



9 August 2019

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

Email: IDRSubmissions@asic.gov.au

Dear Ms Rush,

Re: Consultation Paper 311 – Internal dispute resolution: Update to RG165

In brief:

AIST strongly endorses the proposals to record all complaints, provide reasons and that reporting to ASIC is needed. However, AIST strongly recommends that a complaints data and reporting Framework is needed to ensure that a co-ordinated approach across funds, ASIC and AFCA is taken. The proposed definition of ‘complaint’ needs greater guidance. Consumers need to gauge complaints at individual and conglomerate firm level. AIST agrees with the proposal to reduce superannuation IDR timeframes, but seeks discussions regarding how complex complaints such as disability or death claims (which take longer) will be handled. AIST would not support any proposal to have shorter timeframes for ‘less complex’ matters and prefers the Consultation Paper’s proposal to have a shorter IDR response where the matter is actually resolved within 5 business days. The proposed commencement date needs to be deferred. AIST calls for an industry roundtable.

AIST would like to thank ASIC for the opportunity to make this submission. We also appreciate the release of the consultation paper – *Internal dispute resolution: Update to RG 165* (the Consultation Paper), as well as the accompanying documents. It is vital that the handling, recording and reporting of complaints assists with building confidence and trust in the financial services industry. Internal Dispute Resolution (“IDR”) is the first step in the financial services dispute resolution framework (“Framework”).

AIST strongly endorses the proposals to record all complaints, provide reasons, and the concept of reporting complaint data to ASIC. It is essential that complaints are fairly and efficiently handled, and that data is used to identify system trends and whether processes and outcomes have improved.

However, AIST strongly recommends that a complaints data and reporting Framework needs to be developed to ensure a co-ordinated approach across key stakeholders including funds, ASIC and AFCA. It is important to gain an across the stakeholders a better understanding as to why

data is being collected and reported in the way that is proposed. From a superannuation fund perspective, the list of data items to be captured for every complaint is extensive and will impact fund resourcing. A further example relates to gaining a greater understanding of the cause of complaints : AIST strongly believes that outsourced providers and aggregated conglomerate firm data should be identified within complaints data. Neither this consultation nor recent AFCA consultations cover this issue. These are but several reasons why a complaints data and reporting Framework is needed.

AIST recommends that an industry roundtable be held to discuss what such a data and reporting Framework needs to cover.

This submission covers:

1. Objectives underpinning the Framework.
2. Consultations about Framework elements need to be co-ordinated.

Addressing the questions raised in the Consultation Paper

3. Improve the member experience.
4. Gather and report meaningful data in an efficient way.
5. Ensure timely and efficient responses to the member.
6. Identify and escalate systemic issues.

1. Objectives underpinning the Framework

Before responding to the specific IDR questions raised in the Consultation Paper, it is important to first examine key objectives underpinning the Framework.

From the Consultation Paper and also an examination of AFCA constituent documents, AIST distills that the key objectives at system level are that:

Overall, complaint handling must be clear, accessible, accountable, efficient, fair and effective. Trend analysis may help identify areas for system reform.

Consumers need to have confidence that their complaints are being properly dealt with and to identify whether complaint-handling across the industry is being improved. Consumers also need to know which financial services organisations have been complained about, the 'intensity' of complaints against organisations be they large or small, and what the complaints are about.

Funds need to be able to record complaints and how they are being managed, and whether issues identified by complaints have been mitigated or rectified.

ASIC needs data to help it forecast resources and to target ongoing surveillance and enforcement activities.

AFCA needs data to help it forecast resourcing, whether issues are improving, and to assist ASIC mitigate or rectify systemic issues.

2. Consultations about Framework elements need to be co-ordinated

AIST strongly believes that any consultations about elements of the Framework need to be co-ordinated to ensure a consistent and efficient approach.

