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Dear Ms Fairbairn

Feedback on Consultation Paper 335: Consumer remediation: Update to RG 256

As a leading professional services firm, KPMG Australia is committed to meeting the requirements of all our stakeholders – not only the organisations we audit and advise, but also employees, governments, regulators and the wider community. We strive to contribute to debate that seeks to develop a strong and prosperous economy and welcome the opportunity to provide a submission to ASIC's Consultation Paper 335 *Customer Remediation: Update to RG 256* (the Consultation Paper).

KPMG has been working with a number of Australian Financial Services (AFS) licensees to remediate customers across consumer, retail, business, institutional banking, insurance and financial advice and we are pleased to be able to share our learnings from these engagements.

The feedback reflected in this response provides KPMG's practical experience assisting our clients who are AFS licensees executing remediations from identification through to payment. We have a thorough understanding of licensee systems, data, issues and risk incidents and the challenges experienced in remediation.

Our comments included in our response highlight where CP335 would benefit from clearer, and in some cases more prescriptive, guidance on appropriate and acceptable treatments to mitigate the cost and uncertainty caused by regulatory guidance that is unclear. This would also promote consistency across the industry for customer outcomes. Case studies which have been provided to assist in the interpretation of the guidance are very helpful and ASIC should be commended for their inclusion.



Where ASIC provides guidance, which is not prescriptive to enable flexibility in interpretation, in practice we have observed licensees experiencing difficulty in reaching a consensus on the appropriate remediation approach. This has resulted in delays to remediation programs which is both costly for licensees and is not beneficial for efficiently getting the money back into the hands of customers.

We would be happy to speak with you to provide any clarification, as required.

Yours sincerely,

Partner
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ASIC Consultation Paper 335: Consumer remediation: Update to RG 256- KPMG Comment

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<p>Remit of RG256: <i>Client Review and remediation conducted by advice licensees</i></p>	<p>Although RG256 is named for ‘advice licensees’, the regulatory guidance often considered in the remediation of other financial products.</p> <p>We commend ASIC for including case studies in CP335 relating to products outside of advice, and we suggest that the revised standard capture the remediation of other financial products, and be named as such, not limited to the provision of financial advice.</p> <p>KPMG (and other consultants) and our clients deal with a large number of products and industries where errors are made which are not connected with “advice”, including but not limited to:</p> <ul style="list-style-type: none"> — Unit pricing (governed by ASIC and APRA Unit Pricing Guide to Good Practice) — Life insurance e.g. premium/policy fee over charge, incorrect sums insured, eligibility, reinstatement, cancellation, etc etc) — General insurance – e.g. premiums, policy discounts, excesses, etc etc. — Investment, including superannation product fees (not advice related) — Incorrect investment instruction (not relating to advice) — Incorrect annual tax statement — Incorrect distributions (e.g. distributions not consistent with legal/constituent documents or tax law). — Bank products (both retail and institutional): <ul style="list-style-type: none"> — Interest charges — Term deposit / bank account interest credits — Account fees — Discounts/bonuses — Incorrect Superannuation Guarantee (SG) contribution — SG contribution to wrong fund — Incorrect wage payment



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<p>Providing more prescriptive and detailed guidance in RG256</p>	<p>KPMG has contacted ASIC previously on the extent to which principles and other “harder” guidance contained in RG 256 is applicable/relevant to errors and issues other than those involving financial advice (which RG 256 specifically covers).</p> <p>One example is the method/rates for accumulating remediation amounts for time value of money (i.e. RG 256 specifies circumstances in which RBA+6% should be adopted – for other errors should this rate also be adopted? when, and in what circumstances, might it be reasonable to consider adopting an alternative rate and what that alternate rate should be). We believe that providing further clarity on this matter would assist.</p> <p>This is just one issue compared with many other principles and “harder” guidance that RG 256 contains.</p> <p>We are of the view that the overall speed, efficiency and consistency of remediation programs would be improved by ASIC providing further guidance, considerations, rationale. Providing the most and the clearest informaton around ASIC’s expectations to assist licensees.</p> <p>Without this guidance (and as is currently the case) there is less clarity and more time taken to resolve issues than we think is necessary (take the interest rate above as just one example).</p>

