Min-it Software

Financiers Association of Australia

Joint Submission –

ASIC CP311: Internal Dispute Resolution: Update to RG 165

13 August 2019

Contact:

Haydn Cooper
President
Financiers Association of Australia

Director
Min-it Software
PO Box 1367
Sunnybank Hills
QLD 4109

Telephone : 07 3038 3044
Fax: 07 3870 0813
Mobile: [redacted]
e-mail: [redacted]

Table of Contents

Background Information

Firstly, we would like to thank ASIC for providing the extension of time requested so that we may provide it with this submission. It is very much appreciated.

This submission is made on behalf of the Financiers Association of Australia ("FAA") and Min-It Software ("Min-It") clients.

We welcome the opportunity to submit this submission on Treasury's consultation on the design, distribution obligations and product intervention powers of financial and credit products in regard to short term credit products.

The FAA, having been established since the 1930's, is an organisation for individuals and companies involved in the fields of finance and credit provision. The FAA's members are either non-ADI credit providers, providing personal loans, mortgage financiers or business financiers.

A number of the FAA numbers hold both an Australian Financial Services Licence ("AFSL") as well as an Australian Credit Licence ("ACL") with conditions enabling them to act as both a credit assistance provider and a credit provider.

Aside from the software produced in-house, specifically by or for franchised organisations, Min-IT Software is a leading loan management software supplier to the micro-lending sector of the Australian market. Additionally, it has a number of clients providing motor vehicle finance as well business loans and consumer leases.

Whilst the majority of Min-it clients hold credit provider ACL's, a small number do hold an ACL with conditions enabling them to act as both a credit assistance provider and a credit provider.

The vast majority of Min-It's clients are not affiliated with any industry association.

Introduction

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry's inquiry highlighted where a large majority of IDR dis-satisfaction has occurred to date. To that end, this submission is made by a representative body and a software supplier whose members and clients are not major home loan lenders but are in serious danger of being disregarded if ASIC focusses only on the big banks and this type of lender. Draft Regulatory Guide 165 is not just about meeting the needs of home loan borrowers and we urge ASIC not to overlook this.

When Treasury consulted on the Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017 (and following enactment, subsequently referred to as the "AFCA Act") to establish the Australian Financial Complaints Authority ("AFCA") in November 2017, we stated the process was a sham. Treasury did not listen to industry concerns when the Authority was being established but that is exactly when it should have occurred. It was presented as a *fait accompli.* The Ramsey Review never consulted any FAA member or Min-It client and we can find no one in the smaller lending sectors that were ever consulted.

Our concerns were always with the way it was engineered to replace the two former External Dispute Resolution ("EDR") bodies for credit and financial services, the Financial Ombudsman Service ("FOS") and the Credit Industry Ombudsman Scheme ("CIOL") along with the Superannuation Complaints Tribunal. We wanted to see a Tribunal (with a capital "T") with the powers of a Court replace FOS and CIOL rather than another tribunal set up as a private company that saw itself having semi-legislative powers. This was recommended by a Parliamentary Committee.

The legislation was passed at a time in response to the growing public dissatisfaction as to how some major financial institutions had acted. We do not dismiss the fundamental reasoning behind the Authority's implementation. The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry verified these concerns.

The establishment of AFCA was supposed to be an alternative purview to the then Turnbull Government agreeing to a Banking Royal Commission. As a result, the licencees represented by the FAA and our clients have become collateral damage to this unsatisfactory process. There is almost no ministerial control required under the AFCA Act. The only time it must seek Ministerial approval is when it wants to increase its fees.

The importance of Internal Dispute Resolution

We concur that the passing of the AFCA Act has significantly reshaped the Australian financial dispute resolution framework. Almost every specialist credit industry lawyer we know of along with those members and clients that have had dealings with AFCA regard the body as being totally out of control. It is slow to act and inconsistent in its decision making. Disputes are escalated despite there having been no Internal Dispute Resolution ("IDR") processes occur with the licence holder simply because they can. As a consequence of the AFCA Act, the consensus of opinion is there has been no change to the EDR process being designed to reward those consumers that do not want to be held contractually liable for their actions. In fact, anecdotal comment suggests many Financial Service Providers ("FSP") have paid financial or non-financial penalties to consumers after what some suggest is nothing more than verbal coercion by AFCA case managers as a means to simply make the issue go away rather than face escalating costs if they don't agree.

AFCA is a private, not-for-profit business but the fact that it doesn't distribute those profits doesn't stop it from taking actions that are clearly revenue driven. As we pointed out in one of our submissions[1] to a Senate Committee earlier this year which was unpublished but accepted as correspondence, the complaint fees that AFCA charges FSP for <u>each</u> complaint along with an annual 'membership' fee payable, based on turnover, are not insignificant. These are:

Decision Point	Fast Track	Standard	Complex
Registration & Referral		80	
Case Management - level 1		740	

[1] Joint FAA/ Min-It Software, 2019. Supplementary Submission to the Senate Economics References Committee – Inquiry into credit and financial services targeted at Australians at risk of financial hardship, dated 04 February 2019.

Case Management - level 2		1,855	2,100
Case Management - Conciliation		1,980	2,300
Fast Track – Preliminary View	1,775		
Fast Track - Decision	3,320		
Decision - Preliminary View		4,725	5,895
Decision - Ombudsman		7,420	9,490
Decision - Panel			11,140
Ombudsman Conference		1,180	

For these reasons, resolving a matter under IDR so that it never reaches EDR is an economic priority for all FSP. For a small credit assistance provider or credit provider, a couple of determination costs together with the need to provide remediation can **seriously** affect its bottom line. These costs show why it makes commercial sense to capitulate as quickly as possible rather than fight an alleged complaint, even though they may have acted both legally and morally correct.

