



**Submission re ASIC Consultation Paper 311**

**Update to RG 165:  
Internal dispute resolution**

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By email: [IDRsubmissions@asic.gov.au](mailto:IDRsubmissions@asic.gov.au)

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financialcounsellingaustralia.org.au | [www.financialcounsellingaustralia.org.au](http://www.financialcounsellingaustralia.org.au)

Level 6, 179 Queen Street  
Melbourne  
VIC 3000

**Contact person for this submission**

Fiona Guthrie  
phone: 03 8554 6979  
mobile: [REDACTED]

## **About Financial Counselling Australia and Financial Counselling**

Financial counsellors provide advice to people with money and debt issues. Working in community organisations, their services are free, confidential and independent.

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. FCA's members are the State and Territory financial counselling associations.

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## 1 Introduction

Financial Counselling Australia (FCA) welcomes the review by ASIC of Regulatory Guide 165 (RG 165).

Financial counsellors around Australia extensively use internal dispute resolution processes (IDR) when advocating for their clients. Financial counsellors on the National Debt Helpline also explain and refer callers to IDR where appropriate.

Financial counsellors regularly receive feedback from people about difficulties accessing and using IDR. Being able to access high quality IDR is essential. Many people build up significant resentment with a financial firm because they are unable to resolve a dispute. Access to justice is a key right for all people in Australia and effective IDR is a critical component of that right.

Vulnerable people (and vulnerability can be temporary or ongoing) can find IDR incredibly difficult or even impossible. Recognising that everyone should be able to access effective IDR should be an important objective of RG 165.

This submission has answered the specific questions in each section of the consultation paper and suggests a number of changes to the next version of RG 165.

## 2 RG 165 and enforceability

We support ASIC's intention to make RG 165 enforceable. The consultation paper mentions that there will be core requirements that will be enforceable, but these are not specified. We do not support specifying and only enforcing certain requirements, as in effect, this would mean there was a lower standard for other components. As a matter of principle, financial firms should comply with RG 165 as a whole. If ASIC continues with its proposal to only enforce core requirements, then it should consult on what those core requirements should be.

We also support the proposal to make it explicit in the Corporations Act and National Credit Act that financial firms must *comply* with RG165 (and it is not enough to have procedures in place).

### Recommendations

RG 165 must be enforceable in full. ASIC should **not** specify only core requirements that are enforceable.

## 3 Importance of IDR

We support the comments in the consultation paper on the importance of IDR. IDR is critically important to people as it is their first attempt to get a problem resolved. Many people may give up if IDR is not responsive and then the dispute remains unresolved. This in turn may leave the person dissatisfied with the financial service licensee. It also has poor possible consequences for the financial firms including loss of business, disengagement and more broadly loss of confidence in the financial system.

ASIC Report 603 *The consumer journey through the Internal Dispute Resolution process of financial service providers* provides strong evidence of the importance of IDR and the need to improve IDR practices in Australia.

## 4 The role of AFCA in improving IDR

IDR is only part of the dispute resolution process. The second part is external dispute resolution (EDR) which is now provided through AFCA. There is a strong interaction between IDR and AFCA. A person is effectively sent back to IDR when they lodge in AFCA, however, AFCA plays a vital role in supervising that IDR. Many disputes settle at the “IDR in AFCA” stage.

Licensed financial service providers incur AFCA costs, both in time and resources and a deteriorating relationship with their customer when a complaint is lodged in AFCA. This provides a clear incentive to improve IDR to avoid those further costs. It has been pleasing to see the investment in IDR that many licensed financial firms have made to improve IDR.

AFCA also has a vital role in helping people find the best area to contact in IDR. AFCA has been heavily publicised following its creation by the Government. Many people now know about AFCA and call AFCA for help. We support AFCA helping people to access IDR and AFCA.