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<p>B1 We propose to provide guidance on a two-tiered approach to initiating a remediation:</p> <p>(a) Tier 1—a remediation must be initiated when a licensee has engaged in a misconduct, error or compliance failure that has caused one or more consumers to have suffered potential or actual loss, detriment or disadvantage (loss) as a result; and</p> <p>(b) Tier 2—given the broad nature of the obligations on them, licensees should also turn their mind to whether a remediation is warranted when a failure causing loss has breached certain standards, expectations and/or values.</p> <p>We are proposing that a remediation must be initiated when a licensee has engaged in a misconduct, error or compliance failure relating to a financial service provided by and covered under the licensee’s relevant licence and caused actual or potential consumer loss to ‘one or more’ consumers, rather than a ‘number of consumers’.</p>	<p>B1Q1 Do you agree with our proposed two-tiered approach to initiating remediation? If not, why not?</p> <p>We have some concern with the two-tier approach to determining when to initiate a remediation.</p> <p>Whilst there are benefits to customers in the two tiers, the practicality of defining and determining what constitutes a remediation under Tier 2 would be challenging for licensees and is likely to result in inconsistent practices being undertaken across the industry.</p> <p>We believe Tier 1 sufficiently captures the requirement for when to remediate customers (i.e. customers who have suffered a loss due to misconduct, error or compliance failure), where error is defined in paragraph 29 as <i>“the actual outcome of a business process differs from the promised outcome because of inadequate, non-existent or failed processes, people, systems or external events; and conduct (such as system, processing or manual error) results in a contractual failing”</i>.</p> <p>For our concerns relating to Tier 2 refer to B1Q2.</p> <p>B1Q2 Are there any practical problems associated with this approach? Please give details.</p> <p>With the current wording of Tier 2, there may be a wide scope of variation in remediation inclusions and exclusions depending on interpretation. For example, the practical problem associated with Tier 2 is in the definition of <i>“standards, expectations and/or values”</i>. In particular:</p> <ul style="list-style-type: none"> - the source of these standards is unclear; - whose expectations? If community expectations, these may vary widely; and - whose values? Values differ between licensees.

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	<p>Furthermore, customer expectations and values can differ, making it difficult for the licensee to determine which customers' expectations or values are more applicable and which take precedent. If the licensee was to make this determination it would require judgement, may result in inconsistencies and inefficiencies and may lead to a group of customers being treated unfairly.</p> <p>If this is to be retained it would require more specific guidance to be successful in practice.</p> <p><i>B1Q3 What is your current policy and procedure for initiating a remediation? How do you describe the standard of conduct required in your organisation for initiating a remediation?</i></p> <p>Our response is based on assisting AFS licensees.</p> <p>ASIC may wish to include a principles-based criteria where investigation is required. In particular, one criteria we have adopted in advising our clients in the event of an identified system/ process/ control failure/weakness, is that they should undertake sufficient investigations and analysis into the matter to have reasonable confidence that any and all errors (i.e. that may have caused a financial damage to a customer) have been identified (and will ultimately be remediated).</p> <p>We acknowledge that "reasonable confidence" (or any other such similar term expressing probability) involves judgement, industry expertise and skill. "Reasonable confidence" involves licensees considering ASIC's expectations, industry practice, consumer and the Board's attitudes (and doing the minimum of what is required to meet all of these) on where judgements are required.</p> <p>Nonetheless, in our experience across many remediations we have found it a highly useful process for management (as well as ourselves as advisors) in deciding whether sufficient investigation has been undertaken or whether further analysis is required. Being principles based it is also highly applicable across many different</p>



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<p>C1 We propose to provide guidance that, as a starting point, the relevant period for a remediation should begin on the date a licensee reasonably suspects the failure first caused loss to a consumer.</p>	<p>situations – which is particularly useful given every instance of system/ process/ control failure or weakness is different.</p> <p><i>C1Q1 Do you agree with this proposal? If not, why not?</i></p> <p>We agree with the proposal, however, suggest that ‘reasonably suspects’ be amended to ensure that licensees conduct the required investigation and due diligence to support the starting point of a remediation. Further this should be documented by the licensee.</p> <p>We think the wording could be enhanced (consistent with B1 on process and criteria) by expanding the description to include the process/criteria the licensee should go through.</p> <p>In particular: In the context and the event of a system/ process/ control failure/ weakness, the licensee should undertake sufficient investigations and analysis into the matter to have reasonable confidence in relation to the identification of the starting point of the error (i.e. that may have caused a financial damage to a customer).</p> <p>We acknowledge that “reasonable confidence” (or any other such similar term expressing probability) involves judgement, industry expertise and skill. “Reasonable confidence” involves licensees considering ASIC’s expectations, industry practice, consumer and the Board’s attitudes (and doing the minimum of what is required to meet all of these) on where judgements are required.</p> <p>Being principles based it is also highly applicable across many different situations – which is particularly useful given every instance of system/process/control failure/weakness is different.</p>