AIST has recently made two submissions to the Australian Financial Complaints Authority (“AFCA”) – one deals with the proposed AFCA arrangements for comparative public reporting of complaint data¹ and the other deals with the naming of financial institutions within AFCA published determinations². The first submission referred to strongly highlights the close relationships involved across various stakeholders in the recording, reporting and publishing of complaints data.

AIST strongly believes that it is difficult to assess the impact of any proposals unless the complete Framework – involving all stakeholders – is taken into account. In this particular instance, AIST strongly recommends that there should be a complaints resolution data and reporting framework so that the manner in which the following is collected, reported and published is co-ordinated.

The collection and recording of data at first instance by a superannuation fund is inevitably and strongly linked to what is reported to ASIC, how complaints are managed by AFCA, and how AFCA publicly reports complaints data.

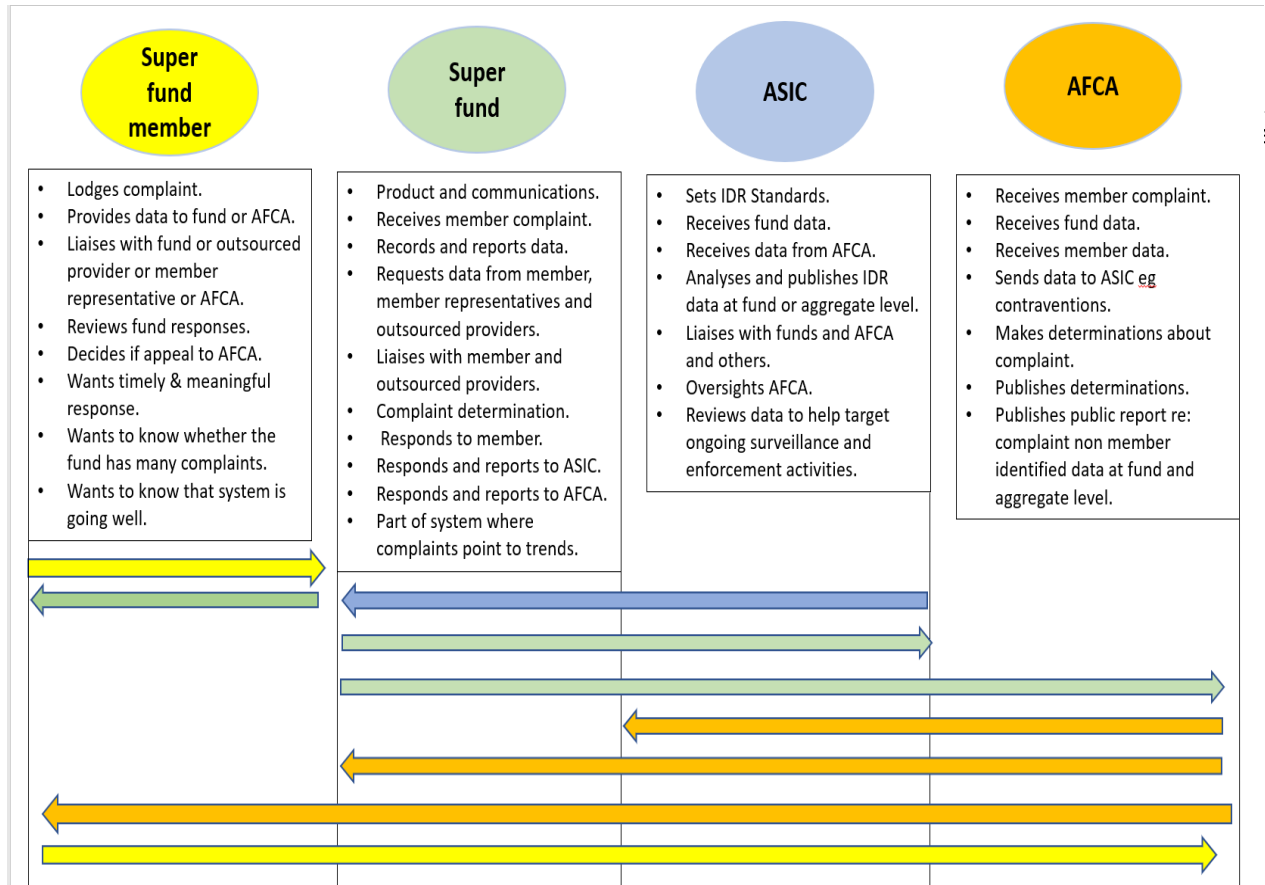
As one example, AIST submitted to AFCA that public reporting of complaint data should include outsourced providers and the identification of conglomerates and related party structures. Such a key issue needs to be dealt with across all stages of complaint recording and reporting and form part of the Framework.

