

Attachment to CP 350: Draft regulatory guide



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 000

Consumer remediation

November 2021

About this guide

This guide sets out our guidance on consumer remediation conducted by:

- Australian financial services (AFS) licensees;
- Australian credit licensees (credit licensees); and
- retirement savings account (RSA) providers.

This guide comes into effect on the date of final publication. For remediations initiated before the date of publication, [Regulatory Guide 256](#) *Client review and remediation conducted by advice licensees* applies.

This guide may be read in conjunction with [Making it right: How to run a consumer-centred remediation](#) (PDF 2.5MB).

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.

Document history

This draft guide was issued in November 2021 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 256 *Client review and remediation conducted by advice licensees*, issued September 2016

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act, ASIC Act, National Credit Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

DRAFT

Contents

A	Overview	5
	The need for proactive, effective remediation	5
	Purpose of this guide	6
	When this guide will apply	8
	Remediation framework	8
	Legal basis for the remediation framework	9
B	When remediation is required	10
	When licensees must initiate a remediation	10
	Identifying misconduct or other failures	12
	Scalability	13
C	Key principles for conducting a remediation	15
	The nine remediation principles	15
D	Conducting the remediation: Part 1—Investigate the nature and extent of the misconduct	19
	Understanding the nature and cause of the misconduct or other failure	19
	Investigating the full extent of the misconduct or other failure	20
	Identifying affected consumers	22
	Reviewing and testing the scope	23
	Determining the impact of the misconduct or other failure	24
	Segmenting and triaging consumers	34
E	Conducting the remediation: Part 2—Determine and deliver an appropriate outcome	35
	What an appropriate outcome is	35
	Determining appropriate remedies	37
	Considering the consumer experience in delivering outcomes	48
	Applying ‘reasonable endeavours’ to making remediation payments	50
	Money that cannot be returned to consumers	55
F	Other remediation outcomes to consider	58
	Legal or other forms of assistance	58
	Tax implications of payments for consumers	58
	Postponement or cessation of action	59
	Pausing or waiving the statutory limitation period	60
	Settlement deeds	60
G	Resourcing, governance and accountability	62
	Allocating adequate resources	62
	Governance and accountability arrangements	63
	Documenting the remediation and justifying decisions	66
	Reporting publicly	67
H	Engaging with external organisations	68
	Australian Financial Complaints Authority	68
	Australian Taxation Office	69
	Australian Prudential Regulation Authority	69
	PI insurers	70
I	Interaction with licensing obligations and other laws	71
	Licensing obligations	71
	Compensation	73

DRAFT

Obligations relating to superannuation trustees and fund managers	74
Design and distribution obligations	75
Record-keeping	75
Dispute resolution systems	76
Breach reporting	78
Obligations to notify, investigate and remediate	79
J Our role in remediations	81
Our role in remediations	81
Reporting the remediation to ASIC	81
When ASIC will take action in relation to a remediation	82
ASIC public statements	83
Key terms	84
Related information	88

DRAFT

A Overview

Key points

This regulatory guide sets out our guidance for remediations conducted by all licensees within the Australian financial system.

Licensees who engage in misconduct or other failures when providing financial services or credit activities must remediate consumers who have suffered loss as a result: see Section B.

Licensees may tailor their processes to ensure that a remediation is conducted in a manner that is efficient, honest and fair, taking into account the nine principles of this guidance (see Section C) as well as the scale and complexity of the remediation. As a general principle, consumers who have suffered loss, regardless of the scale, should be returned to the position they would have otherwise been in, as closely as possible.

Remediations, once initiated, will generally involve:

- understanding the nature and extent of the misconduct or other failure, including when it first began and who has been affected (see Section D);
- conducting a remediation that delivers appropriate outcomes to those who have suffered loss, and effectively communicates with affected consumers at various stages (see Section E);
- making payments and closing the remediation to ensure no profit is retained and consumers have a right to review (see Section E);
- considering other remediation outcomes (see Section F);
- making decisions about resourcing, governance and accountability (see Section G); and
- engaging with the right stakeholders (see Section H).

The need for proactive, effective remediation

RG 000.1 Remediation is the process where a licensee investigates the nature and extent of misconduct or other failure and, if appropriate, returns affected consumers as closely as possible to the position they would have otherwise been in. This could be by way of monetary, or non-monetary remedies, or a combination of both.

RG 000.2 For our financial system to operate effectively, and for consumers to engage with trust and confidence, misconduct or other failures that cause consumer loss must be proactively remediated upon discovery by a licensee.

Note: For a description of 'misconduct or other failure' see Section B.

DRAFT

- RG 000.3 Proactive remediation is critical because very often a consumer of financial products or services will not be aware (nor have any reasonable way to be aware) that they have suffered loss as a result of a licensee's misconduct or other failure.
- RG 000.4 Licensees must have adequate systems and processes in place to ensure misconduct or other failures are identified when they occur, and to protect and compensate consumers for the loss suffered as a result.
- RG 000.5 Whether a licensee quickly and effectively remediates consumers upon discovery of the misconduct or other failure is an important aspect of a good corporate culture. It is also a key indicator of whether the licensee is meeting its licensing obligations.

Purpose of this guide

- RG 000.6 This guide is for:
- (a) Australian financial services (AFS) licensees, including limited AFS licence holders;
 - (b) Australian credit licensees (credit licensees); and
 - (c) retirement savings account (RSA) providers.
- Note: In this guide, we refer to the above licensees and providers collectively as 'licensees'.
- RG 000.7 To help licensees proactively and effectively remediate consumers, this guide aims to:
- (a) provide a streamlined and well-understood consumer-centred remediation framework for licensees to apply; and
 - (b) set out nine key principles for conducting a remediation efficiently, honestly and fairly, in line with the general licensee obligations.
- RG 000.8 This guidance primarily concerns remediations of retail consumers. However, in some situations, it may be appropriate to include other types of consumers (e.g. wholesale clients) within the scope of remediation. Licensees should make this assessment on a case-by-case basis.
- RG 000.9 This guide can also be used as good practice guidance to assist entities who provide financial products or services (or engage in credit activities) to retail consumers under the financial services or credit legislation, but who are not licensed under the *Corporations Act 2001* (Corporations Act), *National Consumer Credit Protection Act 2009* (National Credit Act) or *Superannuation Industry (Supervision) Act 1993* (SIS Act).

DRAFT

- RG 000.10 Applying this guidance will ultimately improve outcomes for consumers who are owed money, and will also benefit licensees by:
- (a) promoting trust;
 - (b) reducing the costs of external dispute resolution, or individual or class actions; and
 - (c) not having to ‘re-do’ remediations in the future.

Scalability

- RG 000.11 This guide is not intended to apply to all remediations in its entirety. If the misconduct or other failure only affects one or a small number of consumers and the cause is isolated in nature, the process a licensee follows will likely use existing resources, be simple and prompt and not require a full ‘program’ to be initiated. While it is still necessary to return those consumers to the position they would have otherwise been in, parts of this guidance are likely to not apply or will not be relevant (e.g. using assumptions and finding lost consumers).

Note: For more information on scalability, see RG 000.35–RG 000.39.

Interaction with other remediation guidance and laws

- RG 000.12 This guidance is designed to be applicable to all licensees. While the guide is occasionally tailored for specific licensees or financial sectors, it will not always take into account specific legislative requirements, business structures, contractual arrangements, constitutions or trust deeds unique to particular licensees or particular types of misconduct or other failures.
- RG 000.13 To the extent that other laws or legal duties conflict with this guide, the former will prevail. See Section I for further information about other legislative requirements that relate to consumer remediation.
- RG 000.14 ASIC has issued other specific guidance which is relevant to remediating consumers:
- (a) [Regulatory Guide 94](#) *Unit pricing: Guide to good practice* (RG 94);
 - (b) [Information Sheet 232](#) *Fees for no service: Remediation* (INFO 232); and
 - (c) [Information Sheet 259](#) *Complying with the notify, investigate and remediate obligations* (INFO 259).
- RG 000.15 These documents provide more detail about how to conduct a remediation in particular circumstances and should be read in conjunction with this regulatory guide where relevant. Further guidance may be issued in the future, and any such guidance should also be read with this regulatory guide.

