



ASIC
Australian Securities &
Investments Commission

REPORT 665

Response to submissions on CP 311 Internal dispute resolution: Update to RG 165

July 2020

About this report

This report highlights the key issues that arose out of the submissions received on [Consultation Paper 311](#) *Internal dispute resolution: Update to RG 165* (CP 311) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act, *National Consumer Credit Protection Act 2009*, *Superannuation Industry (Supervision) Act 1993* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see [Regulatory Guide 271](#) *Internal dispute resolution* (RG 271).

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A Overview

- 1 In [Consultation Paper 311](#) *Internal dispute resolution: Update to RG 165* (CP 311), we consulted on proposals to update our existing internal dispute resolution (IDR) requirements. We provided a draft updated Regulatory Guide 165 *Internal dispute resolution* (draft RG 165). The purpose of these proposals was to:
- (a) align with the new statutory requirements for IDR processes;
 - (b) reflect the standards for effective complaints handling in Australian Standard [AS/NZS 10002:2014](#) *Guidelines for complaint management in organizations* (AS/NZS 10002:2014); and
 - (c) refine our requirements in some key areas, based on our experiences administering our previous IDR policy.
- Note: See regs 7.6.02(1)(a) and 7.9.77(1)(a) of the Corporations Regulations 2001 and reg 10(1)(a) and item 2.20 of Sch 2 to the National Consumer Credit Protection Regulations 2010.
- 2 This report highlights the key issues that arose out of the submissions received on CP 311 and our responses to those issues.
- 3 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 311. We have limited this report to the key issues.
- 4 We received 7 confidential and 61 non-confidential responses to CP 311 from a variety of firms, industry groups and consumer bodies. We also held 5 industry roundtables with representatives from over 70 organisations. During these roundtables we offered stakeholders the opportunity to make further submissions on issues that had not previously been raised. As a result, we accepted a further nine supplementary submissions. We are grateful to respondents for taking the time to send us their comments.
- 5 For a list of the non-confidential respondents to CP 311 see the appendix. Copies of these submissions are currently on the [CP 311 page](#) on the ASIC website.

Responses to consultation

- 6 The main issues raised by respondents in the submissions and roundtables (other than those relating to data recording and reporting) related to:
- (a) what defines a ‘complaint’, particularly on social media;

- (b) the definition of ‘small business’ for IDR purposes;
- (c) IDR timeframes and the content of IDR responses;
- (d) the role of customer advocates;
- (e) identifying and managing systemic issues;
- (f) how we intended to enforce draft RG 165; and
- (g) transitional arrangements for the obligations under draft RG 165.

7 Given the number of issues raised in submissions about the requirements for IDR data collection and recording, we have postponed providing guidance on the data-specific matters until we have completed further targeted consultation in 2020. The issues raised in submissions about data requirements will be responded to in a separate feedback report in 2020.

The importance of IDR

8 Consumer and small business access to fair, timely and effective dispute resolution is a central part of the financial services consumer protection framework. This includes both IDR and external dispute resolution (EDR), which is available through the Australian Financial Complaints Authority (AFCA). Consumer trust is eroded where complaints are not identified and acted on by financial firms, and there is a link between poor performance at IDR and downstream remediation costs. It is in the interest of firms, regulators and consumers for IDR standards across the financial services sector to consistently improve.

Release of new IDR policy

9 In our consultation, we proposed that we would issue the IDR standards, requirements and guidance as an update to [Regulatory Guide 165](#) *Licensing: Internal and external dispute resolution* (RG 165). We also proposed that some parts of the guide would be subject to a transition period.

10 As a result of our consultation, we have decided to apply a transition period to the entirety of the new guide: see paragraphs 110–111. The new guide will come into effect on 5 October 2021. However, complaints that are made to financial firms before 5 October 2021 will continue to be dealt with under the requirements in RG 165.

11 We therefore have decided to:

- (a) issue the guidance consulted on as draft RG 165 as [Regulatory Guide 271](#) *Internal dispute resolution* (RG 271), which will come into effect on 5 October 2021; and

- (b) withdraw RG 165 on 5 October 2022. RG 165 will continue to apply to all complaints received by financial firms before 5 October 2021, when RG 271 comes into effect.

Note: A reference to 'draft RG 165' is a reference to the consultation draft attached to CP 311 and a reference to 'RG 271' is a reference to our final policy.

- 12 We are releasing RG 271 now to give financial firms time to prepare for the introduction of the new requirements and standards.

Enhanced supervision—IDR on-site visits

- 13 Between November 2018 and November 2019, we visited and reviewed the IDR processes at:
 - (a) AMP Limited;
 - (b) Australian and New Zealand Banking Group;
 - (c) Commonwealth Bank of Australia;
 - (d) National Australia Bank; and
 - (e) Westpac Banking Corporation.
- 14 These IDR on-site visits were conducted under ASIC's close and continuous monitoring program. During these visits we spent approximately 69 days on-site, reviewed almost 10,000 documents and held over 200 meetings with staff.
- 15 In this feedback report we refer to our findings and observations from these on-site visits where they have influenced our decisions on policy settings. We do not identify any of the specific entities that were part of our IDR on-site visits when discussing these findings and observations.
- 16 We examined a wide breadth of issues during the IDR on-site visits. IDR performance varied both among the entities and within the entities themselves. Poor results against one or some measures do not necessarily reflect the overall quality of a firm's IDR procedures. We found examples of:
 - (a) high volumes of complaints being handled at the frontline without adequate quality assurance, monitoring and oversight;
 - (b) issues with the management and cultural approach to complaints within particular bank subsidiaries;
 - (c) issues with the quality of final response letters;
 - (d) unacceptable delays in financial hardship teams (likely because of the practice of going back to the business unit staff about proposed resolutions);

- (e) specialist complaints staff who were limited by their financial delegations and the influence of the business units that caused the complaint;
- (f) limited focus on systemic issues across banking groups, sometimes further impeded by information technology (IT) systems that do not allow staff to effectively flag and follow up systemic complaints;
- (g) limited monitoring of, or controls to ensure, compliance with the IDR requirements, including the IDR timeframes and the requirement to provide delay notification letters with AFCA details; and
- (h) multiple complaints-recording systems and significant under-reporting of complaints across banking groups.

17 In response to issues found during IDR on-site visits, we are requiring these firms to commit to action plans to redress any identified deficiencies.

B The application of the IDR requirements

Key points

This section outlines the responses we received about:

- the definition of ‘complaint’ and the inclusion of complaints that are made ‘about’ a firm;
- the requirement to treat complaints made to a firm’s social media channel as complaints;
- the definition of ‘small business’; and
- the interaction of IDR and remediation processes.