Whilst we appreciate the need for ASIC to align its policies with the AFCA Act, there was never any suggestion made at the time nor can we find it in the revised Explanatory Memorandum to the Bill that ASIC would be using its law-making powers like it intends. For example, under the heading 'Strengthened Oversight', it merely states:

> "1.22 ASIC will have a new power to issue regulatory requirements that AFCA (being the operator of the AFCA scheme) must comply with.
>
> 1.23 ASIC will also have the power to approve material changes to the AFCA scheme by giving written notice to AFCA.
>
> 1.24 ASIC will also have a directions powers so that it can:
> • increase the limits on the value of claims or remedies that can be made under the AFCA scheme;
>
> • ensure the AFCA scheme is sufficiently financed; and
>
> • require AFCA to comply with legislative or regulatory requirements that apply in relation to the AFCA scheme. "

All these are requirements on AFCA and not on licencees generally. In our view, if Treasury knew or suspected it was ASIC's intention to use its law making powers and convert RG 165, a Regulatory Guide relating to Internal Dispute Resolution which up to now has provided guidance

only and is not intended to constitute legal advice into a legislative instrument, industry and Parliament should have been made aware of it. We also note that the CP states ASIC will seek to use (see point 23 of the CP) similar law-making powers to modify s.912A (1) (g) (i) of the Corporations Act.

Similar to what we stated in our submission to CP 313 – Use of Product Intervention Power, it is totally inappropriate in such circumstances for the regulator to be judge, jury and executioner unless the draft legislative instrument RG165 (hereafter referred to as the "legislated instrument") or anything similar contains mechanisms to refer the matter either to the Administrative Appeals Tribunal or to a Court. The Draft currently contains neither.

When the National Consumer Credit Protection Act 2009 ("NCCP") was being discussed, we raised concerns about the use of a complaints process generally and that on any failure of IDR, the use of EDR. From our discussions with Treasury at the time, the whole idea of IDR was to minimise the financial and resource impact of complaints on licencees so that only the generally more difficult complaints were likely to proceed to EDR.

Treasury believed, as did industry, that the number of complaints that would be dealt with at IDR or EDR would be relatively small when compare to the total number of contracts provided overall. Based on feedback from members and clients, we still remain of that view.

AFCA's CEO and Chief Ombudsman, Mr. David Locke stated in January 2019 that "[f]rom our experience, many vulnerable and disadvantaged consumers actually struggle to be able to use financial firms' IDR processes, where those exist, or even to be able to bring matters to AFCA."[2] None of our members or clients has reported this but the thrust of requiring a full complaints system with highly detailed reporting required bi-annually to record every instance of 'dissatisfaction', no matter how trivial, for every licencee, in our opinion shows a bias towards this view.

Mr. Locke mentioned "[t]here are some large providers who generated more significant numbers than others. Cash Converters personal finance generated 96 complaints; Sunshine Loans centre,

[2] Ibid 1. Hansard, Canberra 24 January 2019, p.2.

62; Cash Converters cash advance, 60; Credit Corp Financial Services, 54" [3] and stated that "[w]e believe that there are significantly more complaints than are actually coming to us in some of these areas" [4].

These figures are for the period 1 July 2017 through to 31 December 2018 and are infinitesimally small compared to the number of credit contracts each of the credit providers issue monthly, never mind for an 18 month period. Given his two roles as CEO and Chief Ombudsman, there may be an arguable conflict of interest if the aim of this comment was to see increased revenue for the monopoly.

Our concerns

- ASIC has based its research (see REP 603,[5] published December 2018) on a commissioned investigation by Nature and The Lab using around 1,000 participants in Stage 1. When that report was published we asked a sample of our members and clients if any of their clients had been approached. None reported they had.

  In stage 2, the online qualitative and in-depth interviews were narrowed down to just 60 individuals, with 35 (58.3%) of those having actually made a complaint, 14 (23.3%) in the process of making a complaint and 11 (18.3%) had considered making a complaint in the past 12 months. Of the 60 interviewed, 29 (48.3%) were in respect of credit.

  In stage 3, the sample size increased to 1294, and for credit issues, there were 261 of 595 (43.9%) actual complainers and 335 of 699 (47.9%) considerers. Unfortunately for our members and clients, the general heading "credit" in the tables covered all forms of credit and included credit card providers. There was no breakdown published of the various credit suppliers and credit types despite Q7a and Q7b of the online sample specifically asking.

[3] Ibid 2, p5.
[4] Ibid 2, p.5
[5] Australian Securities and Investments Commission, 2018. *Report 603 - The consumer journey through the Internal Dispute Resolution process of financial service providers,* December 2018, p10. Available online https://download.asic.gov.au/media/4959291/rep603-published-10-december-2018.pdf viewed 5 January 2019.

We do not dispute that the consumers who responded had issues with IDR but our members and clients question whether ASIC has adequately given sufficient weight to the types of businesses and the types of credit involved in its decision-making when we have such distortion. It doesn't take a sledgehammer to crack a nut but at face value, this appears to be yet another example of a one-size-fits-all approach.

For the research to have any value, ASIC should have encouraged the investigator to further breakdown the reports so that meaningful data could be obtained by industry and other stakeholders alike.

- Based on ASIC's comment at point 66 of the Consultation Paper ("CP") that it had already started to proceed with IT development, ASIC clearly has already made decisions it will impose on industry despite stating the proposals are at a "preliminary stage… and may change" (page 2 Disclaimer of the CP). On that basis, exactly which proposals are at a preliminary stage and which aren't? Why haven't we been informed which these are?

- The CP makes no mention as to whether the cost of this development is to be paid for by industry and so coming out of licencees industry levies or if it is being paid for by Government. If the costs are going to come from industry levies, we regard this as being utterly unreasonable as t least some of the comprehensive reporting requirement appears to be required purely because of deficiencies in ASIC's own database systems that are not interfaced.

- Unlike other legislation which requires a Risk Impact Statement ("RIS"), no draft has been circulated. The timeline (page 5 of the CP) contains no mention of one to be circulated with the revised Regulatory Guide as part of Stage 4 due in December 2019 either. We do not consider the Treasury-issued RIS for the AFCA Act covers this proposal. With no questions asked about costs, some of our members and clients have said it would appear ASIC simply doesn't care. None of the questions asked actually cover this area and so we must ask why no information has been requested.