Note: Where there are conflicts between [RG 94](#) and this guidance, RG 94 will prevail.

DRAFT

When this guide will apply

RG 000.16 This guidance applies to all remediations initiated on or after the date of issue of final guidance. For remediations that pre-date the issue of final guidance, the 2016 version titled [Regulatory Guide 256](#) *Client review and remediation conducted by advice licensees* (RG 256) continues to apply.

Note: In this guide, a remediation is ‘initiated’ when a licensee makes the decision to address misconduct or other failure through a remediation process.

Remediation framework

RG 000.17 In this guide we have described the framework for conducting remediations. While every remediation will be different, remediations will generally involve:

- (a) a decision-making process to initiate the remediation (see Section B);
- (b) conducting the remediation, which includes:
 - (i) adopting a process that is efficient, honest and fair, taking into account the nine key principles described in Section C;
 - (ii) investigating the nature and extent of the misconduct or other failure, including when it first began and who has been affected (see Section D);
 - (iii) designing a consumer-centred remediation plan that delivers fair and timely outcomes through appropriate remedies and effective communications at various stages (see Section E);
 - (iv) making payments, providing non-monetary remedies, and closing the remediation to ensure no profit is retained and consumers have a right to review (see Section E);
- (c) considering other things that can achieve better consumer outcomes (Section F);
- (d) making decisions about resourcing, governance and accountability (see Section G);
- (e) documenting, tracking and, where appropriate, publicly reporting on the remediation (see Section G); and
- (f) engaging with external organisations (see Section H).

RG 000.18 Some stages of the remediation will occur consecutively and others concurrently. In larger remediations, licensees may also consider triaging groups so that ‘easier’ cohorts, or those cohorts that may be experiencing financial difficulty are addressed first. For smaller remediations and licensees, not all processes described above will be relevant.

RG 000.19 Some licensees must consider the specific requirements under the notify, investigate and remediate obligations described in [INFO 259](#) when

conducting remediations of misconduct by financial advisers and mortgage brokers only. The licensee must also consider this guide and the broader remediation framework when conducting the remediation: see Section I for more details about the obligations.

Legal basis for the remediation framework

RG 000.20 The remediation framework described in this guide is underpinned by the general obligation on AFS licensees and credit licensees to do all things necessary to ensure that the financial services or credit activities covered by the licence are provided efficiently, honestly and fairly: see s912A(1)(a) of the Corporations Act and s47(1)(a) of the National Credit Act. Complying with this ongoing obligation includes licensees taking responsibility for the consequences of their misconduct or other failures, and remediating consumers who have suffered loss as a result.

DRAFT

B When remediation is required

Key points

Licensees who engage in misconduct or other failures when providing financial services or credit activities must remediate consumers who have suffered loss as a result: see RG 000.21–RG 000.29.

Licensees should have and maintain adequate systems and processes to identify misconduct or other failures when they arise: see RG 000.30–RG 000.34.

The processes a licensee should apply to any remediation will depend on the scale, age and complexity of the underlying misconduct or other failure: see RG 000.35–RG 000.39.

When licensees must initiate a remediation

- RG 000.21 A remediation must be initiated if a licensee has engaged in misconduct or other failure when providing financial services or credit activities, and the misconduct or other failure has caused, or may have caused, consumer loss.
- RG 000.22 ‘Misconduct or other failure’ includes decisions, omissions or behaviours of a licensee, as well as:
- (a) a current or former representative of a licensee;
 - (b) a current or former third-party service or product provider of a licensee;
 - (c) a consultant engaged by a licensee; or
 - (d) other significant related entities of a licensee.
- RG 000.23 Licensees should initiate the remediation as soon as they become aware of the misconduct or other failure, rather than wait for a consumer to make a complaint or until proceedings are issued against the licensee.
- RG 000.24 The types of misconduct or other failure causing consumer loss that licensees must remediate includes:
- (a) a breach of financial services laws or credit legislation;
 - (b) a contractual failing;
 - (c) conduct constituting negligence or fraud under common law; or
 - (d) a failure to meet or comply with other applicable regulatory requirements.
- RG 000.25 Misconduct or other failure also includes conduct that can be characterised as:
- (a) system failures that result in consumers being delivered products or services that are different from what was agreed or promised;

- (b) errors in pricing algorithms that result in the miscalculation of fees or interest rates, or failures to apply rebates, discounts or benefits; or
- (c) failures or errors due to inadequate internal processes, systems or external events that result in an outcome that differs from the promised outcome.

RG 000.26 Breaches of an industry code of conduct may also constitute a breach of financial services law, credit legislation or contract. Misrepresentations about compliance with codes may also result in a contravention of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and/or the prohibited conduct provisions of Pt 7.10 of the Corporations Act or Pt 2 of the National Credit Act. If such a breach or misrepresentation causes consumer loss, it must be remediated.

RG 000.27 Superannuation trustees must also consider whether the conduct causing loss is an operational risk event that must be remediated.

RG 000.28 The types of conduct that must be remediated are not limited to reportable situations as defined under s912DAA of the Corporations Act or s50B of the National Credit Act. This is because some misconduct or other failures may be excluded by operation of the *Corporations Regulations 2001* (Corporations Regulations), the *National Consumer Credit Protection Regulations 2010* (National Credit Regulations), or the significance test. It is expected that the licensee address any consumer loss suffered as a result, regardless of whether it is reportable to ASIC or not.

Note: If the misconduct or other failure constitutes a reportable situation and has caused or will cause loss, it may trigger licensing obligations for certain licensees to notify, investigate and remediate (see RG 000.326–RG 000.330).

RG 000.29 Licensees should keep in mind that the financial services regulatory framework in which licensees operate covers a wide range of consumer protections. These protections, including those under contract, are broad. Licensees should focus on ensuring good consumer outcomes, and not take an overly technical or legalistic approach when identifying misconduct or other failures in need of remediation.

Note: The primary pieces of Commonwealth legislation under the financial services regulatory framework include, among others, the ASIC Act, Corporations Act, National Credit Act, which also includes the National Credit Code; SIS Act, *Insurance Contracts Act 1984* (Insurance Contracts Act); *Insurance Act 1973*, and *Life Insurance Act 1995* (Life Insurance Act).

Example 1: When a remediation must be initiated

Every year, Vasey Insure Pty Ltd (Vasey Insure) asked customers to inform them if any changes had been made to their insured asset. The information related to a factor that Vasey Insure's premium guide had identified as a pricing factor. Due to a systems error, Vasey Insure failed to take into account the information that customers had provided relevant to their risk

through a particular distribution channel. As a result, some customers were undercharged or overcharged fees.

Following a review, Vasey Insure decided not to initiate a remediation for potentially affected consumers because they considered the circumstances were not reportable to ASIC under the Corporations Act.

Commentary

The licensee should have initiated a remediation of all those affected by the overcharged premiums. In other words, the remediation should not have been contingent on whether it was a reportable breach, but whether the misconduct or other failure resulted in consumer loss.

Note: The examples in this guide are purely for illustration. They are not exhaustive and are not intended to impose or imply particular rules or requirements.

Identifying misconduct or other failures

- RG 000.30 Licensees should have and maintain adequate systems and processes to identify misconduct or other failures that have or may have led to consumer loss.

Note: A failure to have and maintain adequate systems and processes to deliver a product or service as promised, or to have a proper control environment or systems for identifying and reporting issues may be a breach of s912A(1)(a) of the Corporations Act. This is broadly consistent with the observations of Justice Beach in *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790.

- RG 000.31 Misconduct or other failures may be identified through a number of different channels including (but not limited to):

- (a) through a single complaint which suggests an issue might have caused detriment to other consumers who have not yet complained;

Note: If a licensee becomes aware of misconduct or other failure through a single complaint, it must be dealt with pursuant to the relevant internal dispute resolution (IDR) requirements (see [Regulatory Guide 271 Internal dispute resolution](#) (RG 271)). If an investigation confirms that a systemic issue exists, licensees should initiate and conduct a remediation in line with this guidance.

