

9 August 2019

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Dear Ms Rush

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

The Customer Owned Banking Association (COBA) welcomes the opportunity to provide a submission to ASIC's Consultation Paper 311 Internal dispute resolution: Update to RG 165 (CP 311).

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has \$119 billion in assets, 10 per cent of the household deposits market and 4 million customers. Customer owned banking institutions account for around three quarters of the total number of domestic Authorised Deposit-taking Institutions (ADIs) and deliver competition and market leading levels of customer satisfaction in the retail banking market.

COBA agrees with ASIC that it is essential for consumers and small businesses to have access to transparent, fair and timely complaints processes when things go wrong.

COBA recognises that the proposals set out in CP 311 primarily seek to align RG 165 with the new statutory requirements for internal dispute resolution (IDR), as introduced under the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018* (AFCA Act). We also recognise that ASIC's proposals compliment a number of other key ASIC projects seeking to raise IDR standards and capability across the entire financial services sector.

COBA is pleased that ASIC is consulting on the proposals, given that key aspects of the proposals may have material unintended consequences on financial firms. We appreciate that ASIC is keen to fully understand and assess the financial and other impacts of its proposals, and any alternative approaches, and is seeking feedback on likely costs and benefits and the competition and other impacts.

This submission sets out COBA's general and specific comments to ASIC's proposals. Our specific comments are on ASIC's proposals concerning the definition of a complaint, response timeframes, systemic issue identification, reporting obligations and transition. COBA welcomes ASIC's emphasis that the proposals are only an indication of ASIC's possible approach and is not ASIC's final policy.

### **General Comments**

While COBA recognises the genesis and intent of ASIC's proposals, we are concerned that ASIC's approach to mandate IDR in a prescriptive fashion will have an unnecessarily burdensome impact on COBA members, particularly given the relatively lower level of complaints handled by our members.

For smaller financial firms, such as customer-owned banking institutions, ASIC's proposals would impose significant resourcing burdens with respect to system changes, capability uplifts and resourcing required to achieve and maintain compliance. Our members' complaint resolution systems, while performing effectively, are typically tightly resourced.

It is important to recognise that, unlike larger ADIs, our members typically do not have designated customer service centres. For some of our members, all of their staff need to contribute to directly responding to customer enquiries. Preliminary estimates received from some of our members show that the *annual* ongoing additional cost of implementing ASIC's proposed changes would be in the tens of thousands of dollars, which represents a material proportion of their net profit.

For example, ASIC's **Proposal B4** to record all complaints received, including those resolved immediately at the first point of contact, would have a significant impact on front line operations and technological requirements. ASIC's **Proposal B5** to require that each complaint be allocated a unique identifier and the recording of specific complainant data with each complaint would be extremely costly and challenging.

Furthermore, the ability of a financial firm to implement this effectively, and within ASIC's proposed transition timeframe, would be dependent on a financial firm's level of technical/system sophistication. An extensive and costly program of retraining of staff would also need to be undertaken. On this basis, we respectfully submit that the potential benefits from these proposals are not sufficient to justify the costs involved.

As ASIC would appreciate, the update to RG 165 is taking place at a time of heightened regulatory reform in the financial services sector. In this context, COBA urges ASIC to carefully consider the regulatory costs of its proposals not only from a stand-alone perspective, but also from a cumulative perspective, and the potentially detrimental flow-on impact to *all financial firms* and their customers.

As the Chair of the Australian Competition and Consumer Commission (ACCC), Mr Rod Sims, has clearly emphasised, "many people instinctively think that more regulation is the answer, but in our experience more regulation can be harmful to consumers, especially in sectors of the economy that are already heavily regulated"<sup>1</sup>.

As mutual ADIs do not have the same scale of resources compared to larger ADIs and other financial firms operating in different sectors, the final version of ASIC's revised RG 165 must not inadvertently disadvantage mutual ADIs, as this would only operate to further exacerbate the competitive imbalance between mutual ADIs and larger ADIs.