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	<p data-bbox="1032 276 2119 339"><i>C1Q2 Are there any practical problems associated with this proposal? Please give details.</i></p> <p data-bbox="1032 376 2119 472">A practical problem likely arises when a licensee determines the date on which they “reasonably suspected the failure first caused loss to a customer” is beyond 7 years’ and the licensee has not legitimately retained the relevant records.</p> <p data-bbox="1032 512 2119 608">While the Consultation Paper indicates that beneficial assumptions may be appropriate in these circumstances, further guidance would assist licensees on how beneficial assumptions should be applied in this case.</p> <p data-bbox="1032 647 2119 711"><i>C1Q3 Are there any other matters that we should consider to help us provide appropriately scalable guidance?</i></p> <p data-bbox="1032 751 2119 879">For background context, we acknowledge that a number of licensees are a conglomerate of businesses acquired over time and as such their internal systems can be diverse and complex. Our experience is that complexity makes remediation efforts challenging in some cases.</p> <p data-bbox="1032 919 1895 951">The systems/data complexity often drives the remediation timeline.</p> <p data-bbox="1032 991 2119 1086">Furthermore, we acknowledge that in many instances employees who detect the issue were not present at the time the issue first occurred, and therefore, they do not have the background information/ history of when or why an issue arose.</p> <p data-bbox="1032 1126 2119 1222">It is therefore important for ASIC’s guidance to elaborate on what ‘reasonable steps’ should be taken to determine when the failure first occurred. This should be documented by the licensee.</p>

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<p>D1 We propose to provide guidance that, overall, licensees should only use assumptions in a remediation if they are beneficial assumptions. In particular, this guidance would cover what a beneficial assumption is and set out what should be considered when using assumptions, including for specific types of assumptions.</p>	<p><i>D1Q1 Do you agree with our proposal for assumptions to be beneficial and that they should satisfy certain considerations? If not, why not?</i></p> <p>Guidance would benefit from clarification that the default position to return the customer back to the position they would have been in, but for the issue.</p> <p>Nearly every step of a remediation program, from when to initiate right through to processing payments, likely requires some form of assumptions and professional judgement.</p> <p>We agree with ASIC’s proposal, as where assumptions are required, they should be beneficial to the customer. Assumptions should be aimed at producing the most accurate and fair outcome and where there is doubt, they should lean towards the benefit of the customer, or be ‘beneficial assumptions’.</p> <p>Beneficial assumptions can be used where there are data limitations, and also by licensees for efficiency gains by taking a commercial approach to expedite remediation.</p> <p>KPMG has observed licensees sometimes over-compensating one customer/ cohort of customers does not mean that other customers/ customer cohorts have to be over-compensated. If ASIC has any concerns or disagreement with this approach in particular circumstances this may be worth clarifying.</p> <p>We think that further detail and explanation, (potentially categorisation of assumptions) is required regarding ASIC’s expectations on this matter. For example, there can be a distinction between “assumptions” for:</p> <ul style="list-style-type: none"> • analysing the direct financial damage/loss from the error during the time the customer held the product/ was given advice; • data or other issues requiring an assumption; • then there are parts of the financial damage/loss which relate to the “counterfactual”, or other factors such as time value of money from the date

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	<p>of the “direct” financial damage/loss (in addition to the direct financial damage/loss). For example, the use of funds, during the period the customer held the product/advice – and possibly if they are no longer a customer – the use of funds after they left the product/advice.</p> <p>These may all involve assumptions.</p> <p>We suggest, as follows, some areas which ASIC could expand upon:</p> <ul style="list-style-type: none"> • Likelihood – how likely is it that the “beneficial” assumption is sufficient (e.g. in what proportion of cases or for how many customers is it estimated that the assumption provides an outcome at least as good as what actually occurred). • Significance – for those customers where the assumption may not be sufficiently generous, what is the potential size of the difference to the actual or potential outcome (both in terms of % and \$). • Group versus individual impacts – in determining “significance” this should be considered for both total customers as well as any individual customer. • Communication and potential for further corrections later – the remediation may involve reaching out to customers to obtain information or otherwise inviting them to contact the licensee if the assumptions are not accurate. <p>We understand and agree with ASIC’s position that if a customer is not happy with a remediation outcome, the licensee puts the onus on the licensee to contact and advise them. Such reliance does not, and should not, enable licensees to adopt aggressive or non-generous assumptions– but it may be a factor in how generous those assumptions may be.</p> <p>Also the nature of the customer, their level of engagement and currency of contact details may be relevant (e.g. institutional or professional investors may be more likely to read and understand such communication).</p>