AFCA currently has a list of IDR contact details for all of its members, however the contact list is not easy to find on the AFCA website. (It was a lot easier to find on the old Financial Ombudsman Service website.) To get to the IDR contacts list you have to click on “make a complaint”. This leads to a “before you complain to us” which finally gives the “Find a financial firm” link. This then leads to the search tool. This is all reasonably difficult to find. People who just want to complain to their licensed financial service provider may give up thinking they are starting a complaint to AFCA.

AFCA has an important role as a central contact point, and it is essential that IDR contact details are easy to find on the AFCA website. The main link should be available on the AFCA home page. This would make it easy for people to access contact details. It would assist consumer representatives to easily access IDR details. Making the details more prominent would also assist AFCA staff to help people to find the contact details.

AFCA (and FOS and CIO previously) insist on basic contact details to go on their contact lists. Those contact details are:

- Contact name, position, department
- Postal address
- Phone number
- Email address

We have been concerned that other EDR schemes in Australia do not have these minimum standards. For example, the Telecommunications Industry Ombudsman only has phone contact details for its members and the list is very difficult to find. Everyone (and in particular vulnerable people) must have multiple ways to contact both IDR and AFCA. The IDR contact details listed in AFCA must reflect those accessibility principles. We want to avoid any watering down of accessibility and entrench minimum standards with incentives for greater accessibility.

RG 165 should therefore require that all licensed financial service provider list minimum IDR contact details with AFCA. Those details must be kept up to date. This requirement would recognise that many people find IDR through AFCA.

The minimum details would be:

- Contact name, position, department
- Postal address
- Phone number
- Email address
- National relay service
- How to access an interpreter

Financial firms should also be strongly encouraged to provide details of the following if provided:

- Webchat
- Text message
- Fax

It would be our preference that ASIC take a leadership role on accessibility and make all of the above details compulsory (with a transition period for webchat and text messages). The only exclusion would be that fax is only offered if the licensed financial service provider has a fax.

Finally, we would also encourage AFCA to reflect further improvements on accessibility by having a list of ways to access AFCA that is easy to find on its website. Currently, the full list of access (with national relay service missing) is buried at the bottom of their webpage under contact us at <https://www.afca.org.au/about-afca/contact-us/>. It would be excellent if the full list was very easy to find (and given prominence) to give people genuine choice on how they can access AFCA.

### **Recommendations**

RG 165 must recognise the role of AFCA in the IDR process. Licensed financial service providers must be required to provide a wide range of details to AFCA for their IDR contact. Those minimum contact details are:

1. Contact name, position, department
2. Postal address
3. Phone number
4. Email address
5. National relay service
6. How to access an interpreter
7. Webchat (if available)
8. Text message (if available)
9. Fax (if available)

## 5 Fairness and good industry practice

Determinations in AFCA are required to be “fair in all the circumstances” having regard to:

- a) Legal principles
- b) Applicable industry codes
- c) Good industry practice and
- d) Previous determinations.

IDR decisions and procedures should also be subject to the principles of fairness and good industry practice. It makes sense to harmonise the approaches in IDR and EDR. In this way, financial firms can be applying fairness and good industry practice from the moment the complaint is received. Many financial firms would already be doing this. Making this requirement explicit in RG 165 would mean that all financial firms would ensure fairness and good industry practice are embedded into IDR decision making.

### Recommendation

RG 165 must explicitly require financial firms to apply fairness and good industry practice in both the procedure and responses in IDR.

## 6 Definition of complaint

We support the updated definition of complaint proposed in the consultation paper.

### 6.1 Social media complaints

We do not support social media being used as a platform for making a complaint. The reasons are:

- It is not a private way to make a complaint. This enables other people to see the complaint and can put the licensed financial firm in a difficult position on how to respond privately.
- It can be difficult (and sometimes impossible) to be sure who is making the complaint. Even when a person appears identifiable, it may be a person pretending to be another person.
- Responding to a person on social media is not private and some platforms scan and keep this information.
- Social media is often used to flag issues and there may not be any intention to make a complaint or even express dissatisfaction directly to the financial firm.
- The financial firm does not own the platform for social media. They are using it subject to terms and conditions from the third party who actually owns the platform. Accordingly, it may be a breach of those terms and conditions to use social media as a formal complaint mechanism. In any event, it is not the purpose of the platform.