The following chart provides a very brief outline underpinning why a co-ordinated approach is needed:

¹ AIST (2019). *Consultation – Proposed AFCA arrangements for comparative reporting of complaint data*. [online] AIST. Available at: <https://tinyurl.com/y2psn8n4> [Accessed 9 July 2019].

² AIST (2019). *Consultation – AFCA Rule change*. [online] AIST. Available at <https://tinyurl.com/y334kanq> [Accessed 9 July 2019].

Chart one – interrelationships involved in complaint handling



Source: AIST

AIST would be most willing to be involved in any consultation to develop such a complaint recording and reporting framework.

3. Improve the member experience

Introduction

AIST strongly supports that members’ best interests should always be at the forefront of how complaints are handled. It is important to gauge how this primary test is being met against the objectives of clarity, accessibility, accountability, efficiency, fairness and effectiveness.

Definition of ‘complaint’ – AS/NZS 10002:2014

B1Q1 Do you consider that complaints made through social media channels should be dealt with under IDR processes? If non, please provide reasons. Financial firms should explain (a) how you currently deal with complaints made through social media channels; and (b) whether the

treatment of social media complaints differs depending on whether the complainant uses your firm's own social media platform or an external platform.

AIST acknowledges that complaints may now be made on social media platforms. That being said, anecdotal feedback from funds is that at an industry level, less than 50 percent of people funds attempt to contact via social media respond to the fund.

Draft RG165.36 mentions the expectation that firms will be proactive in identifying complaints made on social media platforms and to determine the types of social media complaints that should be dealt with through their IDR process.

Draft RG165.37 brings a degree of greater precision to this by stating that "at a minimum, we expect that a firm's IDR process will deal with complaints made on a firm's own social media platform(s) and by a complainant who is both identifiable and contactable."

AIST believes that greater guidance is needed to address issues such as:

- If a member complains on the fund's social media platform and other members make comments such as "agree" or "like" a comment, does this qualify as a "complaint".
- Difficulties arising with distinguishing a member's comment on a fund's social media platform as compared with a follower non-member.
- That a fund's responsibility to monitor social media is linked **only** to the fund's **own** platform. Without this clarity, funds would be put to the big expense of engaging social media monitoring services which may or may not be able to clearly identify what is a "complaint". This would add considerable expense to funds without the capability of delivering a meaningful outcome. Additionally, what comprises 'social media' as outlined in the Consultation Paper is very broad and monitoring this would be very – and unduly - onerous.

Also, many funds currently do not enable comments to be posted on their social media sites: AIST assumes that this may remain as is.

AIST believes that an industry roundtable would be useful to help clarify these issues.

[B2Q1 Do you consider that the guidance in draft updated RG165 on the definition of 'complaint' will assist financial firms to accurately identify complaints?](#)

AIST supports the expansion of both the definition of 'complaints' and that social media is now a legitimate avenue for making complaints. To ensure that both of these extensions of complaint handling are clear and effective, AIST strongly recommends that greater guidance is needed.

The definition of 'complaint' in AS/NZS 10002:2014 is very broad and therefore at fund level involves a degree of subjectivity. This may have the unintended consequence that where a fund

has a high level of 'complaints', this does not necessarily mean that the fund has a higher proportion of dissatisfied members. There may be a fine line between an 'enquiry' and a 'complaint'. This requires guidance.

