Industry Super Australia

ISA's submissions in response to CP311 - proposed update of RG165

9 August 2019

About Industry Super Australia

Industry Super Australia (ISA) is a research and advocacy body for Industry SuperFunds. ISA manages collective projects on behalf of a number of industry super funds with the objective of maximising the retirement savings of over five million industry super members. Please direct questions and comments to:

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1. Executive Summary

As the IDR process is an extremely important part of the consumer protection framework it is imperative that any changes made to RG 165 deliver a better experience for members. For this reason, ISA agrees with most of the changes proposed to the IDR framework. However, there are unique considerations in the superannuation sector that have not been considered in the proposed changes that need to be addressed for the changes to be effective. For example, issues arise regarding the respective reporting roles and timeframes of trustees, administrators and insurers. These are discussed in the body of this submission.

In brief ISA:

- whilst supporting a wider definition of what constitutes a complaint, does not agree with the proposed definition of a complaint because, amongst other reasons it may contain expressions of dissatisfaction of which the financial firm is unaware of;
- supports the list of complainants that regulated superannuation funds must be able to deal with;
- makes certain observations concerning the unique role of superannuation trustees;
- generally supports the proposed complaint recording and reporting proposals, but proposes a 12-month reporting cycle rather than a 6-month cycle;
- supports the cautious publication of aggregate and firm level complaints data;
- supports a requirement that IDR responses be in writing and meet certain content requirements;
- in principle supports a reduction in IDR response timeframes for superannuation funds that are consistent with the Insurance in Super Voluntary Code of Practice, provided there is suitable recognition of the unique types of disputes in the superannuation sector, and therefore opposes a common 30-day IDR response time;
- generally, supports a requirement for the reporting of systemic issues;
- in principle agrees with the proposed IDR standards; and
- recommends a further 3-month transition period to 1 October 2020.

2. ISA supports IDR processes

ISA is supportive of ASIC's intention that once the policy settings are finalised, ASIC will issue a legislative instrument that will have the effect of making the core IDR requirements set out in RG 165 enforceable.

However, ISA is extremely concerned that the discussion paper at paragraph 20 appears to express an intention to discount or disregard contrary views to that expressed in the paper unless the party expressing a different opinion meets certain preconditions. Requiring interested parties to pass a performance test before their feedback will be considered is counter to genuine consultation

3. Definition of Complaint

ISA agrees that complaints can be expressed in a variety of forms and that some of these expressions of dissatisfaction may not be part of a formal complaint process. It is appropriate that expressions of dissatisfaction provided they are sufficiently clear to invite a useful response, be considered a complaint that is then addressed through an IDR process. This properly includes complaints made via social media platforms, and the organisation's own internal or external platforms. ISA endorses the proposition that financial firms be required to establish IDR processes that conform to the proposed IDR standards in section F reflecting AS/NZS 10002:2014. However, ISA has a significant concern with parts of the definition of a complaint contained in the standard.

3.1 To or about and organisation

Expressions of dissatisfaction that are sufficiently clear to act on 'to' an organisation should be considered a complaint. However, expressions of dissatisfaction that are made to the wider world 'about' an organisation should not be considered a complaint. It is unreasonable to expect an organisation to be required to follow internal resolution processes, including prescribed response timeframes, in circumstances where it may not be aware of the expression of dissatisfaction.

If social media complaints are not provided directly 'to' the organisation it cannot be expected to trawl through social media accounts seeking expressions of dissatisfaction 'about' the organisation. This concern is highlighted given the broad scope of 'social media', which is not in any way limited by definition. Whilst there are a few well known and popular social media platforms there are many dozens of smaller social media and online platforms which could be utilised to complain 'about' a superannuation fund. It is unclear if there is an expectation that financial organisations will be required to actively search potentially hundreds of large and small social media platforms for negative comments regarding their products, services or organisation. If this is the expectation contained in the revised RG 165, then it is an unreasonable and costly one.

