

FINANCE INDUSTRY DELEGATION

Response to

ASIC

Consultation Paper 311 Internal Dispute Resolution: Update to RG 165

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Attention: Jacqueline Rush, Senior Policy Adviser, ASIC

By Email: IDRSubmissions@asic.gov.au

Submitted by:

The Finance Industry Delegation

Contact: Phillip Smiles
Ph: (02) 9975 4244
Mob: [REDACTED]
Email: [REDACTED]

**SUBMISSION TO ASIC
CONSULTATION PAPER 311
INTERNAL DISPUTE RESOLUTION: UPDATE TO RG 165
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INTRODUCTION

On behalf of 187 small, medium and large licensees across Australia - non-bank credit providers, credit assistance providers and household goods lessors - the Finance Industry Delegation provides this submission in response to Consultation Paper 311 and the draft Regulatory Guide 165 published by ASIC in May, 2019.

Please note that, unlike any other relevant industry sector representative entity that may also provide a submission, whose supporters offer similar small amount product, supporters of the Delegation are representative in size and range of business models to the Australian industry sector as a whole, with the exception of public companies and overseas-owned companies. As a matter of policy, the Delegation does not represent these entities.

1. Fundamental concerns

- 1.1. The Finance Industry Delegation notes that no regulatory impact statement or similar has been researched and published by ASIC, despite proposing a radical change to Regulatory Guide 165, which has been available, with minor changes, since 2010.

We do not consider that the Treasury RIS prepared for the *Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Act 2018* (AFCA Act) was anything other than a whitewash following a sham consultation process and, as it does not address ASIC's 'lawmaking' included in the draft RG 165, it has no legitimate current application.
- 1.2. The Delegation notes that ASIC admits this with a statement on page 4 of the Consultation Paper. With that admission is a deeply disturbing comment, "*...any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation impact Statement...*" (our emphasis and we note the word "if").
- 1.3. Given the extent of the impact of the proposed regime, preparation of a Regulatory Impact Statement that is not a whitewash, but accurately reflects and comprehensively includes information provided to ASIC during the current consultation period - must be considered essential.
- 1.4. Without such an effort, the Finance Industry Delegation cannot be confident that ASIC comprehends the significant operational and cost impact of the proposed changes, plus highly likely impact on competition. It must be remembered that, to the direct and indirect costs associated with the proposals for RG 165, must be added the direct and indirect costs of the proposals for RG 209 - the subject of an earlier submission by the Delegation.
- 1.5. The combined RG 165 and RG 209 costs will be so significant, that numerous small and medium licensees will face strangulation by direct and indirect regulation costs. In accordance with industry research conducted by the Finance Industry Delegation in June/July, 2019, the continuing existence of in excess of 60 small and medium lending and leasing companies (meaning Australian Credit Licensees, hereafter referred to simply as licensees) will be threatened, in direct contradiction with Morrison Government policy.
- 1.6. The extent of the proposals make a mockery of Prime Minister Morrison's frequent promises to reduce red tape.
- 1.7. At a time when the licensees affected are part of the primary source of funding for ASIC under the new industry funding arrangements and ASIC, under new leadership, has never been better resourced, the proposals outlined are a substantial and improper effort to make licensees undertake ASIC's data analysis and collection and investigation roles. We understand that there is an argument that the AFCA Act has established what the law is and ASIC cannot be blamed. However, ASIC has acknowledged that it accepts the task of taking the existing RG 165 and endeavouring to "align" a new version with the content of the legislation, its own research and observations and the results of the current consultation process.

Such an "alignment" must involve a considered approach that reflects the range of potential outcomes of alternative methods. The Act does not provide the detail for implementation, only the basic framework. Further, the Act provides ASIC with a discretionary role, as discussed later in this submission. The aim of this submission is to provide input into this considered approach process in order to determine the detail.

- 1.8. Despite presenting as conducting consultation, with reasonable licensee expectation that ASIC would at least consider industry concerns presented during the process before any ASIC action - the Consultation Paper admits that ASIC has already commenced undertaking the necessary IT development. This development being required to accommodate the controversial receipt and analysis of the huge amount of data proposed to be collected from licensees, at the licensees' substantial effort and expense.
- 1.9. This premature IT development does not sit well with the ASIC statement on page 2 of the Consultation Paper -
- "The proposals... are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change".*
- 1.10. Further, this premature IT development does not sit well with ASIC's invitations, on page 4 and elsewhere in the Consultation Paper, for "...comment on:
- *the likely compliance costs;*
 - *the likely effect on competition; and*
 - *other impacts, costs and benefits".*
- 1.11. The proposed self reporting regime anticipates an almost strict liability self-incrimination role for licensees in regard to the nature and extent of complaints and systemic issues, which is a major departure from the traditional Australian approach that law enforcement agencies must investigate and, subsequently, prosecutors must prove their case.
- 1.12. Without appropriate ASIC "alignment", the proposed regime will provide major encouragement for vexatious, vacuous, superficial and/or unsupported or unsupportable "disputes" to be engineered by disgruntled consumers, many of whom will have simply been refused a loan, or refused a larger loan than the lender was prepared to offer on responsible lending grounds, or feel some slight in their dealings with the targeted licensee. These consumers will be able to place any nonsense claim on a social media site in seconds and at no cost to them. These sort of activities are not supported directly, or indirectly, by any provision in the AFCA Act.
- 1.13. Without appropriate ASIC "alignment" the proposed regime, if adopted according to the major relevant provisions of the AFCA Act - without appropriate ASIC "alignment", will provide major opportunities to expand the use of blackmail by consumers, financial counsellors and credit "repair" companies, based on both the administration detail and costs involved with the proposed changes to the IDR regime and the Australian Financial Complaints Authority (AFCA) complaint submission and escalation costs. This is something that constantly occurred under the previous EDR scheme regime and appears to be escalating under the current scheme.
- 1.14. Already the utility of credit reporting is being seriously degraded by this blackmail, which sees licensees confronted with a choice of either contacting the credit reference body and requesting removal of the default information or the inquiry listing - at a cost of some \$35 - or having the consumer engineered/persuaded to lodge a complaint with substantially pro-consumer AFCA, which costs the licensee supporters of the Delegation \$95 for the lodgement, \$855 for the initial consideration (Case Management) and \$2,135 if it proceeds to Case Management 2 level. If an Ombudsman's decision is required, it will cost the licensee \$8,535. To these amounts has to be added the internal management time and stress involved.
- It must be remembered that these amounts are attracted - with the consumer never having to pay a cent - even if the complaint is without foundation or vexatious and AFCA finds in favour of the member. Most transactions involved net the licensee well under \$1,000 gross profit and are frequently for loans of under \$500. This brings in the appearance of coercion or blackmail in AFCA's dealings with the member to enhance AFCA's bottom line particularly as, to all intents and purposes, AFCA is a private company effectively only controlled by its Board, with the so-called "members" (including Delegation supporters) having no right to nominate or vote on Board positions, or any right of appeal.
- 1.15. Unsuitable borrowers and lessees, most already in financial difficulties, are having their credit reference body files "cleansed" of information that would discourage future licensees from offering new loans or leases at such a rate since AFCA was created,

that already the whole edifice of credit reporting is very shaky. Add the proposed IDR regime's opportunities that will result, mostly due to the major increase in administration costs, if the current proposals are adopted and a credit report will have to be considered an almost useless document within months of the commencement of the new proposed regime.

- 1.16. Given the new AFCA regime is silent on the matter, the Delegation is particularly concerned that ASIC intends *"to issue a legislative instrument that will have the effect of making the core IDR requirements set out in RG 165 enforceable"* (Paragraph 22, Consultation Paper). Delegation supporters understand that this means Regulatory Guide 165 being submitted to the Parliament for registration as a Regulatory Instrument.

That means a major shift from regulatory guides being an explanation as to how ASIC interprets the law - to ASIC being a law maker. This not only usurps the role of the Parliament, but also means that ASIC is law-maker, investigator (using the licensees to do the investigation), potential prosecutor (with or without DPP assistance) and, in the alternative, imposer of penalties under the enforceable undertaking system.

- 1.17. This ignores 500 years of development of our legal system that deliberately seeks to separate these various roles, as a means of creating checks and balances to the implementation and exploitation of arbitrary and ruthless power.
- 1.18. The Delegation notes at least one other ASIC statement indicating that ASIC is embracing this new law-making role and applying it beyond just RG 165.

With reference to changes to the Corporations Act and the National Consumer Credit Protection Act, ASIC unfortunately states, *"We also intend to make the following modifications to the law when we publish the updated RG 165..."* (Paragraph 23, Consultation Paper).

- 1.19. As discussed later, we accept the major relevant provisions in the AFCA Act that demonstrated the then Minister and Parliament's lack of interest in the above issues. However, ASIC admits that it has an *"alignment"* role in creating the new RG 165 (Paragraph 19, Consultation Paper) and the Delegation is requesting ASIC's consideration and satisfactory acknowledgement of these fundamental concerns in designing the final result.

2. Consultation participation

- 2.1. Since January 2011, the Finance Industry Delegation has presented 56 major submissions to government consultation programs, met with all but 2 of the relevant Ministers, met with department, ASIC and other government authority officers on 26 occasions, given evidence in person to 5 parliamentary committees and liaised with numerous members of backbench committees.

We are directly emailed with news of government inquires and consultation opportunities on an almost weekly basis.

- 2.2. However, neither the Delegation nor the other 2 industry sector representative entities, nor any lender or lessor known to us, have received any news concerning the *"IDR stakeholder meetings"* listed as Stage 2, for May to August 2019, on page 5 of Consultation Paper 311.
- 2.3. During the final week of preparation of this submission, these three industry sector representative entities were informed that they were not invited to participate in the public hearings being organised in regard to RG 209. If this exclusion was repeated in regard to the promised "round table" conferences, it would mean in excess of 400 licensees, from a financial sector that attracts significant ASIC and populist media comment and provides services to over 1.2 million Australians each year (smaller loans and household goods leases) would be denied a voice at these important meetings.

We trust that ASIC will give appropriate attention to this omission.

3. In summary, what the Finance Industry Delegation's industry research indicates

- 3.1. During June and July, the Delegation formally and informally presented the issues and questions raised in Consultation Paper 311 to its supporters.
- 3.2. This section presents a general summary of the key qualitative and quantitative information obtained from those research activities. Further more detailed information

gained from this research is included later in this submission in the answers to specific questions presented by ASIC for stakeholder consideration, and in a number of supplementary questions that the Delegation considered were important to ask stakeholders. The latter was included to avoid ASIC adopting untested assumptions.

3.3. Likely compliance costs:

- (a) Significant disruption to business building and consumer servicing time for small companies' principals, or employment of a half time information processing officer. Most responding small companies are unable to afford the half time processing officer.
- (b) One extra full time information processing officer for smaller medium size companies.
- (c) Multiple staff member increases, mainly information processing officers, for larger medium size and larger companies.
- (d) Opportunity cost of diverting small company principal to information processing - \$20,000 to \$50,000 per annum.
- (e) Cost of each full time information processing officer - minimum \$80,000 per annum, including on-costs.
- (f) Outsourcing social media monitoring to third party companies, at prices quoted of between \$4,000 and \$30,000 per year, over a range of service levels.
- (g) Supplementary IT system development to accommodate all the current proposals -
 - Set up fee - approximately \$5,000, plus \$200 per month service fee for small companies who contract out to third party service providers.
 - Medium and larger companies - \$50,000 to \$250,000 development and installation costs. The larger amount for multi-site operations.
- (h) Compliance consultancy fees for the development of manuals and initial staff training - \$8,000 to \$45,000, depending on source and size of licensee company (based on current costs for credit compliance training).
- (i) Costs of on-going and refresher staff training - various, depending on integration with other training and the extent of external trainers employed. An estimate only - small companies \$2,500 per year, to larger multi-site companies \$50,000 per year.