Additionally, COBA notes that ASIC intends to make the core IDR requirements set out in the revised RG 165 enforceable. Given this, ASIC must ensure that all of the provisions in the final RG 165 are clear and without ambiguity. For example, COBA notes that **draft RG 165.146** provides that "Firms must also implement proactive and innovative approaches to promoting awareness about the IDR process and sourcing complaints from vulnerable people and groups". In this example, we would appreciate clarity from ASIC around, for example, what ASIC's minimum expectations would be.

### Definition of a Complaint

COBA notes that ASIC **proposals B1 and B2** would update RG 165 to require financial firms' IDR processes to apply to complaints as defined in AS/NZS 10002:2014, which expands the concept of 'complaint' to include expressions of dissatisfaction made 'to or about' an organisation.

COBA is concerned that ASIC is proposing that the definition should also capture complaints made by identifiable consumers on a firm's own social media platform(s). We are particularly concerned about the practical implications of this proposal.

Identifying customers complaining via a firm's own social media platform(s) – which may capture forums and review boards, for example – may be very difficult if not impossible, particularly as an alias is often used which may make identification impossible. In this respect, we would appreciate from ASIC additional guidance around what its expectations of financial firms will be with respect to identification.

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<sup>1</sup> [Speech](#) by ACCC Chair, Mr Rod Sims, 'Companies behaving badly?', 13 July 2018.

COBA would also appreciate additional guidance from ASIC around what would be captured within the scope of a “firm’s own social media platform”. We would be concerned if, for example, this inadvertently extended to an employee’s social media account.

Furthermore, it is important to recognise that not every customer who raises a complaint via a social media platform may want to pursue the matter through IDR. Customers may sometimes wish to bring issues to the attention of an organisation for consideration, rather than pursue a matter through IDR.

In this respect, our view is that if a customer has raised a complaint, and is identifiable and contactable, a financial firm should be required, as a first step, to reach out and ask whether the customer wishes to make a formal complaint through IDR, as opposed to automatically triggering a formal IDR process.

### Response Timeframes

COBA is very concerned about ASIC’s **Proposal B11** to reduce the maximum IDR timeframe for most complaints from 45 days to 30 days, with extensions for exceptional circumstances only. There does not appear to be a clear rationale in CP 311 to support the proposal to reduce the IDR timeframe.

COBA emphasises that its members always aim to resolve complaints promptly. We appreciate that CP 311 states that for customer-owned banking institutions, 88 per cent of disputes are resolved within 21 days.

As ASIC would appreciate, depending on the specific circumstances of a complaint, the IDR timeframe to provide a final response may take longer than 30 days. It is critical to recognise that complaints requiring more time to resolve tend to be far more complex and resource intensive.

The fact that the vast majority of complaints are dealt with within 21 days suggests that ADIs are generally only taking more than 30 days to respond where such time is reasonably required to properly investigate and respond to the particular issues raised in a complaint.

Bringing the timeframe down by over 33 per cent for all complaints would require a significant amount of *new resourcing* targeted towards what is typically a small proportion of total complaints received. Such a change would also necessitate a large number of customer-facing documents that outline and explain the current IDR procedure to be updated.

We respectfully submit that there does not appear to be empirical evidence supporting a view that the current response timeframes are too long. Consumer research with respect to response times that exceeded 45 days (as referred to in **draft RG 165.67**) is irrelevant to a proposal to reduce response timeframes to 30 days. Our view is that reducing the response timeframe may result in an increase in the number of matters that proceed to external dispute resolution (EDR), where the matter may take much longer to be resolved.

### Systemic Issue Identification

COBA is concerned with ASIC’s **Proposal B13** to introduce new requirements on financial firms regarding systemic issue identification, escalation and analysis.

We are particularly concerned about ASIC’s proposal to require Boards to set clear accountabilities for complaints handling functions, including setting thresholds for and processes around identifying systemic issues that arise from consumer complaints.

COBA’s view is that there needs to be a clear delineation between the roles of a Board and “financial firm staff”. As ASIC would appreciate, the primary role of a financial firm’s Board is to develop and set a clear strategy for their financial firm, while the role of financial firm staff, such as senior management for example, is to execute the strategy of the Board.

We are concerned that ASIC's proposals would shift the focus of a Board from strategy development to becoming too involved in a financial firm's day-to-day operational activities. In the context of systemic issue identification, the role of a Board should be exclusively focussed on ensuring that their financial firm possesses a *sound capability* to identify, escalate, analyse and address systemic issues.