- (b) by analysing trends in complaints made through IDR processes;
- (c) through a whistleblower complaint;
- (d) from a licensee's compliance checks or audits, including file reviews, or a licensee's breach reporting processes;
- (e) by proactively monitoring and analysing data and trends that might show anomalies in services or product provision; or
- (f) following discussions, referrals or directions from us or the Australian Financial Complaints Authority (AFCA), other regulators such as the Australian Prudential Regulatory Authority (APRA), or a code monitoring body.

Note: Licensees must not wait for AFCA, or regulators such as ASIC, to direct or request the licensee to take action to address the consumer loss.

DRAFT

RG 000.32 Licensees subject to design and distribution obligations are also required to monitor consumer outcomes and review products to ensure that consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.

Note: See [Regulatory Guide 274](#) *Product design and distribution obligations* (RG 274).

RG 000.33 It is important that licensees have the flexibility in their remediation practices to quickly identify and respond to new and emerging harms, as products develop and new technology is introduced.

RG 000.34 Timely identification of misconduct or other failures will improve the overall efficiency of the remediation process, as licensees will not face common challenges with absent records or lost customers that are typical when remediating historic misconduct.

Scalability

RG 000.35 The processes a licensee should apply to any remediation will depend on the scale, age and complexity of the underlying misconduct or other failure, and therefore what steps need to be taken to make it right. If the misconduct or other failure only affects one or a small number of consumers and the cause is isolated in nature, the process is likely to be simple and prompt and not require a full remediation ‘program’ to be initiated.

RG 000.36 For example, licensees can choose to use existing incident management or IDR processes and resources if the misconduct or other failure affects only a small number of consumers. While it is still necessary to return those consumers to the position they would have otherwise been in, parts of this guidance are likely to not apply or will not be relevant (e.g. using assumptions and finding lost customers).

RG 000.37 While the remediation should be documented, what should be recorded for a small-scale remediation may differ from the types of records necessary for a large-scale complex remediation.

RG 000.38 It is up to licensees to decide their own thresholds for when a remediation becomes a ‘program’ and when it can be effectively dealt with through other processes. For example, in relation to advice licensees, the thresholds considered may include the number of clients affected, the number of advisers involved, and the nature of the misconduct or other failure.

Note: If the misconduct or other failure only affects one consumer and that consumer has made an IDR complaint, then the IDR requirements and guidance under [RG 271](#), and [ASIC Corporations, Credit and Superannuation \(Internal Dispute Resolution\) Instrument 2020/98](#) apply.

DRAFT

- RG 000.39 Regardless of the approach adopted, licensees should initiate the remediation as soon as they become aware of misconduct or other failures, rather than wait for a consumer to make a complaint or until a claim is made against them.

Example 2: Small-scale remediations

Advice licensee Brown & Co Advisers (Brown & Co) discovered, after receiving a complaint from one of its clients, that one of its advisers had been giving inappropriate advice to clients to acquire a margin lending facility. After determining that the adviser had given inappropriate advice to five clients, Brown & Co's complaints team reviewed the advice provided to the five affected clients, and made appropriate compensation offers.

Commentary

In this example, it was appropriate for the licensee to review the advice and remediate clients using its IDR resources, given that only one adviser was involved and a small number of clients were affected.

C Key principles for conducting a remediation

Key points

When conducting a remediation, licensees should adopt a process that is efficient, honest and fair, taking into account the following nine principles:

- Return all affected consumers as closely as possible to the position they would have otherwise been in had the misconduct or other failure not occurred (see RG 000.41–RG 000.42).
- Understand the nature, extent and impact of the misconduct or other failure (see RG 000.43–RG 000.45).
- Give consumers the benefit of any doubt, and minimise the risk of under-compensation (see RG 000.46).
- Ensure key decisions are justified and documented (see RG 000.47–RG 000.49).
- Apply reasonable endeavours when making remediation payments (see RG 000.50–RG 000.51).
- Be timely without sacrificing quality consumer outcomes (see RG 000.52–RG 000.56).
- Make the process easy for consumers by minimising complexity and, where possible, limiting their involvement in the process (see RG 000.57–RG 000.58).
- Do not profit from the misconduct or other failure (see RG 000.59).
- Ensure the remediation has adequate resourcing, governance and accountability (see RG 000.60–RG 000.62).

Adopting these nine principles will assist licensees to comply with their obligations, and help them to achieve fair and timely outcomes for all affected consumers.

The nine remediation principles

- RG 000.40 Licensees should apply the following nine principles in this guidance. Licensees may tailor their processes, taking into account the principles as well as the scale and complexity of the remediation.

Return affected consumers to the position they would have otherwise been in

- RG 000.41 The guiding principle of any remediation is to return affected consumers, as closely as possible, to the position they would have otherwise been in had the misconduct or other failure not occurred. This should be the aim

regardless of scale or complexity, and generally underpin remediation decision making.

- RG 000.42 There are rare situations where it would not be appropriate or possible to return a consumer to the position they would have otherwise been in: see RG 000.131–RG 000.133 for further information.

Understand the nature, extent and impact of the misconduct or other failure

- RG 000.43 Licensees should aim to identify all consumers who have or may have suffered loss as a result of the misconduct or other failure. Licensees will need to understand the nature, extent and impact, including undertaking a root cause analysis: see RG 000.63–RG 000.68.
- RG 000.44 By understanding the root cause and extent of the misconduct or other failure, licensees should be able to determine when they reasonably suspect the misconduct or other failure first caused loss to a consumer: see RG 000.69–RG 000.73.
- RG 000.45 If the licensee is identifying and remediating misconduct or other failure promptly, rarely should the remediation review period exceed record retention requirements.

Give consumers the benefit of any doubt when making assumptions, and minimise the risk of under-compensation

- RG 000.46 In some remediations, in order to save time and program costs, remediate more efficiently or make up for absent records, licensees may consider using assumptions that are beneficial for consumers: see RG 000.97–RG 000.126. If assumptions are used for scoping or calculating refunds, licensees should give consumers the benefit of any doubt, and minimise the risk of consumers falling out of scope or being under-compensated: see RG 000.96–RG 000.99.

Ensure key decisions are documented and justified

- RG 000.47 Licensees should document and track the remediation by keeping accurate and relevant records of the remediation approach, decision making, progress and consumer outcomes. ASIC may ask to see these records.

Note: Licensees subject to notify, investigate and remediate obligations are required to keep records to demonstrate compliance with the obligations: see RG 000.308.

- RG 000.48 Key decisions about scoping and remedies that will affect consumer outcomes should be evidence based and appropriately justified in the circumstances.
- RG 000.49 Monitoring the remediation, specifically the consumer outcomes, will help improve this and future remediations. Learning and adapting to new

information as it becomes available will help licensees achieve good consumer outcomes.

Apply reasonable endeavours when making remediation payments

- RG 000.50 Licensees should apply reasonable endeavours in making remediation payments to affected consumers, or when providing remedies. Payment methods that require no consumer action should be prioritised (e.g. electronic funds transfer (EFT) or Pay ID): see RG 000.177.
- RG 000.51 Licensees should return all remediation money owed to current customers regardless of value. However, for former customers who are owed \$5 or less (after interest), licensees may instead make a residual remediation payment: see RG 000.185–RG 000.189.

Note: A 'residual remediation payment' is a payment to a charity or not-for-profit organisation made up of consolidated remediation money that could not be returned to consumers despite reasonable endeavours and where an unclaimed money regime was unavailable: see RG 000.198–RG 000.209.

Be timely without sacrificing quality consumer outcomes

- RG 000.52 Efficient and timely remediations benefit everyone, as long as there is no trade-off in quality. Delayed identification of misconduct or other failures causing loss and slow remediations can:
- (a) exacerbate detriment already suffered, especially if the consumer is suffering financial hardship;
 - (b) increase the likelihood that records become lost or get destroyed;
 - (c) increase the likelihood that consumer information becomes outdated, and existing customers become ex-customers; and
 - (d) significantly increase the cost of the remediation program for a licensee, also risking reputational damage.
- RG 000.53 What a reasonable timeframe is for a remediation will depend on the nature and complexity of the matter and the availability of data, with reference to factors like the nature of the misconduct or other failure, the size of the licensee, the number of affected consumers, the type of loss experienced by those consumers, and the quality of contact and payment information.
- RG 000.54 For larger or complex remediations with longer timeframes, it might be appropriate to conduct a tiered remediation—for example by focusing on segments of affected consumers, or first prioritising payments for consumers who can be paid easily or are experiencing hardship: see RG 000.127.