3.4. Likely effect on competition.

- (a) At least a 20% reduction in lender and lessor numbers - almost all small and medium companies.
- (b) Significant advantage to some larger credit provider companies, some overseas-owned credit provider companies, and some leasing franchise organisations, none of whom are Delegation supporters. These are companies who have a reputation for non-compliance, thereby saving on the current significant and growing compliance costs in a regulatory environment where, traditionally, ASIC has demonstrated little interest in their business models.
- (c) Overall encouragement of the concentration of the supply of credit and lease provision services to a small number of large companies, who have the advantages of economies of scale and the opportunity to develop and fund sophisticated back office and IT systems that service the demands of the proposed new regime. Some transition of consumers of former licensees who have closed down, to the totally unregulated buy now/pay later facilities.
- (d) Competitive advantages associated with the relative volume of complaints and cost of complaints processing, and compensation for licensees who do "sweetheart deals" with the credit "repair" companies. This is to avoid most of the imposts associated with the proposed new regime - destroying the efficacy of the credit reporting system, substantially encouraging consumer dishonesty and increasing the opportunity for consumers to successfully seek further loans and/or leases and put themselves in financial difficulty.
- (e) A reduction in the market volume presence of small companies who choose to continue in business, as they struggle to manage and deal with the new proposed regime requirements with little opportunity to employ extra resources for that

purpose - at the serious opportunity cost of ignoring business development and business maintenance opportunities.

3.5. Other impacts, costs and benefits.

- (a) Given the extra cost imposts of the proposed new regime, a shrinkage in industry sector net profits, without any consideration of change to the effective price fixing imposed by the National Consumer Credit Protection Act regime.
- (b) A much tougher approach to the offering of compensation, or reduction in loan repayments, rental payments and fees. First because of the reduced profits providing less money for largess. Secondly, because the proposed abandonment of any advantage to the licensee to resolve a dispute in the first 5 days, and the major impost of recording and reporting - no matter what the history or outcomes - means the licensee might as well "fight to the death".
- (c) If not-for-profit industry participants are expected to participate in the new proposed regime - a withdrawal of their opportunities from the market, because their volunteer and other staff will simply be unable to cope without a (so far) not promised injection of Federal Government funds for extra staff, staff training and the necessary IT system development.
- (d) Consumers strongly encouraged to create a dispute - with little or no regard to efficacy. This continues and expands a culture associated with credit and leasing that has become entrenched since the Commonwealth took over regulation responsibility. A culture, also strongly encouraged by the consumer advocates, many financial counsellors, the credit "repair" companies and now the tenure of the proposed Regulatory Guide 165, that does not place any responsibility on the consumer and does not expect any responsibility from the consumer.

4. ASIC research - industry sector kept in the dark

- 4.1. The Delegation notes the summary of ASIC's research findings, as originally published in REP 603, December 2018, included on page 7 of Consultation Paper 311.
- 4.2. Unfortunately neither REP 603, nor the Finance Industry Delegation's June/July 2019 research, has indicated that non-bank credit providers lending amounts - primarily from a few hundred to several thousand dollars - were part of any research sample selected by ASIC.
- 4.3. The Delegation asked its supporters the following questions:
 - Question 1 - ASIC claims that it undertook consumer research in December 2018 into consumer experiences with IDR. To your knowledge, were any of your consumers questioned or involved?
 - Question 2 - ASIC claims that it undertook a program of onsite monitoring of IDR arrangements in November 2018. Was your company ever monitored?

The response was universally "NO".

No delegation supporter has reported being included in ASIC's program of on-site monitoring of IDR arrangements that commenced in November 2018.

- 4.4. Concerning the summary ASIC has listed under the subheading "*The importance of IDR*".

The Finance Industry Delegation is most concerned to differentiate Delegation supporters' management and experience of IDR, from the comments included in the Consultation Paper relating to the limited research that formed the basis of ASIC Report 603 - "The consumer journey through the Internal Dispute Resolution process of financial service providers".

The Delegation emphasises the following differences for Delegation supporters:

- (a) ASIC finding - 18% of complainants dropped out or withdrew.

Delegation supporters report that this is so rare that a percentage figure would be meaningless. A number of respondents reported that they simply do not let a complainant drop out or withdraw, because they take the attitude that such action still leaves a complaint unresolved. A common comment was that, for most complainants, there was no chance to drop out or withdraw because the resolution

process began immediately they contacted the licensee and the majority of complaints (up to 85%) were resolved on that first contact.

- (b) ASIC finding - the length of time taken to conclude a complaint significantly impacted on consumer satisfaction.

Delegation supporters report that the average time to resolve a complaint falls into two categories -

- i. If under 5 days, the average is within 48 hours.
- ii. If more than 5 days - generally because a third party is representing the complainant and there is frequently a numerous exchange of emails and a need to ask further questions - the average ranges from 14 to 18 days.

- (c) ASIC finding - one in 7 complainants found it difficult to find the financial firm's details to make a complaint.

Delegation supporters have IDR contact details on their websites, in their Credit and Lease Contracts, in the Information Statements, in the Credit Guides and in at least one of their privacy documents.

- (d) ASIC finding - almost a quarter of complainants did not have the IDR process explained well at first contact.

None of the Delegation supporters who responded made a point of explaining the IDR process to every complainant. Only one actually recalled a consumer asking. All said they would if they were asked. The general view was that the mention of IDR in the various consumer documents appeared to provide enough explanation and an attempt to resolve began as soon as the complainant contacted the licensee, which meant that complainants did not feel compelled to seek such an explanation.

- (e) ASIC finding - 27% of complainants were unsure how long they would have to wait for a decision.

Delegation supporters reported that the only time this might be an issue was when a third party was representing the complainant and there were a lot of email and telephone communications backward and forward, with the licensee often left waiting for the third party representative to respond to a last email.

Otherwise the immediacy of the licensee's attempt to respond and resolve the complaint, and the lack of a large bureaucracy dealing with complaints, means there was no issue of a long drawn out process to worry the complainant.

- (f) ASIC finding - only 45% of complainants received an explanation when presented with an unfavourable outcome.

All respondents provide an explanation when communicating a response that is not favourable to the complainant.

- 4.5. Given that the Delegation research results are substantially different from the results ASIC included in the Consultation Paper, it might be useful to note that Nature, the firm that conducted the survey for ASIC, actually interviewed only 29 consumers of credit products.

Further, these 29 were drawn from a sample of only 60, which included only 35 that had recently made a complaint, 14 who were currently in the process of making a complaint and 11 who were considering making a complaint.

- 4.6. There is no breakdown provided in ASIC Report 603 as to which of the 3 lending sub-categories the 29 consumers associated with credit complaints belonged.

In addition, the general results included in the Consultation Paper appear to relate to all 60 respondents being from "financial firms" that included banking, credit, general insurance, life insurance, financial advice and superannuation.

5. The AFCA Act and credit regulations

- 5.1. The Delegation makes the following comments only in an effort to encourage ASIC to take a different path and to alert ASIC to the fact that it should not assume appropriate, effective, equal and comprehensive participation by non-bank lenders lending smaller

amounts, and lessors of household goods, in the developments under the then Minister that have led up to the release of Consultation Paper 311.

- 5.2. It is unfortunate that the Finance Industry Delegation's experience with the consultation process that was employed in regard to the AFCA Bill showed the process was a sham, and that this was accompanied by then Ministerial indifference to at least non-bank lending sector comment.
- 5.3. Unfortunately, this was preceded by the Ramsay Review which, again, demonstrated little interest in the financial sector to which Delegation supporters belong.
- 5.4. To that end, Delegation supporters were asked the following questions:
 - Question 3 - In 2016/17 there was a Ramsay Review into IDR. Was your company ever involved in this Review?
 - Question 4 - Did any industry representative organisation with which your company is involved make a submission, or give evidence, during this Ramsay Review?

The universal answer was "No" to both questions.

The Delegation, and our industry sector generally, were not encouraged or invited to make submissions, or otherwise participate in the Ramsay Review.

- 5.5. However, the Delegation accepts the end result of this unfortunate history, which could impact so seriously on Delegation supporters if ASIC fails to adopt a realistic and commercially viable policy towards its role of aligning RG 165 to the relevant legislation and regulation.
- 5.6. The Finance Industry Delegation accepts the comments included in paragraph 19 in the Consultation Paper. ASIC has to "align" the new version of RG 165 in accordance with the AFCA Act and ASA/NZS 1002:2014 standards. However, such an alignment must recognise the considerable discretion given to ASIC in the legislation and regulation.
- 5.7. The Delegation encourages a very careful consideration of the actual wording of the provisions before ASIC implements such procedures and powers. While we accept that the fundamental provisions of the AFCA have to be adopted, being the will of the Parliament and no matter how deficient the preceding consultation process - our concern is in regard to the approach taken by ASIC in its alignment function.

6. Legislation provided discretion

- 6.1. The publication of information collected by ASIC, in regard to IDR from licensees, is considered in Section 243C of the Treasury Laws Amendment (Putting Consumers first - Establishment of the Australian Financial Complaints Authority) Act 2018 [AFCA Act].
- 6.2. The Delegation notes that publication, either in the aggregate or concerning individual licensees, is optional ("*ASIC may publish information*") and is not mandated.
- 6.3. There is similar discretion available for ASIC in regard to what ASIC specifies as the IDR information or data it requires from licensees.
- 6.4. Section 912A(2) gives ASIC complete discretion as to what IDR information it asks for, except that it may not ask for "*personal information*".

7. Regulation providing limited discretion

- 7.1. Regulation 10(1) of the National Consumer Credit Protection Regulations, as amended by the AFCA Act, provides that ASIC "*must take the following matters into account*" - those matters being included in Australian Standard AS/NZS 10002.2014.
- 7.2. In this context it is useful to note that the Explanatory Statement issued by the Minister for Revenue and Financial Services, in regard to the AFCA Act (then Bill), on page 13 explains that, "*The Standard provides guidance for the design and implementation of an effective and efficient complaint management system...*". The Delegation notes the inclusion of the word "guidance" by the Minister, but does not consider this term to be analogous to "mandatory implementation of every detail".
- 7.3. The Finance Industry Delegation submits that both the sections considered above in the AFCA Act and the Regulation supported by the (then) Minister's explanation, provide ASIC with a level of discretion when ASIC sets out to "align" RG 165 with the legislation and regulations.

- 7.4. This level of discretion must embrace a serious and dedicated consideration of industry sector submissions and evidence provided at the consultation meetings, in order that the changes to RG 165 are commercially feasible and do not have the impact on small and medium business, as well as industry sector competition, that this submission has considered earlier as being probable - if the proposals are adopted without realistic changes.
- 7.5. This submission is essentially an appeal to ASIC to undertake its 'alignment' duties in a manner that is realistic and recognises actual needs. That does not mean process and/or economic strangulation, under a regulatory compliance implementation and cost burden imposed on licensees who are supporters of the Finance Industry Delegation and who are committed to compliance.
- 7.6. The AFCA Act is a fundamental breach of Morrison Government policy - built on a sham consultation process by an incompetent Minister. ASIC has the opportunity to salvage something by way of keeping 'red tape' to a minimum, and recognising that Delegation supporters are primarily from the small and medium sized business sector that the Morrison Government went to the recent Federal election promising to support - not destroy with excessive, un-researched and unnecessary regulation.
- 7.7. On the macro economic front, it must never be forgotten that strangulation by regulation of the smaller loan and household goods leasing sector would be a significant contribution to the post-Banking Royal Commission credit squeeze-induced recession that Australia is now entering, and would particularly impact on the less well off in our society.

SPECIFIC QUESTIONS

This section of the submission considers the questions ASIC included in Consultation Paper 311 and a number of supplementary questions. The latter are included because the content of the draft RG 165 includes some proposals that were excluded from the ASIC questions. This exclusion implies assumptions were made as to suitability, that should be tested.

Feedback from interests representing just over half the Delegation supporters has been analysed, with a general summary of the responses presented for each question. In almost all cases this is followed by a selection of specific comments. The specific comments have been chosen to represent the range of views expressed. To avoid this submission being impossibly long, we have tried not to include repetition of the same view.

The Delegation considers that the general summaries and specific comments provide very useful messages for ASIC and they are featured because they are the views of the licensees that will have to implement and live with the final version of RG 165 that emerges from the consultation process. The research results presented indicate that this final version should include some significant differences to the draft version, presented as Attachment 1 to ASIC Consultation Paper 311.