This CP should not be another pretext for yet another regulatory *fait accompli* by Government introducing new requirements on the financial sector without knowing the full impact.

According to AFCA's CEO, it has about 10,500 financial firms[6] as 'members'. If 500 of these are deducted as being representative of larger firms, that amounts to approximately 10,000 small-to-medium sized businesses. Coupled with the updated RG209 requirements to which industry recently responded, these two proposals are likely to have significant economic impact on these entities. For that reason, we believe it is imperative for ASIC to create a RIS after it has assimilated comments but before publishing the revised RG165. If it cannot do so, we suggest it must seek further information so that it can.

- ASIC may or may not be aware but on June 25, according to an article on SmartCompany[7], Prime Minister Scott Morrison pledged to cut the red tape burden on Aussie businesses. He asked them what it is they want to go. We argue it should also be what we don't want Government or one of its regulators (i.e., ASIC) to introduce. Furthermore, the Treasurer, the Hon Josh Frydenberg stated at an Australian Chamber of Commerce and Industry luncheon meeting held in Brisbane on Tuesday 18 June 2019 which FAA directors attended that in a panel interview, "small businesses were the backbone of Australia and the Government is committed to assisting this sector" of the economy. Small business FSP are part of this backbone and should not be excluded from it.

  Consequently, there appears to be a major dichotomy between ASIC's intent and that of Government, particularly in regard to processing and reporting requirements. Just because ASIC has the power does not mean it must use it.

- We are reminded of the professed desire of the then Assistant Treasurer, the Hon Bill Shorten, back in 2013, to see industry rationalisation. He advised us he ideally wanted to see no more than around a dozen [SACC] credit providers exist but thankfully, whilst a

[6] Ibid 2, p. 11
[7] Elmas, M., 2019 *"Morrison pledges red tape overhaul, invites suggestions from business*", SmartCompany, 25 June 2019. Available online https://www.smartcompany.com.au/people-human-resources/industrial-relations/scott-morrison-red-tape/?utm_campaign=SC&utm_medium=email&utm_source=newsletter&utm_content=smartco_daily&term=2019-06-25 viewed 25 June 2019.

number have come and gone, there are still a number of credit providers for consumers to choose from.

If ASIC is now taking a similar stance and it's using the implementation of the legislated instrument as a means of thinning out the industry as it will be easier to regulate a small number of FSP, who by inference will all be larger entities because these entities will be the only ones able to absorb the costs involved, it should openly come out and state so.

As we have stated, ASIC has the ability to cater for small businesses as it can set reduced requirements (for example, see legislated RG 165.3(a)). We urge it to look at doing so.

- We note at draft RG 165.31 that "[a] consumer or small business is not required to expressly state the word 'complaint', or put their complaint in written form, to trigger a financial firm's obligation to deal with a matter according to our IDR requirements".
  If the intended effect of this is to allow a consumer to advise the lender they are unable to make a payment using any unreasonable excuse but the licencee has to treat this as though it were a complaint, we have a major issue. This was thrashed out during the early negotiations of the NCCP where we, along with a number of other industry representatives, argued that a consumer's use of discretionary funds for other reasons so could not make its commitments to the lender is totally unacceptable, either as hardship or a complaint. This must not change as it will lead to rampant indebtedness and financial collapse.

  We remind ASIC that the then responsible Minister, Assistant Treasurer, The Hon Kelly O'Dwyer MP, said this Government "believe[s] in accountability and in people taking responsibility for their actions, but also providing them with information by which they can make positive choices"[8]. These provisions must be able to hold them to that responsibility.

  In our opinion, there needs to be additional clarification that the inability to make a payment without a reasonable excuse does not constitute a 'complaint' or an element of 'dissatisfaction' under these guidelines. If there is reasonable excuse, then the matter can

[8] ABC TV, 4 April 2016. 7.30 Report: *Assistant Treasurer says tax avoidance is illegal*. Interview by Leigh Sales of Assistant Treasurer, The Hon Kelly O'Dwyer, Transcript available online, http://www.abc net.au/7.30/assistant-treasurer-says-tax-avoidance-is-illegal/7298750. Viewed 30 October 2017.

be dealt with via hardship or a short term arrangement under s.71 of the National Credit Code ("NCC") or if there is genuine complaint, it can be dealt with properly.

- We appreciate that the International Standards are updated over time. The current RG 165 document states on page 20 at RG 165.78 that licencees "will be required to adopt the following definition of 'complaint' in AS ISO 10002–2006 when handling 'complaints' under the Corporations Act or 'disputes' under the Transitional Act and National Credit Act:

  An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected. "

  CP 311 states that 'complaints' will now be defined as under AS/NZS 10002:2014. We note that is also AS ISO 10002:2014. Both standards use the same numbering, "the difference between the two standards that AS ISO 10002:2014 focuses on customer satisfaction whilst AS/NZS 10002:2014 focuses on the complaints handling process".[9]

  The new standard was developed in conjunction with many public agencies and Government Departments, including FOS. From the outset, therefore, it was designed by bureaucrats to cover the compliance requirements of large corporate entities and bureaucracies. Business owners take legitimate risks daily to survive but the detailed requirements of the legislated instrument, if adopted as is, could easily hinder smaller licencees, who are able to move far quicker than large corporate entities. In our opinion, there should be no paralysis by analysis just to meet bureaucratic requirements. This could likely lead to industry consolidation or the complete withdrawal from the market by some entities that are tired of dealing with ever increasing regulatory impediments constantly being introduced.

  The standard is a framework but it's how ASIC intends to implement the process and the vast amount of information required where there is bureaucratic overreach. There appears to be no scalability mentioned in either the CP or the legislated instrument so that

[9] Complispace, 2015. "*Two new '10002' complaints handling standards – now that's confusing*", 25 March 2015. Available online https://www.complispace.com.au/blog/financial-services-updates/two-new-10002-complaints-handling-standards-now-thats-confusing/ viewed 02 August 2019.

regardless of size, the intent is all FSP complaints handling processes must be handled by every licencee in almost exactly the same manner.