Note: Particular timeframes apply to licensees subject to notify, investigate and remediate obligations (see RG 000.326–RG 000.330).

DRAFT

- RG 000.55 However, if a remediation is unjustifiably protracted or delayed, this may indicate that the licensee has not properly resourced the remediation and it may be considered a breach of the licensee's general obligations.

Note: See [Regulatory Guide 78](#) *Breach reporting by AFS licensees and credit licensees* (RG 78), Table 2: Examples of deemed significant breaches, Example 3(g).

- RG 000.56 Assumptions that are beneficial to consumers can offer a balance between timeliness and accuracy without a trade-off in quality: see RG 000.118.

Make it easy for consumers

- RG 000.57 A remediation should be made easy for consumers by minimising complexity and the need for consumer action: see RG 000.173–RG 000.176. Remediations should also be free for all consumers.

- RG 000.58 Consumers who have or may have been affected by the misconduct or other failure should be automatically included in a remediation, and should not be asked whether they want to participate (otherwise known as an 'opt-in arrangement'). An in-scope consumer should not be excluded from a remediation or disadvantaged merely because they fail to respond to correspondence, or cannot provide evidence of their loss.

Do not profit from the misconduct or other failure

- RG 000.59 Licensees must not profit from the misconduct or other failure. If affected consumers are lost or uncontactable despite reasonable endeavours, licensees should lodge the outstanding payments in a relevant unclaimed money regime, or if unavailable, make a residual remediation payment to a charity or not-for-profit organisation: see RG 000.198–RG 000.209.

Note: Licensees remediating unit pricing errors should have regard to [RG 94](#).

Ensure the remediation has adequate resourcing, governance and accountability

- RG 000.60 Remediations must have adequate resourcing and governance arrangements in place, including commitment from senior management.
- RG 000.61 Larger licensees should ensure the people who are managing the design and conduct of remediations have appropriate training and skills to deliver fair and timely consumer outcomes. This may also involve engaging an independent expert to provide assurance about the governance and operation of the remediation process: see RG 000.244.
- RG 000.62 Licensees should consider whether it may be in the public interest to report publicly on the remediation. ASIC may also from time to time publicly report on the existence, progress and outcome of remediations it is monitoring: see RG 000.256.

D Conducting the remediation: Part 1— Investigate the nature and extent of the misconduct

Key points

Conducting a remediation will generally first involve investigating the nature and extent of the misconduct or other failure, including identifying when the misconduct or other failure first began and who has been affected: see RG 000.63–RG 000.80.

To determine the impact of the misconduct or other failure, licensees may use a number of methods including the use of data analysis, file reviews, assumptions or a combination: see RG 000.81–RG 000.129.

These methods are also relevant for determining appropriate outcomes: see Section E.

Understanding the nature and cause of the misconduct or other failure

RG 000.63 The first step for licensees when conducting a remediation is to assess the root cause(s) or underlying drivers to understand the nature and extent of the misconduct or other failure. One failure could have multiple root causes and licensees should not just ask what happened, but why and how it happened: see Example 3. Sometimes the cause(s) might be difficult to identify, at other times the cause(s) of the misconduct or other failure will be readily identifiable.

Example 3: Investigating the underlying drivers of misconduct or other failures

Lima Insurance sold a range of life insurance products direct to potential consumers via outbound telephone calls. The products sold in its outbound telephone sales were more expensive and of lower value than products sold through other channels. Many of the products offered very limited benefit to consumers, were sold using pressure-selling tactics or mis-selling conduct, and had poor disclosure. It was likely that the telephones sales were in breach of the anti-hawking provisions.

Lima Insurance commenced a remediation program and investigated the underlying causes of the hawking and pressure selling misconduct before finalising the scope of the remediation.

DRAFT

Three causes of systemic compliance issues were identified:

- A remuneration structure that incentivised staff to make as many sales as possible at the expense of consumers' interests.
- A culture and governance that enabled unfair and aggressive sales tactics at the cost of compliance, which included aggressive objections handling approaches and the circumvention of the conflicted remuneration provisions.
- Large deficiencies in its risk management practices, including its quality assurance and compliance program.

Investigating the full extent of the misconduct or other failure

RG 000.64 It is important that licensees ensure that the full extent of the misconduct or other failure has been investigated, to identify how many consumers have been affected. There might be a question about whether the misconduct or other failure is more widespread than what initial evidence suggests.

RG 000.65 Licensees may use data, complaints, trend analysis and known risk indicators to investigate how far the misconduct or other failure extends, and which consumers are affected. Generally, licensees should assess whether:

- (a) other products, brands, advice or services might be involved;
- (b) systems, processes or policies might have failed;
- (c) representatives or employees might be implicated;
- (d) platforms or sales channels may be affected; or
- (e) business groups, product or service providers, subsidiaries or licensees might be impacted.

Example 4: Investigating the full extent of the misconduct or other failure

In 2020, Grossman Finance internally identified an error in some of its pricing algorithms for a certain brand product, which effectively meant that renewing customers did not receive the correct eligible discounts. The disclosure and marketing materials did not accurately reflect how the premiums were calculated and discounts applied.

Grossman Finance lodged a breach report with ASIC under s912D of the Corporations Act, and informed ASIC about the remediation program that had been initiated.

ASIC was concerned that Grossman Finance was not investigating the underlying drivers and full extent of the misconduct. ASIC challenged Grossman Finance to do this analysis as well as review all its brands and systems for relevant breaches, given the nature of the misconduct.

As a result, Grossman Finance identified several pricing errors impacting a number of branded policies.

DRAFT

Grossman Finance also identified the following underlying drivers:

- complex and outdated ‘legacy’ technology systems that significantly increase the likelihood of financial and compliance risks occurring;
- equally complex and often poorly disclosed pricing practices; and
- poor governance, controls, and monitoring and supervision to ensure compliance with obligations to consumers.

Grossman Finance also reviewed whether certain breaches may have occurred not just in the pricing algorithms but also through errors that were hard coded into policy administration systems.

Commentary

Grossman Finance may not have identified the full extent of the pricing and systems errors across many different products and brands without ASIC’s intervention. Before finalising the scope of the remediation, Grossman Finance should have investigated the underlying drivers and what other brands and systems may have been affected

RG 000.66 Licensees may choose to use file sampling to test whether the misconduct or other failure is more widespread than the evidence at hand indicates.

RG 000.67 Licensees should also consider the product area in which they deliver financial services in developing key risk indicators of potential misconduct or other failure and for identifying consumers who may be affected.

RG 000.68 When using risk indicators, it is important to keep in mind that they might not pick up all potentially affected consumers. For example, if ‘missed payments’ is used as a risk indicator to identify potential misconduct or other failure, then affected consumers who made financial sacrifices and managed to make repayments would not be picked up. In these situations, it is important to not let these consumers slip through the cracks.

Determining the remediation review period

RG 000.69 It is important that the right timeframe is selected as part of the remediation. This involves considering over what period of time the relevant misconduct or other failure may have occurred and the length of time that consumers have potentially been affected (remediation review period).

RG 000.70 By understanding the root cause and extent of the misconduct or other failure, licensees should be able to determine, based on available information, of when they reasonably suspect the misconduct or other failure first caused loss to a consumer. This should always be a licensee’s starting point for the remediation review period.

RG 000.71 If licensees have adequate systems and processes in place to identify misconduct or other failures promptly, the review period for any remediation should rarely exceed any record retention requirements, and licensees will not have to consider using assumptions to account for absent records. If a

remediation review period does extend beyond seven years, it may indicate a systemic underinvestment in systems to deliver products and identify misconduct or other failures as they arise.