1. Including social media as a complaint communication

Supplementary Questions B1(1)and(2) - ASIC considers that social media platforms are a legitimate way for consumers to make a complaint to or about an organisation. Do you agree? Why?

Summary of responses

For the several respondents using Facebook and Messenger to communicate with some customers, or who are large business with social media specialist teams, social media has been considered legitimate.

Concerns in regard to lack of privacy, lack of ability for the licensee to engage in detailed response on the platform and the extra staff time required, dominated the reasons all respondents regarded social media as not being legitimate for communicating complaints.

Specific answers (representative sample)

Two of the larger company respondents recognised social media usage with their comments:

"Yes - for legitimate customers ONLY. We use Facebook and Messenger as communication with some customers".

"Social media platforms are becoming a customer service platform and a reasonable form of communication".

The other small, medium and large company respondents were less accepting:

"Absolutely not.

...they don't allow for a detailed and legitimate response from the company".

"They are a legitimate way for consumers to make complaints about an organisation, but not TO an organisation.

This is due to the unreliability of an organisation being able to properly monitor all threads on all platforms".

"No. They are a legitimate way to make contact but are not a legitimate way to receive or deal with a complaint.

The process should be private between the complainer and the organisation - social media does not achieve that purpose".

B1Q1 (introductory question) - Do you consider that complaints made through social media channels should be dealt with under IDR processes?

The Delegation is pleased to note that ASIC recognises some flexibility in its "alignment" role when it comes to adopting AS/NZS 1002:2014.

Significantly, while one of the writers has participated in the development of other Australian standards, no invitation was issued to the Delegation - or anyone associated with the financial

sector in which Delegation supporters operate - to be involved in the development of AS/NZS 10002:2014.

As Delegation research results indicate, some of the optional detail in these standards is inappropriate for adoption and would unnecessarily adversely impact on Delegation supporters.

Summary of responses:

- (a) To demand that comments on third party social media platforms should be monitored and treated as IDR complaints is to impose a substantial task on non-bank lenders and lessors.
- (b) To demand that comments on the lender's or lessor's social media platforms be considered complaints for IDR purposes is to create a monstrous cost imposition on licensees represented by the Finance Industry Delegation, and an unwarranted opportunity for irresponsible consumers.
- (c) 100% of research respondents were against the adoption of such a measure.

Specific answers (representative sample)

"On social media consumers can write whatever nonsense they want because they know the company cannot disclose all the details in the public domain to address that "complaint". Companies have to grovel, be constantly apologetic & defensive when in most cases they are in the right".

"Could work with a "Company owned/sponsored web site/Social media" but definitely not non company sites. There are many forums where a company has no control or opportunity to correct inaccurate information or ill founded narcissistic comments vs complaint".

"Encouraging consumers to complain in this way reduces the likelihood consumers will experience a positive IDR outcome".

"I think they are just avoiding us the lender, not giving us a chance to clear any "situation" in the first hand".

"We would argue that most IDR should happen outside the social media platform though, to protect confidentiality if account details are to be discussed".

B1Q1(a) - how you currently deal with complaints made through social media channels

Summary of responses

The small and many medium companies report either not being aware of such complaints or not monitoring them. Responding large companies all monitor these and provide some general response.

Specific answers (representative selection)

"By writing platitudes and trying to defuse the situation".

"All complaints are forwarded to the Responsible manager to deal with along with compliance adviser if required, as per our IDR policy".

"Respond with general comment or where applicable an invitation to contact us directly so as to take the conversation offline, as we are concerned about privacy issues in a social media discussion".

"There has been none".

"We don't monitor social media or have much of a presence".

"Currently, 'complaints' via social media are predominantly addressed by our social media team (sometimes with manager input) and are resolved swiftly. As they have all been resolved within the 5 business days of first contact, we have not recorded them as complaints.

The only time we haven't resolved a social media complaint has been when the person isn't a customer (applied, but thought the fees were too high and did not proceed).

Minor complaints are answered by the social media team with assistance from managers and compliance where required. More serious complaints or complaints requiring financial or personal account details are re-directed to the appropriate team".

B1Q1(b) - whether the treatment differs... depending on whether the complainant uses your firm's own social media platform or an external platform?

Summary of responses

This is not an issue for most Delegation supporters but, where such comments were made, the respondents regarded it as too onerous to expect them to give such comment the comprehensive treatment expected of an IDR complaint. The relevant respondents regarded these comments as generally lacking objective credibility.

Strong rejection of responsibility to react to comments on others' social media page.

Specific answers (representative selection)

"We don't have the time or resources to do this".

"How on earth would we know it is on someone else's media page if it is not directly linked to us".

"Respond with general comment or where applicable an invitation to contact us directly so as to take the conversation offline, as we are concerned about privacy issues in a social media discussion".

"N/A".

"There has been none".

"We don't monitor these social media platforms".

"N/A - we haven't had this happen".

Supplementary Question B1(1) - What proportion of adverse comments about your company your social media platforms are capable of being considered by IDR, and a solution or resolution achieved?

Summary of responses

While attention to social media postings is very mixed, with primarily the bigger companies giving it any attention, if the comment is discovered, the opportunity for IDR consideration is primarily dependent on whether or not the licensee can identify the commentator.

While no statistics have been kept by licensees, it appears that in many cases IDR attention cannot be given because there is inadequate identification or deliberate anonymity adopted by the commentator, and the aim of the posting is not to achieve a resolution for the individual, but to discourage others from doing business with the licensee.

It must not be overlooked that mandatory disclosure documentation that licensees have to provide all applicants, regardless of the outcome of their application for credit or a lease, includes an invitation and contact detail for complaints or disputes. First, on the credit guide then, if the application is successful, this detail is also included in an Information Statement and in the credit or lease contract. Following a default, default documentation also includes the invitation to access IDR and how to do so.

In these circumstances, not necessarily duplicated in other jurisdictions that were the subject of research noted by ASIC in the Consultation Paper, supporting inclusion of social media for IDR purposes may be an inappropriate burden for licensees. With multiple invitations to contact the company directly, and full details as to how to do so accompanying every invitation, why should licensees be put to the extra mandatory trouble and expense of searching social media for complaints and disputes - often posted by anonymous 'trolls' who have ignored all these invitations or by people (generally not consumers) presenting their social or philosophical opinions?

Specific answers (representative selection)

"In my experience, and for a small company, absolutely zero. Who has the time & resources to monitor and follow up such nonsense?"

"Very minimal to date".

"None to very few as many are anonymous very general in nature, vindictive, ill informed, etc".

"Never had any bad comments that I've seen"

"We are universally aware of whether or not there are adverse comments about us on social media".

Supplementary Question B1(2) - For those social media complaints to which you could not apply IDR - why would there be no solution or resolution?

Summary of responses

In relatively equal numbers, the three reasons provided by all the relevant respondents were that the complaint was not specific enough, was posted by a non-customer as a general anti-business message, or by a non-customer who had been refused a loan or lease following assessment for suitability.

It cannot be overlooked how encouragingly easy it is to post a negative or ill-founded comment.

Specific answers (representative selection)

Specific answers providing examples of the 3 reasons were:

"Example: we get a number of complaints from applicants who don't meet our qualifying criteria e.g. they're a casual employee. Are we supposed to contact applicants (who aren't even clients)?"

"They are "Non Customers" with no history with us. Just a spoiler".

"Comments are general and not about a specific issue or incident. To respond on Social media also raises privacy issues and/or corporate sensitive information (RLO)".

"People often refer to our type lending as "loan sharks", they often don't have a loan".

"The only time we haven't resolved a social media complaint has been when the person isn't a customer".

Supplementary Question B1(3) - What would you regard 'an identifiable consumer' to mean?

Any attempt to include social media postings in IDR must involve a clear indication of a benchmark to satisfy the identification of a consumer making a complaint. IDR cannot be applied if the licensee does not have the necessary contact information.

Summary of responses

Sufficient detail to match with the licensee's database of continuing and former consumers.

Specific answers (representative selection)

"A consumer we can search in our database to locate their account, so a representative can assist them properly".

"One for whom sufficient personal and contact information is disclosed to be able to positively identify their identity within our database of consumers".

"Someone I could definitely look at and relate to the client as a person I remember - ... is a small place. I cross paths with most of my current and previous borrowers".

"An account on social media that is an accurate representation of the person who created and corresponds to that account. It must have a profile picture, contact information, address/location, and/or any other personal or private information that would allow our organisation to contact them".

"Name and email address or phone number matched to that contained within a company database".

"Existing or previous customer of the company that we have done a loan for".

"Full name, email and phone number".

2. Definition of complaint

Supplementary Question B2(1) - What will be the impact of the proposal to extend the definition to include complaints about staff?:

Summary of responses

While 25% of respondents already accept complaints about staff in their IDR process, the majority were opposed to staff being included on the basis that it introduced personal, as opposed to business, issues and considerably increased complexity with a resulting increase in time allocation and cost. Frequently, it is simply a 'he said'/'she said' situation.

Specific answers (representative sample)

"It will increase the number of complaints & the time taken & resources required to address complaints".

"Additional training costs will be required. ASIC would have to specify exactly what staff related complaints would be included as a complaint about "rudeness" for example, (it) would be ludicrous".

"This can become very personal and stem from race and cultural biases and beliefs. The issue of staff should not be included as this is not something governed or influenced by ASIC. A complaint can be about product/fees etc. not about an individual directly".

"Adding new variables increases the points under which ambiguity can develop, leading to more opportunity for misunderstanding between parties".

"Our understanding is the presently used definition of complaint doesn't constrain what can be complained about".

B2Q1 - Will the guidance in draft RG 165 assist in accurately identifying complaints?

Summary of responses

The problems lie in the detail. The issue of "accuracy" may be at odds with the issue of "objectively relevant".

(See specific answers included immediately below).

B2Q2 - Merging (a) and (b) - Clarification required due to what may not be an objective or real complaint.

Summary of responses

Overall, respondents were very concerned that the attempt to clarify identification provided far too wide a definition of "complaint". I.e. it is anticipated that, with the expected greater accuracy, will come an overwhelming inclusion of issues that are not realistically complaints with substantial merit.

Specific answers (representative selection)

"What is the expectation on us to identify the complainant, considering not everyone uses their real name & most use nicknames or usernames? ...What is a material complaint and what isn't? Is "he was rude" a complaint? Sometimes pointing out facts to a client upsets them because they never see themselves as being in the wrong... 99% of "complaints" are misunderstanding that are resolved after a brief conversation with the client".

"There are many keyboard warriors within the community who will crave the attention such a law/regulation will provide. Far more guidance will be required as to what constitutes a simple comment versus a complaint or expression of dissatisfaction versus a request or a wish or a frustration with a decision, i.e. no loan provided".

"The only effect would be to increase the complexity of complaints handling procedure".

"I think complaint is usually made if the staff member has treated them poorly".

"Before even beginning the task of discerning what is an 'expression of dissatisfaction' and how to deal with it... another difficult step would be in identifying who has actually made the complaint if they haven't listed sufficient details to properly identify them".

3. Definition of consumer satisfaction with resolution

At draft RG 165.87 and 165.88 ASIC indicates that it would like to include a new definition of a consumer being satisfied with the IDR resolution.

ASIC did not include any question in Consultation Paper 311 concerning this issue. However, the Finance Industry Delegation considers that feedback on this proposal is warranted.

Supplementary Question - ASIC wants to include a new definition of a consumer being satisfied with the complaint resolution within 5 business days, to include:

- (a) consumer confirmation, verbal or in writing; or*
- (b) "circumstances exist that make it reasonable for the firm to form the view that the complaint has been resolved to the complainant's satisfaction".*

What is your opinion of this proposed definition?

Summary of responses

75% of respondents had no major issues with this proposal.

Specific answers (representative selection)

"We do not have an issue as we would like to confirm that our customer is satisfied the complaint has been finalised and nothing else is going to jump out of the cupboard".

"What is the relevance of 5 days? This should read to all complaints as there is no incentive to resolve within 5 days. But it is noted a written response is only required if requested or in our sector a hardship issue, which technically falls under different regulations. Is the expectation to send a survey form (to) the customer? Is a verbal response "yes it is resolved or yes I am Ok with this etc" acceptable and how is it recorded? Who is going to police what is and what is not recorded, as this is an impossible task for ASIC?"