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	<p>Other considerations – ASIC may have views on other factors to consider e.g. time delay/age of error, etc. It would be good for licensees to be informed of these, if there are any.</p> <p><i>D1Q2 Is it appropriate to use assumptions that result in a partial refund for some affected consumers or that involve a discount for a consumer’s ‘use’ of the product? If not, why not?</i></p> <p>This is not clear in its intent and may conflict with the default principle of returning the customer back to the position they would have been in, but for the issue.</p> <p>With respect to ‘a discount for a consumer’s ‘use’ of the product’, in our experience:</p> <ul style="list-style-type: none"> • where there has been a product that has multiple benefits that should be realised by a customer; and • only some of those benefits have been realized. • <p>Partial compensation may be applicable to return the customer back to the position they would have been in, had the failure not occurred.</p> <p><i>D1Q3 Is it appropriate to use an assumption based on an average (e.g. in calculating loss, using the average premium or the average fees charged over a relevant period)? If not, why not?</i></p> <p>No, we would generally deem averages to be inappropriate. Applying an average would under-compensate those customers where the impact of the issue is above average and therefore would contradict the ‘beneficial assumptions’.</p> <p>In our experience, licensees compensate each customer based on each individual customer’s circumstances (i.e. in ASIC’s example referring to the actual premiums paid or actual fees charged to each customer) not based on averages, and consistent with the intent to return each customer back to the position they would have been in, but for the issue.</p>

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	<p>Where a customer's actual information is not available, beneficial assumptions should be made. To be beneficial, the assumption would generally be the 'best of' or highest rate/ fee/ premium to compensate the customer, not via an average.</p> <p><i>D1Q4 Have you used an assumptions based approach in remediations? Please provide details, including evidence on how the assumptions benefited the consumer and if you have used an average that resulted in a good consumer outcome.</i></p> <p>Yes we have used assumptions in supporting our clients' remediations. Most of the remediations we have supported have involved a combination of actual client information/data and assumptions where data was not readily available.</p> <p>For example, we are aware of the following assumptions being made in remediation programs where insufficient information was available:</p> <ul style="list-style-type: none"> • It was unclear where customers had already been refunded in the complaints process, so an assumption was made that no customer had already been compensated, so all impacted customers were compensated; • It was unclear whether a customer had received some of the benefits from a marketing package, so an assumption was made that no customer had received the benefits and all customers were compensated for the cost of the package; • An assumption of the investment option that a customer was in while they were a customer, during the period of the error (for determining interest on the error/overcharged fee up to the date they stopped being a customer). • An assumption of how the customer would have used the proceeds of an overcharge (after they stopped being a customer - for determining interest on the error/overcharged fee up after the date they stopped being a customer).



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<p>D2 We propose that licensees should apply beneficial assumptions if they need to make up for absent records, especially if absent records may be considered a breach of their recordkeeping obligations.</p>	<p>In relation to averages, as noted in D1Q3, we would generally deem averages inappropriate.</p> <p><i>D2Q1 Do you agree with our proposal that beneficial assumptions should be used to make up for absent records? If not, why not?</i></p> <p>Yes. We agree with this proposal, however as noted in our feedback on D1Q1 and C1Q2, further guidance (with examples) would be required on how this is to be applied.</p> <p>Our experience is that, if data is absent, licensees attempt, through best endeavours, to determine which customers have been impacted and the quantum of the impact.</p> <p>Guidance would assist licensees in making assumptions where:</p> <ul style="list-style-type: none"> • No data is available, for example due to a system change or purge; or • Where data gaps are present, for example where information has not been logged, or has been inconsistently logged. <p><i>D2Q2 Are there any practical problems associated with this proposal? Please give details.</i></p> <p>Whilst it is in the customers interest for licensees to make assumptions where there are absent records, this is practically challenging to implement.</p> <p>For example, there may be scenarios where there are no records at all and therefore there is no basis on which to make an assumption; typically where the issue extends beyond 7 years' historically. It would be helpful to understand ASIC's view if this occurs. In our experience, many remediations extend back more than 7 years.</p> <p>A second example could be that while there is data confirming that a customer held a particular product, there may be no transactional data to confirm whether the</p>