Definition of ‘complaint’

- 18 We must, when considering whether to make or approve standards or requirements relating to IDR, take into account:
- (a) AS/NZS 10002:2014; and
 - (b) any other matter we consider relevant.
- Note: See regs 7.6.02(1)(a) and 7.9.77(1)(a) of the Corporations Regulations 2001 and reg 10(1)(a) and item 2.20 of Sch 2 to the National Consumer Credit Protection Regulations 2010.
- 19 AS/NZS 10002:2014 defines a ‘complaint’ as:
- [An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.
- 20 AS ISO 10002:2006 *Customer satisfaction: Guidelines for complaints handling in organizations* (AS ISO 10002:2006, which has been superseded) is the standard that [RG 165](#) was drafted against. For the purposes of comparison, AS ISO 10002:2006 defined a complaint as:
- An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- 21 As demonstrated, AS/NZS 10002:2014 retains the substance of the previous definition, but expands its application to include an expression of dissatisfaction:
- (a) made ‘about’ an organisation;
 - (b) related to an organisation’s staff; and
 - (c) where a response or resolution is ‘legally required’.

- 22 In CP 311 we discussed the application of the definition of complaint from AS/NZS 10002:2014. We considered that the most significant change to the existing definition was the inclusion of complaints ‘about’ an organisation.
- 23 We released a report on consumer research into IDR in December 2018: see [Report 603](#) *The consumer journey through the Internal Dispute Resolution process of financial service providers* (REP 603). The research found that a key obstacle or ‘pain point’ consumers face when pursuing a financial services complaint was the need to follow up too many times before receiving an adequate response from the firm. We consider that firms should apply a broad definition of complaint to ensure that all complaints are adequately addressed the first time they are made.

Complaints made ‘about’ an organisation

- 24 A number of submissions took issue with the inclusion of complaints that are made ‘about’ an organisation. These submissions were concerned that this drafting would capture public complaints, such as those in letters to the editor or complaints made during protests.

ASIC’s response

In our view, letters to the editor or complaints made during protests are unlikely to be covered by this expanded definition.

In the [RG 271](#) we note that we interpret the words ‘or about an organization’ in the definition to cover expressions of dissatisfaction made via social media: see RG 271.28. We do not require these words to be read any more broadly than this.

Social media complaints

- 25 Many respondents were concerned that the new definition of complaint may require them to expansively search the internet for complaints made about their firm on platforms that they would not otherwise monitor. Some respondents also noted that many complainants on social media are difficult to identify and do not respond when contacted.
- 26 A number of respondents raised concerns about potential privacy issues that would arise if they are required to respond to complainants on social media. Some respondents also noted that many social media complainants do not respond when asked for more information about their complaint. Some of these submissions proposed that firms should be able to direct social media complainants to contact their IDR staff directly, so that relevant verification could occur.

- 27 There was also some concern expressed that licensees should not be required to respond to complaints made on the social media accounts of their authorised representatives.
- 28 A smaller number of submissions argued for the exclusion of all complaints made via social media. These submissions argued that, given a complaint imposes significant obligations on a financial firm, it is reasonable that complainants should have to lodge their complaint via a specified channel.
- 29 Our consumer research and recent IDR on-site visits have found examples of firms excluding complaints that are not made in writing or do not specifically use the word 'complaint'. Consumer submissions also raised this specific concern, and some submissions included case studies showing real barriers that prevent consumers from accessing formal IDR processes.

ASIC's response

We consider that consumers can legitimately make a complaint via a firm's own social media channel. We have clarified that our intention is that the definition of complaint should only include '[complaints made] on a social media channel or account owned or controlled by the financial firm that is the subject of the post, where the author is both identifiable and contactable': see RG 271.32(a).

We agree that complaints made to a firm on their social media channel or account should not be 'played out' publicly. Firms should redirect these complainants to an appropriate, private complaints process in a way that reduces additional friction as far as possible. This should alleviate any privacy concerns or issues with identifying complainants.

Where the consumer fails to respond or cannot be identified, this may mean that the complaint cannot be reasonably dealt with.

We note that due to their close interaction with consumers, authorised representatives will often be the primary recipients of complaints. We consider that licensees must ensure complaints made to authorised representatives are dealt with under their IDR process whether they are made directly to the authorised representative or via the representative's social media account.

We agree that when a consumer makes a complaint via a channel controlled by a financial firm, the firm should deal with that complaint under their IDR processes, regardless of the channel used to communicate. This may help remove the barrier identified in our consumer research that complainants sometimes find it difficult to find the IDR details for their financial firm.

More broadly, we have specifically addressed the concern that sometimes firms may seek to technically exclude complaints from their IDR process because of the way in which they are made: see RG 271.31.

Additional guidance on the definition of complaint

- 30 We received many requests for prescriptive guidance on the definition of complaint, or for an exhaustive list of what is and what is not a complaint. Although the definition remains largely unchanged, we understand that these requests may have been driven by concerns about our proposal to clarify which IDR requirements are enforceable, as well as our proposal to publish firm-level comparative performance data on complaints (as permitted by the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018* (AFCA Act), which established AFCA).
- 31 A number of industry submissions requested more guidance on when a response may be ‘implicitly expected’ by a complainant. Some industry submissions also argued that the definition of complaint should not extend beyond complaints that can be dealt with by AFCA.
- 32 There were also multiple submissions querying whether objections to proposed decisions by superannuation trustees about death benefit distributions would or should be treated as complaints. For further discussion of complaints about death benefit distributions, see paragraphs 34–35.
- 33 Consumer representatives raised concerns about the extent to which financial firms seek to mis-define complaints as ‘feedback’ or ‘inquiries’ to avoid their IDR obligations.

ASIC’s response

Given the nature of complaints, we are unable to provide an exhaustive list of what is and is not a complaint. We note that the definition of complaint has not changed significantly from previous definitions.

We have provided additional guidance that a response is ‘implicitly expected’ if the consumer raises the expression of dissatisfaction in a way that implies the consumer reasonably expects the firm to respond and/or take specific action: see RG 271.30. A consumer or small business is not required to expressly state the word ‘complaint’ or ‘dispute’, or put their complaint in writing, to trigger a financial firm’s obligation to deal with a matter according to our IDR requirements.

We do not agree that IDR obligations apply only to those matters that can be escalated to AFCA. We also note that the existing definition of complaint is likely to extend beyond complaints that are within AFCA’s jurisdiction.

Specific types of complaint

- 34 Some submissions argued that specific types of complaint should be expressly carved out of the IDR requirements. Examples raised in submissions included:
- (a) objections to trustee decisions about the distribution of superannuation death benefits;
 - (b) complaints made by a claimant while an insurance claim is in process;
 - (c) disputed card transactions that are currently dealt with under the ePayments Code of Practice (ePayments Code);
 - (d) complaints made to debt collectors during the first collection contact that are resolved immediately; and
 - (e) where a complaint is made about the refusal of a firm to provide credit.

- 35 Some industry arguments for the exclusion of these types of complaints included that:
- (a) there are existing processes that deal effectively with conduct relating to insurance claims (e.g. insurance code standards), death benefit distributions (e.g. claims staking in the *Corporations Act 2001* (Corporations Act) and disputed transactions (e.g. under the ePayments Code);
 - (b) in death benefit distributions, the trustee may be bound by the trust deed and so have limited or no discretion regarding the distribution; and
 - (c) dissatisfaction with debt collection is almost always expressed during the first contact, and it would be unduly onerous to treat all of these expressions as complaints.