"This does not sound much different from how events already transpire, especially with regard to (b). We assume that if no further contact is made, then the consumer is satisfied with the outcome provided. Once again, 'reasonable' is the key word here, and open to much interpretation".

"Doesn't seem unreasonable".

"Waste of time. Who will ever follow up on it, if a clients not happy I'm sure they will follow up again and again and then ASIC could chase us for a response".

"Option (a) is useless. In our experience this will never be obtained from any consumer. Further, not all complaints (in our experience - most complaints) are resolved to the consumer's satisfaction. ASIC's guide presupposes that this outcome is supposed to happen. It is not only not a realistic viewpoint, but also a concerning one that ASIC expects complaints will be determined in the consumer's favour in most/all cases".

"I have no issue with the proposed definition. If we will need to record these as complaints and report the data to ASIC, then there is no real incentive or benefit to resolve matters quickly within 5 business days.

4. Definition of 'small business'

B3Q1 - Proposed modification to 'small business' definition.

Summary of responses

Delegation supporters do not consider this to be a contentious issue. 75% of respondents did not offer business loans.

Specific answers (representative selection)

"N/A to business loans".

5. Recording of all complaints received

B4Q1 - Do you agree that firms should record all complaints that they receive?

Summary of responses

75% of respondents did not favour recording all complaints, on the basis of complaints that were quickly settled were more a comment than a complaint, without any resolution requested, or were very minor in nature.

Specific answers (representative selection)

"If we have to record complaints that have no merit, will that be an option, or one of the data sets, to selected when categorising the complaint?"

If every customer who expresses their dissatisfaction about something had to be recorded and the 'complaint' go through the IDR process, this would significantly increase workloads, not just for the complaints team, but for the frontline staff as well. Most 'expressions of dissatisfaction' can be sorted out in the initial phone call where the 'expression of dissatisfaction' is raised, or in the first email response. If the frontline staff then need to record that (other than in the customer's file) or forward to the complaints team to record, we would need to hire more staff to manage this and change workflows.

Perhaps the obligation to record everything can be scalable - depending on the size of the business".

"We deal with every perceived complaint to which a response is explicitly or implicitly required per the Standard. It is not our place to determine merit in the making of the complaint (perhaps only in the response).

We record all complaints regardless of when they are dealt with, once they are clarified as a complaint. ...We do take care to clarify it is actually a complaint as intended by the consumer however.

...recording all complaints has the advantage of covering us down the track if it comes back to bite us because there's an allegation we didn't comply with our requirements. All complaints we've ever registered have been of no worth whatsoever in terms of the items ASIC has identified".

"Ludicrous".

"There should be a "vexatious complainant" category".

"Not if they are successfully handled straight away".

"If it has no merit and is of a frivolous nature where no outcome is sought or possible, then it should not be registered".

"This should at least wait until we have determined what the complaint is about.

We believe that we continually learn from previous complaints and already update our training to ensure these things never occur again. However, it would be a massive burden on our small company and would likely need more staff, which we cannot afford".

"Who has the time and money to register every little item as a complaint?"

Why should these be recorded as a complaint when in fact they're not a legitimate complaint? In my experience the vast majority of complaints are from clients who are defaulting on their loans or about to default on their loan. You very seldom have to deal with complaints from clients who are up to date with payments".

6. Recording a unique identifier and prescribed data set for all complaints

ASIC presumes that recording all complaints has a number of benefits (see paragraph 49 in the Consultation Paper). However, this presumption does not attract universal support from the respondents to the Finance Industry Delegation's survey.

Supplementary Question B5(1) - ASIC considers that recording all complaints has the advantage of providing a deeper understanding of:

- (a) customers' needs;*
- (b) drivers of complaints;*
- (c) identifying emerging issues;*
- (d) encouraging improvements for consumers' benefit; and*
- (e) providing greater consistency in data collection.*

Do you agree?

Summary of responses

The Delegation's survey question delineated ASIC's consideration to:

Most respondents (87%) recognised the utility of such an approach for the business, but there was suspicion as to whether or not ASIC could justify acquiring the information collected, on the basis of the 5 reasons listed.

All small companies responding were concerned at their lack of resources to cope with the introduction of such a measure, particularly if coupled with the proposal to widen the definition as to what constitutes a complaint.

Specific answers (representative selection)

- (a) *"No. This would inflate the number of complaints as a metric for determining industry performance, and make future analysis of industry operation much more difficult. From the point of view of a society, this is to the detriment of all."*
- (b) *Yes, that perhaps they misunderstand our products or services.*
- (c) *Yes, perhaps they indicate a fundamental misunderstanding of the terms of engagement.*
- (d) *No, it will be much more likely that genuine complaints will get lost in a sea of merit-less rubbish.*
- (e) *This is too ambiguous to make sense of".*

"Recording all complaints has the advantage of covering us down the track if it comes back to bite us, because there's an allegation we didn't comply with our requirements. All complaints we've ever registered have been of no worth whatsoever in terms of the items ASIC has identified" (not a repeat, respondent indicated exactly the same answer to two questions).

"Maybe it would for a larger organisation. But for a smaller business, when there are only a few people dealing with complaints and managing the frontline team, these things can be identified and monitored without the need to record everything in that much detail".

"Yes. But there's a monetary and time element to doing all of this which they clearly don't understand because they've never run or been in business".

"We believe that we continually learn from previous complaints and already update our training to ensure these things never occur again. However, it would be a massive burden on our small company and would likely need more staff, which we cannot afford" (not a repeat, respondent indicated exactly the same answer to two questions).

"No. ASIC are looking to use data to identify opportunities for them to be seen as being proactive after their poor showing at the Royal Commission. This is information that companies review and analyse for the betterment of their customer offerings".

B5Q1 - Assigning a unique identifier

Summary of responses

No respondent had an issue with this concept and most indicated that they already adopted such an approach, generally based on something like the consumer's contract number.

Specific answers (representative selection)

"Will the name of the client not suffice?"

"A reference number would not be a massive issue as a loan number could be recorded".

"This could easily be done via the client number and current/relevant loan number".

"If there is something lodged we need to be able to track it ...there has been none by me anyway".

"We current record the customer name and loan reference number in our IDR register. If we have to use a different identifier or reference number system, it will just mean more work for the IDR team".

B5Q2(a) - Do the suggested data elements for category and type cover firms' offerings?
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Summary of responses

They appear to cover all respondents' offerings. However, respondents were concerned to stress that this did not mean approval for the extensive data collection proposed.

Supplementary Question B5(1) - In its attachment to the Consultation Paper, ASIC proposes the following 37 element data set (this will be the information ASIC expects you to provide in your report to ASIC, for every complaint received in the previous 6 month period).

Company name, ABN, name of ultimate holding company, that company's ABN, start of reporting period, end of reporting period, primary business sector, primary business sub-sector, complaint unique identifier, complainant type (choice of 3 to choose from), complainant gender (choice of 4 to choose from), complainant age (7 age groups to choose from), Aboriginal or Torres Strait Islander decent (4 answers to choose from), Complainant geographic state, (10 answers to choose from), licence type (4 to choose from), licence number, whether the complaint relates to an authorised representative, representative's number, complaint status (choice of 4 answers), date received, complainant's desired outcome, date closed, date re-opened, reason for re-opening, date closed after re-opening, AFCA status, AFCA case number, AFCA date, product or service line (choice of 11 answers), product or service category, product or service type, complaint issue (choice of 11 issues), description of complaint issue, complaint outcome choice of 3 answers), complaint remedy (choice of 2 answers), financial compensation (choice of 11 answers), and description of outcome and/or remedies.

Do you think that this concept is appropriate?

Specific answers (representative selection)

"What a joke! Who has the time to address 20-37 information items? We don't currently record IDR information".

"It is excessive as we have already recorded all of this information previously and do not need to do it again. ASIC just wants us to do it so they have all contact details to poke around and cause more trouble".

"IDR information is recorded but not to the level suggested by ASIC. Their proposal will be quite onerous and complex for (what is) in most cases very trivial issues".

"So much useless and meaningless information. It is difficult to understand the gender, age and geographic requirements. An AFCA number and status would come after the event, which is then an EDR issue, not IDR".

"If the whole IDR changes as outlined by ASIC end up happening, and a tick a box format is provided, it may be handleable. However, for a business of our size this just appears total overkill".

"Far too time consuming, seems like we are doing their job".

"We think this is cracking a nut with a sledgehammer. It also covers issues which are not particularly relevant to the IDR process (i.e. age, gender, ethnicity (partly), location) but are apparently relevant to things like data mining and profiling. As such, we question what ASIC is really trying to achieve here - and doubt it is to bolster the efficacy of IDR".

"Recording and reporting that much information for each complaint, would be onerous on a small or medium size business, especially if there is only 1 employee handling complaints.

If the answer options are limited or do not cover the particular situation, then the information will not be of any benefit to anyone.

ASIC also assumes that when AFCA refers back a complaint to a financial firm, that means the complaint is 'reopened'. They are assuming the complaint has been through the firm's IDR first and has then gone to AFCA. However, for us, the vast majority of complaints referred back from AFCA have never been through our IDR procedures first - the customer many have spoken to a customer service officer, or sent an email, but sometimes not even that. Sometimes, the first we know there is a complaints is when AFCA 'refers back' a complaint.

I don't see why the AFCA case number needs to be reported to ASIC - is this so that ASIC can find out the name of the consumer from AFCA?".

B5Q2(b) - Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail?

Summary of responses - 'complaint issue' and codes

In regard to the 37 element data set, with further sub-coding for 15 of the areas - there is universal concern as to the work involved in completing a record of every single complaint.

Respondents in general were not convinced that the 'adequate detail' provides support for the adoption of the proposed massive data collection regime.

Supplementary Question - Do you have confidence in ASIC assigning numerous codes for 'complaint issues' that ASIC has identified?

Specific answers (representative selection)

A selection of the answers that provides an indication of the range of responses is as follows:

"Absolutely do NOT trust ASIC to work out every possible answer. This will cause massive delays and unnecessary delays and back-and-forths. We prefer to express our answer in our own words!"

"We do not trust ASIC to either properly discern the appropriate levels not to adequately interpret the responses. Again, this sounds more like data mining than actually seeking meaningful information on IDR. It also 'pigeon holes' IDR processes. In our experience each consumer and each complaint is different. Treating them like a 'number' is a good way to get complained about in the first place".

"Could put in a number if it relates and also have 'other comments'."

"An 'Other (specify)' answer should address this if some scenarios are not covered by ASIC".

"I do not trust ASIC to complete any task or objective it has been prescribed as part of its official mandate".

"It is comprehensive, but time will tell if it covers all requirements. The doubt is it will not as there are many unique situations that will occur".

"Happy with numerical codes, however will also require opportunity to add additional wording to suit each unique situation".

"No I do not, considering they haven't consulted with anyone from the microlending industry. Dear God, another useless report we have to submit to satisfy the bureaucrats and justify their existence/wages".

Supplementary Question B5(2) - In regard to RG 165 content - ASIC proposes codes for "financial compensation" as the only indication of financial remedy detail, i.e. they appear to expect any financial remedy to be limited to cash payments.

For example 1 = \$1 to \$49, 2 = \$50 to \$59, 3 = \$100 - \$499, 4 = \$500 to \$999, 5 = \$1,000 to \$4,999, 6 = \$5,000 to \$9,999 - with 11 = more than \$500,000.

Do these provide adequate detail?

Summary of responses

75% responded no.

Specific answers (representative selection)

A selection of the answers that provide an indication of the range of responses and the issues supporting the negative responses, is as follows:

"We have never offered compensation so unsure how to answer this".

"What is compensation? Is the waiving of a dishonour fee or no charge levied for a date change, that is allowed under the loan contract, compensation? Loan written off on compassionate grounds = compensation? Or is it just a shut up and go away payment?"

"Yes, if I was refunding them after a loan's paid out, otherwise no, as I would just cease future fees that could be charged, i.e. monthly fees that may not have a code applicable as it would change depending on how long the client took to pay out.

A \$2,000 SACC has an \$80 a month fee. If I stop future fees and the loan was expected to run just 1 month more, the code would be a 2, but if they then stopped 2 payments it might push it to a code 3!"