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	<p>customer was incorrectly charged or not. It would be helpful to understand ASIC's view if this occurs. Should an AFS licensee make an assumption that the customer was incorrectly charged and therefore needs to be remediated?</p> <p>The case studies in the Consultation Paper are useful and the industry would benefit from ASIC adding further scenarios.</p> <p><i>D2Q3 Are there any other matters that we should consider to help us provide appropriately scalable guidance?</i></p> <p>Noted in D2Q2.</p>
<p>D3 We propose that in certain circumstances it may be appropriate to use beneficial assumptions to increase the efficiency of a remediation.</p>	<p><i>D3Q1 Do you agree with this proposal? If not, why not?</i></p> <p>We agree with the proposal that beneficial assumptions can be used to increase efficiency and be beneficial to:</p> <ul style="list-style-type: none"> • an AFS licensee in closing out the issue sooner; and • the customer, as it results in the customer receiving the refunds in a more timely manner and with a quantum in their favour. <p><i>D3Q2 In what circumstances do you think it is appropriate to use assumptions to increase the efficiency of a remediation? Please give reasons.</i></p> <p>The AFS licensee would need to determine, with confidence, the complete impacted customer population. Beneficial assumptions come into play, from an efficiency perspective, when considering the compensation to be paid to the impacted customer cohorts. Confidence would also be required that assumptions are beneficial, and would not result in customer under-compensation.</p> <p>It may be beneficial to provide guidance that licensees have a process whereby assumptions are reviewed, assessed and endorsed. In our experience this occurs in practice.</p>



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	<p>Some licensees further engage internal audit, the Customer Advocate or an external party to review remediation programs before payments are made or the remediation program is closed out to check and challenge assumptions, complete capture of the impacted customer population, how compensation has been assessed and the governance over the remediation program.</p> <p>Where there is evidence that additional time spent by the licensee to calculate an exact remediation amount would exceed the likely quantum of any overpayment to the customer, it is appropriate to use beneficial assumptions to expedite the remediation, taking a 'commercial approach'.</p> <p>When working with our clients we focus on being clear about when an assumption is required because no amount of work will solve the problem because the data has been destroyed, does not exist etc. (i.e. impossible), verses when an assumption is being adopted where obtaining the data is possible but it is very difficult (i.e. possible). We presume that in this question we are referring to the latter situation and suggest ASIC require licensees to distinguish between such assumptions.</p> <p>In cases where assumptions are adopted for convenience, speed, we think the points above about assumption likelihood, significance and communication should apply, but erring on the side of generosity/beneficial as the company is making a conscious choice not to do work it could do (compared with a situation where an assumption must be adopted as a more accurate approach is impossible at least without contacting the client).</p> <p>For example it may be possible to try and identify any isolated "severe" impacts of an assumption/methodology – and not use the "assumption" for these customers (i.e. actually obtain the missing data or whatever and use a more sophisticated method for particularly highly impacted members) – only use the assumption for members where it is appropriate.</p>

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	<p><i>D3Q3 Have you applied beneficial assumptions to increase the efficiency of a remediation? Please provide details, including any relevant data and documentation.</i></p> <p>Yes we have. For example, in our clients' remediation programs where:</p> <ul style="list-style-type: none"> • The impacted customer cohort was confirmed and tested; • A conservative approach was taken to calculate the compensation amount due to each impacted customer which was acknowledged to over-compensate customers; • The total quantum to be paid was not significant, and hence the over-compensation was determined to be less than the cost of undertaking further analysis; • So a decision was made to over-compensate the impacted customers and go 'straight to pay'.
<p>E1 We propose to revise our current guidance on calculating foregone returns or interest by setting out a three-step framework that involves:</p> <p>(a) Step 1—licensees should attempt to calculate actual foregone returns or interest rates, without the use of any assumptions, if it is appropriate to do so in the circumstances;</p> <p>(b) Step 2—if it is not appropriate, possible or reasonably practical to find out the actual rates, licensees should consider whether beneficial refund assumptions can be made if an evidence-base supports it; and</p> <p>(c) Step 3—if there is no evidence base to support a beneficial assumption, licensees should</p>	<p><i>E1Q1 Do you agree with this proposal to set out a three-step framework for calculating returns or interest? If not, why not?</i></p> <p>Based on the overarching principle of returning customers to the position they would have been in, absent the issue, the appropriate approach, ideally, is to adopt the return/cost saving on the alternative use of funds (on an individual customer basis).</p> <p>ASIC should include the concept of alternative funds including for Step 3.</p> <p>As is implicit in ASIC's suggestion/proposal, the return/cost saving on the alternative use of funds is not always known with certainty.</p>