- Social media platforms censor and delete content regularly based on their terms and conditions. It could therefore be possible to make a complaint that the financial firm never sees.
- The privacy policy of social media platforms has been the subject of a number of serious complaints worldwide. Their privacy policy is not consistent with the privacy policy of the financial firm.

This does not mean that financial firms should not respond to complaints on social media. Financial firms should respond and give information about how to complain. Their social media platform should contain information about how to make a complaint. The main point here is that social media complaints should have a separate and tailored process to make it easy to get to the IDR process.

### **Recommendation**

Financial firms must have a process to respond to social media complaints. This would include:

1. responding to the complaint
2. providing details on how to access IDR

## **6.2 When is a matter a complaint?**

This area causes a lot of problems. Financial counsellors have seen cases where it appears there is an obvious complaint as the client says they have complained at length and yet the financial firm denies they ever received any expression of dissatisfaction. Further specific guidance from ASIC in RG 165 is welcome and definitely needed.

Based on feedback from financial counsellors, there are three main reasons that complaints are not processed by financial firms:

1. There are still clear incentives in the culture of many financial firms to recategorize complaints any way they can. For example:
  - a. Listening to the person until they get worn out and that must mean they are now satisfied
  - b. Making a good guess that it will be too hard for the person to follow up the complaint
  - c. There is no merit to the complaint
  - d. It was not in writing
  - e. People have to use the word “complaint” or a similar word
2. Many financial firms think the complaint is not in IDR until it gets to the IDR department. This is not correct. IDR must start at the first point of contact when there is an expression of dissatisfaction. This problem is systemic and leads to endless arguments about whether a person has been through IDR or not when the complaint gets to AFCA.
3. Insurance claims and financial hardship cause widespread confusion about how IDR operates in this context. They do not seem to understand that even if you are in financial hardship or making an insurance claim you can still make a complaint and an IDR process must then



trigger. There are also problems where claims and financial hardship negotiations drag on for months with no end in sight when an IDR process should have started.

We appreciate the decision by ASIC to include more information about what is and is not a complaint in the draft RG 165. Based on the problems outlined above, more detail would be helpful. We suggest the following extra detail is added:

*165.32* – Similar to the points in this category add a new related section that covers:

A complaint can be made at any time even if the financial firm is already negotiating another matter, such as an insurance claim or a financial hardship arrangement.

*RG 165.34* – Add a specific section that states the expression of dissatisfaction/complaint can be made to frontline staff and this is the date IDR begins.

Finally, RG 165 should encourage financial firms to believe a person when they have complained. Even better, would be an acknowledgement over the phone or by another means (for example, text message) to acknowledge a complaint has been made.

#### **Recommendations**

Further detail is included in RG165 on what a complaint is to cover:

1. the difficulties of triggering IDR when already in a hardship or claims process
2. making it clear that the complaint can be made to frontline staff and the IDR process begins at that time.
3. acknowledging either verbally or in writing when a complaint has been made

## **7 Definition of small business**

We support the proposal to change the definition of small business in the Corporations Act to align it with the definition used in the Australian Financial Complaints Authority (AFCA) Rules.

#### **Recommendation**

The definition of small business should be changed to the definition used by AFCA.

## **8 Data**

### **8.1 Recording all complaints**

We support the proposal to record all complaints, including those that are resolved to a complainant's satisfaction. We agree with the reasoning for this proposal in the consultation paper.

## **8.2 Recording a unique identifier and prescribed data set**

We support the proposal to record a unique identifier and collect and record a prescribed data set for each complaint received.

We also support the reasoning in the consultation paper that consistent data collection and reporting will assist with accurate data being sent to ASIC. It also enables the financial firm to analyse their own data to improve IDR.