Comments to the media and expressions of dissatisfaction 'about' an organisation at a public meeting would also fall within the definition.

ISA agrees with the proposed 165.37 (b) that a complainant via a social media platform should be identifiable and contactable. This contact however should be possible via a private communication method, not as a public response on a social media and other online platforms which would be inappropriate and invoke privacy concerns.

A number of ISA funds report that they do attempt to make contact with disgruntled persons who claim they are members of the fund who express some dissatisfaction via a social media platform. More than fifty per cent of these members do not respond to attempts to address their stated concerns.

Expressed complaints or dissatisfaction 'about' an organisation should not be included as a complaint unless (i) this expression of dissatisfaction is subsequently provided 'to' the organisation, or (ii) the expression of dissatisfaction by a consumer is of sufficient prominence that it would be reasonable to assume that the organisation being complained of would be aware of the complaint. Reports in major publications or public submissions to inquiries may fall into this category.

While ISA agrees that organisations should be required to be proactive when identifying and dealing with complaints an appropriate balance needs to be struck so that genuine complaints that the financial firm is reasonably aware of are responded to in an appropriate and timely manner.

3.2 Response to complaint

There is of course no question that any organisation that is legally required to respond to a complaint should do so in an efficient and prompt manner.

The proposed definition would require a response to a complaint 'where a response or resolution is explicitly or implicitly expected or legally required.'

All legal requirements, including those flowing from any legislative instrument should of course be met. It is appropriate to respond to complaints where a response is expected, even in circumstances where the complainant has not expressly requested a response. However, what is 'implicitly expected' is a subjective determination based on the particular circumstances and nature of a complaint.

Above we note that it is impractical to expect an organisation to be fully aware of, and to respond to, all complaints made about it on social media and other online platforms.

Regarding social media complaints 'about' an organisation, the proposed changes provide no clarity to assist an organisation in determining when a failure to comply with the new requirements triggers a reporting obligation.

4. Superannuation related complaints

ISA supports the list of complainants that regulated superannuation funds must be able to deal with as outlined in the proposed RG 165.43.

4.1 Unique role of the superannuation trustee

In addition to the fiduciary duty trustees owe to beneficiaries they are also required to abide by the terms of the trust deed, and an ever growing legislative and regulatory regime which impacts and adds to their duties.

Trustees of regulated superannuation funds (other than SMSFs) must have an IDR process that conforms with RG 165 and, to the extent there are any gaps, with s101(1)(b) of the *Superannuation Industry (Supervision) Act 1993* [1].

As a result of the passage of the *Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Act 2018* (Cth) the provisions in s101 and (1A) of the and s47(1) and (2) of the *Retirement Savings Account Act 1997* will continue until such time as the updated IDR standards and requirements are made or approved under s912(2)(a)(i) of the Corporations Act.

Trustees are required to ensure that they have adequate and efficient processes in place to meet their obligations to members, reporting and other requirements. These obligations are not diminished when services such as administration are outsourced.[2]

Superannuation trustees are responsible for the management of complaints made via service providers about superannuation funds where they relate to the financial service or product being provided by superannuation trustees. The widening of the definition of complaint to include complaints 'about' a superannuation product or service provider would for superannuation trustees be particularly problematic as many services such as insurance and administration are typically outsourced and as a result it may not be immediately clear who the complaint is directed to. For this reason, the definition of complaints in the superannuation context needs to be amended so that the trustee's obligation are only triggered if the complaint is made 'to' the superannuation trustee or their service provider.