ASIC's response

We have considered each of these examples in turn. In [RG 271](#), we have confirmed that:

- an objection to a proposed trustee decision about the distribution of a superannuation death benefit *is a complaint* and will trigger the start of the IDR process. This position was broadly supported during consultation, as was the need for clarification about how to deal with these complaints. We confirm that the maximum IDR timeframe for these complaints is 90 calendar days, and that written reasons must be given for each proposed and final trustee decision (see RG 271.80–RG 271.85);
- a complaint *can be made* while an insurance claim is in progress—for example, where the complaint relates to the handling of the claim (and which could include excessive or unreasonable delays in finalising the claim);
- a disputed transaction, where liability is subject to investigation under credit card (chargeback) scheme rules *is a complaint*,

although the scheme rules' timeframes will apply. This is consistent with the current tailored approach taken under the ePayments Code; and

- a complaint about the refusal of a firm to grant credit *is a complaint*. If these complaints can be immediately resolved by explanation of a firm's reasonable commercial judgement, then certain further requirements will not apply. For more information, see paragraphs 39–41.

We have considered the feedback provided in submissions and at stakeholder roundtables. There are no other types of consumer dissatisfaction that we consider we should explicitly exclude or include as part of the definition of complaint.

Complaints resolved within five days

- 36 When an expression of dissatisfaction meets the definition of 'complaint', other policy requirements automatically flow from that. In particular, the requirement to provide an IDR response that meets our minimum content requirements within a certain timeframe: see RG 271.53–RG 271.60.
- 37 Both [RG 165](#) and [RG 271](#) provide some relief where the complaint is resolved within five days, including from the requirement to provide an IDR response. The need to retain this relief came up strongly in consultation, with industry stakeholders giving examples of cases in which consumers themselves don't want or expect a written response and where the cost burden on industry would not be justified.

ASIC's response

We have clarified that a financial firm is not required to provide a written IDR response if, within five business days, the firm has:

- resolved the complaint to the complainant's satisfaction; or
- given the complainant an explanation and/or an apology when the firm can take no further action to address the complaint (see RG 271.71).

For example, if the complaint is only about a firm's commercial decision, such as:

- refusing credit; and
- providing insurance cover on certain terms.

We have not carved out entire categories of complaint from the definition of complaint or provided an exhaustive list of how the definition will apply across the financial system.

We have given examples of some circumstances in which it may be reasonable for a financial firm to form the view that an explanation and/or apology is the only action they can take to address the complaint: see RG 271.74.

Definition of ‘small business’

- 38 In CP 311 we proposed to align the definition of small business in draft RG 165 with the AFCA definition of small business (i.e. ‘A Primary Producer or other business with less than 100 employees’). This would ensure that all small businesses that are entitled to access AFCA are also entitled to IDR. This proposal was broadly supported by industry and consumer groups in order to ensure consistent access to both IDR and EDR.
- 39 A number of submissions queried whether it would be possible for ASIC to change this definition without creating unintended consequences for other parts of Ch 7 of the Corporations Act (such as the retail client and wholesale client provisions at s761G).
- 40 The Australian Banking Association (ABA) and some of its members opposed this proposal on the basis that it departs from the definition of small business in the Banking Code of Practice (which is narrower than the AFCA definition). The definition of small business in the Banking Code of Practice is to be reviewed in 2021.
- 41 The AFCA definition was the result of significant public consultation and both simplifies and extends the previous definition (which was based on s761G of the Corporations Act). We note that the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) also recommended that the ABA should amend the definition of small business in the Banking Code of Practice to align it with the AFCA definition: see Royal Commission, [Final report](#), February 2019, Recommendation 1.10.

ASIC’s response

We remain of the view that small businesses that have access to AFCA should also clearly have access to IDR. This is consistent with our view that the technical definition of ‘retail client’ should be considered as setting the minimum scope (rather than acting as a barrier to entry) for access to IDR.

In making this change we are seeking to provide consistency across the financial dispute resolution framework. Our view is that this change will not have a material effect on the IDR coverage of financial firms that deal with small business complaints, and we note that some entities who were the subject of IDR on-site visits already apply a broader scope that would comply with this change.

We have considered the issue of potential unintended consequences to Ch 7 requirements when drafting [ASIC Corporations, Credit and Superannuation \(Internal Dispute Resolution\) Instrument 2020/98](#). We have only changed the definition of ‘small business’ in relation to the obligation to have an IDR procedure in Pts 7.6 and 7.9 of the Corporations Act.

The interaction of IDR with remediation processes

- 42 The draft RG 165 attached to CP 311 included proposed requirements for the interaction of IDR and remediation. This included that some complaints about remediation outcomes might be referred directly to AFCA.
- 43 Although we did not consult specifically on this issue, we received some industry feedback proposing alternative approaches to what was set out in draft RG 165.

ASIC's response

Given the nature of the submissions received, we have decided to consider the interaction of IDR and remediation in more detail before reaching a final policy position. We will deal with this in our upcoming review of and consultation on [Regulatory Guide 256](#) *Client review and remediation conducted by advice licensees* (RG 256).

In the interim, we have clarified in [RG 271](#) that expressions of dissatisfaction about remediation-related matters do fall within the definition of 'complaint'.

C Maximum IDR timeframes and IDR responses

Key points

In CP 311 we consulted on:

- updates to the minimum content requirements for IDR responses; and
- reduced timeframes for providing IDR responses to complainants.

Industry and consumer submissions were broadly in favour of the updated requirements for IDR responses.

Industry and consumer submissions generally supported the reduction in timeframes for superannuation complaints from 90 days to 45 days.

All consumer respondents and some industry respondents supported the reduction in timeframes for non-superannuation complaints from 45 days to 30 days. The majority of industry submissions did not support this reduction.

IDR response requirements

- 44 IDR responses are an essential part of the IDR process. They should provide a consumer with the information that they need to make an informed decision about whether to accept the IDR decision or escalate the matter to AFCA or another forum.
- 45 Our consumer research found that two key reasons consumers withdraw from the complaints process were that they had either waited too long for a response or received a response that did not adequately address their complaint: see [REP 603](#) at p. 5.

What an IDR response must contain

- 46 In CP 311 we proposed updates to the minimum content requirements for IDR responses. We proposed that when a financial firm rejects or partially rejects a complaint, the IDR response must clearly set out the reasons for the decision by:
- identifying and addressing the issues raised in the complaint;
 - setting out the financial firm's findings on material questions of fact and referring to the information that supports those findings; and
 - providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum.