## **8.3 Reporting data to ASIC**

We support the proposed data reporting to ASIC.

## **8.4 Guiding principles for the publication of IDR data**

We support the publication of IDR data including identifying firms. It is not enough for ASIC to know about trends in IDR data in relation to firms, the public also needs to know. How well a financial firm handles disputes is critically important information for consumers.

We agree that a consultation process on the details of how this might work is a useful first step.

# **9 IDR responses – minimum content requirements**

We support setting minimum content requirements for IDR responses. We also support the detail of what is required in an IDR response listed in the consultation paper.

Financial counsellors sometimes receive IDR responses that do not address the dispute raised, turn the dispute into something else and then offer a settlement without admission of any fault.

The most common example of this are responsible lending disputes. The IDR response:

- Does not address the responsible lending dispute
- Denies there is any irresponsible lending without any further reasoning
- Concludes that the real dispute is financial hardship
- States a bit about how they are very compassionate about financial hardship and the circumstances of their customer
- Offers a repayment arrangement

This is an excellent example of IDR by misdirection.

The crux of this problem is that financial firms really struggle with sending a tailored response to any complaint. The staff of financial firms are often trying to fit every complaint into a certain box where they have a precedent response available. This simply does not work. Setting minimum content requirements is essential to make sure the financial firm actually responds to the dispute.

The other important benefit is that actually tailoring and sending a considered response means that the IDR process is more likely to be effective. There is no doubt that when a response is comprehensive the complainant feels that the financial firm listened and took their complaint seriously.

Complaints can often stem from misunderstandings. Many people will feel that their complaint is resolved if they are given reasons about why something is happening.

#### **Recommendation**

We support the proposal to set minimum content requirements for IDR responses in RG 165 subject to a further addition on the role of customer advocates as discussed in section 12.

## **10 IDR responses – superannuation trustees**

We support the decision to treat superannuation trustees in the same way as any financial firm. Superannuation trustees should be subject to exactly the same rules for IDR (including timeframes) as any other financial firm.

We remain concerned that superannuation trustees have immature IDR processes and that considerable work is needed to improve their IDR processes. Setting high standards is essential to improve the IDR performance of superannuation trustees.

#### **Recommendation**

Superannuation trustees should be subject to the same RG 165 rules as any other financial firm.

## **11 Reduced maximum IDR timeframes**

We support the proposal to reduce IDR timeframes. All financial firms, including superannuation trustees, should have 30 days to respond to a complaint. We oppose any proposal where there are different IDR time frames for different financial firms.

A 30-day time frame is appropriate for all financial firms because:

- This is consistent with other IDR time frames for disputes across Australia
- Many financial firms are aiming for shorter timeframes
- Time frames of longer than 30 days heightens the risk of the complainant being frustrated with the process and giving up

- It does not make sense for insurance disputes to have different time frames based on whether the insurance is being offered through superannuation or not
- Different time frames confuse people. From a financial literacy standpoint, it is better for people to have predictable and expected time frames
- Longer time frames encourage inaction and leaving complaints to a due date.

Timeframes should only be extended in exceptional circumstances.

#### **Recommendation**

IDR timeframes should be 30 days for all financial firms.

## **12 Role of customer advocates**

According to the review report commissioned by the Australian Banking Association *Customer Advocate Initiative: Post-Implementation Review*, May 2019 (Deloitte review) there are varying approaches being used for Customer Advocates in the banks. Most banks provide details of customer advocates on their complaints page and in the IDR outcome letter. Assuming that the IDR outcome letter is the main way people find out about a customer advocate, this means that IDR is finished at the time the person becomes aware of a customer advocate.

The ASIC recommendation to include the customer advocate in the IDR process would appear to be inconsistent with the current role of customer advocates. We remain concerned that including the customer advocate in IDR would lead to a number of problems including:

- Difficulty working out how and when a referral should occur;
- The complainant does not even know there is an option to go to the Customer Advocate when they make the complaint
- If the complainant was told about the Customer Advocate at the beginning of the dispute (which is an option) then the Customer Advocate could be overwhelmed
- The difficulty of having too many IDR people involved in the IDR decision. Practically, having the IDR team and a Customer Advocate involved could lead to poorer outcomes
- It may lead to longer response times which is not desirable.