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<p>apply a fair and reasonable rate that compounds daily and is:</p> <ol style="list-style-type: none"> i. reasonably high; ii. relatively stable; and iii. objectively set by an independent body. 	<p>The following observations are made:</p> <ul style="list-style-type: none"> • Step 1 may apply to financial advice and unit pricing remediation, however, does not apply to product remediation in its current wording if RG256 is to apply to other financial products. • For Step 2 and 3, the meaning/interpretation “beneficial refund assumptions” are not sufficiently clearly defined. • For Step 3 have not set out considerations for what represents “reasonably high”. We consider that matters such as: <ol style="list-style-type: none"> i. high relative to the most likely alternative use of funds (e.g. customer had all their money in a bank account or invested mostly in term deposits – versus a product where all invested in equities, versus customers with large home loan, etc.). ii. Per points above – likelihood and significance (and even communication and nature of customer) may be considerations. For example if they were wealthy customers mostly invested in equities and equities boomed since the error (i.e. may be likely but not certain investors would have put funds into equities) that possibly a fixed rate may not be very generous (on the other hand if equities fell, the RG 256 rate of RBA+6% may look quite generous. iii. Tax. • Possibly distinguishing between the period that the customer was with the company and (if they have exited) the period after they terminated their product/relationship with the company. For instance, providing ASIC’s view about whether – after the customer has terminated their relationship with the licensee, the licensee cannot be expected to know what the person would do with their money. This issue may apply more to non-advice errors than advice errors (but in any case, the question about the applicability of RG 256 to non-advice errors should be addressed). • Per points above – we are aware of differences between time value of money approaches for financial advice, unit pricing and other financial



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	<p>product remediations. We have engaged ASIC on this matter although we are still unclear on whether, for example ASIC considers that past practice on unit pricing errors that it is aware of are no longer reasonable or whether there are other differences between advice and unit pricing errors mean that such differences are reasonable.</p> <ul style="list-style-type: none"> • We think the industry would benefit from further clarity from ASIC on this matter and other aspects of the applicability of RG 256 (principles and “harder” guidance approaches to remediation) to other non-advice remediations. We think that ASIC should treat this issue as a high priority as it a key issue for licensees with non-advice remediation. <p>Considering the proposed three-step framework for the remediation of financial products other than advice, customers are typically compensated for foregone returns or interest applying:</p> <ol style="list-style-type: none"> The product rate where the incorrect fee resulted in additional interest being charged; and Compensation for the time value of money- being the benefit the customer would have had by having their funds charged in error, misconduct etc. sooner (typically RBA); and The opportunity cost of where the customer may have used or invested those funds to generate a return or save in debt costs (+6% in current RG256). <p>With respect to ‘actual foregone returns’, a licensee will likely not have visibility of a customer’s full financial position (which products/ loans/ interest bearing debt/ investment returns/ business returns). For this reason, guidance is required on the appropriate foregone returns/ compensation for the customer’s opportunity cost of not having their funds sooner.</p> <p>In our experience, this should be defined for Consumer/ Retail customers and Business Bank customers separately.</p>

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	<p>For example, we have seen banks use the ATO benchmark of average business returns to account for the opportunity cost to a business of not having the remediation compensation sooner. In this case, however, the ATO ceased publishing this data in 2017 and the banks are attempting to 'project' what this now might be.</p> <p>From a Consumer/ Retail customer perspective, the licensee does not know whether a customer would have used the funds sooner to:</p> <ul style="list-style-type: none"> • Make purchases or retained the funds in a non-interest bearing transaction account, achieving no returns; or • Alternatively, at the other extreme, the customer may have a high interest rate credit card with an outstanding balance with another bank or be an investor in crypto-currency achieving high returns. <p>These examples demonstrate the need for additional guidance in this area.</p> <p><i>E1Q2 Are there any practical problems associated with this proposal? Please give details.</i></p> <p>Refer E1Q1.</p> <p>Additionally, the inconsistency in the wording used by each step may cause further confusion. For example, Step 1 refers to "if it is appropriate to do so", Step 2 to "if it is not appropriate, possible or reasonably practical to" – It is unclear why there is only an appropriateness test at Step 1, but an appropriateness, possibility and practicality test at Step 2.</p>