That's not the situation for everyone, though. We note at point 69 of the CP that ASIC already intends offering "an IDR data reporting form to smaller financial firms that receive only a few IDR complaints each reporting period to help them comply with our IDR data reporting requirements." That would appear not to include the vast array of fields FSP's will be required to supply via a .csv file.

ASIC has stated it needs to "align" its guidance with the AFCA Act, which in common with most current Government legislation is a framework. In our opinion, ASIC needs to take into account the impacts that the legislated instrument will have on these 10,000 or so small–to-medium sized businesses. ASIC appears to have little appreciation of their ability to comply with **all** the requirements, at a time when the economy is in recession, without being anti-competitive. Any failure to do so will inevitably have unintended consequences such as diminished freedom of choice for consumers, job losses, and reduced financial availability.

- At draft RG165.60, it states "[f]irms may design their complaints system to suit the nature, scale and complexity of their business, including the number of complaints they receive. Firms that receive few complaints might, for example, use a spreadsheet. We expect firms with large volumes of complaints firms to use specialised complaints software or to integrate complaint management data fields into existing customer relationship management systems."

  As there is no mention of this in the CP, we are left wondering whether ASIC has reviewed and assessed any of these specialised complaints software systems and determined that they are compliant and will meet its requirements. Equally, if any of these systems are capable of producing the .csv file to the specifications required.

- We note AS/NZS 10002:2014 contains an annexure on unreasonable conduct by complainants. There appears to be no reporting category for such complaints in the data dictionary. We believe this is an essential requirement.

We saw from the outset of EDR that vexatious, unsubstantiated or engineered complaints arose and these have steadily increased over the years as some consumers have become more 'savvy' in their attempts to avoid their contractual obligations. According to members and clients, credit 'repair' companies are the most frequent users of these types of complaints, followed by some financial counsellors. As a result, we have one client that will no longer use Credit Reports because the actions of credit 'repair' companies have reduced their efficacy.

We believe these types of 'complaint ' claims will further increase as a result of these proposals. For example, we are aware AFCA recently accepted a 'complaint' from a 'member' (neither an FAA member nor a Min-It client) that had been declined on numerous occasions due to unaffordability. AFCA finally accepted the reasoning provided by this member but it should never have got that far. It cost the member a significant amount in legal fees plus AFCA's fees to obtain this decision. Our members and clients do not want to see petty levels of dissatisfaction used as a means of pursuing IDR.

For example, a consumer could claim to an FSP they didn't like dealing with a specific person, perhaps because of tattoos or piercings, dress, or because the person didn't like being declined. Our members and clients report it is extremely easy to engineer claims of rudeness or other emotional dissatisfaction after the fact. If the business owner is happy with that individual's performance and there are no grounds for dismissal, then that should be the end of it. Many of our members and clients are small 'mum and dad' operators with a few staff, some of whom may be part time. Unless it is repetitive and consistent, a 'complaint' over personal appearance or attitude should not be used as a means of making someone unemployed because of the personal preferences of a small number of consumers.

- These provisions are likely to increase licencees' discontent with the regulator due to the requirement to categorise the minutiae of the alleged 'complaint' simply for ASIC's reporting purposes.

- It is unclear from the CP and draft RG165 as to whether ASIC will take any action in regard to issues that are reported by licencees. If ASIC regards an issue as systemic, for example,

will it refer the matter to AFCA or investigate it itself? It would be useful for industry to know any process it intends employing.

Furthermore, we suggest just because a licencee has recorded and reported the dissatisfaction, it should not necessarily mean that it automatically leads to enforcement action or prosecution. ASIC must investigate further before determining any further action.

- Under the heading 'Complaints resolved within five business days of receipt', RG 165.87 and RG 165.88 have the requirement to assess the consumer's satisfaction. We consider this to be inappropriate because if the consumer is asked on a scale of 1 to 10 to rate their level of satisfaction in quick fire questioning, with 1 being highly dissatisfied and 10 highly satisfied, some clients are going to get it wrong anyway because they interpret the number rating incorrectly. Others are likely to not want to answer at all because they can't be bothered or simply refuse to answer. Others may take offence at the entire question and raise another complaint over it. It is ludicrous to suggest that a complaint cannot be closed in such circumstances.

  If such a response is required, it doesn't make any sense as to why ASIC believes this requirement should only apply to complaints resolved within five business days of receipt rather than applying to all.

- As a result of the above, we consider the intensity of the process requirements along with the detailed reporting required amounts to industry strangulation by regulation.

- Finally, we note that ASIC is not intending to hold any further consultation on this matter, unlike the public hearings scheduled for later this month in regard to the proposals to update RG 209. We consider this to be imperative and we would welcome an invitation to participate in a round table meeting with other stakeholders.

Responses to questions raised

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.

We do not consider complaints should be dealt with via social media at all for the following reasons:

a) It may not be possible to adequately identify the complainant;

b) Unless the licencee knows the privacy settings of the consumer's device and application and these remain unchanged throughout the process, it may breach privacy requirements;

c) To our knowledge, none of our members and clients has anyone permanently engaged in either part or full time social media communication. They don't have the resources;

d) It is far too easy to circulate what should be private communication across the consumer's 'followers' and for an entity to be subject to inundation with adverse comments from non-clients which may range from specific instances of loan or lease refusal to general anti-business comments. Every social media platform has made it extremely easy to publish any comment, good or bad. The industry and individual licencees do not need "fake news"

Some members and clients may use social media to communicate with consumers but with no responses confirming this (as they chose not to respond), we are unable to advise and provide specific answers to sub-questions (a) or (b). In our view, anyone contacting licencees by social media should be encouraged to communicate privately, by email, phone, letter or in person.

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?***

As stated previously, we believe there needs to be additional clarification at draft RG 165.31 to ensure that the definition excludes a consumer's inability to make a payment without a reasonable excuse under these guidelines.