- 47 In CP 311 we also proposed that IDR responses would not be required where the firm closes the complaint by the end of the fifth business day (except for some complaint types, which require an IDR response regardless of when the complaint is closed): see RG 271.71–RG 271.75.
- 48 The quality of the IDR responses we reviewed as part of the IDR on-site visits was highly variable. We saw examples of poor-quality final response letters at most of the entities we visited, including responses that gave no reasons for the decision. We also saw teams at many of the entities failing to provide IDR responses to complainants. Our view is that it is imperative that the quality of IDR responses is improved across the financial system.
- 49 The submissions on CP 311 broadly supported these proposals. However, some respondents did not agree that IDR responses should set out all of the material questions of fact that a firm considered in coming to a decision. These submissions argued that IDR responses may become too long and incomprehensible for consumers.
- 50 A number of respondents called for exceptions to the minimum content requirements where details cannot be published due to the interaction with ‘tipping off’ provisions in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 51 Some consumer representatives argued that IDR responses should also include information about the relevant code of practice and the firm’s financial interest in making the particular finding.

ASIC’s response

In [RG 271](#) we have maintained an exception to the requirement to provide an IDR response where, within five business days, the firm has:

- resolved the complaint to the complainant’s satisfaction; or
- given the complainant an explanation and/or apology when the firm can take no further action to reasonably address the complaint.

We have also maintained the specific content requirements that must be provided when a complaint has been wholly or partially rejected.

We have set out at RG 271.55 that we do not expect financial firms to provide information in an IDR response that would breach the firm’s privacy or other legislative obligations (e.g. the ‘tipping off’ provisions in the AML/CTF Act).

Written reasons for superannuation trustees

- 52 In CP 311 we proposed not to issue a separate, tailored legislative instrument on the provision of written reasons for complaint decisions made by

superannuation trustees. This was on the basis that the updated content requirements should apply equally to all complaints irrespective of subject matter.

- 53 We have maintained this position, which was broadly supported by those respondents that addressed this issue.
- 54 Some respondents from the superannuation industry queried whether IDR responses would be required for all superannuation complaints, or only those complaints about trustee decisions on the distribution of death benefits.
- 55 Before the AFCA Act, the requirement for superannuation funds to give written reasons was limited to death benefit complaints, or for other complaints only at the request of the member. This was set out in s101 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Section 101 was amended by the AFCA Act in 2018, making it clear that superannuation funds would need to have IDR procedures that complied with ASIC standards and requirements and that they would be required to issue written reasons for any decision of the trustee: see s101(1)(b) and 101(1)(d) of the SIS Act.
- 56 We are not able to modify s101 to provide relief from the requirement for written reasons to be given for complaints that are closed within five business days. Therefore, in contrast to other financial services and credit complaints, all complaints about a decision of a superannuation trustee require an IDR response regardless of how quickly they are closed.

ASIC's response

We have not issued a separate legislative instrument specifically addressing written reasons for complaint decisions made by superannuation trustees. These requirements are set out in [ASIC Corporations, Credit and Superannuation \(Internal Dispute Resolution\) Instrument 2020/98](#).

In [RG 271](#), trustees must ensure that written reasons are given for any decision of the trustee (or failure by the trustee to make a decision) relating to a complaint. This applies even if the complaint is resolved within the first five business days.

Maximum timeframes for an IDR response

- 57 In CP 311 we proposed to reduce the maximum IDR timeframes, which were set out in calendar days in draft RG 165. These are the time limits by which a firm must provide an IDR response and after which dissatisfied complainants can then access AFCA.

- 58 In CP 311 we proposed reducing the maximum IDR timeframes as follows:
- (a) from 90 calendar days to 45 calendar days for superannuation related complaints (including about life insurance issued through superannuation) and traditional trustee complaints; and
 - (b) from 45 calendar days to 30 calendar days for (almost all) other financial services and credit complaints

Note: There are some legislatively prescribed IDR timeframes that are left unchanged, including complaints involving credit default notices and credit complaints involving hardship notices or requests to postpone enforcement proceedings.

59 The timeframes in [RG 165](#) have remained the same for at least 20 years.

60 Timeliness is central to effective complaint management and ensuring good consumer outcomes. Our quantitative consumer research suggested that the length of time taken to resolve the complaint negatively affects a complainant's view of the financial firm and increases the perceived stress and effort of the complaints process: see [REP 603](#) at p. 49. The research also showed a significant negative correlation between net satisfaction and the number of days taken to resolve a complaint.

61 REP 603 also showed that 38% of people who considered making a complaint but did not follow through decided not to make a complaint because they did not think it was worth their time: see p. 21. A further 26% did not complain because they did not have enough time: see p. 21. This research suggests that a key reason that complaints are not raised with financial firms is a perceived lack of timeliness. Importantly, when consumers decide not to raise valid complaints, firms lose the opportunity to fix the relationship with that consumer and to improve their products more broadly.

Timeframes for superannuation complaints

62 In CP 311 we proposed that the timeframe for providing an IDR response to superannuation complaints should be reduced from 90 calendar days to 45 calendar days.

63 Most respondents supported this reduction in timeframes for superannuation complaints, noting that an exception may be required in complex circumstances or where the trustee needed to wait for a third party. A number of submissions noted that the 45-day timeframe aligned with the existing timeframe in the [Insurance in Superannuation Voluntary Code of Practice](#) (see paragraph 13.15).

64 Some submissions supported a reduction in timeframes for superannuation complaints to 30 days. However, this was generally not supported due to the

complex nature of superannuation complaints and the high likelihood that the trustee will need to negotiate with third parties (such as insurers).

ASIC's response

We have reduced the timeframe for dealing with superannuation trustee complaints to 45 calendar days: see Table 2 in [RG 271](#). This is excluding complaints about death benefit distributions, which will continue to be subject to a 90 calendar day timeframe: see RG 271.80–RG 271.85.

We understand that this may require superannuation funds and their administrators to invest money and time in improving their processes. However, we consider that 90 calendar days is no longer an acceptable timeframe for financial firms to respond to superannuation complaints.

Timeframes for non-superannuation complaints

- 65 In CP 311 we also proposed that the current 45 calendar day timeframe for providing an IDR response for complaints about (almost) all other financial services and credit should be lowered from 45 to 30 calendar days. We proposed that, in exceptional circumstances, firms may issue a delay notification telling the consumer that resolution of the dispute had been delayed and informing the consumer of their right to lodge their complaint with AFCA.
- 66 Industry submissions broadly opposed this requirement. Their arguments against it included that:
- (a) complaints from specific industry subsectors (e.g. complaints about financial advice and responsible lending) are all inherently complex and require more time;
 - (b) the resolution of individual complaints is often delayed by factors outside of the financial firm's control, such as delays caused by the complainant, third-party insurers or medical experts; and
 - (c) reducing IDR timeframes would simply push more matters on to AFCA.
- 67 Many industry submissions noted that while they could (and already do) provide an IDR response to the vast majority of complaints within 30 days, the complex cases that require more time are not accurately described or defined as being 'exceptional'.
- 68 All submissions by consumer representative groups supported a reduction in IDR timeframes to 30 days for non-superannuation complaints. One submission proposed a 21-day timeframe for all complaints. Some of these submissions noted the stress that an unresolved complaint can cause, particularly when a complainant needs to make significant financial

decisions (e.g. whether to sell an asset or declare bankruptcy). Consumer legal representatives provided examples where their clients had assumed that their complaint had been rejected due to the long wait times. There was a general view across consumer groups (including those that directly represent consumers with complaints) that IDR across the financial service sector is poor and that quality, systems, and outcomes need to substantially improve.