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	<p data-bbox="1032 276 2107 371"><i>E1Q3 Should our guidance clarify whether the rate compounds (and at what interval) or whether it should be based on simple interest? Please give reasons.</i></p> <p data-bbox="1032 408 2063 472">Yes Failure to do so in the guidance causes confusion, inconsistent application, remediation program delay and as a result, impacts customer outcomes.</p> <p data-bbox="1032 512 2107 671">It would be helpful for the guidance to clarify what the rate should be for consumer and business customers and whether the rate should be compounded or simple interest, and if compounded, , it would be beneficial to understand frequency to enable consistency to be applied across the industry which then ensures that a fair approach is being undertaken for all customers.</p> <p data-bbox="1032 711 2130 839">We think the question somewhat misses the point. As noted above, in compensating for time value of money, the calculation is attempting to satisfy the overarching principle of returning customers to the position they would have been in absent the issue.</p> <p data-bbox="1032 879 2029 943">Therefore, the appropriate approach is to adopt the return/cost saving on the alternative use of funds (on an individual customer basis ideally).</p> <p data-bbox="1032 983 2119 1078">For example, if we know the customer’s overcharged fees would have been applied against a mortgage which calculates daily but compounds monthly then of course the “correct” approach is to determine the daily calculation compounded monthly.</p> <p data-bbox="1032 1118 2107 1246">For clarity, where performing calculations where the “alternative” is not known then some kind of regular compounding is the most sensible approach because this is the economics of how investment or loan actually works in practice (i.e. all the alternatives compound!)</p> <p data-bbox="1032 1286 2119 1350">Actuarially, monthly or daily compounding generally makes little difference. For simplicity we suggest daily – we would have suggested first requiring the derivation</p>

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	<p>of an annual per annum effective rate – and then have this converted to a daily rate which can be used for each day.</p> <p>The important issue is to determine the “base” annual rate if the base rate being quoted is not a specific index or security. However, we would also note that generally, unless there is a good reason otherwise, any approach should follow the conversion convention of the rate being quoted e.g. Australian Government bonds rate are generally quoted as annual rates compounding semi-annually.</p> <p>So if you wanted to adopt 5 year government bond + 3% per annum – our suggestion would be to convert the semi-annual quoted 5 year government bond to an annual rate – then add 3% - then convert to daily rate (e.g. for a particular day not in a leap year might be $(1+4.028\%+3.00\%)^{(1/365)}-1$).</p> <p>Where the alternative is an index or some other value no compounding frequency should be required.</p>
<p>F1 We propose to provide guidance that licensees should apply best endeavours to find and automatically pay consumers, and that cheques should generally be issued as a last resort.</p>	<p><i>F1Q1 Do you agree with our proposal? If not, why not?</i></p> <p>Yes we agree with licensees applying best endeavours to find and automatically pay consumers and using cheques as a last resort.</p> <p>Further guidance is required as to the definition of best endeavours.</p> <p>For example, when a customer no longer holds an account with the licensee, services like Equifax can be used to obtain a customer’s new contact details however it is not possible to attain the customer’s new bank details, to enable an electronic remediation payment to be made. This limits the payment option available to cheques.</p> <p>An alternative would be for ASIC to consider if other government departments could assist in finding the relevant information to make automatic payments e.g. the ATO.</p>

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	<p><i>F1Q2 What has been your experience in finding and contacting consumers? What challenges have you faced?</i></p> <p>We have observed licensees being challenged when finding and contacting previous customers. This proves a large administrative task of issuing letters and operating call centres to attain the required details.</p> <p>Furthermore, due to privacy reasons, licensees are unable to keep the updated details without the customer initiating an update to their records, which results in inefficiencies for customer's involved in more than one remediation as the searches need to be re-performed.</p> <p><i>F1Q3 What strategies have you employed to successfully reach all affected consumers? Please give examples of your experiences, including what has and has not worked and any lessons learnt.</i></p> <p>Not applicable.</p> <p><i>F1Q4 Do you agree that cheques should be paid as a last resort? If not, why not?</i></p> <p>We agree that cheques should only be issued as a last resort. In practice, cheques are required where the individual is no longer a customer of the licensee and there is no available information to make payment by any other method.</p> <p><i>F1Q5 What has been your experience in finding a consumer's bank account details and making a direct payment? Please give details.</i></p> <p>Not applicable.</p>