In regard to "accuracy", at draft RG 165.32, it states "[f]inancial firms should not categorise an expression of dissatisfaction as 'feedback', an 'inquiry', a 'comment' or similar". As the legislated instrument is to be a somewhat prescriptive document that both ASIC and AFCA will hold licencees to, we believe ASIC must clarify exactly what these terms mean in its opinion to provide consistency for the entire industry.

B2Q2 ***Is any additional guidance required about 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.

In addition to our response to B2Q1, we believe the 'complaint' definition should exclude all references to "staff". The interaction between two individuals is a very personal but subjective experience. As ASIC has chosen to employ the definition of AS/NZS 10002:2014 rather than AS ISO 10002:2014, ASIC is more concerned with the processes used than providing satisfaction to the consumer. We suggest most businesses would find this rather odd. Satisfied customers return; we are unsure if a processed one would.

A humourless consumer may have certain expectations that are not met because of company policy or legislative requirements. How the consumer interprets the way that is communicated may cause an increase in the number of 'complaints' recorded at IDR. For example, as we have stated previously, some may take being declined for a loan or lease as disrespectful or offensive. Who defines offensive, for example? One individual may be offended but another may not. This will then take further resources and time to

deal with the ‘he said/ she said’ mentality, even if the ‘complaint’ is relatively frivolous or lacks merit.

If a consumer has a sense of humour and the ‘complaint’ is intended as light-hearted banter, it should not be regarded as a communication complaint under these guidelines. Our members and clients deal with forms of discrimination daily. The issue may be due to ethnicity or racial background, religion or gender, or forms of dress. The legislated instrument should not be a means of consumers engaging in unnecessary complaints simply because their opinions differ.

We believe that at all times, a complaint must have specific relevance and merit. The legislative instrument must include guidance on this. It attempts to de-humanise the personal interaction and relationship between the complainant and the licencee and/or its staff. Subjective opinions on staff personality have no place in this definition.

We are very much aware the legislative instrument will also be used by AFCA as a measure by which it will gauge a licencee’s adherence to these processes in its EDR administration. We believe it is totally inappropriate that an unlisted public company, established by an Act of Parliament but not owned by the Government, and granted the power of a monopoly, should be able to act as a defacto Professional Standards Body for all complaints involving staff.

As we have stated previously, there needs to be a category for unreasonable conduct by complainants as per the annexure to AS/ NZS 10002: 2014 and this needs to be further included in the data dictionary.

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.***

We have no issue with this definition.

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

This should not be a requirement in our opinion. Many 'complaints' may have no merit or simply be a passing comment. To record these is a waste of valuable time and resources.

In our opinion, it would be better to not require this and have licencees record genuine complaints or dissatisfaction than encourage them to say they had none and face possible enforcement action.

B5Q1 ***What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?***

As previously mentioned, we have some concerns about the requirement to report bi-annually with extremely detailed information on every 'complaint' but we have no objection to a genuine complaint being given a unique identifier.

We do have an issue that the identifier cannot be reused if the complainant were to continually raise separate complaints as part of an ongoing process to wear down the licencee as it's really all part of the same one. This type of practice has been evident for years at CIOL. Requiring a separate number in every instance would, in such circumstances, increase the apparent number of IDR complaints for no real purpose and may influence public perception if such data were reported at firm level.

We can see no issue including such data at an aggregate level.

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?

We will comment only in respect of credit products.
In regard to (a), for consumer products, as hire purchase or rent-to-buy as a finance option has not been a legitimate finance option under the NCC for many years, we see no validity in including it with leases. It should just be 'leases'.

We are unsure as what the difference is between short-term finance loans and personal loans. They are all forms of personal loans. If there is to be differentiation, ASIC must clarify what these represent.

We note with interest that vehicle loans are not represented. We believe this may be an oversight as it should be included.
For business finance, the general categorisation is sufficient.

In response to (b), given these cover all entities required to have IDR processes, as stated previously, we believe 'vexatious ' must be included as a reason under Complaint Outcome.

We are astounded that ASIC believes every complaint will be settled with some form of financial compensation to the consumer. Zero must be an included option. Also, if future interest were to be held as compensation option, given a loan can be paid out at any time, we are unsure as to exactly how a licencee would report this. ASIC should consider providing guidance for this type of situation.

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 will comment only in respect of credit products.

(a) The wide set of variables is likely to make it cumbersome to deal with unless licencees are able to customise the software to their specific needs.
(b) A 25Mb .csv file should be more than sufficient for our members and clients.
(c) We are of the opinion that no reporting to ASIC will generally be required, as the only foreseeable issue for our members and clients will be where a complaint covers two reporting periods.

In regard to the field sizes, we wonder what ASIC expects to be recorded and at what level of detail when the field size for the ”Description of complaint issue”, “Complainant’s desired outcome” and “Description of outcome and/or remedies” have all been set at 4,000 characters. We would have presumed neither of these would require such detail. When the information in these fields cannot be readily compiled and aggregated, are we then going to see another set of codes issued that ASIC can use to disseminate it all?

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

We are opposed to the publication of IDR complaints at firm level as it encourages a public name and shame exercise.
A large number of IDR ‘complaints’ might suggest the licencee has a major issue when it may not have. The public will not know how many contracts the licencee has issued in the period and so there may be substantial negative perception. Some competitors might even try to use the data in their comparative advertising. We do not believe this should be permitted.

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

We suggest that for credit products, the licencee should not be required to provide detailed information if a complainant has not secured finance, similar to the

requirements of not having to provide a Credit Assessment under the NCC. There are many reasons why a lender will not provide finance and obtaining credit is not a right. The lender has the right to determine who it will and will not lend to and should not be required to substantiate its reasons. This is no different to an hotelier refusing entry to an individual as they are not required to give a reason.

Whilst the vast majority of licencees already provide much of the minimum content information, we question whether most individuals are going to understand the complexities of the NCCP and NCC. Consequently, we have reservations about providing sufficient detail to meet the requirement at (f). Licencees should not have to seek legal advice on how to respond but some lawyers may end up drafting template replies for licencees in order to meet this requirement. If the matter then were to proceed to EDR, AFCA will doubtless seek this information anyway.

