



8 August 2019

Ms Jacqueline Rush, Senior Policy Advisor
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: IDRSubmissions@asic.gov.au

Dear Ms Rush

Consultation Paper 311 - Internal dispute resolution: Update to RG 165

The Insurance Council of Australia (ICA) welcomes the opportunity to respond to ASIC's consultation on changes to the internal dispute resolution (IDR) requirements that apply to Australian financial services (AFS) licensees.

The ICA is the representative body of the general insurance industry in Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers. ICA members, both insurers and reinsurers, are a significant part of the financial services system.

ICA members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property and directors and officers insurance).

The ICA agrees with ASIC that IDR is a crucial component of the overall consumer protection framework. A robust and effective complaints management process is vital to provide for optimal consumer outcomes and a positive consumer experience. We therefore welcome ASIC's stated intent to make improvements to the complaints management culture within firms. The ICA and our members are keen to work with ASIC to achieve this in a sustainable and practical manner. Below, we have provided detail as to how best this could be achieved in our responses to the consultation questions. In addition to our answers, we would like to highlight some overarching points that we believe require careful consideration as ASIC seeks to make changes to financial firms' IDR requirements.

Consideration of the varying sectors within financial services

We understand that in part, some of the changes ASIC is proposing stem from the ASIC commissioned research into the consumer experience of the IDR processes of financial firms.¹ The research provides useful insights into the consumer journey through IDR and the obstacles consumers may encounter. A key takeaway from the report is the variances that

¹ Nature, *The consumer journey through the internal dispute resolution process of financial service providers*, September 2018

can exist among the sub-sectors that make up financial services more broadly. As an example, the significant differences in the reason for making a complaint across the financial sectors is noted in the report.²

In the consultation paper, ASIC has flagged that the research found one in seven complainants found it difficult to find the financial firm's details to make a complaint. When these results are broken down by sector, the researchers noted that of those making or seeking to make a complaint about a general insurance product, the majority of respondents found it easy or very easy and this was noted by the researchers as being significantly higher than other sectors.³ An important insight is that the researchers' findings demonstrate that different sectors are likely to have their own areas that require improvement and their specific set of challenges.

In addition, with regards to the sample size, we note that for the stage two online qualitative and in-depth interviews there were 60 respondents, 7 of whom had a complaint related to general insurance. For the stage three quantitative survey we note that there was a total of 1,294 respondents of which 132 related to general insurance. We refer to the sample size not to take away from, or undermine, the research and its findings, which are extremely insightful. Instead, it highlights to the ICA and our members that we must work closely with ASIC to ensure that changes made to IDR are appropriate and relevant for the consumers of general insurance products and will ensure an enhanced consumer experience in this sector. As an example, we would like to discuss with ASIC both the claims settlement process and the process for discussions around premium and how this may relate to ASIC's definition of a complaint. We would also like to discuss and clarify ASIC's expectations when a complaint involves an agency with their own AFS licence, such as a broker, who will also be required to report complaints according to ASIC's requirements. The industry seeks clarification as to how such complaints should be recorded in a way that does not create duplication.

Transition times

As we will detail later in the submission, the ICA and our members are extremely concerned with the transition timeframes that are being proposed. In particular, the suggestions that by 30 June 2020 firms should be assigning a unique identifier for all complaints received and recording extensive prescribed data for every complaint, including those resolved at the first point of contact.

ASIC has indicated that the revised regulatory guide and legislative instruments will not be released until December 2019. Taking into account end of year closures, and reduced staff levels at this time of year, there may be less than six months to implement these changes. For general insurers there will also be a dependency on external agencies, such as brokers, to also have their systems updated for such changes. The ICA does not believe that such extensive changes should be hurried. We suggest that a 12 month transition time is reasonable given the significant system changes and staff training that will be needed.

² Ibid p17

³ Ibid p81

Datasets

Broadly, the ICA is supportive of many of the changes ASIC is seeking to implement. One of the main concerns however is the extensive amount of data that will need to be captured for each complaint, including those that are resolved at initial point of contact. To ensure that the process for making a complaint is as simple and efficient as possible, preference is for insurers to draw on existing data held for the purposes of reporting to ASIC, rather than collecting this information at the time a complaint is made.