69 When combined with the 21-day refer back period at AFCA, a 45-day timeframe means that some consumers may have to wait at least 66 days before they can have their complaint heard by AFCA.

70 Our quantitative consumer research found that complainants' satisfaction levels were significantly correlated with the time taken to resolve their complaint: see [REP 603](#) at p. 49. Complainants whose complaints were resolved quickly were much less likely to say that the complaint had negatively affected their opinion of the financial firm.

ASIC's response

As noted at paragraph 59, this timeframe has not changed since the first iteration of this policy was published in 1999. Over the past 20 years there have been major improvements in technological capacity and a reduction in reliance on postal communication. These factors support the case for reducing the time taken for firms to respond to complaints.

Data provided to ASIC in response to CP 311 suggested that, where financial firms had invested in their IDR functions, the vast majority of complaints could be resolved in far less than 30 calendar days. At most IDR on-site visits we also observed that the vast majority of total complaints were resolved in less than 30 calendar days. For example, one bank resolved 97% of all complaints within five business days. Given that a 30-day timeframe appears to be achievable for many financial system complaints, we no longer consider that a 45-day maximum timeframe for all complaints is acceptable.

Current timeliness and resourcing implications

Firms already achieving 30-day IDR timeframes

71 Some industry code monitoring bodies have published complaints data, including data on the timeliness of their subscribers' IDR processes.

Note: See I Ramsay & M Webster, 'Enhancing the internal dispute resolution processes of financial firms for consumer complaints', *Competition and Consumer Law Journal* vol. 27(1), 2019, p. 14.

72 Table 1 sets out the timelines of various code subscribers' IDR processes.

Table 1: Timeliness of code subscribers' IDR processes

Code	Timeliness	Source
Banking Code of Practice	97% of complaints resolved within 21 days	Banking Code Compliance Monitoring Committee, Compliance with the Code of Banking Practice 2018–19: Banks' annual compliance statement results , report, November 2019, p. 42
Customer Owned Banking Code of Practice	93% of complaints resolved within 21 days	Customer Owned Banking Code Compliance Committee, Annual report 2018–19 , report, November 2018, p. 55
Insurance Brokers Code of Practice	63% of complaints resolved within 21 days	Insurance Brokers Code of Practice Code Compliance Committee, Our impact: Annual review 2018–19 (PDF 672 KB), report, October 2019, p. 56

73 From the data provided to ASIC in public submissions, we understand that Commonwealth Bank of Australia, Westpac Banking Corporation, Toyota Finance Australia and an ABA regional member bank already complete over 90% of their complaints in under 30 days.

Firms that are not achieving 30 days

74 Other firms have submitted to ASIC that they currently take longer to resolve complaints. For example:

- (a) the Australian Collectors and Debt Buyers Association reported that 65% of complaints are completed within 30 days;
- (b) the Association of Financial Advisers reported that its members who were surveyed completed only 8.4% of complaints within 30 days but 89% within 45 days; and
- (c) National Australia Bank submitted that it completes only 2.5% of its financial advice complaints within 30 days, but completes 99% of these within 45 days.

75 We consider that, in some cases, firms have been anchoring their resolution of complaints to the 45-day maximum timeframe that applied in [RG 165](#). The data cannot therefore be reliably interpreted as evidence of the time needed to resolve all of these complaints.

76 For example, in the case of financial advice complaints, we are of the view that financial advice firms need to improve underlying processes and record-keeping practices. This will enable them to achieve consistently lower IDR response timeframes. This view has been particularly informed by evidence obtained during our IDR on-site visits. Some individual financial advice complaints are complex in nature; these should be treated as a case where it is reasonable for the firm to seek to delay resolution: see paragraph 84.

Potential resourcing implications

- 77 The businesses to which RG 271 will apply are essentially the same as the approximately 10,500 AFCA members with IDR obligations.
- Note: This figure does not include credit representatives, who are AFCA members but do not have mandatory IDR obligations.
- 78 Although we do not yet have data on IDR complaint numbers, the number of IDR complaints that are escalated to AFCA can be used as a relative proxy. For example, of the 10,497 AFCA members with IDR obligations, last year:
- (a) 9882 members (94%) were the subject of less than five complaints to AFCA; and
 - (b) 8,691 members (83%) had no complaints made about them to AFCA.
- 79 The vast majority of financial firms are therefore likely to have very low complaint numbers and, in our view, will not require material additional resourcing to respond to these complaint volumes more quickly. Many of the [RG 165](#) requirements (e.g. to provide written reasons for decisions) have been in place for 20 years. As noted, [RG 271](#) confirms that if a complaint is individually complex, or if circumstances beyond the firm's control are causing delays, a delay notification may be provided to the complainant. For more information, see paragraphs 80–84 and RG 271.65–RG 271.68.

ASIC's response

We have considered all the feedback and data provided and decided that it is now time for the maximum IDR timeframe for non-superannuation complaints to be reduced to 30 calendar days. We consider that with adequate investment in process and staffing levels, this timeframe should be achievable in the vast majority of complaints.

Critically, in cases where the firm has 'no reasonable opportunity' to respond to the complainant within 30 calendar days, we have introduced exceptions (subject to delay notifications): see paragraphs 80–84.

In RG 271 we have set out the maximum timeframes for firms to provide an IDR response, as summarised in Table 2.

Table 2: Maximum IDR timeframes for financial firms to provide an IDR response

Complaint type	Maximum timeframes for IDR response
Standard complaints	No later than 30 calendar days after receiving the complaint.
Traditional trustee complaints	No later than 45 calendar days after receiving the complaint.

Complaint type	Maximum timeframes for IDR response
Superannuation trustee complaints, except for complaints about death benefit distributions	No later than 45 calendar days after receiving the complaint.
Complaints about death benefit distributions	No later than 90 calendar days after the expiry of the 28 calendar day period for objecting to a proposed death benefit distribution referred to in s1056(a) of the Corporations Act.
Credit-related complaints involving default notices	No later than 21 calendar days after receiving the complaint.
Credit-related complaints involving hardship notices or requests to postpone enforcement proceedings	<p>No later than 21 calendar days after receiving the complaint. Exceptions apply if the credit provider or lessor does not have sufficient information to make a decision, or if they reach an agreement with the complainant.</p> <p>Insufficient information</p> <p>If the credit provider or lessor does not have sufficient information about a hardship notice to make a decision, they must request the information no later than 21 calendar days after receiving the complaint. The complainant must provide the information within 21 calendar days of receiving the request.</p> <p>Once the credit provider or lessor has received the requested information, the credit provider has a further 21 calendar days to provide an IDR response.</p> <p>If the credit provider or lessor does not receive the requested information within 21 calendar days of requesting the information, the credit provider or lessor has 7 calendar days to provide an IDR response.</p> <p>Agreement reached</p> <p>If agreement is reached about a hardship notice or request to postpone enforcement proceedings, the credit provider or lessor has 30 calendar days to confirm the terms or conditions in writing.</p>

Complaint management delays

- 80 In [RG 165](#), if a financial firm was unable to respond to a complaint within the prescribed timeframe, the firm was required to:
- inform the complainant or disputant of the reasons for the delay;
 - advise the complainant or disputant of their right to complain to EDR; and
 - provide the complainant or disputant with the name and contact details of the relevant EDR scheme to which they can complain.