B9Q1 ***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.***

This question does not apply to our members and clients.

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.***

This question does not apply to our members and clients.

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.

In regard to (a), no, we do not agree with the proposal to reduce the IDR maximum timeframe. The presumption is licencees will be able to contact whoever they need additional information from and it will be readily available. This is not always the case. .

Whilst every licencee will generally want to obtain all the information required as quickly as possible, our members and clients already experience complaints where the consumer has not been able to supply the required information in the current timeframe or where the lender has to seek additional information from a third party such as an accountant or broker.

Complainants do not always respond quickly and we have seen evidence of some complainants receiving legal advice not to do so. In the vast majority of instances, it probably will be possible to deal with within the 30 days suggested but not always. Licencees should not be penalised for the consumer's inaction or where a third party does not provide the required information in a timely manner to suit ASIC.

We strongly recommend ASIC retains the current timeframe of 45 days.

In response to (b), this question does not apply to this submission.

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?***

This appears to be a re-worded duplication of question B11Q1. Please see our response above.

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.***

This question does not apply as none of the FAA members or Min-It clients employ a consumer advocate.

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.***

This question does not apply as none of the FAA members or Min-It clients employ a consumer advocate.

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.***

For small licencees with low staff numbers, from feedback received, it suggests they are already identifying systemic issues and dealing with it in a timely manner. However, the need to set thresholds for and processes around identifying systemic issues that arise from consumer complaints and creating reports that include metrics and analysis for small 'mum and dad' businesses will be seen as superfluous. It is unlikely they would comply; they would be writing information for themselves.

Whilst this may be a sound idea in principle, it is imperative that some level of scalability be introduced for this requirement to cover all sizes of licencee businesses.

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.***

As we have stated previously, the legislated instrument has been written from a one-size-fits-all approach that is unworkable for many small licences and in our opinion, for our members and clients, it is bureaucratic overreach.

Whilst we have no general problem with the new standard as a framework, it is the way ASIC intends implementing it that's the issue for our members and clients. As we have repeatedly suggested throughout this submission, we need to see some level of scalability apply based on the size of the business.

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.***

From the feedback we have received from members and clients, the proposed timeframes in Table 2 do not allow for sufficient time for implementation.

We have already stated that the suggested reduction in the maximum timeframe allowed for IDR from 45 to 30 days is unwarranted. In most cases, it will be possible but not always. We have therefore suggested retaining the current timeframe.

In regard to the 30 June 2020 deadlines, this is a major change to IDR for all licencees. It requires significant redrafting of policies and procedure manuals and IT development work. Unless the developer has significant existing compliant system knowledge, someone in the business will have to provide specifications for the work. That may not be easy as most of our members and clients would struggle with the requirement. It would be tantamount to the blind leading the blind.

We believe that there will be many details to resolve before everything gets bedded down and whilst some of the ADI's and larger licencees may have the resources to be able to deal with these changes by this date, we suggest that there be a staggered deadline that extends this to 30 June 2021 for smaller licencees, similar to how the Australian Taxation Office introduced the new Single Touch Payroll reporting system.

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

.

See our response to B15Q1 above.

Min-it Software

Financiers Association of Australia

Joint Submission –

ASIC CP311: Internal Dispute Resolution: Update to RG 165

Supplementary Submission

17 October 2019

Contact:

Haydn Cooper
President
Financiers Association of Australia

Director
Min-it Software
PO Box 1367
Sunnybank Hills
QLD 4109

Telephone : 07 3038 3044
Fax: 07 3870 0813
Mobile: [redacted]
e-mail: [redacted]

Table of Contents

Introduction

This supplementary submission is made following the round table meeting held in Brisbane on 20 September 2019. We have now had a chance to review our meeting notes and in some instances, discuss with other attendees, both at this and the meeting held on 25 September, for their thoughts.

Thank you for the opportunity to present these additional concerns for your further consideration.

From discussion with members and clients alike following the meeting, we must advise that there remains a deep underlying belief in our industry that the AFCA legislation went too far. From the perspective of prescribing how businesses must deal with their customers, many regard it as destroying that relationship. For some, the management cost of implementing the requirements of Regulatory Guide RG165 may be too great.

Not all lenders are bad people and not all borrowers need protection but to possibly penalise licencees because they took a day too long to respond or didn't record a complaint because they made some error of judgement is intrusive, bureaucratic interference. With the sheer number of declined applications in the smaller loan and lease sectors arising from regulatory requirements, ASIC needs to consider that it may have unintended consequences. This legislative instrument will have a huge impact on all smaller financial entities, whether credit providers or otherwise. With expenses exploding and revenue capped, at least for Small Amount Credit Contracts ("SACCs"), and consumer push for ever cheaper loans, should many smaller financial firms quit the industry because they don't want to spend their time responding to alleged complaints, it may hurt the very people that the legislation is supposed to assist. We already know it is going to hurt every business' profitability, may increase unemployment and possibly reduce consumer choice. We would hate to see the provisions create a void where black market lending can easily emerge once more should there be many that exit the sectors.

We know of one small amount loan book that contains customers from the ATO's senior management, ASIC, an Associate Director of a major Bank and several Government departments. As can be seen, the consumers come from all professions and walks of life. They are not all the desperate and vulnerable the consumer advocates so often want to portray. Many hold senior

positions, some with salaries over $120,000 p.a. but no one ever knows because borrowing money is a very private and a very personal matter. Dealing with any problems these clients have should also remain that way.

At the meeting on 20 September, the author asked if an abusive phone call, from a client who was obviously affected by Ice or alcohol, be labelled as an IDR complaint. I was asked to repeat the question three times. There was no answer to my question and the other attendees, predominantly from the major banks, simply wouldn't have to deal with many such clients. Unfortunately, for the small lending sector, this is a daily occurrence. Those attending from ASIC appeared to be shocked by the question and didn't know what to say. The question was deferred for further discussion by the regulator.

As regulator, we believe ASIC should, in making what will be legislation when the Regulatory Guide 165 is published, at least understand and take into account the actions of some of the people they are wanting to protect. In doing so, we argue it must also protect the lender.