There will be instances when insurers will not hold all of the information ASIC is seeking to collect, such as the complainant's age and geographical location. This will particularly be the case when the complainant is not a policyholder and the insurer has not previously sought answers to these questions. We are concerned that obtaining this information from consumers, especially those with relatively minor complaints, will actually detract from the key priority which is to resolve the complaint quickly and effectively. There is also a chance that customers may view these questions as overly intrusive and therefore obtaining such information from them could be detrimental to the complaints process. Consumers may be reluctant to provide the information when they are making a complaint without context being given for the purpose of the data collection. This will further extend the complaint process.

Taking the above into consideration, we ask ASIC to consider a more measured implementation approach for the new recording requirements. Options could include implementing the changes as a pilot program, or commencing the changes with a reduced amount of datasets that are then modified as ASIC gains a better understanding of what is useful and what may be disproportionately onerous to collect. We note that in comparable jurisdictions such as the UK, this level of data collection is not required from financial firms.

Attached are answers to the questions relevant for the general insurance industry. The ICA and our members look forward to working with ASIC to deliver enhancements to the IDR process and improving outcomes for consumers. We ask for the opportunity to meet with ASIC to discuss these changes in the specific context of our sector.

If you have any questions about this submission, please do not hesitate to contact Fiona Cameron, General Manager Policy, Consumer Outcomes at
[REDACTED] or 02 9253 5132.

Yours sincerely



Robert Whelan
Executive Director and CEO

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 own firm's social media platform or an external platform.

ICA members support the notion that complaints made on a financial firm's own social media platform should be dealt with through the firm's IDR process when the consumer is both identifiable and contactable.

Our key concern with this proposal relates to the extensive data that will have to be captured for each of these complaints, some of which, for example age, may be difficult to capture and may be viewed as irrelevant or inappropriate by the consumer. We would like ASIC to advise the extent to which they expect firms to obtain this information from the complainant.

With regards to complaints made via social media channels, we acknowledge that the majority relate to legitimate matters. We are concerned however about vexatious complaints and seek clarification from ASIC as to how such complaints should be managed. In the draft updated regulatory guide at 165.32, ASIC stipulates that all expressions of dissatisfaction must be classified as a complaint even if the firm considers that the complaint does not have any merit. However, we believe that there should be a specific policy for vexatious complaints that includes how they are to be identified and managed. We note that a number of different sectors such as state ombudsman schemes, local government agencies and health practitioners have issued guidance specific to the management of vexatious complaints. We would find it beneficial if ASIC provides similar guidance for the financial services industry.

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 noted in our answer to the previous question, further guidance in relation to social media complaints and what ASIC deems would be reasonable when trying to obtain the required data from the consumer via these platforms would be welcomed.

The revised definition of a complaint has been expanded to now include complaints made about an organisation, related to an organisation's staff, and where a response or resolution is legally required. While the ICA does not object to the changes to the definition, we note that the definition will capture a wide range of interactions with customers. It is this, combined with the requirement to record all complaints received, that raises new issues for our members. We detail these concerns further in our answer to B4Q1.

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.

ICA members seek further clarification regarding claims settlement and the process for discussions around premium and negotiation of policy terms and conditions. For such discussions, the ICA suggests that these should be handled under the complaints process only if they take longer than 5 business days to resolve. Many of these discussions resolved under 5 business days are part of a reasonable negotiation process. Mandatory recording of all these types of discussions would result in a significant impact on processing volume.

For general insurers, the ICA also suggests that further guidance is provided for situations where the complaint comes from a broker or an agent on behalf of a customer. Insurers seek to understand if it would be the broker/agent that would be responsible for recording and reporting these complaints or the insurer.

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.

The ICA supports modifying, for IDR purposes only, the definition of ‘small business’ in s761G of the Corporations Act to align with the definition in the AFCA Rules. According to the AFCA Rules, for small business insurance products, the following are excluded from the definition:

- Contractors All Risks
- Fidelity Guarantee
- Legal Liability (including Public Liability and Products Liability)
- Professional Indemnity
- Industrial Special Risks.

It is unclear if the revised ASIC definition will also exclude the above products. We seek confirmation from ASIC that this will be the case.