Note: These three requirements have been defined as 'delay notifications' in [RG 271](#).

- 81 We were concerned that there was an overreliance by firms on these delay notifications that was undermining the prescribed IDR timeframes. We observed some teams within an entity issuing a high proportion of delay notification letters in lieu of final response letters. In CP 311 we proposed

that firms should only be able to issue IDR delay notifications (and therefore take longer than the prescribed timeframes) in ‘exceptional circumstances’. This was intended to ensure that we could appropriately enforce the IDR timeframes, while acknowledging that in some circumstances firms will genuinely need more time to provide an appropriate response.

- 82 Both industry and consumer respondents asked for further guidance on the meaning of ‘exceptional circumstances’. Submissions from consumer groups favoured a narrow interpretation, while industry submissions favoured a much broader set of circumstances in which firms could send IDR delay notifications.
- 83 Some consumer respondents favoured narrower ‘exceptional circumstances’. These respondents largely considered that this type of exception had in practice been applied too broadly in industry codes, and had resulted in firms systematically exceeding the stipulated timeframes.
- 84 Some industry respondents argued that exceptional circumstances should be available to all complaints related to certain types of product or service complaints (e.g. all complaints related to financial advice and all complaints related to responsible lending).

ASIC’s response

In [RG 271](#) we have moved away from the language of ‘exceptional circumstances’. We have instead said that financial firms may take longer than 30 calendar days (and 45 calendar days for superannuation complaints) in instances where there is *no reasonable opportunity* for the financial firm to provide the IDR response within the relevant maximum IDR timeframe because:

- the resolution of the individual complaint is particularly complex; and/or
- circumstances beyond the financial firm’s control are causing complaint management delays (see RG 271.65–RG 271.68).

This amended language aims to address industry concerns that there are circumstances that are not exceptional where a firm will have no reasonable opportunity to respond within the IDR timeframes.

Based on a thorough review of submissions and the issues raised during consultation roundtables, we consider these categories provide an appropriate safeguard for when financial firms reasonably need more time to resolve a consumer complaint.

We do not accept that complaints related to particular types of product or service should always be considered to be particularly complex. Even the most complex products or services will give rise to some complaints that are simple; financial firms should respond to these complaints as quickly as possible and certainly within IDR timeframes.

Customer advocates

- 85 In CP 311 we proposed that customer advocates should be subject to IDR requirements (including meeting the maximum IDR timeframes and minimum content requirements for IDR responses) if they:
- (a) act as an escalation point for unresolved consumer complaints; or
 - (b) have a formal role in making decisions on individual complaints.
- 86 In these models, the complainant self-selects (based on communication from the financial firm) to have their complaint considered by the customer advocate rather than escalate it to AFCA. These self-selected complaints are not of themselves indicative or representative of systemic or high-priority consumer complaints.
- 87 Most of the submissions agreed that customer advocates should be subject to IDR timeframes under the draft RG 165.
- 88 A number of banking submissions stated that some existing customer advocate models would be unable to continue the role of reviewing consumer-escalated IDR complaints if they were required to comply with the maximum IDR timeframes. These submissions often argued that the experience gained by the customer advocate when reviewing IDR decisions provides valuable insights and credibility that then allow them to drive consumer-centric change within the organisation.
- 89 Most firms with a customer advocate noted that the customer advocate would rarely consider a complaint that had not already received an IDR response. Some of these respondents argued that where a complainant has already been provided with an IDR response, the regulated IDR process has been completed and the [RG 165](#) requirements should no longer apply.
- 90 During our IDR on-site visits we observed several entities where the volume of complaints escalated to customer advocates was hindering their broader capacity to conduct thematic reviews or directly drive improvements to IDR processes. We also saw concerning examples of failures in the feedback loop from customer advocates to the IDR function. Where this feedback loop fails, the customer advocate cannot be said to be effectively changing IDR culture or performance. One entity we reviewed has since removed considering escalated IDR complaints from their customer advocates' responsibilities, and instead refocused their role on conducting thematic reviews of closed IDR files and other systemic issues across the firm.
- 91 Some firms argued that the high rates at which their customer advocates overturned IDR decisions (reported as being in a range from 50% to 70%) is evidence of the customer advocate's benefit to customers. In our view, a high overturn rate could equally indicate deficiencies in the IDR systems of those firms. There may be other opportunities for the customer advocates to

be directly improving IDR performance rather than relying on insights from self-selected escalated complaints.

- 92 A number of submissions referred to the ABA-commissioned [Customer advocate initiative: Post implementation review](#), and suggested that we should not amend the regulatory settings until the findings of this review are considered and the recommendations implemented.

Note: In its submission to [CP 311](#), the ABA stated that the industry had unanimously agreed to implement the improvements recommended by Deloitte over 18 months, and that the ABA would be conducting a further review of the customer advocate role within 18–24 months.

- 93 Consumer representatives provided mixed responses on the current function of customer advocates. They reported positive experiences with individual customer advocates, particularly where the nature of the complaint was such that AFCA would not be able to provide an appropriate resolution. However, a number of consumer representatives argued that if IDR teams were properly resourced and empowered to make fair and effective decisions, then the role of the customer advocate in reviewing IDR decisions would not be needed. Consumer representatives considered that it would be strategically preferable for customer advocates to contribute their ‘consumer voice’ on issues like product design, remediation programs and systemic issues identification.
- 94 One submission proposed that when the financial firm has provided an IDR response, the customer advocate could have a further 21 days to review the decision. This would be in lieu of the refer back period at AFCA.

ASIC’s response

We are concerned that customer advocate models may delay consumers’ access to AFCA. We are also concerned that consumers may interpret the customer advocate as an additional or mandatory step *before* they can make a complaint to AFCA. In our view, it is very difficult for consumers to make an informed decision about the relative benefits of a customer advocate’s further review versus taking their complaint directly to AFCA. There are no specific standards or requirements in [RG 271](#) on how customer advocates should be established or operate.

An internal audit report at an entity identified that, of 82 open customer advocate complaint reviews, 25 (30%) of these had been open for more than 90 calendar days

We consider that the underlying intention of the dispute resolution framework is that an unresolved complaint will make a timely transition from IDR to AFCA. We are concerned that the customer advocate model will undermine this intention by creating a delay between the two steps.

We have therefore clarified that when a customer advocate reviews a complaint following an IDR response, the total time

spent dealing with the complaint must not exceed the relevant maximum IDR timeframe. The total time includes both the IDR process and the customer advocate review: see RG 271.110.