IDR is essentially a mediation process, between the client and the business, to work out their differences. Significantly, IDR by its very nature is casual and less restrictive, enabling common language and reason. The safety net for consumers is AFCA and EDR. Whilst we understand the AFCA Act was passed by Parliament and is law, making the IDR processes overly prescriptive will only bring deep dissatisfaction.

We consider the lack of clarity in how ASIC intends to regulate this legislative instrument and interpret some of the elements creates an uncertainty which is of grave concern. It must be remembered consumers and the business owners are real people who make mistakes from time to time. They exist in a symbiotic relationship and for this reason, we suggest ASIC needs to carefully balance any desire to be overly zealous in its enforcement approach with unforeseen consequences arising from bureaucratic overreach.

Six hours consultation with chosen members of the industry in round table meetings is clearly not going to consider all the nuances that affect the consumer or the financial institutions that attended. It would be useful for future meetings – and for future round tables - to allow industry representatives to bring along some of those that are at the coal face so that ASIC can hear their

first-hand accounts. We hope the consultation process is not seen as yet another ticked event to make this process appear legitimate.

In our opinion, even with the carved out areas, what may end up in draft Regulatory Guide RG165 has not been thoroughly thought through. Whilst respecting that timeframes for concluding IDR processes need to remain, reducing the timeframe to 30 days isn't the answer. It should be a goal or an ideal scenario but not a mandatory requirement.

Rather than rushing this draft Regulatory Guide in before Christmas, we would like ASIC to consider issuing a further draft to those that attended.

We will now comment on some of the issues that we took note of and where the answers weren't as clear as we would have liked.

ASIC RG content v AFCA Rules

We remain extremely concerned that AFCA Rules allow for an inconsistent interpretation or approach of what the final version of the redrafted ASIC Regulatory Guide 165 might contain. Industry needs consistency and if AFCA is to meet its statutory requirement of being fair and transparent to all parties, then the legislative instrument RG165 must override or at the very least be totally consistent with AFCA's Rules.

AFCA has the power under its Rules to apply whatever decision it thinks "fair in all the circumstances" but if credit providers or licencees are following the requirements of the National Consumer Credit Protection Act ("NCCP"), the National Credit Code ("NCC") and ASIC Regulatory Guide content, this may override the legislative framework. Essentially, AFCA may elect to completely ignore this whenever and howsoever it chooses.

If the credit provider or licencee has complied with the legislation, then that should be the end of the matter. AFCA should not be in a position to override parliament's intent.

Definition of a complaint

Whilst it was with some relief to hear that only actual complaints need to be recorded, there is still some considerable disagreement and uncertainty as to what constitutes a complaint. For example, in our initial submission, we asked for a definition of "feedback" but at the meeting it was made clear nothing was to be provided. Despite the intense questioning by some attendees as to the "complaint" definition, it was mentioned that AS/NZS 10002 2014 includes the requirement to regard a matter as a complaint where "the consumer 'implicitly' expects some attention and a resolution is required". A dictionary definition of 'implicit ' is "suggested but not communicated directly:"[1] In such circumstances, as credit providers are not mind readers, if a view is formed that no such response is required, it cannot be a complaint. We believe there needs to be some form of "safe harbour" built into the legislative instrument that protects the credit provider from unnecessary expense or prosecution unless ASIC can prove otherwise.

We recommend that the updated RG165 contain a 'safe harbour' provision.

Request for 'information' versus 'complaint'

There was some discussion as to when an expression of dissatisfaction is no more than a request for information or clarification.

Both FAA members and Min-It clients regularly have discussions with borrowers where there may be some element of initial dissatisfaction that are promptly resolved simply by providing information (possibly such as an explanation of the fees contained in the contract) or pointing out the legislative requirements.

In our view, these are not complaints but simply either misunderstanding or ignorance on the part of the consumer.

[1] Cambridge Dictionary.org, 2019. Definition of implicit. Available online https://dictionary.cambridge.org/dictionary/english/implicit viewed 13 October 2019.

Professional judgement

Elise Ivory from Dentons sought clarification at the meeting as to what constitutes “professional judgement”. We believe this was not satisfactorily addressed and in the absence of any “safe harbour” provision, still leaves uncertainty. We believe any new Regulatory Guide 165, whether made a legislative instrument or otherwise, should address this.

Third party complaints

It was clear from the meeting that most attendees believe third party complaints should not be entertained. At the very least, there are possible privacy issues and ascertaining that the third party is even entitled to have the complaint heard and dealt with.

Rejected application complaints

We noted ASIC believed a complaint should be accepted from a declined applicant. As we and others stated in the meeting we attended, we disagree with this view.

This issue is more than significant for smaller credit providers. We have previously provided Treasury and the SACC Review Panel with evidence that our members and clients, on average, decline between 75 – 92% of all applicants. They do so because in almost all cases, the applicant does not or cannot meet the NCCP or NCC statutory requirements. Credit providers should be penalised for Government legislative intent. Equally they should not be subjected to provisioning the resources to deal with this outcome and most certainly not by AFCA.

As we have previously stated, credit is not a right. The credit providers decision, based on its own internal guidelines and possibly gut feeling, should be final and the end of the matter. We recommend that the updated RG165 contain such an explanation

Evidence of consumer/complainant agreement

It was mentioned in the meeting that the credit provider or licencee could obtain some form of evidence that the complainant has agreed to an IDR resolution proposal. We understand this

matter was also raised in the round table meeting held on 25 September. We don't believe it was sufficiently addressed as to how this could be achieved and have the finality and certainty the credit provider would seek so as to preclude another complaint being made.

Complaint v apology

We understand that at the meeting held on 25 September, the question was raised as to what extent a request for an apology is a complaint. At least 2 attendees did fully hear the explanation being offered.

We are of the opinion that such a request, using our 'professional judgement', is a not a complaint and we would recommend that the updated RG165 contain such an explanation. If ASIC disagrees, then it is a matter of personal opinion and no more.