It is proposed that the clock of the proposed 45 days for superannuation complaints starts from the making of the complaint. It is therefore important that greater clarity is given as to how the new definition might be applied. Clarity is also needed from the viewpoint of fund training of staff – ranging from call centres, to seminar teams, to complaint-handling staff. Superannuation is complex and while we appreciate that AS/NZ10002:2014 has already been applied to a number of other Australian sectors, AIST strongly recommends that application of this broader standard to such a complex set of circumstances is needed.

AIST would appreciate an industry roundtable to identify key examples for inclusion in the guidance.

[B2Q2 Is any additional guidance required about the definition of complaint? If yes, please provide \(a\) details of any issues that require clarification; and \(b\) any other examples of 'what is' or 'what is not' a complaint that should be included in draft updated RG165.](#)

AIST reiterates the need for greater guidance given the high degree of subjectivity involved in the definition. The following examples highlight the possible degree of subjectivity involved:

- A member attends a fund seminar and verbally queries the investment performance of the fund. Updated draft Regulatory Guide 165.32 Internal dispute resolution ("draft RG 165"). notes that verbal comments may be included as a complaint. The query may be about negative performance either in general or specifically about their account, it might be about the interaction between unit pricing and what the member receives, why hasn't the fund chosen different investment managers, or about how the investment option performed against benchmark. AIST queries which of these falls into being either a query or a complaint.
- A fund decides to implement a new way of providing member half yearly transaction 'statements' including by emailing members access to these to those members who have selected a paper member annual periodic statement. Members query why they are receiving emailed information about half yearly transaction statements rather than paper.
- A member receives information about a proposed change to fees and says that the information is confusing and does not enable the member to make a decision about whether to stay in the fund or not.

4. Gather and report meaningful data in an efficient way

Introduction

We reiterate our earlier comments calling for a complaints' resolution data and reporting framework. AIST very strongly recommends that the collection and reporting of data throughout the entire complaints process are very strongly interlinked and should accordingly be examined in a co-ordinated way. This affects how members complain, what data the fund records, what data the fund reports to ASIC, and how stakeholders relay information to AFCA, and how AFCA reports data either to ASIC or publicly. AIST acknowledges that the Internal dispute resolution data dictionary ("Dictionary") is an important component of such a framework.

The objectives for the collection and reporting of data include the identification of key complaint causes to help funds remediate any issues, for ASIC to better target its surveillance and enforcement activities (be it by systemic issues; sector type; volume; new products, etc), and for the public to identify issues within the system and also to see whether the system is improving.

The Consultation Paper and accompanying documents such as the Dictionary are an important and welcome step towards such a framework. But more understanding about the underpinning objectives is needed. A Framework is needed to help understand and resolve questions such as:

- How do the data and reporting objectives across funds, ASIC and AFCA inter-relate?
- In a highly concentrated sector as superannuation, why doesn't the Dictionary include reference to outsourced providers if they formed a key component of the complaint? This is an important issue which we raised in our submission to AFCA's public reporting consultation³.
- The Financial Services Royal Commission identified many instances where structural conflicts of interest adversely affected consumers. It is therefore important that the volume of complaints be at an individual firm level (e.g. a superannuation fund) as well as at a conglomerate level (e.g. a superannuation fund which forms part of a banking conglomerate). This important issue is not dealt with in the Consultation Paper.
- What system issues might be addressed through collection of the data? For example, AIST has raised the question of using complaint data by sector (industry; retail, etc) to help direct the raising of regulatory supervisory levies.

³ AIST (2019). *Consultation – Proposed AFCA arrangements for comparative reporting of complaint data*. [online] AIST. Available at: <https://tinyurl.com/y2psn8n4> [Accessed 21 July 2019].