We suggest that Recommendation 8 of the Deloitte review is implemented into RG 165. Which means that Customer Advocates are not specifically included in the IDR process, but they must also:

- Make it clear to the complainant that they have the right to access the Customer Advocate and AFCA. They retain the right to access AFCA while the Customer Advocate considers their complaint.
- Communications must clearly explain the role of the Customer Advocate including what they do, support provided, contact details and what they can do.

## Recommendations

RG 165 should include details on the role of Customer Advocates. Customer Advocates should not be included in the formal IDR response process. RG 165 should include details on how Customer Advocates must explain their role and the rights to go to AFCA and/or the Customer Advocate in the IDR outcome letter.

## 13 Systemic issues

We support the proposal to identify, analyse and report systemic issues. Systemic issues should be a focus of all financial firms. Systemic issues can cause serious harm to multiple customers and the focus of a financial firm should be to ensure this does not happen.

We agree with the reasoning of ASIC in the consultation paper and support these changes as a key way to recognise and rectify ongoing harm to consumers.

## Recommendation

We support the ASIC proposal to require financial firms to identify, analyse and report systemic issues.

## 14 IDR Standards

We support updating the RG 165 guidance to comply with complaint management standard AS/NZS 10002:2014.

We support the detail included in the proposed IDR standards under “Enabling Complaints”. We commend ASIC in making specific requirements for accessibility and visibility. As ASIC has recognised, IDR needs to be accessible to the vulnerable and disadvantaged members of our society. We recommend further improvements to the details in the IDR Standards to make it easier for vulnerable customers.

### 14.1 Visibility

A major issue for vulnerable consumers is getting a choice about how they access IDR. Many financial firms interpret accessibility as publicizing a phone number with back up options only available on request. Visibility means making all of the options available for access up front. The options need to be visible at all times.

We recommend amending RG 165 to make this point explicit and to require financial firms to provide all of the required options listed at RG 165.148 in the welcome packs, on the websites etc.

## 14.2 Approaches to promote awareness of IDR

We support RG 165.146 promoting awareness for vulnerable customers. We remain concerned that the gentle nudge of this section will only be applied by a few financial firms. Further detail is required to outline possible approaches with examples. One example is visiting remote aboriginal communities to find out what complaints they have (and then responding to those complaints).

## 14.3 Accessibility

We would suggest some further actions that should be included on accessibility are:

- Taking extra care when the customer is vulnerable with staff training on this
- When the customer is finding it hard to access a service, asking the customer about why they are having difficulty
- Bringing the service to the customer. For some reason with sales you can get someone to your home but when you are a long-standing customer with a disability this is impossible. Specifically considering way to bring the service to the customer should be encouraged for disputes.
- Offering a choice of methods to make a complaint every time (regardless of how the complainant attempts to ask, for example, web, phone). The financial firm should not assume that because the person is calling that they want to continue with this method to lodge a dispute.
- Add text and web chat as accessibility methods when possible.

## 15 Transitional arrangements

The proposed transitional arrangements are supported.

## 16 Other issues

### 16.1 Escalating to the IDR team

There are people who cannot get out of a frontline process to the dedicated IDR section. People have good reasons for wanting to escalate a complaint to ensure they can get someone who is empowered to resolve the dispute. RG 165 should specifically state that complainants have this option.

## **16.2 Making sure the person empowered to resolve the dispute is accessible**

Some IDR complaints are difficult to resolve because no-one has the ability to make the decision that could resolve the complaint. Complaints can languish until they get to AFCA when suddenly a person is found who has the authority to resolve the complaint. RG 165 should specifically require that a specialist IDR team should have authority to resolve all disputes and frontline staff have sufficient power to resolve minor disputes.