RG 000.72 When the misconduct or other failure extends beyond record retention requirements, and records have been destroyed in good faith, the review period may be limited. However, licensees should consider if it is possible or reasonable to apply assumptions to identify and remediate consumers who suffered loss beyond such period (such as seven years): see RG 000.113 for more information.

RG 000.73 Licensees should remember that individual consumers have rights to seek a review or compensation under other statutory frameworks including IDR and through AFCA. No limitation to a remediation review period can extinguish these rights.

Note: Other frameworks such as the state, territory and Commonwealth unclaimed money regimes have also been established to ensure that money owed to consumers remains available to them beyond the expiry of any statutory limitation period.

Identifying affected consumers

RG 000.74 Once the nature and extent of the misconduct or other failure is understood, licensees should be able to identify consumers who have or may have been affected by the misconduct or other failure. Working out who may have been affected is an exercise that should be robust and inclusive.

RG 000.75 Licensees should review the evidence and records available to determine which consumers have or may have been affected as a result of the misconduct or other failure. Depending on the nature of the remediation, reviewing all records may be the only appropriate approach: see RG 000.87 for file reviews.

RG 000.76 In some cases however, licensees may need to use assumptions to account for absent records or increase efficiency to achieve fair and timely outcomes: see RG 000.96.

RG 000.77 It is not appropriate to ask consumers who are likely to fall within scope (with a reasonable level of certainty) whether they wish to participate or ‘opt-in’ to a remediation. A key principle of conducting a remediation is to make the process easy for consumers and minimise ‘calls to action’.

Note: For more information on ‘calls to action’, see RG 000.173–RG 000.176.

Example 5: Inappropriate opt-in methodology

Jupiter Advisory (Jupiter) incorrectly charged adviser service fees from consumers’ cash management trusts to which Jupiter had access. This

happened in a number of situations including where the adviser was inactive, or where the consumer had asked for the adviser to be removed from their account. As a result, consumers did not receive the services that they paid for. A remediation was initiated.

Jupiter proposed an opt-in methodology that would involve the licensee writing to consumers to ask them whether they would like their fees refunded. Jupiter knew that the 'likely outcome' of taking this approach was that Jupiter would have to pay less compensation.

Commentary

Once Jupiter has identified all of the affected consumers, these consumers should be proactively remediated fees and interest automatically.

Consumers should not be asked to opt-in. The remediation process should minimise complexity and consumer action, preferably by making any remediation payments directly to a consumer's bank account.

Reviewing and testing the scope

- RG 000.78 Further misconduct or other failures may be identified during the remediation. If this occurs, the scope may need to be revised (e.g. other failures in product areas not originally anticipated or representatives/staff not previously identified). Licensees should also consider whether any closed matters in the remediation need to be re-examined.
- RG 000.79 Licensees should also have processes in place to review and monitor complaints that relate to the remediation scope. For example:
- (a) determine whether there are consumers who have had previous complaints reviewed by IDR or AFCA that would fit within the parameters of the current remediation; and
 - (b) have processes in place to review circumstances of consumers who indicate later—including after the remediation has been concluded—that they should be considered.
- RG 000.80 Licensees may consider testing the remediation scope to ensure that it properly captures all affected consumers. For example, licensees may choose to invite consumers who are likely to fall out of scope to participate in the scoping process of the remediation as a means of testing any decisions or assumptions made. But remember, licensees should always adopt an inclusive approach in determining the scope of the remediation and minimise consumer action.

Example 6: Revising the scope of remediation

Licensee Vade Advisory (Vade) commenced a review of consumer files after becoming aware that three of its advisers had been giving inappropriate insurance advice.

After reviewing a sample of advice by the three advisers, Vade felt certain that the deficiencies in the advice related only to insurance advice.

After commencing a review of all consumers who received insurance advice by the three advisers in the past four years (the length of the advisers' employment), it became apparent that one of the advisers was also giving superannuation advice that was inappropriate.

Vade reviewed a sample of the adviser's superannuation advice over the past four years and found further instances of inappropriate superannuation advice. As a result, Vade decided to expand the scope of the remediation to include superannuation advice given by that adviser.

Commentary

In this example, it was appropriate for the advice licensee to revise the scope of the remediation.

Determining the impact of the misconduct or other failure

- RG 000.81 Licensees may use a number of methods to determine the scope and impact of the misconduct or other failure—for example by using data analysis, file reviews, assumptions or a combination. These methods are relevant to identifying affected consumers, and for determining appropriate outcomes in Section E. Licensees should consider their obligations when determining the appropriate methodology to use, including whether it is efficient, honest and fair.

Accessing evidence, records and data

- RG 000.82 Licensees have a range of record-keeping obligations that are relevant to their ability to effectively remediate: see RG 000.300.
- RG 000.83 Licensees should ensure that relevant records are readily accessible including that they remain so upon the acquisition by a third-party provider, administrator or financial adviser (for example).
- RG 000.84 Licensees should take all reasonable steps to access and utilise the evidence, data and records held by the business or relevant external third parties in order to complete the remediation. This process should occur as early as possible in the remediation process to avoid any accidental or automatic erasure of evidence.
- RG 000.85 Authorised representatives have obligations to provide records to licensees upon request: see [Class Order \[CO 14/923\]](#) *Record-keeping obligations for Australian financial services licensees when giving personal advice*. This obligation continues to apply even if the authorised representative ceases its relationship with the licensee. Licensees should be open and transparent with

the third parties involved to ensure the provision of relevant records and evidence is as efficient as possible.

- RG 000.86 Sometimes the evidence will be easily accessible. For example, in situations of overcharged fees, an analysis of the data may reveal exactly which consumers have been affected and the loss suffered. If the misconduct or other failure is identified quickly, there will rarely be challenges associated with accessing reliable evidence. Licensees that have accurate, digitised records will also generally be better placed to efficiently conduct a remediation.

File reviews

- RG 000.87 In some remediations a file review or some form of individual assessment of advice or eligibility will be needed to accurately determine who has been affected by the misconduct or other failure and the loss suffered (if any). For example, file reviews might be necessary to determine whether promised products or services were delivered competently and in accordance with the law, if at all.
- RG 000.88 Licensees may also choose to conduct sample testing of files to understand the extent and impact of the failure.

The review process

- RG 000.89 It is essential that files, or the quality of services provided to the consumer, are reviewed in a consistent and fair manner. Licensees should develop principles and guidance for reviewing consumer files or the provision of service to ensure that this is the case.
- RG 000.90 The review process should not be unnecessarily complex. Templates are a useful way to guide reviewers and assist in record keeping. However, the review process should not be a ‘tick-a-box’ exercise—it should be flexible enough to make changes where lessons are learned.
- RG 000.91 Where there are indications of fraudulent or misleading or deceptive behaviour by a representative, licensees should be prepared to look beyond the face of the file to determine whether what the file suggests occurred, actually did occur.
- RG 000.92 Licensees should have already identified consumers who may be suffering hardship or have special circumstances, and these consumers’ files should be reviewed as a priority.

File reviewers and peer review

- RG 000.93 Files should be reviewed by people who meet the training and competence requirements to provide the services or products to which the file relates.

The more complex the underlying products and services provided, the more training and competence will be required to review the files.

Note 1: See further [Regulatory Guide 146](#) *Licensing: Training of financial product advisers* and [Regulatory Guide 206](#) *Credit licensing: Competence and training*.

Note 2: The *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* modified the Corporations Act in relation to education, training and ethical standards of financial advisers.

- RG 000.94 After an initial review of a file has occurred and a determination made, in some cases a file should be ‘peer reviewed’ by another appropriately qualified and experienced person to ensure consistency and fairness. In many cases a peer reviewer will be internal to the business; in others, such as where there are no suitably qualified people available, external assistance may be required.
- RG 000.95 We do not expect that peer reviewing, or regular peer reviewing, will be required in all circumstances. Whether peer reviewing is appropriate will depend on the nature of the misconduct or other failure involved, the size of the remediation and the complexity of the consumer files. It may also be appropriate when the remediation is still at its early stages and reviewers are developing ways to ensure that reviews are conducted consistently.