4.2 Insurance in Superannuation

Many complaints involving superannuation trustees involve matters pertaining to the administration of insurance claims. Superannuation trustees are obliged to provide insurance to their members. In all but a few cases funds purchase group insurance from outside providers on behalf of their members. The policy holder is the trustee of the fund and the policy is held for the benefit of the all the members of the fund.[3]

Although trustees work closely with insurers, their ultimate responsibility is to assist members with claims and, where required, advocate on their behalf. It is understandable that the separate roles of trustees and insurers are often misunderstood by members. Complaints

[1] Which includes reference to 912A(2)(a)(i) of the *Corporations Act 2001*

[2] APRA Superannuation Prudential Standard SPS 231 – Outsourcing, contains some of the requirements upon trustees when outsourcing services

[3] Trustees are obliged to offer insurance at an appropriate level and type that does not unreasonably erode retirement incomes. After consideration of the demographic of the fund some trustees have removed some types or all insurance coverage for some younger members. The Parliament is currently considering a Bill that will extend this to all members under 25 or who have account balances of less than $6,000.

relating to insurance held within superannuation are often made to superannuation funds but relate to the decision of an insurer.

Superannuation Prudential Standard 250 – Superannuation outlines the trustee's obligations pertaining to insurance arrangements within superannuation.

Notwithstanding the outsourcing of roles to administrators and insurers, ultimately trustees are responsible for ensuring compliance with the prudential standard, including licensing requirements pertaining to the management of disputes relating to claims, and the collection of data relating to claims and disputes.

The alteration of RG 165 to include complaints 'about' an organisation are problematic and add particular difficulties for superannuation trustees who outsource key activities. Whilst trustees are ultimately responsible to their members, they cannot reasonably be expected to be aware of all complaints 'about' the fund or product they operate when the complaint may be about a service provider.

The inclusion of a definition of complaint that includes complaints 'about' an organisation is too broad and therefore not supported.

5. Recording of all complaints received and provision of a unique identifier

ISA supports the amendment of RG 165 that requires the keeping of records of all complaints, including those immediately resolved and the provision of a unique case reference number for each complaint. Such an approach assists in the identification of systemic issues.

6. Data reporting and data dictionary

ISA supports a collection reporting approach which better enables comparative analysis and the identification of emerging trends, which in turn aids transparency and consumer decision making.

The proposed data dictionary appears comprehensive. However, it will need to be reviewed on a regular basis to ensure its relevance is maintained.

6.1 6 monthly IDR report after review

As detailed in section 12 below, superannuation funds are currently implementing several system changes. This proposed reporting requirement will necessitate a further system change and is likely to contribute to further disruptions and costs. Whilst ISA acknowledges the importance of timely reporting, in the current climate ISA is concerned that the proposed 6 monthly IDR reporting cycle will place further pressure upon superannuation funds who are trying to implement a number of changes in a short period of time. Of course, the influx of system changes is likely to settle and for this reason ISA recommends an initial 12-month reporting cycle followed by a potential move to a 6 monthly report subject to a review of the resource and operational implications for funds.

7. Guiding principles for the publication of IDR

ISA supports transparency and in principle supports the publication of complaints data at an aggregate and financial firm level. Different jurisdictions publish complaints data with varying degrees of specificity.[4]

The careful and balanced provision of firm level information regarding complaints is a relevant factor for those engaged consumers when making a purchasing decision. Multiple complaints regarding the same consumer, complaints that are vexatious and the like should be vetted. The arguments for non-publication are not strong.

Our preliminary review of published complaints data in other jurisdictions such as the UK appears to show high rates of complaints against certain firms. An obvious limitation with reporting the number of complaints in isolation is that a high number of complaints about a product gives the impression that there is a systemic issue, even when the rate of complaint per consumer may be below average. Accordingly, complaints should be appropriately contextualised when published. One means of doing this is to publish the percentage of complaints received relative to product sales or fund membership.

8. IDR responses – Minimum content requirements

In general ISA agrees with the proposed minimum content requirements. We agree with the proposition that consumers should be fully aware of the reasons for the determination of a complaint via IDR to enable then to determine whether to proceed to an external dispute resolution process. This approach is good business practice and may avoid unnecessary complaints to AFCA.