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

We understand that by requiring firms to record all complaints, regardless of the timeframe within which they are resolved, financial firms and ASIC will have access to an expansive pool of data by which analysis can take place. While we are supportive of this objective, we are concerned that the recording of all complaints will capture a broad range of interactions with consumers which may make it more difficult to identify complaints of a more serious or systemic nature.

The definition of a complaint captures any interaction in which a consumer expresses dissatisfaction and a response or resolution is implicitly or explicitly expected. There may be many instances that are consistent with this definition however the recording of such an

interaction, according to extensive datasets, may be disproportionate. We have provided some examples of when this might be the case:

- Example 1: A customer expresses dissatisfaction at the length of time they were kept on hold on the phone and is satisfied with the call centre staff's apology.
- Example 2: In the course of a conversation about a home contents claim, a customer expresses dissatisfaction with the proposed settlement amount for stolen jewellery. The claims officer explains the policy limits and how the settlement has been calculated. During the course of the conversation, the customer accepts the explanation and settlement amount.
- Example 3: A customer calls about completed repairs to her vehicle. She expresses dissatisfaction that damage, unrelated to the accident, has not been repaired. The customer service adviser explains that the policy does not provide cover for damage unrelated to the accident. The customer is satisfied with this explanation.

Complaints of the nature detailed above are typically resolved at the first point of contact. Under the changes being proposed, insurers would be required to provide the complainant with a unique identifier and record and report the details of the complaint to ASIC. The ICA submits that for complaints resolved immediately, this will create an overly protracted and excessive process. Further, it is unclear what benefit there would be from recording these complaints.

The ICA suggests that a more balanced approach would be to not require the recording of complaints resolved at the first point of contact. While the consultation paper notes that many firms are already recording information on complaints that are resolved within five business days, what is currently being recorded by those firms may not meet the new expanded requirements.

The General Insurance Code of Practice requires complaints made by authorised representatives to be reported to the Code subscriber. Insurers will need guidance on the recording requirements associated with such complaints. For example, if a complaint has been made to an agency or distributor it may be challenging to obtain, or verify, the full datasets that ASIC requires.

Overall, we are concerned that there may be diminishing beneficial returns given the extent of data fields to be captured and the resources that will then be focussed on data collection as opposed to complaint resolution, particularly for those complaints that are of a non-material nature and are resolved quickly.

B5Q1: Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.

The ICA supports ASIC's intent to enable firms to identify and keep track of individual complaints through the use of a unique identifier. Our concern relates to implementing this requirement for all complaints received including those resolved at initial contact. The system implications, particularly for smaller firms, should not be underestimated.

In addition, the process for assigning a unique identifier when a complaint may come from a broker or agency with their own AFS licence needs to be considered. A company with its own AFS licence may issue policies and handle claims on behalf of an insurer. In such circumstances processes will need to be in place to ensure that when the complaint is transferred to the insurer, it is not recorded twice - once under the agency's licence requirements and then again under the insurer's. As the agency and insurer are likely to be operating under different systems, they are also likely to have different identifiers. Insurers seek clarification as to who will be responsible for providing the unique identifier to avoid multiple identifiers and duplicate reporting of the same complaint.

Taking the above into account, requiring firms to have this change implemented by June 2020 will be extremely challenging for many of our members. We ask that ASIC provides a 12 month implementation timeframe and gives consideration as to whether a unique identifier is required for complaints resolved at initial contact as well as guidance for complaints that may come from other AFS licence holders.

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

We have the following concerns with the proposed data sets:

- *Table 3 – Complainant demographics (12 and 14)* – The data fields for age and geographic location do not have an unstated/unknown option. In accordance with Australian Privacy Principle 3, an entity must not collect personal information unless the information is reasonably necessary for one or more of the entity's functions or activities. Age and geographic location are examples of information which a firm may not collect for this very reason, particularly if the complainant is not a customer. We seek clarification as to whether ASIC would require the firm to obtain this data for all complaints received. As noted previously, requesting such information may be disproportionate, particularly for minor complaints that are resolved quickly.
- *Table 4 – Complaint information*
 - Licence or registration type and Licence number (15 and 16) – It is unclear how frontline staff will be able to provide this data or the usefulness of this data from a regulatory perspective.
 - Product of service line (29) – The ICA considers that this field should not be mandatory as some expressions of dissatisfaction may not actually relate to a