"No. And give no bearing on the product they are measured against. Some amounts also cannot be accurately measured. For example, ceasing all interest charges cannot be accurately measured because you cannot tell how long the loan may exist for".

"No. That is only going to capture scenarios where payments are made to consumers. But maybe that is all ASIC is interested in. All our complaint remedies will fall under 'non-financial remedy'.

Draft RG 165, at Table 2, is currently suggesting that some information does not need to be included in the licensee's IDR report. The Delegation considers feedback on these omissions could be useful.

Supplementary question B5(3) - ASIC is suggesting that you do not need to record:

- (a) the complainant's name and contact details,*
- (b) the complaint lodgement channel,*
- (c) the name of the staff member responsible for the complaint,*
- (d) details of any actions taken to manage the complaint, including contact with the complainant, or*
- (e) any recommendation for product/service improvement.*

What are your views on these exclusions?

Summary of responses

While 37% of respondents welcomed the exclusion on the primary basis of less work, the majority were not convinced that exclusion was appropriate.

Specific answers (representative selection)

"I agree that these details should not be reported to ASIC. Although, I don't think most of the information they want should be reported".

"ASIC's suggestion is completely inappropriate. (a) and (c) are completely necessary to internally deal with the complain. (b) is important for knowing how complaints are received. (d) and (e) are fundamentally important to the IDR process. Without (e) how are the processes supposed to improve and, hopefully, avoid further complaints of that nature?"

"Agree with a, b and c being excluded but don't understand why they would want to exclude d and e if they are wanting to gain insights into the nature of complaints".

"I feel as though it will diminish their ability to conduct in depth evaluations regarding outcomes. Invariably this will lead to timely interactions between ASIC and financial organisations".

"It is difficult to understand the ASIC logic to some of the exclusions when they require such a comprehensive set of data over some 37 categories, however we support the less the better to be supplied to ASIC. Internally we may do differently".

".. we believe that we should learn from every 'complaint' and therefore I think that inclusion of details to improve future service be included".

7. IDR data reporting

The Finance Industry Delegation is concerned that ASIC requires substantial feedback on the concept of 6 monthly reporting as a general concept. To aggregate the ASIC questions so that all the feedback can be presented in this one sub-section of the submission, we have presented them in a slightly different order to that in the Consultation Paper.

B4Q1 - ASIC wants all complaints received, including those resolved on the first point of contact, to be registered for inclusion in a 6 monthly report to ASIC. Do you agree?

Summary of responses

100% of respondents were not in favour of this proposal, primarily on the basis of the resources required to be allocated and a failure to comprehend how such a mass of data could assist ASIC.

Specific answers (representative selection)

"No. Providers need an incentive to resolve issues. The unintended consequence could be that complaints instead of being resolved immediately (or within 5 or less days) will now potentially blow out up to 21 days, with a request for further information allowing then up to a further 21 days and a further request adding up to another 30 days".

"This is so unfathomably impossible for a small business to accomplish. The entire catalogue of online communication must be filtered for complaints (merit or none), case opened and shut for each, and then submitted.

Complaints resolved in the first point of contact is an especially asinine category as these events signify an overall positive experience".

"No. I think it it's resolved why take it further?".

"No. The scope of a complaint is so wide that a simple expression of exasperation by a consumer who doesn't understand something could be considered a complaint. It could be dealt with by a simple explanation to the consumer's satisfaction. If it was necessary to record and report all of these incidents, the 'red tape' would be monumental".

"I don't see how ASIC having IDR complaint data is going to improve consumer outcomes.

Complaints resolved on 1st point of contact - by all means these should not be required to keep a record of. Often times we will find that it is a simple misunderstanding from the customer, which is easily overcome by the Customer service rep. Customers are often at work when receiving correspondence and could be the culprit of how information is misconceived".

Supplementary Question B4(1) - ASIC continues to prefer that every complaint be noted with the full IDR written record process, so that there is a complete record. Do you agree?

Summary of responses

100% of respondents were not in agreement with the proposal. Primary concerns being the cost in person power and the view that many complaints were so minor and/or so easily addressed within the first interaction between the complainant and the licensee, that noting every complaint was 'overkill'.

Specific answers (representative sample)

"No. The definition of a complaint is too broad. Not every 'expression of dissatisfaction' needs a full written response, many can be resolved over the phone or in a simple email. Many are resolved in the first contact/response. This obligation would be too onerous on small to medium size businesses".

"No, because not every 'complaint' needs that level of interaction. A simple issue dealt with on the spot to the consumer's immediate satisfaction does not need to be subjected to the full IDR process - especially since our front line staff have never dealt with the full IDR process".

"Waste of time and resources...".

No. If they are only recording and interested in Data consistency... (P19, para 49) then full written responses is a significant overreach".

"Absolutely NOT. Who has the time to do all of this? As it is we can barely cope with the nonsensical admin and reporting we have to comply with already".

B6Q1 - ASIC's proposed reporting regime will require you to report each IDR complaint received, using an identical set of data variables, provided as unit record data (i.e. one row of data for each complaint), every 6 months, via an ASIC website portal.

What are your views in regard to this reporting regime?

Summary of responses

25% of respondents considered it 'OK' or 'workable'. The balance of respondents were critical, generally considering the intended task to be 'onerous'.

Specific answers (representative selection)

Typical of those who were not outright opposed to the concept:

"Okay. As long as we have the option to explain our counter to the complaint".

"Very cumbersome, and will require large screen for viewing or a challenge for printing".

Typical of those opposed to the concept:

"Once again time consuming and cost prohibitive. We are a very small business and do not have funds for extra staffing".

"This sounds like an expensive and ineffective method of achieving some goal. As above, this is guaranteed to increase the costs of business... What benefit do consumers derive relative to the increase in cost? I would expect none - given the massive size and poor quality of the data set this would provide".

"This doesn't seem like they have heard Morrison's stated aim of cutting down on red tape".

"More reports - great just what we need. It's hard to keep up on everything as it is".

"We don't see that this will provide sufficient ability to provide meaningful data towards making the IDR process better. It may be completely suitable to providing ASIC with a 'hit list' however".

B6Q1(a) - Are the proposed data variables set out in the draft IDR data dictionary appropriate?

Summary of responses

For numerous reasons (indicated immediately below), 71% of respondents did not think that they were appropriate. The others considered them 'workable'.

Specific answers (representative selection)

"No. I don't think that much information is necessary".

"No. ...covers issues ...apparently relevant to things like data mining and profiling".

"They aren't really all appropriate. I don't record my clients nationalities... If I assess them as suitable for a loan I do a loan, if I can't I don't".

"These variables are all situationally appropriate depending on each complaint, and the severity of the complaint, and who makes the complaint".

"Workable".

"No. Too much info to have to deal with for the slightest 'complaint'."

B6Q1(b) - Is the proposed maximum size of 25 MB for the CSV files adequate?

Summary of responses

12% of respondents said 'no'. 12% were unsure, or did not know. The balance answered 'Yes'.

Specific answers (representative selection)

"Workable".

"I would expect not. Considering the volume of complaints I would expect one of the four big banks receives, I don't see how it could remain under 25MB".

"It should be. Getting over 25MB on a CSV file within a six month period would be a serious undertaking and, we suggest, an indication there are serious issues at that lender".

B6Q1(c) - Should the complaint be reported to ASIC where there has been no change in status over multiple reporting periods?

Summary of responses

Only one respondent was unable to provide a view, all others agreed that no reporting to ASIC was required.

Specific answers representative selection

"Aside from complaints straddling the 6 month deadline, we don't see that IDR processes should be taking that long to finalise. Once a matter goes to EDR they should be taken off the IDR report, as the process is now in the hands of AFCA (and they do take time to deal with them)".

"No. If there is no change what can you do about it. Obviously no change is because the client's given up (because we were right) or because its escalated and in time ASIC will get the responses they need once its settled".

B7Q1 - What principles should be adopted for the publication of aggregated IDR data?

Summary of responses

12% were not sure. 37% were against publication. All others had suggestions for the principles to be adopted.

Specific answers (representative selection)

"We do not believe it should be published in the first place".

"Firm level is not a requirement and should be resisted. Complaints in many circumstances are both ill founded and with the new definition and reporting requirements (no 5 day grace period) unavoidable".

"That it be useful".

The data must be organised so that

- 1. it is available freely*
- 2. it is easily interpreted (good luck)*
- 3. complaints with no merit are clearly displayed either nominally or as a percentage*
- 4. all aspects of the complaints process must be available including time to resolution, first contact resolution.*
- 5. The information must be provided without bias or cherry picked data points".*

"Publication without 'interpretation' by ASIC would be the fundamental requirement, given their capacity for skewing data against the industry".

"I don't believe publishing the IDR data is going to improve on consumer outcomes.

B7Q1 - What principles/policies should be adopted for the publication of a company's IDR data?

Summary of responses

12% were not sure. 50% were against publication. All others had suggestions for the principles to be adopted.

Specific answers (representative selection)

"I don't believe the data should be linked to a financial firm. Just because a financial firm receives complaints, even if they receive many complaints, that does not mean that the complaints are justified, or that the financial firm is doing the wrong thing. People complain for all sorts of things, some have legitimate concerns, and some are just trying to get out of paying their loan".

"IDR data capable of identifying a particular company should not be allowed".

"I'm not sure an individual should be targeted. Again it might be a small place where a local financial counsellor takes a dislike and therefore could make every client complaint about (them)".

"The data must be published without bias, opinion or editorialising".

"Don't agree that they should be published".

"When it comes to sector ASIC need to be very specific and not mix and match sectors e.g. 2015 review where Payday includes non compliant, SACC, MACC and consumer leasing.

Perhaps a threshold of x number/ratio if ASIC are determined to name and shame".

"We do not believe it should be published in the first place".

"It shouldn't be a name and shame exercise. The company must be unidentified".

8. IDR responses - minimum content requirements

B8Q1 - Do you agree with ASIC's minimum content suggested requirements?

Summary of responses

Given the minimum content requirements suggested are:

- (a) Final outcome.
- (b) Right to complain to AFCA.

- (c) Contact details for AFCA.
- (d) Addressing all the issues raised in the complaint.
- (e) Setting out the findings on material facts and including the supporting information.
- (f) Providing enough detail for the complainant to understand the basis of the decision and make an informed decision as to whether or not to go to AFCA - the more complex the complaint, the more detail.

The Delegation's June/July research indicated that 25% did not approve, 28% accepted but with very similar reservations or caveats, and the balance agreed and/or saw no problem.

Specific answers (representative selection)

"Absolutely not".

"As this would need to be provided to AFCA if the complaint was progressed by the consumer, we see little detriment".

"Once again there are concerns about more ambiguous terms - are some clients ever really going to 'understand' the decision making process?"

"Yes, but... (f) must be an objective determination".

9. IDR responses - superannuation trustees

B9Q1 and B10Q1 - These are not relevant for Finance Industry Delegation supporters.

10. Reduced maximum IDR timeframes

B11Q1, B11Q1(a) and B11Q2 - Do you agree with ASIC's proposals to reduce maximum IDR timeframes to a standard 30 days?

Summary of responses

50% of respondents were against changing, universally citing the need for the current time to obtain information from slow/reluctant consumers.

Specific answers (representative selection)

"No. In most cases, where the customer engages in the process, we can resolve complaints fairly quickly and well inside a 30 day timeframe. However, if it is a complex complaint, or if we need to source information from a broker, or if the customer does not engage in the process, it is likely to require longer than 30 days (and in some cases, longer than 45 days).

Reduction in turnaround time from 45 to 30 days is also unacceptable - this will create more 'unanswered' complaints, as in the customer does not respond to emails or phone calls. The extra 15 days could be the difference between a no-outcome and a positive outcome for the customer".

"No. In our experience, we often struggle to get information out of the complainer to clarify their complaint within the timeframe (or at all).

The timeframe should remain at 45 days".

"No, not acceptable. We're getting it from all angles: more admin and less time to do it in".

"Would agree if the 5 day rule in place now was to continue".

11. Role of consumer advocates

B12Q1 and B12Q2 - Supporters of the Finance Industry Delegation do not have consumer advocates working in (or for) in their companies.