While conceptually we agree with the Proposals, these fundamental issues do need resolving as they have an impact across all stakeholders.

Recording of all complaints received

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

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AIST strongly agrees that all financial firms need to record all complaints, including those that are resolved to a complainant's satisfaction at first point of contact.

AIST notes that the Dictionary provides that information should be sought on whether a member is an ATSI person. AIST queries what is to occur where this information is not held.

The overall approach outlined in draft RG 165 coupled with the Dictionary provides clarity regarding what information needs to be recorded including, for example, subsets of "complaint issue" types.

In support of agreeing that all complaints need to be recorded, AIST notes that both the Consultation Paper and requirements of the United Kingdom Financial Conduct Authority's Handbook⁴ ("UK Handbook") provide an 'incentive' for financial firms resolving a complaint quickly. In both cases, this 'incentive' relates to what is required to be included in the response, rather than affecting the need to record the complaint in the first place.

Recording a unique identifier and prescribed data set for all complaints received

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

AIST strongly agrees that there must be a publicly available IDR data. In order to place this need within context, AIST strongly recommends that a complaints' data and reporting Framework is needed – one which covers all key stakeholders and addresses questions such as those we have raised above.

While conceptually AIST agrees with the proposal, we request that discussions take place – involving key stakeholders – so that such a Framework is developed. We acknowledge and appreciate that the Consultation Paper and Dictionary are key steps towards such a Framework.

⁴ Financial Conduct Authority (2019). *FCA Handbook*. [online] Financial Conduct Authority. Available at: <https://tinyurl.com/y4vdt345> [Accessed 22 Jul. 2019].

We note that the UK Handbook requires the documenting of all complaints, but that the level of recording is at a fairly high level but one which aims at addressing the number of complaints, the cause of the complaints, and timeliness of complaint handling:

The records required by [DISP 1.5.1 R](#) are for the purposes of monitoring by the [FSA](#) and also to ensure that the [firm](#) is able to cooperate, as necessary, with the [Financial Ombudsman Service](#). They should include:

- (1) the name of the complainant;*
- (2) the substance of the complaint;*
- (3) any correspondence between the [firm](#) and the complainant, including details of any redress offered by the [firm](#); and*
- (4) documentation relating to the referral of a complaint under [DISP 1.4.18 R](#)*

B5Q2 Do you consider that the data set proposed in the data dictionary is appropriate? In particular: (a) do the data elements for ‘products and services line, category and type’ cover all the products and services that your financial firm offers? (b) Do the proposed codes for ‘complaint issue’ and ‘financial compensation’ provide adequate detail?

AIST refers to the introduction to this section where we raise questions which need to be addressed. We repeat our call for an industry roundtable.

IDR data reporting

B6Q1 Do you agree with our proposed requirements for IDR data reporting? In particular (a) are the proposed data variables set out in the draft IDR data dictionary appropriate? (b) Is the proposed maximum size of 25MB for the CSV files adequate? When the status of an open complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status?

AIST repeats its answer to question B5Q1. AIST is also concerned regarding the impact on fund systems – some funds may have Customer Relationship Management systems which would assist with such detailed reporting, while others might not.

Additionally, we note that the UK Handbook requires a fairly high level of reporting biannually to the Financial Conduct Authority, but one which aims to address system trends identified by complaints:

A [firm](#) must provide the [FSA](#), twice a year, with a report in the format set out in [DISP 1 Annex 1R](#) which contains (for the relevant reporting period) information about:

- (1) the total number of complaints subject to [DISP 1.4](#) to [DISP 1.6](#) received by the [firm](#), broken down according to the categories and in respect of each of the generic product types described in [DISP 1 Annex 1R](#) which are relevant to the [firm](#);*
- (2) the total number of complaints subject to [DISP 1.4](#) - [DISP 1.6](#) closed by the [firm](#):*
 - (a) within four weeks or less of receipt;*

- (b) within four to eight weeks of receipt; and
- (c) more than eight weeks after receipt; and
- (3) the total number of complaints subject to DISP 1.4 - DISP 1.6 outstanding at the end of the reporting period.