- product or service. For example it could be about the complaint handling process itself.
- Complainant remedy and remedy description (35 and 37) – Complainant remedy should have a ‘not applicable’ or ‘no remedy provided’ field for use where no remedy was required, for example if the complaint is found in favour of the firm. Consequently, the remedy description field should be conditional and not mandatory and based on whether a remedy has indeed been provided.
 - Financial compensation (36) - In the context of general insurance we seek confirmation as to whether this is the claim settlement amount or any amount paid over and above the claim, i.e. ex gratia payments.
 - AFCA (27 and 28) - We believe that the fields relating to AFCA should be obtained from AFCA and not from the firm. ASIC obtaining the data directly from AFCA will avoid duplicative processes and potential data variances.
- Table 6 – An ‘other’ field should be added to the product and service type for each category to recognise that circumstances may be complex and these broad categories may not be entirely accurate when applied. For example, in Lenders Mortgage Insurance, after the payment of a claim, a debt is assigned to the insurer. It is unclear how this would fit within the categories provided.

Overall, we remain concerned that the datasets may require firms to collect and record information about a consumer that is disproportionate and seemingly unrelated to the matter they are complaining about. This could undermine the consumer’s experience and not promote a positive complaint handling process.

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?**

As noted above, we are concerned with the breadth of data variables ASIC is proposing be collected for each complaint. For many complaints, especially those that are resolved quickly and at the first point of contact, collecting the proposed amount of data risks undermining the consumer experience. We strongly encourage ASIC to reconsider the amount of data fields that are being required. Our understanding is that for the equivalent exercise carried out in the UK, the Financial Conduct Authority requires less data to be captured.

In addition to a 12 month transition timeframe, options for ASIC to consider include:

- not requiring data to be collected for complaints resolved at first point of contact;
- establishing a reduced data set for complaints resolved within five business days; and/or
- running an initial pilot program where limited data is collected and reported on, this can then be expanded in an informed manner as ASIC obtains a better understanding of any additional data that might be reasonably required.

For the proposed amount of data ASIC is proposing, we believe that 25 MB is unlikely to be sufficient. It is important that when lodgement is required, firms can do so with ease. As such, the maximum file size must be ample and facilitate a smooth lodgement process. The ICA suggests that just as ASIC will be expecting firms to update their systems to comply with the new proposals, ASIC must ensure that its own systems and technical capabilities are adequate to handle the data being requested.

In response to Part C of this question, depending on how systems are designed, it may be more difficult to exclude complaints that remain open from the reporting exercise.

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

The ICA supports the publication of meaningful IDR data that will be informative to both consumers and industry. We believe that the following principles should guide ASIC's approach to the publication of IDR data:

- *Appropriate contextualisation metrics* – In order for the data published to be meaningful, and to enable comparison, appropriate metrics that contextualise the data in accordance with the firm's size and also nature of the products they provide should accompany any data published.
- *Consistency with AFCA* – AFCA have advised that they will be reporting on the disputes they receive every six months. It would seem logical to align ASIC's reporting with AFCA's, and to also make sure that terminology used and product classifications are consistent.
- *Data validation* - Particularly as ASIC is requiring firms to collect new data, we would suggest that there is opportunity for firms to validate the data ASIC intends to publish. We understand that this will be the approach AFCA will be taking. Processes will also need to be in place to ensure that when a complaint moves from a broker or agency to an insurer that the complaint is not counted twice.
- *Number of data points* – It is currently unclear if ASIC will publish all of the data sets it receives. We note that in the UK the FCA reports on:
 - Number of complaints received in the context of number of accounts or policies provided
 - Number of complaints received by the firm
 - Number of complaints closed by the firm
 - Percentage closed within three days
 - Percentage of complaints closed after three days but within eight weeks
 - Percentage of complaints upheld

While less than the datasets ASIC is proposing to collect, it would seem that this information would be broadly useful for both consumers and industry.

B8: Do you agree with our minimum content requirements for IDR responses? If not, why not?