12. Consulting promise re. systemic issue inclusion in reports to ASIC

Draft RG 165 notes that the subject of mandatory inclusion of 'possible systemic issue or regulatory breach', in reports to ASIC from June 2012, will be an issue for future consultation.

The Delegation alerted its supporters to this promise and sought preliminary feedback in case the issue came up at the promised stakeholder meetings.

At this stage, it is appropriate to signal that this is a very contentious issue and will require substantial and detailed consultation. The concept of self-incrimination cannot be expected to be welcomed.

13. Systemic issues

B13Q1 - Do you consider the ASIC proposals for strengthening the accountability framework and the identification, escalating and reporting of systemic issues are appropriate?

The Delegation listed the following proposals concerning systemic issues in its questionnaire:

1. Staff to adopt a systemic issue focus.
2. Setting thresholds for identifying systemic issues.
3. Board reports to include metrics and analysis of systemic issues.
4. Complaint recipient staff to consider every complaint to assess whether systemic.
5. Regular analysis of complaint data sets to assess whether there are any systemic issues.
6. Conducting root-cause analysis of complaints that raise concerns about systemic issues.
7. Complaint staff to escalate any possible systemic issues they discover.
8. Follow up re. these escalations and reports to follow.

Summary of responses

12% considered the proposals appropriate. 12% considered the proposals workable, but with serious caveats or reservations. The balance were strongly against the proposals.

However, there was overwhelming comment on the likelihood of the new measures being ignored by a significant number in the industry sector.

Specific answers (representative sample)

"Definitely not. Because 99.9% of issues are NOT systemic. The time required to deal with complaints will become insane, ESPECIALLY for small lenders".

"It would be nearly impossible to monitor".

"How can ASIC police all of this? Systemic... can be subjective".

"These proposals are ambiguous, vague and obfuscating. They are open to interpretation and disagreement and therefore do not provide any useful or material improvements to the financial organisations.

I severe doubt the efficacy of these buzzword-ridden proposals".

"Why would you do yourself in, you would just fix your ways and carry on trading".

"In our case there is simply insufficient numbers of complaints to warrant this level of scrutiny (or even make it worthwhile). The majority of lenders in our sector are small businesses who we doubt have the infrastructure to cope with this requirement.

Those with significant issues which would be 'caught' in this reporting are also the ones likely to not be completely truthful in the reporting".

"The definition and parameters for 'systemic issue' would need to be very prescriptive and well defined".

14. IDR Standards

B14Q1 - Do you agree with the ASIC approach in regard to adopting AS/NZS10002.2014 in the draft RG 165?

Summary of responses

All respondents expressed concerns in regard to general standards, one size fits all - in contrast to industry sector-specific standards being applied, and in the lack of consultation in regard to the new standards. None of the respondents indicated any awareness of the development of the new Standards.

Specific answers (representative sample)

"Generally, the principles in the Standards are framed in a way which can be adapted to any industry. It is the contextualisation which is important. Sadly, we expect this contextualisation will come from ASIC - so we'd rather it didn't happen at all".

"Do I think that standards should be based on reality? Of course".

"IDR standards should definitely be industry specific. Our issues are not the same as other lenders e.g. banks. Our clientele is NOT the same to a large extent, and our consumers' behaviour is vastly different to that of bank clients (generally speaking)".

15. Transitional arrangements for the new IDR requirements

B15Q1 and B15Q2 - Do the proposed commencement dates give you adequate time to prepare? Are there any other transitional tie table requirements?

Respondents were provided with the following commencement date detail:

- 31 March 2020 for 30 day IDR resolution timeframe;
- 30 June 2020 for recording all complaints according to ASIC's data set requirements; and
- 30 June 2021 for reporting all IDR complaints to ASIC.

Summary of responses

12% said yes without reservation. 37% said yes with reservations or caveats. The balance want more time.

Specific answers (representative sample)

Reservations comments -

"Yes - providing our compliance advisers are capable of updating our compliance manuals and offer any additional training required. We would have to consult with them first".

"I doubt it, especially considering the length of time it takes to iron out all the shortcomings, contradictions, and ambiguities...".

"NO they do not. The introduction of this type of ASIC regulation will be the beginning of the end for a lot of small lenders who simply do not have the resources to administer such a ...system".

More time comments -

"Would prefer it to be pushed out as far as possible".

"Dates need further extension. ...There will be a lot of training and IT development to meet these dates. This is a very significant change to existing RG 165 requirements".

Conclusion

We trust that the feedback included in this submission assists in the acceptance and adoption of a new version of RG 165 that recognises the need for functional alignment with business reality - and does not result in the economic strangulation by regulation that the current (unamended) proposals will achieve.

Finance Industry Delegation.

August 2019

**POST-CONSULTATION STAKEHOLDER MEETING
SUPPLEMENTARY SUBMISSION**

Following the publication and response opportunity to Consultation Paper 311 and in response to ASIC's invitation presented at the consultation meeting on Wednesday 25 September 2019 - on behalf of the Finance Industry Delegation we provide the following issues not addressed, or requiring clarification, for consideration in the final version of RG 165.

Please note that, if we have expressed any comments in a manner that appears to be a question, as with all comments listed below, these issues are provided in the hope that you and your colleagues will consider them as you prepare the final draft of RG 165. The comments are not presented as questions where we expect you to respond to the Finance Industry Delegation.

1. ASIC RG content v AFCA Rules

ASIC regulatory guides must override, or be consistent with, AFCA's Rules and be what AFCA applies at Case Management 1 and 2 stages.

Note:

At present an Australian credit licensee can be compliant with both the National Consumer Credit Protection Act and ASIC regulatory guide content, but will be effectively determined as non-compliant because AFCA imposes an undefined "fairness" test and ignores both the legislation and regulatory guides whenever it chooses.

Effectively, this is AFCA creating and applying "soft law", while choosing to ignore Parliament and ASIC. The opportunity for certainty in regard to the applicable law has currently been replaced by highly subjective and unpredictable AFCA-created uncertainty.

The opportunity for AFCA to ignore the credit legislation and ASIC's regulatory guides is financially significant. On calculations generously provided by a Smiles Turner client - to earn the income necessary to pay the AFCA Case Management 1 fee of \$855, it is useful to consider:

- (a) With average loans of \$650 for a term of 95 days, income is \$208. That means the income from 4 of these average SACC loans would be \$23 less than what was needed to cover the cost of a Case Management Stage 1 AFCA consideration of just one complaint - generally associated with only one loan.
- (b) A \$1,300 SACC for 350 days would generate gross income of \$884, providing just \$29 more than the AFCA Case Management 1 fee if this loan led to a complaint.
- (c) The industry average MACC loan is for \$2,600 over 20 fortnights and generates a gross income of \$1,012. Payment of the AFCA Case Management 1 fee constitutes 84.5% of this total revenue.

2. Evidence of consumer/complainant agreement

What is acceptable evidence that the consumer has agreed to an IDR resolution proposal?

Note:

This was presented at the meeting on 25 September, but not clearly addressed.

3. "Professional judgement"

Clarification as to what "*professional judgement*" means is required.

Note:

This was also presented at the meeting on 25 September, but not clearly addressed.

This is a substantial area and, at very least, requires consideration of:

1. Section 12ED of the ASIC Act - due care and skill;
2. Competition and Consumer Law - the old Section 34 of the Trade Practices Act - implied warranties concerning suitability and revealing the purpose of the decision;
3. Section 47(1) of the NCCP Act - efficient, honest and fair treatment;
4. a mass of court cases on "professional judgement" and "professional standards"; and
5. the issue of the "professional judgement" being made at the time, while any ASIC or AFCA review will occur some period later when additional information and allegations can be presented that were unavailable when the "professional judgement" was exercised, or the complainant's circumstances have adversely changed.

The problem - this would involve high level legal argument in an environment where neither AFCA, nor consumer advocate legal centres, nor "credit repair" companies engage and respond when this is presented to them.

4. Definition of a complaint

In regard to the definition of a 'complaint', clarification as to what the AS/NZS 10002 2014 means when it includes that the consumer "*implicitly*" expects attention and resolution is required.

Note:

What does the word 'implicit' mean in such circumstances?

5. Third party complaints

Position requested - that no third party complaints can be included as requiring licensee acceptance - if nothing else, due to privacy issues.

Note:

For a licensee to effectively address a third party complaint (i.e. one from a person who is not the consumer on the credit contract), the licensee would have to breach critical Privacy Act and Code provisions.

We recognise 6 reasons why they should not be included for recognition:

1. Any resolution with just the third party cannot bind the consumer, particularly if the consumer is not at all involved in the complaint.
2. The third party is not a party to the loan or lease contract and any resolution that effectively involves changing the terms of the contract cannot happen, because this change must be confirmed in writing by the consumer, in accordance with Section 19(1) of the National Credit Code.
3. However there are 2 exceptions
 - (a) Section 19(2) of the Code - if the total liability of the consumer is reduced; and
 - (b) ASIC's Class Order - allowing no written agreement for SACCs if the changes are simple and do not exceed 90 days.

But this still involves a change to the contracted terms to which the consumer has not been a party to considering or agreeing.

4. There are major issues of privacy in regard to disclosure of information, with such disclosure being potentially unavoidable in many cases [draft RG 165 stresses the protection of personal identifiable information concerning the complaint - see RG 165.181, 182 and 190(h)].
5. All privacy documentation would have to have new inclusions that would satisfy both the Office of the Australian Information Commission (Privacy Commissioner) and AFCA.
6. Further, any change in RG 165 could not be retrospective - so complaints from third parties about existing and past loans could not be accepted, because the traditional licensee privacy documentation does not recognise this opportunity and there is no relevant agreement by consumers who have already signed their privacy consent agreement.

Draft RG 165.182 effectively demands that the consumer would have to give permission for the third party to make a complaint.

6. Rejected application complainants

Position requested - refused applicants' complaints to be excluded from the definition of complaints that must be accepted.

Note:

This is a major issue (we will basically copy our arguments in the briefing paper to include here). If this proposal is adopted, many completely compliant and legal Australian Credit Licensees could face financial ruin at the hands of unscrupulous would be borrowers.

The significance of recognising that consumers refused a loan on the basis of being unsuitable - in accordance with the law - can be seen in an example provided by a Smiles Turner client:

- 9,000 applications received online per month.
- 5% - 450 applications approved as suitable as per the NCCP Act.

- 8,550 unsuccessful applicants could lodge a complaint.
- If they did and all got to AFCA Case Management 1 stage - total AFCA fees - \$7,310,250 for the month.
- Total annual AFCA bill - \$87,000,000.
- Total cost to all applicants to complaint to AFCA - Nil.
- Income received by licensee from these applications to pay the bill - Nil.

We submit that:

- (a) This is a major both Parliamentary disallowance and High Court appeal issue.
- (b) One major online lender has a 76% rejection rate, with other online lenders refusing up to 95% of applications and bricks and mortar lenders reporting at least 40% non-approvals (Cash Converters). Most Finance Industry Delegation supporters have previously reported bricks and mortar rejection rates in the range of 40 to 86%. The open opportunity for these people to complain is horrendous.
- (c) It presents a conflict of law issue, between the currently intended Statutory Instrument version of RG 165 on this point and the requirements of a licensee to acknowledge the responsible lending or leasing Sections 128 to 131 and 151 to 154 of the National Consumer Credit Protection Act.
- (d) It opens up the opportunity for a financially ruinous use of the AFCA complaint regime, where a licensee has refused to provide a loan or lease because the application is unsuitable in accordance with statutory demands associated with responsible lending and leasing. At no cost to themselves, the unsuccessful applicant presents a vexatious complaint that is automatically escalated to AFCA Case Management 1 (licensee cost \$855) - and then AFCA Case Management 2 level (licensee cost \$2,135) because, strictly speaking, the licensee and the consumer cannot come to an agreement and resolution during the 21 day refer back period or at Stage 1.

The licensee cannot backtrack on their decision during the “refer back” period, or at stage 1 or Stage 2, because they are thereby admitting they have broken the law by lending an unsuitable loan, or providing an unsuitable lease, or admitting that they did not undertake the responsible lending or leasing inquiry and verification process efficiently, fairly and/or honestly in accordance with Section 47(1) of the NCCP Act - thereby breaching a fundamental statutory licence condition. The Finance Industry Delegation has received advice that this would be the basis of the “conflict of laws” argument that the Delegation could present to Parliamentarians and the High Court.