We recognise that some firms, particularly in the banking sector, have made significant investments in their customer advocate function. We strongly support these firms retaining these resources. Firms should consider the merit of the customer advocate role focusing on:

- increasing the underlying performance and quality of IDR systems;
- supporting vulnerable consumers;
- improving the identification and handling of systemic issues; and
- assisting in consumer-centric culture change within their firms.

We also strongly support the establishment of effective feedback loops between customer advocates and the relevant business units. To be effective, customer advocates need the right degree organisational support and appropriate reporting lines.

D Systemic issues

Key points

In CP 311 we proposed updates to the requirements for firms to identify systemic issues from complaints handled through their IDR process and escalate these as appropriate.

These updates generally focused on:

- the role of boards, executive committees and financial firm owners;
- the role of frontline staff; and
- analysis of complaints metrics and data.

Most submissions on the proposed systemic issues requirements focused on the role of boards and frontline staff. The data analysis requirements were supported by most respondents.

- 95 Complaints are a key risk indicator for systemic issues. Proactively identifying and managing systemic issues can reduce the likelihood and costs of further complaints. There is a direct link between a failure by a firm to manage systemic issues that are identified from consumer complaints and downstream remediation costs. This is a clear example where issues once considered to be non-financial risks have significant direct financial consequences for firms.
- 96 The Australian Prudential Regulation Authority’s 2018 [Prudential Inquiry into the Commonwealth Bank of Australia](#) called out failures in the identification, escalation and management of systemic issues. Relevantly, the prudential inquiry recommended that the bank:
- (a) improve its processes for monitoring issues raised by internal audit, regulators and other sources, and end any organisational tolerance for untimely or ineffective resolution of significant and outstanding matters of concern;
 - (b) report on customer complaints to the board and executive committee, in line with the practices of peer organisations; and
 - (c) prioritise investment in the identification of systemic issues from customer complaints.
- 97 The systemic issues requirements in draft RG 165 were broadly supported in submissions, on the basis that they would lead to more systemic issues being identified and escalated sooner.

Requirements for boards and executive committees

- 98 In CP 311 we proposed to require:
- (a) boards to set clear accountabilities for complaints handling functions, including setting thresholds for and processes around identifying systemic issues that arise from consumer complaints; and
 - (b) reports to the board and executive committees to include metrics and analysis of consumer complaints including about any systemic issues that arise out of those complaints.
- 99 These requirements were generally supported in submissions. However, some respondents were of the view that we were prescribing a role for boards that was more appropriate for the executive level.
- 100 The Royal Commission highlighted significant shortcomings in the corporate governance practices of many large financial services firms, including in relation to the oversight and management of non-financial risk. [Report 631](#) *Director and officer oversight of non-financial risk* (REP 631), published in October 2019, set out significant shortcomings in corporate governance practices in large listed entities. In particular, it highlighted that oversight and management of non-financial risks has generally not received sufficient attention until recent times—in stark contrast to the focus on financial risk and financial returns.
- 101 Notably, the Australian Institute of Company Directors (AICD) were broadly supportive of the requirements for boards to set clear accountabilities and thresholds for identifying systemic issues. The AICD also supported the requirement for board reports to include metrics about systemic issues arising from complaints, with the caveat that the quality rather than the quantity of these metrics will be crucial.

ASIC's response

We remain of the view that boards must set the accountabilities for complaints handling and the management of systemic issues.

[RG 271](#) also requires financial firms that provide reports to boards or executive committees to include metrics and analysis of complaints and systemic issues.

Requirements for frontline staff

- 102 In CP 311 we proposed that financial firms must identify possible systemic issues from complaints by:
- (a) requiring staff who record new complaints and/or manage complaints to consider whether each complaint involves potentially systemic issues; and
 - (b) ensuring that staff who handle complaints promptly escalate possible systemic issues they identify to appropriate areas for action.
- 103 Our IDR on-site visits highlighted serious failures in systemic issues processes at the frontline and within specialist IDR teams. Within some banks, the systems used by IDR staff did not even allow the staff to flag complaints that raise possible systemic issues.
- 104 A number of industry submissions did not agree with the requirement for frontline staff to have a role in identifying systemic issues. These respondents argued that frontline staff do not have the necessary training or information to accurately identify systemic issues from complaints. They argued that this would likely lead to a large number of false positives, as frontline staff would tend to apply an overly broad definition of systemic issue.
- 105 Some industry submissions suggested that centralised analysis of complaints data would be a more appropriate method of identifying systemic issues.

ASIC's response

While we view data analysis as an important mechanism for identifying systemic issues, we consider that staff dealing with individual complaints also play an important role.

In our view, frontline staff and staff in specialist IDR teams provide a valuable source of information on systemic issues that should not be ignored. The ability of all staff dealing with complaints to at least 'flag' potential systemic issues allows for the matter to be subject to further analysis within the firm.

[RG 271](#) requires firms to:

- encourage and enable staff to escalate possible systemic issues they identify from individual complaints;
- regularly analyse complaint data sets to identify systemic issues; and
- promptly escalate possible systemic issues to appropriate areas within the firm for investigation and action.

E Enforceability and transitional arrangements

Key points

In CP 311 we proposed to clarify the enforceability of draft RG 165 through a legislative instrument. Since the introduction of civil penalties for breaches of the IDR requirements (see *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*), the importance of clear standards and requirements has increased.

In light of the heightened consequences, a number of industry respondents asked for more guidance around all of the requirements in draft RG 165. This included what the threshold for breach reporting would be for breaches of IDR requirements.

While we proposed to clarify the core IDR requirements that would be enforceable, consumer respondents generally argued that all of draft RG 165 should be enforceable.

Enforceability of the draft RG 165 requirements

- 106 In CP 311 we said that once the policy settings were finalised, we would create a legislative instrument that would have the effect of making the ‘core requirements’ of draft RG 165 enforceable
- 107 A number of respondents queried which of the draft RG 165 requirements would be considered to be ‘core’. Consumer representatives generally argued that all of draft RG 165 (as set out in the consultation version) should be enforceable. Some industry respondents asked for more clarity on which requirements in draft RG 165 would be enforceable, and the thresholds for a breach to become enforceable.

ASIC’s response

Since March 2019, contravention of both s912A of the Corporations Act and s47 of the *National Consumer Credit Protection Act 2009* have attracted a pecuniary penalty. As the legislative IDR requirements require ASIC to ‘make or approve’ the IDR standards or requirements in these provisions, RG 271 must be explicit about what those standards and requirements are to ensure that financial firms are clear about their legal obligations.

We have therefore amended both the language and the formatting in [RG 271](#) (e.g. using text borders and headers that identify the relevant paragraphs) to clearly highlight the standards and requirements that are enforceable. These are also set out in [ASIC Corporations, Credit and Superannuation \(Internal Dispute](#)

[Resolution\) Instrument 2020/98](#), which we have published alongside RG 271.

The parts of RG 271 that we have not highlighted as enforceable paragraphs, or set out in the instrument, are guidance to help financial firms comply with their legal obligations.