Guiding principles for the publication of IDR data

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

AIST is pleased that ASIC is seeking views regarding principles regarding publication of IDR data and that further consultations will take place. This is also another important component of the Framework AIST calls for in this submission.

Here are our initial thoughts regarding the principles. We have taken into account the principles outlined by the Commonwealth Ombudsman⁵:

Principle	Public reporting
At consumer level	
Consumers should be able to access the level of complaints at both aggregate and individual firm level.	In our recent submission to AFCA ⁶ , AIST recommended that, for example, members should be able to search complaints at both firm and aggregate level. AIST also drew attention to the need to include outsourced providers involved in the complaint and that data regarding group conglomerates needs to be aggregated.
Consumer complaints are handled with fairness and efficiency.	Timeliness trends of resolving complaints.
Consumers have easy access to complaint handling	ASIC reports on the consumer journey
Consumer confidentiality	There will be no public reporting of the consumer’s name.
Integration	That there is a Framework which encompasses stakeholders involved in the handling and analysis of complaints.

⁵ Commonwealth Ombudsman (2009). *Better practice guide to complaints handling*. [online] Canberra: Commonwealth Ombudsman. Available at: <https://tinyurl.com/yyoeocht> [Accessed 10 Jul. 2019].

⁶ AIST (2019). *Consultation – AFCA Rule change*. [online] AIST. Available at <https://tinyurl.com/y334kanq> [Accessed 9 July 2019].

At system level		Public reporting needed	
To build trust and confidence in the financial system		That there be public reporting by ASIC and AFCA.	
Complaints are used to improve the financial system and organisations		Report on trends in the type of complaints.	
At regulatory level			
Assists provide focus to regulatory supervision and enforcement		Actions taken by the regulator in response to trends identified	
Assists identify level of risks across sectors and organisation types		Which sectors within financial services give rise to complaints. (AIST policy is that the raising of regulatory supervisory levies should include a sector-based risk levy raising approach, e.g. industry funds, retail funds, corporate or public sector funds)	
Commercially sensitive information should be assessed on a case by case basis.		AIST strongly recommends that these issues can only be meaningfully handled on a case by case basis.	

IDR responses – Minimum content requirements

B8Q1 Do you agree with our minimum content requirements for IDR responses? If not, why not?

AIST agrees with the minimum content requirements. It is important that members are provided with reasons for the decision.

IDR responses – Superannuation trustees

B9Q1 Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, provide reasons.

AIST agrees with this approach.

B10Q1 Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary.

AIST believes that the minimum content requirements address core issues.

5. Ensure timely and efficient responses to the member

A core objective of complaints handling is that members' complaints are addressed in a timely way.

AIST is pleased that draft updated RG 165 provides an 'incentive' for a fund resolving a complaint within 5 business days of receipt through draft RG165.80 having a different IDR response. This is similar to United Kingdom requirements where the 'incentive' is given for quick resolution. AIST strongly believes the 'incentive' is rightly provided here and would disagree with any proposals for a shorter timeframe where the complaint is, for example 'less complex'. The proposals appear to be contemplating a move to a 30-day timeframe for superannuation complaints in some circumstances. We deal with this issue in our answer to the next question.

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Reduced maximum IDR timeframes

[B11Q1 Do you agree with our proposal to reduce the maximum IDR timeframes? If not, please provide \(a\) reasons and any proposals for alternative maximum IDR timeframes; and \(b\) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line.](#)

AIST agrees with the proposal to move from 90 to 45 days

AIST in general agrees with the proposal to reduce the maximum IDR superannuation timeframes from 90 to 45 days – funds want to resolve complaints to the satisfaction of members. The 45-day timeframe ASIC is proposing for super complaints aligns with the timeframe required under the insurance code, which reflects extensive industry consultation.