Give consumers the benefit of any doubt when using assumptions

- RG 000.96 In order to save time and program costs, remediate more efficiently and/or make up for absent records, licensees may consider the use of assumptions when they are beneficial to consumers.
- RG 000.97 There are two key circumstances in which assumptions may be applied:
- (a) when determining which consumers should be included in the remediation (scoping assumptions); and
 - (b) when calculating the amount of actual or potential loss, including foregone returns or interest (refund assumptions).
- RG 000.98 Overall, licensees should only use assumptions in a remediation if they are *beneficial* to consumers and will result in an outcome that:
- (a) returns affected consumers *as closely as possible* to the position they would have otherwise been in had the misconduct or other failure not occurred;
 - (b) is evidence based and well documented; and
 - (c) is monitored to ensure the assumption continues to achieve the goal of returning consumers as closely as possible to the position they would have otherwise been in throughout the remediation.

- RG 000.99 When we refer to assumptions that are ‘beneficial to consumers’, or ‘give consumers the benefit of any doubt’, we mean that when there is uncertainty the assumptions should:
- (a) minimise the risk of any affected consumers falling out of scope (when identifying affected consumers); and
 - (b) benefit consumers by minimising the risk of under compensation (when determining remedies).

Note: Licensees are not expected to overcompensate all consumers.

- RG 000.100 Using assumptions will also likely save licensees time and resources in conducting the remediation that would ordinarily be associated with analysing all records or conducting individual file reviews. This means the use of assumptions will benefit the licensee as well as the consumer. If there is an element of overcompensation for some affected consumers, this program cost saving should be taken into account when determining what is an appropriate overall outcome.

When it is appropriate to use assumptions

- RG 000.101 When using assumptions, the outcome should be beneficial to consumers to ensure the licensee is complying with its obligations to act efficiently, honestly and fairly. Depending on the circumstances, it may be more appropriate to undertake individual file reviews (this could be for certain cohorts or all those potentially affected).
- RG 000.102 Licensees need to be able to justify their assumptions with available evidence and be clear when communicating with consumers about the use of assumptions and the impact that these may have on their individual loss calculation.
- RG 000.103 A decision to use assumptions may need to be balanced with other factors and considered in the context of the licensee’s other legal duties and obligations. For example, superannuation trustees must consider whether the use of assumptions is in the best financial interests of its members and treat members within a class and of different classes fairly: see s52(2)(c), (e) and (f) of the SIS Act.
- RG 000.104 Licensees remediating unit pricing errors should refer to the guidance outlined in [RG 94](#) when using estimates.

Developing the assumptions

- RG 000.105 When developing assumptions, there are a number of factors licensees should consider to ensure they are beneficial to consumers.
- RG 000.106 For example, licensees should consider the variability within the affected consumer portfolio, including between consumer cohorts and whether

different assumptions should apply. In some cases, for certain cohorts it may not be appropriate to apply assumptions (e.g. certain vulnerable cohorts, high risk cohorts or severely affected cohorts).

- RG 000.107 There will be limited circumstances when it will be appropriate to use a median or mean as basis for an assumption. This will be when the standard deviation of losses is low, and/or the skew of the distribution of losses minimises the risk of under-compensation.
- RG 000.108 There will generally be a margin of error associated with the use of assumptions. Licensees should minimise the margin of error and the ‘risk of under compensation’. Ultimately it is a matter for licensees to decide what margin of error and risk is fair and appropriate in the circumstances.
- RG 000.109 Some of the factors that may indicate that an assumption is not beneficial to consumers include (but are not limited to):
- (a) unjustifiably narrow scoping;
 - (b) unjustified discounting or inappropriate averaging;
 - (c) if the outcome of using assumptions appears to commercially benefit the licensee over the consumer;
 - (d) if evidence has been excluded or new information ignored that may change the assumption; or
 - (e) if the licensee has not taken reasonable steps to use all of the data that is reasonably available to them.

Using assumptions when records are missing

When record-keeping obligations have been breached

- RG 000.110 Licensees have a range of record-keeping obligations: see RG 000.300.
- RG 000.111 If a licensee has breached their record-keeping obligations, and as a result is unsure whether a consumer has suffered a loss, licensees must make assumptions that are beneficial to consumers. It may not be efficient, honest and fair if consumers are disadvantaged because a licensee has failed to keep proper records in line with its record-keeping obligations, or if an authorised representative of the licensee has failed to comply with its obligations to provide records on request.

Note: See [INFO 232](#) regarding the correct approach to fee-for-no service remediations. If the licensee cannot identify reliable evidence that an annual review was provided, it is expected that it will refund the fees paid by a consumer.

- RG 000.112 Although it may be reasonable to ask a consumer for information in some cases, if the consumer is unable to fill the gaps in the licensee’s records then assumptions that are beneficial to the consumer should be made.

DRAFT

Example 7: Applying assumptions to account for record-keeping breaches

MintVest Bank discovered a systems error that meant that some of the benefits promised as part of a financial package were not delivered. Based on the records available, it was unclear which customer had received what benefits from the financial package, so an assumption was made that no customer had received the benefits and all customers were compensated for the cost of the package.

Commentary

This is an example of an assumption that is beneficial to consumers where a licensee has breached its record-keeping obligations.

Example 8: Applying assumptions to account for record-keeping breaches

MintVest Bank was conducting another remediation and it was unclear whether customers had already received compensation via the internal or external complaints process because they had not been fully documenting their complaints, so an assumption was made that no customer had been previously compensated rather than asking the customer.

Commentary

This is an example of an assumption that is beneficial to consumers where a licensee has breached its record-keeping obligations. It is also beneficial to the licensee in terms of reduced time and costs in trying to reconstruct complaints records.

Example 9: What kind of assumption would not be to the benefit of consumers?

Salaried advisers of advice licensee Rudisao Advisers (Rudisao) provide personal financial advice to Rudisao clients, including advice to switch superannuation products. Through random quality checks, Rudisao recently discovered that some of these advisers may not have met their obligation to undertake a reasonable investigation of new products when recommending a switch. As a result, some advisers were identified as high risk and relevant audio files and documentation were reviewed.

The quality of some audio files was poor and records are incomplete. Notwithstanding these circumstances, Rudisao decided that they could not conclude that problematic advice had been given based on the information available and assumed that if no complaints had been made, then the clients must be satisfied with the advice.

Commentary

This is not an assumption that is beneficial to consumers. Rudisao should not assume that because a client has not complained that they have not suffered loss. Given Rudisao has breached its record-keeping obligations, the advice licensee should assume that clients that received advice in situations where records are incomplete are within the scope and should be included in the remediation.

DRAFT

When a remediation review period extends beyond record-retention requirements

- RG 000.113 If licensees are maintaining adequate systems and processes to identify and remediate problems when they arise, rarely will a remediation review period extend beyond record-retention requirements (which is generally seven years). This means that there will rarely be a need to consider the use of assumptions to account for absent records beyond seven years.
- RG 000.114 If the remediation review period extends beyond the relevant record retention requirements, it may not be possible to access or retrieve certain records. Records may have been destroyed in accordance with relevant privacy laws.
- RG 000.115 If records have been destroyed in good faith, this is likely to affect a licensee's ability to effectively remediate for older misconduct or other failures. However, licensees should consider whether it is possible and reasonable to apply assumptions that are beneficial to consumers to fill in the necessary gaps.
- RG 000.116 There may be circumstances when it is not possible to apply such assumptions, for example if affected consumers cannot be identified with the data available. If that occurs, the licensee may make a residual remediation payment if the profit made can be reasonably ascertained: see RG 000.205.
- RG 000.117 If affected consumers are known or can be reasonably identified, then generally licensees should use assumptions to calculate the loss and remediate the consumers.

Example 10: Applying assumptions beyond record-retention requirements

In 2020, Influence Insurance discovered a manual processing error that resulted in duplicate home and contents insurance policies being created in its operating system when consumers amended their existing policies. An investigation found this misconduct or other failure had begun in 2003.

Influence Insurance were able to identify the affected consumers and refund the additional premiums the consumers had paid between 2008 and 2020.

For the period between 2003 and 2007, Influence Insurance were able to access legacy systems and conduct a desktop review to identify the consumers who had likely paid for duplicate policies. However, the data on the additional premiums paid by individual consumers was unavailable.