ASIC's Report 591- Insurance in Superannuation[5] in September 2018 found that some trustees have not provided adequate written reasons for complaint decisions. Trustees should provide clear and specific reasons for their decisions in writing. The minimum content requirements will assist this process.

The insurance in super Voluntary Code of Practice deals extensively with complaints handling, including the timing of responses to complaints, the detail of the responses and the adequate provision of reasons for decision. The Voluntary Code contains best practice that should be emulated.

8.1 IDR responses – Superannuation trustees

ISA agrees that due to the operation of the minimum IDR response requirements there is no need to issue a separate and overlapping legislative instrument to apply to superannuation trustees.

[4] The UK Financial Services Ombudsman publishes complaints and results data, at a product and business level following a 2008 review as an aid to transparency.

[5] https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-591-insurance-in-superannuation/

9. Reduced maximum IDR timeframes

Generally, ISA agrees with the proposal to reduce the IDR timeframes applying to superannuation trustees from 90 to 45 days with the ability of the Trustee to provide notification of delays in exceptional cases.

This approach is consistent with the Insurance in Super Voluntary Code of Practice. Subclause 13.15 of the code provides:

> 13.15 We will provide a final response to your complaint **in writing** within 45 calendar days of receiving your complaint. In **exceptional cases**, we will need more time to investigate and respond to your complaint. In these cases, we will tell you that we need more time, and will clearly communicate our revised expected timeframe, which will not exceed 90 calendar days.

Whilst 45 days is in most cases is an appropriate maximum response timeframe, in some instances such as those complaints involving insurance, more time is required to obtain additional information such as medical reports, and to allow external expert review. In many instances delays in the provision of this information is dependent on third parties, not those to whom the complaint has been made.

Proposals for a 30-day response time to be applied to all financial service providers would not be realistic in the superannuation industry because of the reasons discussed above. If it was introduced the full and proper consideration of complaints would be compromised. The introduction of a 30-day response time is likely to reduce the quality of responses to consumers and increase the number of matters being processed via external dispute resolution.

Nor would it be appropriate to have different time-frames for complaints that appear to have different levels of complexity as this would result in a lack of clarity for consumers and the full nature and complexity of a complaint is not always clear until the complaint is investigated.

9.1 Role of customer advocate

ISA supports the proposition that customer advocates, ultimately as representatives of the financial firm, be required to conform with RG 165.

10. Systemic issues

ISA supports the proposed requirement that firms have a robust system to identify possible systemic issues and to ensure they are escalated internally and reported.

Section E of the proposed Guide would be enhanced by case studies or examples of systemic issues.

11. IDR Standards

The proposed IDR standards in section F reflecting AS/NZS 10002:2014 are generally suitable. We have earlier in this submission expressed our concern regarding the suitability of the definition of a complaint for these purposes contained in AS/NZS 10002:2014

12. Transitional arrangements

ISA does not accept that all the proposed transitional arrangements detailed in Table 2 of the discussion paper are sufficient. The 31 March 2020 implementation date for new maximum IDR timeframes is supported. However, the 30 June 2020 date for the implementation of the remaining requirements will prove difficult for superannuation funds and their administrators.

These changes are significant and for many firms and superannuation providers will require system changes many of which will be dependent upon successful negotiations with third party administrators. Administration companies are external organisations that will be required to cooperate with superannuation trustees and implement system changes. With limited resources and priority given to larger clients, an appropriate timeframe is required to allow for system wide change.

The superannuation industry is repeatedly being subjected to significant legislative shock that in most cases requires administrative change and skills revisions. There are a range of legislative changes to the superannuation industry which are requiring systems change. These include measures relating to inactive accounts, the provision of insurance and other significant matters and systems changes associated with fees and costs disclosure requirements. Further legislative change is currently before the Parliament that is expected to challenge the capacity for change, even amongst larger institutions. ISA proposes 1 October 2020 as a date that will enable an appropriate level of planning.

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Consider a fund's PDS and your objectives, financial situation and needs, which are not accounted for in this information before making an investment decision.

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