The AS/NZS 10002 2014 standard

At the meeting we attended, attendees were advised that some matters were to be carved out of the draft Regulatory Guide 165. After the meeting, we were unaware as to when exactly ASIC would bind the draft Regulatory Guide with AS/NZS 10002 2014. It would be useful for ASIC to publicly state this.

The reduced 30 day IDR timeframe

We remain totally unconvinced that the timeframe can be reduced to 30 days generally and be extended satisfactorily by some guide as to what might constitute "exceptional circumstances".

Whilst it was great that ASIC accepted the need to allow for "exceptional circumstances" that would permit an extension of the proposed 30 day timeframe to extend the time frame for IDR conclusion, we were left with a view this would have to be so broad that it would be almost pointless. One industry association, the Australian Debt Buyers Association ("ADBA"), stated that 35% of all IDR complaints currently go beyond 45 days now.

In our view, there is no merit in reducing the time period in a regulatory manner. The proposal should be that where possible, credit providers attempt to conclude the matter within the reduced time frame but it is not mandatory and that exceptional circumstances will still apply.

As we stated in our earlier submission, this issue was discussed at length when the NCCP was still in draft form and we see no reason to change it. The reasons then for leaving it at 45 days remain today.

We would also point out here that ASIC must seek an amendment to AFCA's Rules that require its "refer back" period be consistent with the draft Regulatory Guide. Currently, AFCA has this set at 21 days which is less than half of the period allowed for by ASIC in the present Regulatory Guide. In not doing so, it is allowing the EDR provider to be unfair.

As we have stated above, there must be consistency for credit providers and other licencees in this matter. AFCA is not a regulator and it should be required to uphold the timeframes set by legislation.

Social media

Whilst we have few members or clients that engage with social media complaints because of potential privacy issues, it was mentioned that the licencee should attempt to deal with the matter as a compliant. Dirty washing should not be dealt with in public and we remain of the opinion that the 'complainant' should be asked to deal with the matter outside of social media. In many cases, the 'complainant' may not even be properly identifiable. If the 'complainant' can be adequately identified, the licencee should contact the individual at its last known address.

We are concerned ASIC or AFCA may form the opinion that the licencee should have to go to extra-ordinary attempts to contact the individual when it may not even be required. If the complaint is genuine, the complainant should be able to communicate privately with the licencee to resolve the matter.

Complaints involving staff

We raised extreme concern in our submission that AS/NZS 10002 2014 allows for complaints against staff as one of the 3 categories of complaints. From the meeting, it was clear others hold the same view.

We left totally perplexed as to what ASIC might regard as a complaint being 'acceptable' for IDR application in this regard. Our members face daily abuse from the public; quite often, many of them will be high on drugs. These individuals may call at any time, and we have some members that have been known to repeatedly receive such abusive calls during the night.

As examples, we have one client that has just had a complaint made against her because the individual "doesn't like the credit provider's communication" yet this individual refuses to respond to SMS, email and letters. She has done this after reluctantly having to accept an AFCA determination that has occurred after she was given a deadline to respond to AFCA or face having another complaint declined because of lack of communication. This claim is purely vexatious. Other members and clients have complainants that regularly racially abuse staff or who make snide comments on personal attributes. These complaints are not real. They are designed to intimidate and vent at the credit provider's staff member who may be assessing a loan or a hardship application but were unsuccessful or not as accommodating as the individual might have hoped. In the latter example, many will have been primed by consumer advocates who suggest requesting a total refund of all monies paid to date and not to have to repay the loan back.

To regard these as genuine complaints against the staff concerned would be ridiculous.

Appeal opportunity

For many small businesses that are licencees, the relevant Corporations and/or NCCP penalties for what may be relatively minor breaches of what is being proposed (as contained in the draft Legislative Instrument for RG 165) can create substantial financial loss. They may also cause many to simply exit or consider exiting the industry because of perceived unfairness and the regulator being overly bureaucratic. This Government wants to reduce red tape yet here is far more being thrust on the financial and related industry sectors.

It was mentioned the penalties will be ‘scalable’ but we have seen first-hand evidence of how regulators treat this and we are extremely concerned for our members and clients’ livelihoods.

Although the penalties are civil, we still maintain that there needs to be an appeal process in place to contest any ASIC decision. It is unclear whether a licencee could make use of ASIC’s own internal appeal process or would have to take the matter to the Administrative Appeals Tribunal, given that this would effectively be legislative provisions rather than the regulator’s interpretation.

We recommend that ASIC put in place a clear appeals process and include this in the draft Regulatory guide RG 165.

Systemic issues

It was mentioned at the meeting that frontline staff should be able to recognise systemic or potentially systemic issues even arising from a single complaint. We are unsure how, at least in some cases we can think of, a staff member might recognise one from dealing with a single complaint from a single complainant. We believe there needs to be some examples provided.

In the Consultation Paper 311, on page 32, it mentions that “boards and financial firm owners … set thresholds for and processes around identifying system issues”. This area of concern was only partly considered in the 20 September meeting but no mention was made as to what ASIC’s more detailed thoughts are on this. We believe ASIC must provide some further clarity and examples that cover this.

Core v non-core RG 165 content

We understand from one attendee at the 25 September meeting that there was mention of “core and non-core” matters. We cannot recall any such specific terminology used at the meeting we attended.

If there are to be core and non-core categories of RG165, how will ASIC advise these? Equally, how will they be defined within any redrafted Regulatory Guide to make it clear what is considered core and non-core matters?

Regulatory Impact Statement

We raised the issue of a Regulatory Impact Statement ("RIS") in our earlier submission and at least one other attendee raised the same issue as we did in the meeting. As it looks likely there will be 2 issues of Regulatory Guide 165, given the carve out of certain matters, we remain of the opinion that ASIC needs to produce 2 RIS so that ASIC and Government fully appreciates the financial impact and resource requirements of the changes being championed.

We do note the Chair's concern for ASIC to receive data from the industry to assist in the preparation of a RIS but until we know fully what the changes are to be, at present, it's a chicken and egg situation. Industry cannot cost what is unknown.