- (e) The financial impost on a licensee who has attempted to obey the NCCP Act must be considered in the context that the licensee has already lost money in association with the cost of advertising to attract the applicant and undertaking the assessment - which cannot be charged for - without then proceeding to enjoy any income from the loan.

7. ASIC and AS/NZS 10002 2014

Will ASIC approve AS/NZS 10002 2014 from 1 July 2020?

Note:

The question seeks clarification of expression in the provisions included in the Explanatory Statement issued in late September (paragraph 14) in association with the ASIC Corporations and Credit (Repeal) Instrument 2019/966.

8. Social media

- (a) Social media complaints - what will ASIC’s expectations be concerning whether or not a complainant on social media is “contactable” by the licensee, to respond to a complaint via IDR application?

Note:

Our concern is to have RG 165 recognise the last contact address provided by the complainant to the licensee as the criteria.

- (b) Social media complaints - what constitutes an ASIC accepted level of verification of the identity of a consumer complaining on social media?

Note:

Our concern is to have a standard that does not involve licensees having to carry out extensive investigation or engage a private detective agency to do so.

- (c) What rules will ASIC adopt in regard to the licensee responding to the complaint in detail on the same platform, for all visitors to see?

Note:

The complaint on a social media platform is a very public presentation. That requires an opportunity for the licensee to respond, so that the same public can read and consider “the other side of the story”.

- (d) How can the licensee be sure that the name provided with the social media complaint is legitimate and what happens if the name is discovered not to be legitimate - is an IDR resolution still prescribed?

9. Complaints involving staff

AS/NZS 10002 2014 lists complaints about staff as one of 3 categories of complaints.

What does ASIC consider should be included as acceptable for IDR application in this area?

Note:

It appears that this issue has not been addressed in draft RG 165.

Licensees are challenged with “complaints” against staff members that are racial, highly subjective claims concerning courtesy, or otherwise comments based on personal views as to highly personal attributes of a staff member that have nothing to do with assessing the application for a loan or a hardship application - but are presented as relevant because the consumer just wants to vent anger or frustration because they did not get their way.

It could be useful for ASIC to refer to other industries where this requirement is mandatory.

10. Request for information v complaint

To what extent is an expression of dissatisfaction a complaint, that is really just a request for information?

What if it starts out as a complaint and is resolved because the consumer should have made a simple request for information which would have stopped the “complaint”?

Note:

Finance Industry Delegation supporters relatively frequently deal with expressions of dissatisfaction that are quickly resolved by providing information, such as drawing the “complainant’s” attention to a clause in the credit contract or associated document.

The “complaint” is in fact an expression of ignorance as to a fact or group of facts, because the “complainant” has previously either not listened to a licensee provided explanation, or has not carefully read their mandatory credit documentation - despite clear requests to do so.

11. Complaint v apology

To what extent is a request for an apology a complaint?

Note:

While this issue was discussed during the consultation meeting held on 25 September, we were unable to hear ASIC’s response.

12. The proposed 30 day IDR timeframe

- (a) What are “exceptional circumstances”?

Note:

While ASIC appeared to accept the need for exceptional circumstances to extend the time frame for IDR conclusion (from the generally applicable proposed 30 days), we were left uncertain as to what ASIC’s position was, after the mentions of this issue during the meeting on 25 September. Detail on categories, including case studies, is required in the final version of RG 165 to clarify what “*exceptional circumstances*” means.

- (b) The need for ASIC to seek a change in AFCA Rules, so that AFCA’s “*refer back*” period can be changed from generally 21 to 30 days (sometimes AFCA can specify it as less) - for RG 165/AFCA consistency.

Note:

Without such a change we are concerned at the possibility of a conflict between what each of the regulators requires.

13. Systemic issues

- (a) What are the other means recognised by ASIC to identify a systemic issue, other than referring to data collected by the licensee as to the reason for complaints?

Note:

This question arises as a result of the Chairperson at the 25 September consultation meeting indicating that front line staff should be able to identify systemic issues and alert management for final decisions.

- (b) How does a staff member recognise a systemic or potentially systemic issue when they are dealing with a single complaint from a single complainant?
- (c) What are the “other means” ASIC has in mind?
- (d) Can these be detailed in the final version of RG 165 for clarity?
- (e) What does ASIC mean by the term “*threshold*” in these circumstances?

Note:

This term was used in Consultation Paper 311, but without explanation.

14. Core v non-core RG 165 content

Segregation of RG 165: What is “*core and non-core*”?

Note:

This concept was raised during the consultation meeting on 25 September, but the Chairperson indicated that ASIC was not ready to announce what issues were included in each category.

Obviously, in the final version of RG 165, there is need for clear definition of each category and explanation as to the penalties that apply to each category. We are also concerned as to how the interface between core and non-core will be expected to be managed by licensees.

15. Regulatory Impact Statement

Given the assurance licensees need that ASIC fully understands the ramifications of the changes it is championing, there is a need for 2 Regulatory Impact Statements concerning those changes that will be finalised this year and those that have been deferred until 2020.

Note:

We note the Chairperson’s concern for ASIC to receive data from the industry to assist in the preparation of a RIS.

The Finance Industry Delegation is most consistent and holistic in undertaking industry and consumer research and providing research results to Government and its agencies, when there are proposals for regulatory changes at any level amongst the representative entities associated with non-bank smaller amount lending.

What specific type of data would ASIC like from the industry sector in regard to each RIS?

16. Appeal opportunity

Will ASIC recognise that relevant Corporations Act penalties (and National Consumer Credit Protection Act penalties) for breaches of what ASIC is currently proposing for content in a Legislative Instrument RG 165, can be financially substantial and ruinous?

Will ASIC recognise that there are potential collateral penalties, around failing to be a “*fit and proper person*”, that could apply under the proposed Legislative Instrument RG 165. These could have a major impact on the ability of a person to continue as a Key Person, in particular as a Company Director or Responsible Manager?

Will ASIC accept that simply recognising that the penalties are civil does not justify the lack of appeal opportunities being included in the Legislative Instrument RG 165, given its status of a mandatory applicable regulation, and no longer simply an indication as to how ASIC interprets the law.

We thank you for the opportunity to attend the consultation meeting and to present these further issues for your consideration. Please note we are currently undertaking industry research in response to the Chairperson's request for data, made during the Wednesday meeting, and will forward the results of that research once analysed.

Phillip Smiles

Lyn Turner

Coordinators

4 October 2019

The following is the questionnaire presented to supporters of the Finance Industry Delegation during the 2 weeks commencing 30 October 2019, and a summary of their responses. This research was undertaken in response to a request for more data, from the ASIC officer chairing the stakeholder consultation meeting concerning ASIC’s proposed re-write of Regulatory Guide 165 (IDR), held on 25 September.

This report contains contextual data that the Finance Industry Delegation considers essential for consideration by ASIC, during that Commissions’ preparations to finalise a new version of ASIC Regulatory Guide 165.

There was some delay in undertaking this follow-up survey, because surveys concerning a later announced consultation meeting in regard to ASIC re-writing Regulatory Guide 209 (Responsible Lending) had to intervene, in preparation for the consultation meeting about that Guide held on 1 November.

The Co-ordinators of the Finance industry Delegation never present submission content or follow up information (invited or self initiated) at or after consultation meetings, without surveying the 180+ supporters of the Delegation.

A summary of the results of the RG 165 survey tabulated from responses received from credit providers offering loans via 4 major websites, 2 small websites and 69 bricks and mortar outlets, follows. In terms of business size, the respondents represent a statistically acceptable cross section of the industry sector, from all parts of Australia except the Northern Territory. In addition, as a matter of policy, the Finance Industry Delegation does not seek to represent the views of the 2 public companies and the 3 significant, wholly foreign owned, companies in the sector. The subheadings listed represent areas of interest and issues that emerged during the consultation meeting, or indirectly from those deliberations.

Timeframes

ASIC is set on establishing a 30 day timeframe to finalise an IDR complaint (down from 45 days). However, following industry pressure, ASIC proposes to recognise “*extraordinary circumstances requiring in excess of 30 days*”.

1.	What would you like to see included as extraordinary circumstances?
	<p>Respondents note:</p> <p>Reliance on third party guidance and/or representation by consumers.</p> <p>No response by consumers to requests for further information, despite 3 contact attempts.</p> <p>Recognition of holiday periods where lender is a sole trader or small business and the owner is on leave.</p> <p>Christmas and public holiday period closures.</p> <p>Where the credit provider has to contact a third party such as a credit assistance provider for information and that contact is slow to respond.</p> <p>Family death.</p> <p>Hospitalisation for an extended period.</p> <p>Act of god/natural disaster.</p>

Slow responders to requests for further information

ASIC considers that it is appropriate to expect the lender to chase up when consumers (or their representatives and advisers) are slow to respond to a request from you for further information, after a complaint at IDR has been made.

2.	What proportion of your complaints involving IDR require you to ask the consumer/complainant for more information?
	At least 25% overall, with some larger companies reporting 50% and 50% of smaller companies reporting 100%.

	<p>Note: one large company has adopted a policy of avoiding any opportunity for the matter to end up with AFCA and face AFCA's fees - which are more than its gross income on its SACC lending.</p> <p>For that reason it generally just gives the consumer what they want and, as a result, a maximum of 10% are asked for further information.</p>
3.	<p>What proportion of these complaints, where you have asked for further information, is where the consumer or their representative are slow to respond?</p> <p>It is inappropriate to suggest an average because the range indicated was 2% to 100%. The mean was 75%.</p> <p>One medium size lender commented: <i>"People are inordinately quick to make a complaint but struggle to substantiate it"</i>.</p>
4.	<p>Do you currently attempt to chase up these slow responders?</p> <p>Yes - 72%.</p> <p>Comment from one major lender: <i>"Yes, but with very little expectation of a result"</i>.</p>
5.	<p>Do you have any reason/s to be against the ASIC expectation that you should chase up these slow responders. If so, what are they?</p> <p>Credit provider respondents were universally against regulation/expectation that they chase up consumers, having already gone to the trouble of asking for further information because the consumer had not properly prepared their complaint communications.</p> <p>Summarising the comments -</p> <p><i>"Once complainants are asked for further information - a varying number just discontinue by not responding"</i>.</p> <p><i>"They will never respond, no matter how many times we chase them, because their complaint was a try on and they are unable to substantiate it"</i>.</p> <p><i>"If we have already requested information several times and they do not supply, what can we do?"</i>.</p> <p>40% of respondents asked why they should be responsible to do the consumers' work? Their view - the complainant has a responsibility to provide the information in a timely manner.</p> <p>A general view - why should we have to beg the consumer to substantiate their complaint, we are business people, not consumer nannies?</p> <p>A common question presented: How many times would we be expected to chase up in the face of continuing consumer non-response?</p>

Complaint v Hardship

The consumer advocates and ASIC are concerned that some licensees push for complaints to be considered as hardship applications.

6.	<p>Do you ever try to convert a complaint into a hardship application?</p> <p>No - 100%.</p> <p>One large lender commented: <i>"We don't try to 'convert' a complaint into a hardship application. However, when the complaint is essentially about hardship or the information shows the consumer who has complained is in hardship, our resolution proposal will generally be offered 'on the basis of financial hardship'. Whilst we may not accept the reasons or issues raised by the consumer or third party representative as being valid, we may still be able to reach a resolution based on the financial hardship the consumer is now experiencing"</i>.</p>
7.	<p>If yes, why?</p> <p>0%.</p>

8.	<p>What percentage of your total received IDR complaints are actually hardship applications?</p> <p>25% of respondents - 0, “rarely” or “less than 1%”. However, all respondents in this group were small lenders, with close and personal contact with many of their consumers.</p> <p>12.5% of respondents - 12%.</p> <p>62.5% of respondents - 50% or more.</p> <p>This means, where the “complaint” is really a “hardship application”, the consumer is attempting a bogus complaint because they can no longer fulfil their contractual/financial obligations and are looking for an excuse to avoid payment.</p> <p>Co-ordinator comment, based on repeated case study information from Delegation supporters:</p> <p>Adoption of this strategy appears frequently encouraged by financial counsellors and consumer legal centres.</p>
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Regulatory Impact Statement Data

The Chairperson at the consultation meeting asked for statistics to justify ASIC preparing a Regulatory Impact Statement concerning its IDR review. We regard this preparation as essential. The following questions are included to provide topic content for consideration in its preparation.