Breach reporting

108 A number of submissions requested more clarity about when a breach of a draft RG 165 requirement would require a firm to make a breach report to ASIC under s912D of the Corporations Act.

109 Some industry submissions were concerned that a breach report would be required for *any* breach of the IDR standards and requirements, regardless of materiality or significance.

ASIC's response

We have provided guidance on breach reporting in [Regulatory Guide 78 Breach reporting by AFS licensees](#) (RG 78). We consider this guidance to be relevant to breach reporting obligations under RG 271.

Under the current law, Australian financial services (AFS) licensees must give ASIC a written report as soon as practicable, and in any case within 10 business days, after becoming aware of a breach (or likely breach) if:

- they breach or are likely to breach any of the specified obligations; and
- that breach (or likely breach) is 'significant'.

AFS licensees must have regard to a number of factors (listed in s912D(1)(b) of the Corporations Act) when considering whether a likely breach is significant.

RG 78.15 states that 'Whether a breach (or likely breach) is significant or not will depend on the individual circumstances of the breach. We consider that the nature, scale and complexity of your financial services business might also affect whether a particular breach is significant or not. You will need to decide whether a breach (or likely breach) is significant and thus reportable. When you are not sure whether a breach (or likely breach) is significant, we encourage you to report the breach.'

On 31 January 2020, Treasury released exposure draft legislation introducing new breach reporting requirements for AFS licensees. The exposure draft also introduces comparable requirements for Australian credit licensees, who are currently only subject to the requirement to provide annual compliance certificates. If implemented, these amendments will expand the situations that need to be reported to ASIC. We will also be required to publish data on reports received from licensees.

Transitional arrangements

- 110 In CP 311 we proposed specific transition periods for implementing the various updates to draft RG 165: see Table 3. We also proposed that any updates without a transition period would commence on the date that the final guide was published.

Table 3: Transition periods proposed in CP 311

Requirement	Reference in draft RG 165	Proposed application date in draft RG 165
To provide an IDR response to a complainant within reduced maximum IDR timeframes	RG 165.78– RG 165.117	31 March 2020
To record all complaints received by the financial firm, including those that have been resolved immediately	RG 165.57	30 June 2020
To assign a unique identifier for all complaints received by the financial firm	RG 165.58	30 June 2020
To record prescribed complaint data for every complaint received by the firm	RG 165.61– RG 165.62	30 June 2020
To report IDR data to ASIC in accordance with ASIC's data reporting requirements	RG 165.66	30 June 2021

Note: These proposed timeframes were based on the assumption that all parts of draft RG 165 would be published in December 2019.

- 111 We received a significant amount of feedback that no updates to our policy should commence on the day of publication. Respondents also submitted that efforts to implement the changes might be delayed by the large amount of other regulatory changes occurring at the same time and the likely high demand for staff with complaints-handling skills.

ASIC's response

We agree that a transition period should apply to [RG 271](#). Having considered submissions, and our experiences from the IDR on-site visits, we have extended the commencement of all of the RG 271 requirements until 5 October 2021. This also aligns with the commencement of the design and distribution obligations for those financial firms that are also subject to them.

F Other matters raised during consultation

Key points

We will undertake further targeted consultation on the data reporting framework in 2020.

We observed at our IDR on-site visits that the ability of IDR staff to resolve complaints efficiently and fairly can be impeded by:

- inappropriate delegations; and/or
- IDR staff not having the appropriate authority to resolve complaints.

This can directly affect a firm's ability to comply with regulatory timeframes if complaints are 'bounced' between business units and IDR staff.

In [RG 271](#) we have required that firms must have appropriate financial delegations in place to facilitate the fair and efficient resolution of complaints.

Data reporting framework

- 112 We received strong feedback from both industry and consumer representatives that more consultation on the data reporting framework was needed. Respondents emphasised the need to ensure that the framework is both designed and implemented in a way that is cost effective and fit for purpose.

ASIC's response

In September 2019, we confirmed that we would undertake further targeted consultation in 2020. This will take place once [RG 271](#) is published.

Appropriate delegations

- 113 In CP 311 we did not consult on requirements regarding appropriate financial delegation and empowerment of complaints management staff. However, this issue came to our attention during IDR on-site visits. We observed instances where the ability of IDR staff to efficiently and fairly resolve complaints was clearly hindered by inappropriate delegations. We raised this as an issue during stakeholder roundtables, and both consumer and AFCA representatives confirmed that they had they had similar concerns as a result of their advocacy and EDR work.

114 During the roundtables we proposed that, under the updated IDR requirements, financial firms must give their complaints handling staff appropriate delegations, so that they can resolve complaints in a fair and efficient manner.

115 Industry respondents generally agreed with this requirement, but were concerned that ASIC should not be prescriptive about what levels of delegations IDR staff should have.

ASIC's response

We have set high-level requirements in [RG 271](#) that firms must meet. We have required firms to:

- provide relevant staff with appropriate authority to be able to determine and resolve complaints; and
- have appropriate financial delegations in place for paying amounts to complainants.

Firms must ensure that these authorities and financial delegations facilitate the fair and efficient resolution of complaints: see [RG 271.147](#).

It will be up to financial firms to determine appropriate delegations based on their business and complaints profile.

Appendix: List of non-confidential respondents

- AIG Australia
- Ali Group
- ANZ
- American Express
- AMP
- Association of Financial Advisers
- Association of Securities and Derivatives Advisers of Australia
- Association of Superannuation Funds of Australia
- Australian Banking Association
- Australian Collectors and Debt Buyers Association
- Australian Finance Group
- Australian Finance Industry Association
- Australian Financial Complaints Authority
- Australian Financial Markets Association
- Australian Institute of Company Directors
- Australian Institute of Superannuation Trustees
- Australia Retail OTC Derivatives Association
- Australian Small Business and Family Enterprise Ombudsman
- Australian Timeshare and Holiday Ownership Council
- Banking Code Compliance Committee
- Care Inc Financial Counselling Service/Consumer Law Centre (Joint Submission)
- Chris Rutherford
- Citigroup
- Commonwealth Bank of Australia
- Consumer Action Law Centre
- Consumer Credit Law Centre SA
- Consumer Credit Legal Service WA
- Corporate Superannuation Association
- Customer Owned Banking Association
- Finance Brokers Association of Australia
- Finance Industry Delegation
- Financial Counselling Australia
- Financial Planning Association
- Financial Rights Legal Centre
- Financial Services Council
- GS1 Australia
- Industry Super Australia
- Insurance Council of Australia
- Law Council of Australia
- Legal Aid NSW
- Legal Aid Queensland
- Mastercard
- Maurice Blackburn
- MDA National
- MIGA
- Mine Super
- Min-it Software/Financiers Association Australia (Joint Submission)
- Mortgage and Finance Association of Australia
- National Australia Bank
- National Credit providers Association
- National Insurance Brokers Association
- Perpetual
- Prospa
- P&N Bank
- RACV
- RateSetter
- Stockbrokers and Financial Advisers Association
- Super Consumers Australia
- Tasmanian Small Business Council
- Toyota Finance Australia Limited
- Westpac Group