COBA is also concerned about ASIC's proposed definition of a "systemic issue" at **draft RG 165.128**, stating that a "systemic issue is a matter that affects, or has the potential to affect, more than one complainant". Our view is that this threshold is *far too low* and would inadvertently capture a broad range of non-systemic issues. COBA strongly encourages ASIC to reconsider the proposed definition.

### **IDR Data Reporting and Publication**

COBA recognises that the Ramsay Review recommended the introduction of a mandatory financial services and credit IDR data reporting regime, and that the AFCA Act has established a mandatory IDR data reporting regime, with the aim of improving the transparency of financial firms' IDR activities and performance. We recognise that the AFCA Act empowers ASIC to publish reported IDR data at both an aggregate and firm level.

COBA notes that ASIC expects that financial firms will submit reports to ASIC as unit record data (that is, one row of data per complaint for each reporting period), and that ASIC is proposing financial firms report to ASIC at six-monthly intervals by the end of the calendar month following each reporting period.

COBA would appreciate further clarity from ASIC around its expectations on the reporting framework and how this should be applied in practice. For example, if a customer makes one compliant covering several issues, we would appreciate clarification on how that should be reported to ASIC.

As ASIC would appreciate, providing clarity on the reporting framework is critical as this will underpin the design of systems to respond to the final suite of ASIC's IDR reporting requirements.

COBA appreciates that ASIC will conduct a separate, targeted consultation about its approach to the publication of IDR data. We understand that ASIC will consult after the data reporting requirements have been finalised and before the first round of IDR data reports have been submitted to ASIC.

We appreciate ASIC acknowledging in CP 311 that there are diverse stakeholder views about the publication of IDR data by ASIC, particularly the publication of identifying, firm-level data. As ASIC would also appreciate, a poorly designed IDR data publication framework may result in, for example, unintended reputational damage to a financial firm.

### **Transitional Arrangements**

COBA notes ASIC's **Proposal B15** that financial firms must comply with the requirements set out in the draft updated RG 165 and supporting legislative instruments *immediately* on the publication of the updated RG 165, except for the following requirements:

- i. to provide an IDR response to a complainant within reduced maximum IDR timeframes (31 March 2020)
- ii. to record all complaints received by the financial firm, including those that have been resolved immediately (30 June 2020)
- iii. to assign a unique identifier for all complaints received by the financial firm (30 June 2020)
- iv. to record prescribed complaint data for every complaint received by the firm (30 June 2020), and
- v. to report IDR data to ASIC in accordance with ASIC's data reporting requirements (30 June 2021).

While we appreciate the intent of ASIC's phased approach to implementation, ASIC's proposed implementation timeframe would be inadequate for our members, chiefly given the time and cost associated with building the required IT system infrastructures, retraining staff and updating internal and customer facing documentation regarding the IDR process.

COBA notes that ASIC intends to release its revised RG 165 and legislative instrument (to make the core RG 165 requirements enforceable) in December 2019, meaning that all of ASIC's proposed changes, with exception to those listed above (from i. to v.), would need to be implemented *prior* to the release of the final RG 165 and legislative instrument.

COBA is very concerned with ASIC's proposed transition approach. We consider that an appropriate minimum transition period is required for implementation. As ASIC would appreciate, without seeing the final RG 165 and legislative instrument, it would be unreasonable to expect that financial firms would be able to accurately anticipate the final requirements and be compliant at the release of the final versions.

With respect to ASIC's proposals above at i. though to iv., our view is that implementation by 1 February 2021 for all four measures would be feasible. The proposed implementation date of 30 June 2021 to report data to ASIC (proposal v.) appears feasible at this early stage.

#### **Further ASIC Consultation**

COBA notes that in addition to CP 311, ASIC is conducting a series of stakeholder meetings, particularly in relation to ASIC's new IDR data reporting regime. COBA would appreciate an opportunity to participate at the planned stakeholder meetings.

In the meantime, if you have any questions or comments in relation to any aspect of our submission, please contact Tommy Kiang, Senior Policy Manager, on 02 8035 8442 or at [REDACTED].

Yours sincerely



**MICHAEL LAWRENCE**  
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