9.	<p>What percentage of your total loans end up involving a complaint presented to IDR?</p> <p>Larger lenders - 0.0013% to 0.8%.</p> <p>Medium size lenders - 0.01% to 0.29%.</p> <p>Small lenders - 0% to 0.5%.</p>
10.	<p>What percentage of these complaints you have received end up with a resolution that demonstrates the complaint was fully justified?</p> <p>60% of respondents - 0%.</p> <p>Larger other lenders - average 3%.</p> <p>Medium size other lenders - average 22%.</p> <p>Small size other lenders - average 15%.</p> <p>One small lender commented: “None... we give them what they want to avoid the extravagant EDR fees, even though the cases have no grounds to rule in their favour”.</p>
11.	<p>What percentage of your total IDR complaints, over the last 12 months, have been resolved within 5 days of the complaint being received?</p> <p>All respondents - 80% to 97%.</p>
12.	<p>In your opinion, what percentage of your total complaints at IDR have little or no substance and are basically vexatious?</p> <p>Range 55% to 100%.</p> <p>Mean 65%.</p>
13.	<p>In staff and management time (only), what do you estimate it costs the company to deal with the average IDR complaint?</p> <p>Range - 3 to 10 hours.</p> <p>Average - 5 hours per complaint.</p> <p>Nominated average cost amounts - \$225 minimum to \$1,000 maximum, with extra cost if outsourced compliance adviser/lawyer involved.</p> <p>Comment: In contrast, one company estimated that the administration costs of just</p>

	<p>agreeing to whatever the consumer demands was \$6.50.</p> <p>One large lender commented, <i>“For simple complaints from a consumer, 3 hours, and if from a financial counsellor/lawyer, 5-7 hours. For all other complaints from a consumer, 6-8 hours, and if from a financial counsellor/lawyer, 10+ hours”</i>.</p>
14.	<p>What percentage of your complaints resolved at IDR have involved paying the borrower compensation?</p> <p>11.5% of respondents - 10%. 89.5% of respondents - 0%.</p>
15.	<p>What percentage of your complaints resolved at IDR have involved your company foregoing some of the amount owed by the consumer?</p> <p>Larger companies (with one exception) - average 15%. Medium sized companies - average 25%. Smaller companies - average 45%. The one exception - being the company which has resolved to simply agree with most consumers’ demands - replied, <i>“64% - ...only because of the constant threat or possibility of the complaint going to AFCA and the company bearing the unfair cost”</i>.</p>
16.	<p>Have you had examples of third parties complaining - not the consumer who actually took out the loan?</p> <p>No - 11%. Yes - 89%. Co-ordinators note: The third parties include those that clearly identify themselves as acting for their client, such as Legal Aid, Financial Rights Legal Centre, Financial counsellors, Community Programs, Christian Services, Aboriginal Services, Redfern Legal Centre, Consumer Action Legal Centre, etc. These entities address some element or elements of the loan transaction. In addition, there are the credit “repair” companies whose interests are almost always focused on seeking unjustified amendments to credit reporting body files. One medium lender commented, <i>“Yes. Over 75% come or are driven by a third party such as credit repair companies for their own financial gains and consumer advocates that push for unreasonable outcomes and claims with no regard for common sense or following the law. They even push clients to make complaints even if the client is satisfied and appreciative of the assistance and outcomes we offer them”</i>.</p>
17.	<p>If yes, what was your experience with these?</p> <p>Consistent comments were: Lacked accuracy, distorted the facts, scatter gun approach, often indiscriminately list sections of the National Consumer Credit Protection Act, create delay generally, time wasters. When confronted with a reasoned and reasonable response - inclined to then threaten to go to AFCA, often refuse to substantiate their client’s claim, generally fail to engage with substantial responses, pushy to the point of being extortionate, rude and dismissive, lacking ability or preparedness to compromise. Comments from lenders in regional areas acknowledged that some were reasonable to deal with and fairly prepared to compromise. No comments of this kind were received from lenders dealing with city-based third parties. One respondent commented, <i>“These entities are very familiar with how the AFCA game works and are more demanding because of this. They are well aware that it is in the lender’s interest to resolve even if that requires the lender to agree to an unfair resolution”</i>. Comments provided concerning credit “repair” companies were consistent - the</p>

	<p>credit “repair” companies are totally ruthless, don’t offer compromise, never engage with any explanations offered by the lenders and consistently threaten to blackmail the lender by lodging a complaint with AFCA, to cost the lender AFCA fees.</p> <p>One large lender commented, <i>“The problem with dealing with third parties acting on behalf of a consumer (i.e. financial counsellor or lawyer), is that if they don’t like your initial response (i.e. you don’t give in and reduce amount owing to the loan principal or completely waive the debt) or if they don’t want to reply to your request for further information, then instead of responding to us and continuing to negotiate a resolution, some financial counsellors/lawyers will go straight to AFCA before the IDR process has concluded.</i></p> <p><i>I have a new AFCA complaint come in today, and yet I have been waiting for the financial counsellor to respond to my request for further information and my complaint resolution proposal. I guess I have the answer on my proposal”.</i></p> <p>One small to medium lender commented that credit repair companies and their threats to go to AFCA was <i>“complete blackmail”</i>.</p>
18.	<p>What is the current percentage of total applications you reject?</p> <p>No less than 60% reported. Mean 75%. Where online percentage specified, 78% to 91%.</p>
19.	<p>What percentage of these rejected people currently attempt to lodge a complaint?</p> <p>Range 0% to 3%. Average 2.25%.</p>
20.	<p>If you receive complaints from consumers you have rejected, after assessing their loan application, what reasons for complaining do these people give?</p> <p>The reasons suggested were in the following categories:</p> <ul style="list-style-type: none"> - Desperate for credit for what the consumer perceives to be emergency expenditure. - Seek to complain about a staff member or customer service, ignoring the fact that their application has been rejected on responsible lending/statutorily “unsuitable” grounds. - Simply being declined. - You said you help everyone. - You false advertise. - You are discriminating (they do not accept that the lending laws should apply to them). <p>One small to medium lender commented, <i>“They insist we should give them a loan and if not will make a complaint to AFCA”</i>.</p>

Complaints and defaults

At the recent ASIC consultation meeting, there was an implied presumption by the Chairperson and consumer advocates that all complaints made were totally legitimate. There is a need to present a message concerning the reality.

21.	<p>In the last 12 months, what proportion of total IDR complaints received by your company involved a complainant who was at least 1 loan payment behind?</p> <p>For all but 2 respondents, the answer was 90% or more. One large company reported 15% and a medium size company reported 60%.</p>
22.	<p>In the last 12 months, what proportion of total IDR complaints received by your company involved a complainant who was at least 3 loan payments behind?</p>

	<p>All but 3 respondents reported 75% or more. One large company reported 2%, one medium sized company 65% and one small to medium company 50%.</p>
23.	<p>In the last 12 months, what proportion of total IDR complaints received by your company that were resolved to the complainants' satisfaction, later ended up with the consumer not repaying all the money owing?</p> <p>2 large companies reported 17% and 34%. With two exceptions, the other respondents reported between 64.5% and 100%. The exceptions - a small regional lender reported only 1 consumer, a small to medium company reported 0%.</p>
24.	<p>In your opinion, what proportion of total IDR complaints received in the last 12 months were primarily, or only, an attempt to avoid repaying the loan?</p> <p>2 large companies reported 15% and 18% and one small to medium company 1%. All others reported at least 48.5%.</p>
25.	<p>In the last 12 months, how many of your IDR complaints involved credit repair companies threatening to go to AFCA if you did not remove a default listing with the credit reporting body?</p> <p>Larger companies - 12% to 48%. Other companies responding provided a range 0.06% to 100%.</p>
26.	<p>How many of these credit repair company removal of default listing requests were accompanied by a credible explanation?</p> <p>One respondent reported 2 on compassionate grounds. All others reported 0%.</p>
27.	<p>In the last 12 months, how many of your IDR complaints involved credit repair companies threatening to go to AFCA if you did not remove a credit enquiry with the credit reporting body?</p> <p>All but 3 companies, range 6% to 86%. 3 companies - 100%.</p>
28.	<p>How many of these credit repair company removal of credit enquiry requests were accompanied by a credible explanation?</p> <p>100% of respondents said "None". The significance of the negative impact credit repair companies are having on the efficacy of the credit reports system is demonstrated by the following comments: One small regional lender: <i>"I now NEVER default a client's credit rating as all it can do is come back to bight me. Defaults rarely results in a loan being repaid to fix the credit rating but it could in turn cost me the complaint fees and get me prime time on 'A Current Affair'."</i> One of the largest lenders: <i>We happened to have a meeting today with two representatives from Veda (now Equifax). They were trying to sell their wares as sales reps do. One of those products being Credit Checks. They asked the question - "What price per credit check could we offer you to gain your work?". We indicated that even if <u>they paid us \$0.10 per credit check, we still would not use the product.</u></i></p> <ol style="list-style-type: none"> <i>1. It is simply too costly to remove an enquiry once a customer has gone to AFCA and we are forced to bear their cost.</i> <i>2. The value of a credit check has diluted so much over the last 4 years because lenders are forced to remove the enquiry and/or a listed default, under threat of the AFCA cost.</i>

	<p><i>A lender may conduct a credit check on a potential customer and find an unblemished record. But this could be completely misguided as the customer may have recently had a number of enquiries or defaults removed from their file.</i></p> <p><i>One or more lenders may have correctly listed the enquiry/ies or default/s but has removed these because of the threat of having to pay unfair AFCA fees (right or wrong, the fees still apply). How can a lender trying to adhere to Responsible Lending laws achieve this by conducting a credit check that had effectively been falsified.</i></p> <p><i>The rep indicated he knew exactly where I was coming from and his hands were tied! He also proceeded to tell me that their team of 5 staff that handles default/enquiry removal processes and enquiries of this nature had increased from 5 to 25 over the last 2 years”.</i></p>
<p>29.</p>	<p>To avoid ASIC lumping all categories of complaints together in its reports and publicity, including minor and serious, could you please indicate what you consider to be an appropriate range of categories of complaints so that ASIC will be able to differentiate rather than assume all complaints have the same weight or seriousness?</p> <p>Suggested categories were:</p> <ul style="list-style-type: none"> - Customer service. - Contract details/contractual. - Fees and charges. - Breach of Responsible lending obligations. - Breach of protected earnings regulation. - Credit repair. - Repayments/direct debit dates. - Collections processes. - Collections fees/costs. - Credit score related. - Consumer behind in payment/s. - Consumer declined. - Source of complaints: consumer, third party individuals, third party organisations, credit repair company. - Money level. - Has the consumer complained to the lender before, concerning the same loan. - Lender mistake/incorrect decision. - Poor communications. - Inappropriate contact. - Decline to vary terms/hardship application. - Breach of responsible lending. - Credit inquiry/default listing.
<p>30.</p>	<p>In what percentage of your total received IDR complaints do you offer a resolution, not because you believe in it, but to avoid the costs of the complaint going to AFCA?</p> <p>Larger companies 40% to 92%. 50% of the other companies - 100%, the rest averaged 50%.</p>
<p>31.</p>	<p>In your opinion, what percentage of your total received IDR complaints involve the consumer being honest in presenting the detail of their complaint?</p> <p>With just two exceptions, respondents reported no more than 12%. The exception reported were 50% and 65%.</p>

<p>On of the larger companies commented, "<i>When the complaint comes from the consumer directly without coaching... 20%. When the complaint comes from a representative - 5%. This is very obvious to us as these complaints are in the format of a number of common templates where the content is identical apart from the complainant's personal and loan details</i>".</p>

The Finance Industry trusts that the above information will be of assistance to ASIC with their endeavours to write a new version of RG 165 that reflects the market place and community realities.

Phillip Smiles

Lyn Turner

Co-ordinators

Finance Industry Delegation

13 November 2019