Considering that Influence Insurance could reasonably identify the consumers who had likely been affected, Influence Insurance decided to analyse its financial reporting data and refund those affected consumers the mean premium value paid for home and contents policies over the relevant period where there were no records.

DRAFT

Commentary

In these circumstances it was appropriate for Influence Insurance to triangulate the data it held within the organisation to develop an assumption that would be beneficial to consumers, given the records they had available.

Example 11: Applying assumptions to account for absent records

Consumers who had a business lending facility with Lussen Loans were required to obtain a 'key person' life insurance policy. In some cases, this policy was assigned to Lussen Loans as a policy owner. For the last 10 years, when Lussen Loans was the policy owner, correspondence received by Lussen Loans from insurers may not have been provided to consumers. This meant that consumers may have unknowingly continued to pay for the policy after the relevant business facility was repaid and the condition lifted.

Instead of relying on insurance providers to extract historical premium data and details of premiums actually paid (especially because the insurers may not have retained this information), Lussen Loans determined that the most recent premium paid was the highest premium the consumer would have paid over the life of the policy. It used that assumption to determine the base refund rate for each consumer per year of impact.

Commentary

This is an example of how a licensee made up for absent records by using an assumption that was beneficial to consumers. It also significantly increased the efficiency of the remediation, which was beneficial to the licensee.

Example 12: Applying assumptions to account for absent records

Bellen Bank discovered in 2014 that it had failed to apply benefits including fee waivers (e.g. a waiver on advice fees), interest rates discounts and bonus interest on 'BB+' products for a period of 10 years. The remediation methodology incorporated a broad range of assumptions to account for a lack of data—see examples below:

- Many fee types shared the same codes and it was not possible based on the available data to determine which fees were eligible for a discount. An assumption was made that all fee types were within scope and refunded.
- Due to a lack of records between 2004 and 2008, it was not always possible to determine whether a consumer was erroneously charged an advice fee when they were eligible for a waiver. A sample of available files showed that 78% of consumers did not receive the eligible waiver. When unsure or where the advice file was unavailable, Bellen Bank assumed that the advice fee should have been waived and refunded 100% of the fees.

Commentary

This is an example of how a licensee used the information available, despite the lack of complete or accurate records, to develop an assumption that was beneficial to the consumer.

DRAFT

Using assumptions for efficiency purposes

- RG 000.118 Assumptions that are to the benefit of consumers can also be used to increase the efficiency of a remediation, even when a licensee has good quality records.
- RG 000.119 Such assumptions can offer a balance between timeliness and accuracy without a trade-off in quality. If considering this approach, licensees should first ensure the considerations at RG 000.98–RG 000.99 are satisfied.
- RG 000.120 Fund managers of managed investment schemes and superannuation trustees should refer to [RG 94](#) when remediating unit pricing errors using scheme or trust property.

Example 13: Applying assumptions to increase efficiency

Vault Advisers discovered one of its advisers failed to deliver ongoing advice services to financial advice clients who were charged fees for those services. Vault Advisers reviewed all of the adviser's clients' files, and where Vault Advisers did not find evidence that the adviser had provided the required services, it paid fee refunds and interest to the clients.

Separately, Vault Advisers also sampled its other advisers and practices to determine if they had engaged in fees-for-no-service conduct. Vault Advisers subsequently discovered a cohort of clients that had likely received no service from certain advisers and practices.

Instead of reviewing each client file in that cohort to determine whether the service had actually been provided, which would have taken considerable time, effort and resources due to the complexity of the matter, Vault Advisers decided to make an assumption and refund 100% of that cohort's advice fees plus interest for the relevant period.

For the remaining clients of the advisers and practices, Vault Advisers undertook individual file reviews. If the files did not contain evidence that the advisers provided the ongoing services to clients, Vault Advisers refunded 100% of those client's advice fees plus interest for the relevant period.

Commentary

It was appropriate for the licensee to refund clients where there was no evidence that advice had been provided. The approach taken for other advisers and practices is an example of using a combination of assumptions that were beneficial to consumers as well as an example of using file reviews to increase overall efficiency and accuracy.

Example 14: Applying assumptions to increase efficiency

Hondo Bank discovered that from December 2017 to November 2019, an error with the calculation of daily interest on commercial overdraft facilities occurred intermittently across the period. Hondo Bank decided it was more efficient to remediate all Hondo Bank customers who held the overdraft facility during that time period, rather than seeking to identify specific customers affected by the error.

Commentary

This is an example of how a licensee used an assumption to increase efficiency and benefit consumers.

Example 15: Applying assumptions to increase efficiency

Jost Sky Pty Ltd was conducting a remediation after charging incorrect fees. Instead of undertaking a file review to understand exactly how much every consumer was overcharged, Jost Sky decided it would be more efficient to apply an assumption and automatically refund all fees paid below a set dollar threshold. For the remaining consumers owed fees above the threshold, Jost Sky conducted individual file reviews to determine whether they had been mischarged.

Commentary

This is an example of how a licensee used a combination of an assumption and individual file reviews to increase efficiency and benefit consumers.

Justifying the assumptions

- RG 000.121 Before applying an assumption, licensees must ensure it is evidenced-based, documented and appropriately justified. We may request records that evidence and justify the use of the assumption(s).
- RG 000.122 Regardless of size, licensees can think creatively about where they may be able to source data from across their organisation, or from service providers or consultants, and what that data could tell them about their consumers, and how it may inform assumptions.
- RG 000.123 For example, in cases where licensees are applying assumptions to account for absent records, a licensee should consider:
- (a) what available data could inform an evidence base for the period when records are incomplete;

Note: The evidence base for these assumptions may differ to the evidence base available for assumptions used for efficiency purposes only (where accurate and complete records exist).
 - (b) whether other internal or external information could be triangulated to inform scoping; or
 - (c) if it is known or suspected that a consumer has held the relevant product for a longer period of time than there is data available for, this could be factored into assumptions about how far back the remediation will go.

Monitoring the assumptions

- RG 000.124 Licensees should monitor the assumptions until payments are finalised to ensure fair and timely consumer outcomes are achieved and continue to be what was expected.

- RG 000.125 If new information arises (e.g. through subsequent complaints) during or following the remediation that suggests that any assumptions made are not to the benefit of consumers, licensees should consider whether any supplementary compensation is necessary.
- RG 000.126 ASIC may request the remediation monitoring data if necessary.

Segmenting and triaging consumers

- RG 000.127 For larger or more complex remediations, licensees should consider whether there are cohorts of consumers who share common features or experiences that can be identified. The way a licensee decides to determine consumer cohorts will depend on the specifics of the remediation and the characteristics of those specific consumers—there is no ‘one-size-fits-all’ approach that can be used.
- RG 000.128 Licensees may wish to use consumer cohorts to triage consumers through the remediation—at both the investigation stage and when determining and delivering the remedy. This will help with the timeliness, efficiency and fairness of the remediation.
- RG 000.129 It is appropriate for licensees to triage different consumer cohorts so that licensees can begin remediation of some segments while still completing the scoping of other segments. This decision could consider the following:
- (a) cohorts that are the simplest or most complex to remediate;
 - (b) cohorts that hold the largest number of affected consumers;
 - (c) cohorts that are receiving the largest payments;
 - (d) cohorts that the licensee has contact and/or payment details for; and/or
 - (e) cohorts that are experiencing situational vulnerability (this may include financial difficulty or hardship).

E Conducting the remediation: Part 2—Determine and deliver an appropriate outcome

Key points

Conducting a remediation also involves determining and delivering appropriate outcomes for affected consumers that are fair and timely. The aim is to return affected consumers to the position they would have otherwise been in had the misconduct or other failure not occurred: see RG 000.130–RG 000.133.

Delivering appropriate outcomes generally involves:

- determining the appropriate remedies (see RG 000.134–RG 000.149);
- calculating foregone returns or interest (see RG 000.150–RG 000.167);
- considering the consumer experience and delivering effective communications at various stages (see RG 000.168–RG 000.176);
- applying reasonable endeavours to make remediation payments (see RG 000.177–RG 000.197); and
- ensuring no profit is retained (see RG 000.198–RG 000.209).

