. This is an example demonstrating how consumer and small business borrowers require separate and distinct treatment.

Prospa sees the benefit of being provided generic data sets by AFCA so we can benchmark our performance against the industry best practice. We welcome the provision of such data and encourage AFCA to provide this as soon as possible.

Prospa cautions against the use of specific IDR data sets and we have concerns around the privacy and data security measures that would be required to facilitate this type of data exchange. Data definitions will need to be carefully understood as in the case of small business funding, directors' details are captured as well as the small business's details. For example would we be expected to register the director, or the small business as the complainant? More clarity and guidance around these important aspects needs to be provided.

## 9. B6Q1

Whilst the data set in the proposed dictionary is a good start, we recommend that it be reviewed as some of the proposed fields are potentially seen as intrusive to the customer and unlikely to add additional extra value.

## 10. B8Q1

Prospa agrees there needs to be a minimum IDR response content standard. For this to work effectively, drafting a clear set of definitions will be critical, especially when comparing customer typologies and product differences e.g. "consumer" versus "small business", "mortgage" versus a "small business loan" as these specific characteristics differences determine what data a lender has on file.

For example, Prospa is a signatory of the Australian Finance Industry Association (AFIA) Online Small Business Code of Lending Practice ("the AFIA Code"). As part of the AFIA Code, participating signatories have introduced a standardised pricing disclosure tool with six pricing metrics to their loan contracts, and a clear and concise loan summary before a loan is accepted by the customer. It would therefore be important that all online small business lenders apply a consistent data set within IDR responses that relate back to the details contained within this standardised pricing disclosure tool.

## 11. B11Q1

Our biggest challenge is usually being able to make contact with small business owners who work long hours, often 6-7 days a week. Prospa acknowledges that timely response rates must be adhered to so a fair IDR result can be achieved, however does not agree with the proposal to reduce the MAXIMUM resolution timeframe of 30 days from 45 days unless there is some requirement placed on the complainant to respond within a set timeframe that supports the ability of a lender to try and resolve a complaint within 30 days.

Complainants must bear some responsibility for time to resolution. Otherwise, due to the nature of lending to small businesses, and matters being typically complex, enough time is required to assess all aspects of a dispute, factoring in all the interested stakeholders, and engage sufficiently. Multiple interactions

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typically occur with varied documentation requirements to be sourced. When relying on time poor small business owners or third parties to supply details and/or documents, the ability to control response times is limited.

## 12. B11Q2

Prospa would have no issue in seeing a single maximum IDR resolution timeframe set however the considerations outlined throughout this submission need to be acknowledged and catered for first. Again, Prospa strongly encourages the 45-day rule remains in place and is not reduced unless complainants are given a requirement to respond in a timely fashion.

## 13. B12Q1 and Q2

No, as the involvement of internal customer advocates is increasing. Some of these advocates are preying on small business owners and working to the detriment of a fast resolution so they can justify high fees from their customers; and we welcome any action taken by AFCA to refuse to deal with such third parties.

Again, Prospa would have no issue in seeing a single maximum IDR resolution timeframe set however the considerations outlined throughout this submission need to be worked through.

## 14. B13Q1

Prospa agrees there is strength in the accountability framework, particularly for all staff and stakeholders directly involved with reviewing and resolving complaints.

## 15. B14Q1

Prospa agrees with the proposed application of the AS/NZS, if RG165.145 is structured to 'provide training to all staff, not just complaints management staff, about the IDR process' and is amended to exclude staff who never deal with customers.

## 16. B15Q1

The transition/implementation timing should be linked to the finalisation of the legislation and the review of AFCA in May 2020.

We suggest that AFCA's right to name and shame lenders by posting identified recommendations should be held until AFCA has trained all its staff to the same consistent standard, published and started acting in accordance with its 'fairness' principles and policies, and bedded down its systems and processes. In our current experience AFCA is struggling to provide sound consistent treatment of complaints, and many staff do not understand the difference between a consumer and a small business owner, or which Code to apply to denote industry best practice to different lenders and product categories.



## 17. B15Q2

Prospa encourages a simple transition period and single implementation date to enable the deployment of more effective change management and communication strategies.

## 18. Final comments

Prospa is committed to working with ASIC to ensure a robust IDR process operates in a way that strikes a reasonable and fair balance between the goals of minimising risk of customer harm while maximising access by customers (both consumers and small business) that have the desire and ability to service finance to support their own and Australia's economic future.

We would welcome the opportunity to discuss the contents of our submission. Should you wish to do so, or require additional information, please do not hesitate to contact me.

Kind regards,

Anna Fitzgerald  
Group Head of Corporate Relations, Prospa