The ICA generally agrees with the minimum content requirements proposed for IDR responses. We would like to see some parameters and clarification around the requirement to identify and address all the issues raised in the complaint. We believe that IDR staff should be required to confirm the basis of the complaint and ensure that this is addressed in any response. Particularly with regards to vexatious claims, identifying and addressing all issues raised may be unwarranted.

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.**

The ICA acknowledges that the vast majority of complaints are resolved within the 45 day maximum timeframe. There are circumstances however where up to, and more than, the 45 day timeframe is required. In the case of general insurance this might be following a catastrophic event or a complaint related to a particularly complex claim where the customer has not been able to provide the requested information within the maximum timeframes. As an example, the General Insurance Code of Practice provides 12 weeks to obtain an external expert report to assess a claim. This is because in circumstances where a catastrophe has occurred, certain experts may be in high-demand, impacting their availability. For such complex claims, a 30 day maximum IDR timeframe may not be sufficient.

In this regard, we would like more clarification around the exceptional circumstances that may permit an IDR delay. Particularly in the case of catastrophic events, it would be an unfortunate outcome if the complaint resolution process was driven by compliance with timeframes as opposed to thorough investigation of the consumer's concerns and appropriate resolution.

B11Q2: We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints. Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now?

While the ICA supports a drive to see complaints handled effectively and in a timely manner, the proposal to implement this reduction by March 2020 seems rushed. We ask ASIC to take into account the current IDR market which is undergoing significant change and flux, particularly since the commencement of AFCA, who are going through extensive expansion and undertaking a significant recruitment drive. The result is high-demand for those with expertise in this area. While firms are responding with their own recruitment initiatives, all new staff need to be trained. Implementing ASIC's proposed changes in this context, coupled with significant regulatory change, and at a time of year notoriously busy for the general insurance industry due to higher instances of natural disasters and catastrophes, the ICA strongly encourages ASIC to provide firms with ample time to implement changes.

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.

The ICA agrees that there should be appropriate oversight and responsibility at Board level with regards to a firm's management of their complaints and the identification of systemic issues. We support the proposal for reports to be provided to Boards and executive committees regarding the identification of systemic issues.

We do have concerns with the requirement that staff who record or manage complaints should consider whether each complaint involves a systemic issue. This is a considerable administrative and analytical task to place on frontline staff. We believe that firms should have discretion as to how this analysis takes place, which may vary depending on the size of the firm and the amount of resources they have available. Requiring frontline staff to determine whether a complaint is reflective of a systemic issue will add additional pressure and require extra training. We consider that for the majority of frontline staff their focus should be on providing the best resolution for a complainant and not on trend analysis and identification of systemic issues.

For some firms it may be more appropriate for such analysis to take place separately. Insurers agree that trend analysis enables better claims and complaints management. This can be achieved by a separate team analysing complaints data and not by the frontline employee who is focused on the specific circumstances of the complaint at hand.

We further recommend that ASIC provides a definition and guidance as to what is deemed to be a systemic issue. This will assist with any training that will be required to help firms identify systemic issue trends.

B14Q1: Do you agree with our approach to the application of AS/NZ 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons.

The ICA supports this proposal.

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.

ASIC have advised that changes to RG165 will come into effect from December of this year. According to the proposed transitional periods, this would then give firms approximately six months, maybe less to:

- record all complaints received, including those that have been resolved immediately;
- assign a unique identifier for all complaints; and
- record prescribed complaint data for every complaint received.

The above will require extensive system changes and for smaller firms may require brand new systems. Staff will also have to be trained and upskilled on the new requirements. The ICA suggests that if such changes are to go ahead then a minimum of 12 months from when

the regulatory guide is updated should be provided for. In addition, with regards to the data that is to be captured, the ICA recommends that ASIC starts with a smaller more focussed data set, which can be expanded in accordance with lessons learnt.

As ASIC acknowledges in the consultation paper, some of the IDR reforms represent significant change. The internal capacity building needed to effectively implement these changes is unlikely to take place in less than six months, particularly given the current IDR market as referenced earlier.

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

Transitional periods for the identification of systemic issues should also be provided for, particularly if ASIC maintains the requirement for frontline staff to carry out these requirements. Insurers would welcome further consultation on expectations regarding identification to inform system changes and training.