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	<p><i>F1Q6 If you are a third-party licensee for a superannuation fund or RSA, what challenges do you have in remediating members of that fund? Please give details.</i></p> <p>Not applicable.</p> <p><i>F1Q7 If you are a superannuation trustee, what challenges do you have in accepting and/or facilitating remediation payments from third party licensees? please give details.</i></p> <p>Not applicable.</p>
<p>F2 We propose to remove the low-value compensation threshold in current RG 256 and instead provide guidance that:</p> <p>(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;</p> <p>(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</p> <p>(c) if applicable, the reasons for the decision to apply a low value threshold should be well documented and appropriately justified.</p>	<p><i>F2Q1 Do you agree with our proposal? If not, why not?</i></p> <p>‘Low value compensation threshold’ would benefit from further clarification. We have observed it applied typically for former customers only (not current customers where a direct entry can be made into their account).</p> <p>From our experience, we have seen inconsistent treatment, from:</p> <ul style="list-style-type: none"> • Rounding up to the low value threshold, typically \$20; • Retaining in a holding account and then paying to a charity. <p>An alternative could be to keep track of compensation due to a customer from different remediation programs and when this exceeds the low value threshold, paying the customer.</p> <p>ASIC’s proposal that the low-value compensation threshold be removed (in F2) is contradictory to point (c) requiring licensees to document the reasons for the decision to apply a low value threshold (both bolded in column 1 to this table).</p> <p>In our experience, it is important to maintain a low-value threshold for former customers where the cost of raising cheques, and the customer subsequently cashing cheques, exceeds the benefit that comes from them receiving that money.</p>

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	<p><i>F2Q2 Do you think that any licensee using a low value compensation threshold should have to disclose it? If not, why not?</i></p> <p>It is unclear who ASIC is suggesting this disclosure should be made to.</p> <p>We consider transparency to be very important and believe that the use of a low value compensation threshold, generally rather than at an individual customer level, should be disclosed to both customers and regulators.</p>
<p>G1 We propose to clarify current guidance for when remediation money cannot be returned to consumers. That is, if a licensee cannot, despite best endeavours, find consumers to pay them compensation (including when cheques remain uncashed):</p> <ul style="list-style-type: none"> (a) the licensee must not profit from the failure (see the current RG 256 at RG 256.135); (b) the residual funds should be sent to a relevant state or federal unclaimed money regime if available; and (a) if the licensee is unable to lodge money with an unclaimed money regime, as a last resort, the money should be paid as a residual remediation payment to a charity or not-for-profit organisation registered with the Australian Charities and Not-for Profits Commission. Note: Residual remediation payments 	<p><i>G1Q1 Do you agree with our proposal? If not, why not?</i></p> <p>We agree with this proposal, however further clarification and guidance would be useful as to which state or federal unclaimed money regimes should be considered.</p> <p>Also clarification of whether this applies to amounts above the low value threshold only would be helpful.</p> <p>A definition of not profiting could be made clearer by ASIC, e.g. should this include remediation program costs or would they be considered a sunk cost? What level of grouping by licensees of errors is allowable if there are multiple errors?</p> <p>Also, ASIC view would be welcome on payment to charity of remediation amounts due to a trust or trust members.</p> <p><i>G1Q2 Is it appropriate for ASIC to provide guidance that any money that cannot be directly returned to consumers be lodged in an unclaimed money regime? If not, why not?</i></p> <p>Not applicable.</p>

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	<p>G1Q3 What challenges are there in lodging unclaimed money? Please give details.</p> <p>Not applicable.</p> <p>G1Q4 Do you think any licensee making a residual remediation payment to a charity or not-for-profit organisation should have to clearly disclose it? If not, why not?</p> <p>It is unclear who ASIC is suggesting this disclosure should be made to.</p> <p>We consider transparency to be important and believe that residual remediation payments to charities should be disclosed, generally rather than at an individual customer level, to both customers and regulators.</p> <p>Further clarification about who this disclosure is to be made to and where it is published would be beneficial.</p> <p>G1Q5 Do licensees have evidence of consumers requesting that they be remediated after the finalisation of the remediation? How common is this?</p> <p>Not applicable.</p>
<p>H1 We propose to clarify our guidance about if and when using settlement deeds and relying on implied consent may or may not be appropriate as part of a remediation.</p>	<p>H1Q1 In what circumstances, if any, are settlement deeds essential to protect your legitimate interests? Please provide examples or other supporting evidence.</p> <p>Not applicable.</p>



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<p>Other comments on consideration not included in <i>Consultation Paper 335 Consumer remediation: Update to RG 256</i></p>	<p>The industry would benefit from ASIC guidance on:</p> <ul style="list-style-type: none">• the treatment of vulnerable customers/hardship;• scenarios when it is not appropriate to pay compensation to a customer, for example:<ul style="list-style-type: none">• if the customer has been found to be fraudulent;• where there are financial crime concerns/ potential money laundering;• if there is garnishee they should be paid monies due;• for de-registered companies; and• any other considerations• the appropriate treatment is in these circumstances in terms of hierarchy of payment and payee.