Recognition needs to be given that some claims may take longer

However, AIST strongly recommends that given the complexities involved with, for example, total and permanent disability claims and death benefit claims that there must be recognition that there are such cases that take longer than 45 days. It is very difficult to rely on external parties (particularly medical specialists) to comply with the proposed reduced timelines.

AIST does not support shorter timeframes in some circumstances

The Consultation Paper appears to contemplate a 30-day timeframe for superannuation complaints in some circumstances. AIST opposes moving to a 30-day timeframe for resolving super complaints in any circumstances. A 30-day timeframe would result in a reduction in the quality of the Internal Dispute Resolution process which would in turn lead to more

External Dispute Resolution complaints and undermine consumer confidence. Ultimately, members would not be better off.

Given the complexities of superannuation, the vast majority of superannuation complaints will be complex.

Additionally, AIST strongly believes that a better and more member-focussed proposal is as in the Consultation Paper, where an 'incentive' be provided where the complaint is **actually** quickly resolved through draft RG165.80 having a different IDR response. AIST strongly supports this proposal.

Roundtable

AIST asks that this issue be discussed at an industry roundtable, for without resolution to this, AIST queries what would happen and would this result in increased breach reporting. For example, AIST asks at what point does failure to comply with the Internal Dispute Resolution requirements trigger a breach reporting requirement.

[B11Q2 We consider that there is merit in moving towards a simple IDR maximum timeframe for all complaints \(other than the exceptions noted at B11\(b\) above\). Is there any evidence for not setting a 30 day maximum IDR timeframe for all complaints now?](#)

We refer to our answer to B11Q1.

Role of customer advocates

[B12Q1 Do you agree with our approach to the treatment of customer advocates under RG165? If not, please provide reasons and any alternative proposals, including evidence of how customer advocates improve consumer outcomes at IDR.](#)

AIST agrees with this proposal as it brings customer advocates into sync with these requirements.

[B12Q2 Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position.](#)

AIST provides no comment.

6. Identify and escalate systemic issues

Systemic issues

B13Q1 Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.

AIST agrees with these proposals but believes that guidance is needed.

IDR Standards

B14Q1 Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG165? If not, why not? Please provide reasons.

AIST refers to our answer to B2Q1.

Transitional arrangements for the new IDR requirements

B15Q1 Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your proposals for alternative implementation periods.

Develop the Framework first

AIST strongly recommends that before implementation, it is essential to first develop the Framework AIST has outlined within this submission. It is critical that a common set of objectives, recording and reporting is in place. We acknowledge the work undertaken within this consultation, but believe an integrated approach is needed. It is not in the best interests of either members or funds to rush implementation, particularly where a co-ordinated complaints data and reporting framework is not in place.

Proposed commencement date is unachievable

The commencement date is unachievable, and a deferral is needed:

- If the *Treasury Laws Amendment (Putting Members' Interests First) Bill 2019* passes with (as is expected) a deferred start date, funds will have no capacity to commence work on implementing the Internal Dispute Resolution changes during the first half of next year. AIST asks that ASIC takes this into account and sequence the various commencement dates.
- ASIC has indicated that changes to the various documents associated with *RG97 Disclosing fees and costs / PDSs and periodic statements* will be finalized by the end

of 2019. AIST strongly believes that ASIC should also take this – and any other matters which may be forthcoming to commence in the first half of the year – into account.

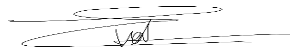
AIST requests that the possible sequencing of requirements – rather than being run in parallel – be discussed at an industry roundtable.

[B15Q2 Should any further transitional periods be provided for other requirements in draft updated RG165? If yes, please provide reasons.](#)

AIST refers to its answer to B15Q1.

For further information regarding our submission, please contact Karen Volpato, Senior Policy Advisor on [REDACTED] or at [REDACTED].

Yours sincerely,



Eva Scheerlinck
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$1.3 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.