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2 March 2021

Dear Ms Fairbairn

CONSULTATION PAPER 335 CONSUMER REMEDIATION: UPDATE TO REGULATORY GUIDE 256 (CONSULTATION)

The Australian Finance Industry Association (AFIA) appreciates the opportunity to respond to the Consultation.

As context to this submission, AFIA is a leading advocate for the Australian financial services industry. We support¹ our members to finance Australia's future. We believe that our industry can best support Australia's economy by promoting choice in and access to consumer and business finance, driving competition and innovation in financial services, and supporting greater financial, and therefore social, participation across our community.

AFIA represents over 100 providers of consumer, commercial and wholesale finance across Australia. These banks, finance companies, and fleet and car rental providers, and fintechs provide traditional and more specialised finance to help businesses mobilise working capital, cashflow and investment. They are also at the forefront of financial innovation in consumer finance.

KEY RECOMMENDATION: PROVIDE CLEAR CASE STUDIES WHERE THRESHOLDS ARE REMOVED

We welcome ASIC's development of regulatory guidance on remediation for all licensees.

This Consultation seeks information on individual licensee's remediation experience, including challenges, solutions instituted and consumer outcomes. To that end, we note that our members may separately provide a submission to this Consultation, including to respond to the specific questions within Consultation Paper 335 (CP 335).

¹ [Australian Finance Industry Association \(afia.asn.au\)](http://www.afia.asn.au)

We understand that this Consultation is the first round of a two-part process. We make a targeted recommendation in this letter, and will make a more fulsome submission in the second stage of the consultation process.

We note that there are two significant changes on which ASIC is seeking feedback in relation to the current RG 256:

1. Replacing the seven-year minimum period with guidance that the relevant review period for a remediation should start on the date a licensee reasonably suspects a failure first caused loss to a consumer.²
2. The proposal to remove the low-value threshold (of \$20) and instead provide guidance that:
 - (a) the starting position should be to return all consumers, as closely as possible, to the position they would have otherwise been, in regardless of value,
 - (b) it is up to licensees to decide how they will treat their unresponsive or lost consumers and, if applying a compensation threshold, what low value is fair and appropriate in line with their obligations, and
 - (c) if applicable, the reasons for the decision to apply a low value threshold should be well documented and appropriately justified.³

The approach set out by ASIC in CP 335 to remediation is, in our view and on balance, fair, balanced and reasonable. We particularly support the policy approach by ASIC to remediation, that:

- there is no one-size-fits-all approach
- licensees will be able to tailor the guidance and scale the requirements to their remediations.⁴

We understand the removal of these thresholds gives effect to ASIC's approach. It requires licensees to, in essence, consider what is efficient, honest and fair to the consumer in the circumstances and to design its remediation accordingly.

Whilst we agree with ASIC's approach, we want to highlight that the removal of thresholds poses significant practical challenges for licensees. Thresholds are useful, particularly where a complaint is referred to the Australian Financial Complaints Authority (AFCA).

As ASIC would be aware, AFCA is required by legislation to operate, amongst other things, in a way that is fair. The concept of fairness is one that is subjective. Fairness has different meanings for different people, for consumers and for licensees. Whilst parties will seek fairness for themselves in outcomes of individual disputes, licensees are more likely to perceive fairness in rules and consistency.⁵

Our members understand and do support the removal of thresholds to give effect to a principles-based, scalable approach to remediation. Equally, however, our members are concerned that the removal of thresholds, which they find useful as guidance in designing remediation programs, may lead to inconsistent outcomes if complaints in relation to remediation are referred to AFCA.

² <https://download.asic.gov.au/media/5877962/cp335-published-3-december-2020.pdf>: C1Q1

³ <https://download.asic.gov.au/media/5877962/cp335-published-3-december-2020.pdf>: F2Q1

⁴ <https://download.asic.gov.au/media/5877962/cp335-published-3-december-2020.pdf> para 35.

⁵ <http://www.austlii.edu.au/au/journals/UNSWLJ/2019/13.html>

We therefore recommend in its revised guidance, ASIC supplement the removal of prescriptive thresholds by providing clear examples and case studies of when it is and when it is not appropriate to use thresholds. These examples will be helpful and useful to licensees in their remediation design, and will also be helpful to both licensees and AFCA in dealing with complaints with regards to remediation.

For example, in addition to Case Study 6, we suggest a further case study (which is a real example of when a licensee has applied a low-value threshold to its remediation program) as follows:

Firm A discovered that due to a system-wide issue, there was a small error in the calculation of interest which resulted in a cohort of customers being overcharged interest at an average of 1-2 cents each. The cumulative amount was around \$2000. Firm A decided that, on balance, it was not practical or prudent to remediate customers given the low value individual amounts. Firm A instead made a donation of the \$2000 to a charity.

AFIA has previously assisted ASIC in developing regulatory guidance through providing real-life case studies. We have done so through roundtables between AFIA, its members and ASIC (for example in ASIC's consultation on the review of Regulatory Guide 209).

If it is helpful to ASIC, AFIA and our members would be happy to participate in a similar roundtable in relation to the development of the revised RG 256 and to contribute case studies.

CLOSING COMMENTS

A continued focus on improving efficiency, competition and innovation within the finance sector will support Australia's economic recovery. If implemented, we believe our recommendations will:

- promote access and choice to consumer and business finance
- drive competition and innovation in Australia's financial services industry
- support economic and social participation across our community.

We look forward to contributing to the second stage of ASIC's Consultation. Should you wish to discuss our submission or require additional information, please contact me or _____ at _____ or _____.

Yours sincerely

Executive Director, Policy & Risk Management

ATTACHMENT A: AFIA BACKGROUND

The Australian Finance Industry Association (AFIA) is the voice of a diverse Australian finance industry.

AFIA represents over 100 providers of consumer, commercial and wholesale finance in Australia, which includes:

- Major, regional and mutual/community owned banks.
- Providers of consumer finance, including home loans, personal loans, consumer leases, credit cards, buy now pay later services, and debt purchasers.
- Providers of land finance, including residential and commercial mortgages and bridging finance.
- Equipment financiers, including commercial equipment financing ranging from agri-equipment to small ticket equipment financing.
- Motor vehicle financiers, including consumer motor finance, novated motor finance, small business motor finance and heavy vehicle finance.
- Fleet leasing and car rental providers.
- Providers of commercial finance, including secured and unsecured loans and working capital finance to businesses, including small businesses.

AFIA's members range from ASX-listed public companies through to small businesses providing finance, which operate via a range of distribution channels, including through 'bricks and mortar' premises (physical branches and other outlets), via intermediaries (including finance brokers, dealerships, retail suppliers), and through online access or platforms (traditional financial institutions and fintechs).

AFIA's members collectively operate across all states and territories in Australia and provide finance to customers of all demographics from high to low-income earners and to commercial entities ranging from sole traders, partnerships and across the corporate sector in Australia.

AFIA's members provide a broad range of products and services across consumer and commercial finance, a snapshot of these include:

- Consumer: home loans, personal unsecured loans, revolving products (including credit cards and interest free products coupled with lines of credit), personal secured loans (secured by land or personal property); consumer leases of household assets (including household goods, electrical/IT devices or cars) and buy-now, pay later services.
- Commercial: land, asset or equipment finance (finance/operating lease, secured loan or hire-purchase agreement or novated leases); business finance and working capital solutions (secured loans, online unsecured loans; debtor and invoice finance; insurance premium funding; trade finance; overdrafts; commercial credit cards), together with more sophisticated and complex finance solutions.

For further information about AFIA, please see [here](#).