What an appropriate outcome is

RG 000.130 Once the nature and the extent of the misconduct or other failure is understood and affected consumers are identified, licensees should start to think about how to deliver appropriate consumer outcomes that are fair and timely, including the type of remedies.

Returning consumers to the position they would have otherwise been in

RG 000.131 The guiding principle for all remediations is to return affected consumers as closely as possible to the position they would have been in had the misconduct or other failure not occurred. However, there are some rare circumstances when this may not be appropriate.

Example 16: Where it may not be appropriate to place consumers in the position they would have otherwise been in

BBNG Advisory (BBNG) designed a large-scale remediation for consumers who had paid fees for ongoing advice but did not receive the advice in return. BBNG intended to return consumers to the position they would have been in if the misconduct had not occurred by:

- refunding the fees that were incorrectly deducted (refund amount); and

DRAFT

- adjusting the payment to reflect the interest or earnings that the refund amount would have earned if it had remained in a consumer's account or investment fund.

For most consumers, this resulted in payment of the refund amount plus interest or investment earnings. However, for a group of consumers, the value of the investment fund that the fees were deducted from had declined in value. A rigid application of BBNG's compensation principles would have resulted in these consumers receiving negative interest or earnings, so they would have been compensated with less than the fees they had paid.

BBNG decided to set a minimum floor on the refunds and compensation paid, so that no consumer would have their compensation reduced by negative interest or earnings, and all affected consumers would receive at least the value of the fees incorrectly deducted plus an interest component.

Commentary

In this example it was appropriate for the licensee to not apply negative interest/earnings in determining the amount to be paid to affected consumers.

- RG 000.132 Sometimes it may not be possible to return consumers to the position they would have otherwise been in. Licensees should do what they can to compensate the consumer for any disadvantage caused by the misconduct or other failure.

Example 17: Where it may not be possible to return consumers to the original position

Steel Financial Solutions (Steel) has discovered that one of its representatives has been routinely advising consumers to move out of their defined benefit superannuation schemes, and into an accumulation fund. Consumers have accepted the advice and moved funds.

File reviews confirmed that the advice was not appropriate for the 150 consumers in question and was contrary to their best interests.

The core impact on consumers is that they had been moved from a superannuation fund which had no investment risk to a superannuation fund under which the consumers bore investment risk.

Due to the nature of defined benefit superannuation, the consumers could not be returned to that superannuation fund and thereby returned to the position they would have been in had the misconduct or other failure not occurred. Instead Steel appropriately compensated the consumers for their loss by:

- refunding all advice fees to the consumer's superannuation account; and
- purchasing a guaranteed annuity on equivalent terms to replace the foregone guaranteed income.

Commentary

It was appropriate for the licensee to think of alternative remedies that could ensure the affected consumers were not further disadvantaged by

DRAFT

the misconduct, despite not being returned to the position they would have otherwise been in. Due to complexity of the case, Steel could also consider appointing an independent expert to assess their methodology and approach.

- RG 000.133 Licensees should also consider what tax consequences the consumer may incur as a result of the remediation payment to ensure they are returned to the position they would otherwise have been in, as closely as possible: see RG 000.213.

Determining appropriate remedies

- RG 000.134 Remedies to address consumer loss can be monetary or non-monetary, or a combination of both.
- RG 000.135 Licensees should consider a broad range of possible remedies to address how the misconduct or other failure has affected the consumer to date, and what needs to be done to avoid the risk of ongoing harm or future consequences as a result of the misconduct or other failure.
- RG 000.136 To determine an appropriate remedy licensees should assess available records to identify ‘features’ of affected consumers that may be relevant to how the misconduct or other failure may have affected them. Consumer cohorts who are suffering financial hardship or difficulty because of the misconduct or other failure, or have been identified as potentially vulnerable, may need additional remedies such as support services or professional assistance.

Note: Licensees may refer to p. 4 and Resources A and B in [Making it right: How to run a consumer-centred remediation \(Making it right\)](#) (PDF 2.5MB) for more information on how to do this in practice.

- RG 000.137 Some consumers may also suffer detriment that is not apparent on its face to a licensee. It is important licensees provide a consumer with clear information about how they have calculated compensation, so that the consumer is able to provide detail of any detriment that was not considered by the licensee when determining the appropriate remedy.

Monetary remedies

- RG 000.138 When addressing monetary consumer loss, licensees may decide whether it is appropriate to calculate the actual loss or use assumptions that are beneficial to consumers: see RG 000.87 for file reviews or RG 000.96 for use of assumptions. What the appropriate approach is will depend on the circumstances. Licensees should refer to Table 1 for a non-exhaustive list of possible remedies by product or by failure.
- RG 000.139 Depending on the circumstances, compensation for monetary loss may include foregone returns or interest: see RG 000.148–RG 000.167.

DRAFT

- RG 000.140 Licensees should also consider any additional fees or charges that may have been incurred as a result of the misconduct or other failure, for example overdraft fees or late payment fees.
- RG 000.141 If relevant, when calculating monetary loss, a licensee should assess whether consumers received the specific products or services that they paid for. For example, it is not appropriate for a licensee to discount the compensation owed for a mis-sold insurance product because they believe holding the insurance policy gave the consumer ‘peace of mind’.
- RG 000.142 A partial monetary remedy may be appropriate in limited circumstances, but only if the consumer has received a legitimate and demonstrable financial benefit in return.

Non-monetary remedies

- RG 000.143 Non-monetary remedies may be appropriate in some circumstances (in addition or as an alternative to compensation), for example if consumers:
- (a) received non-compliant advice;
 - (b) were placed in an inappropriate product;
 - (c) were mis-sold a product;
 - (d) misunderstood key features of a product due to inadequate or misleading disclosure or marketing; or
 - (e) were subject to misconduct or other failure but did not suffer a monetary loss.
- RG 000.144 Non-monetary remedies may include things like moving, or assisting to move, consumers into more appropriate products, varying contracts (such as waiving eligibility criteria), correcting false information or providing other forms of rectification, assistance or support.
- RG 000.145 If it is not possible to move a consumer out of an inappropriate product (e.g. because the consumer is unresponsive), licensees should take reasonable steps to ensure the consumer is not disadvantaged: see Table 1 for further information on remedies.
- RG 000.146 Licensees should consider the consumer’s circumstances in determining what other non-monetary remedies or outcomes may be appropriate. For example:
- (a) providing financial or legal advice (see RG 000.210);
 - (b) postponing or ceasing action (see RG 000.216); or
 - (c) pausing or waiving statutory limitation periods (see RG 000.218).

Example 18: Where non-monetary remediation of clients may be appropriate

David is 42 years old, has no dependants and owns a house with a mortgage of \$550,000. He recently inherited \$100,000 following the death of a relative.

David sought advice from Harvey, an adviser at Green and Brown Advisory Services (Green and Brown), about what to do with the inheritance. David was asked to answer a series of questions that were designed to help Harvey understand David's personal circumstances, priorities and risk profile.

The results of the questionnaire showed that David had a conservative risk profile and his priorities included reducing debt and saving for retirement. Despite this, Harvey recommended that David invest all of his inheritance in a high-risk managed investment scheme.

When the firm reviewed the advice given to David, they determined that David received advice that did not address his personal circumstances and risk profile. However, given favourable market conditions, the managed investment scheme that was recommended to David had performed well over the past few years and had resulted in a gain that outweighed the benefit David would have received if he had been advised to pay the inheritance into his mortgage or superannuation fund.

David did not suffer a monetary loss. However, Green and Brown explained to David that he had not received appropriate advice and that an alternative strategy would be more appropriate for him, assuming his circumstances and risk profile had not changed.

David was offered a free review by one of Green and Brown's advisers, or a reimbursement of fees if David chose to see an adviser from another firm.

Commentary

In this example, non-monetary remediation was appropriate for the client.

Remedies to consider when determining and delivering appropriate outcomes

RG 000.147 Table 1 provides a non-exhaustive list of possible remedies to consider when determining and delivering appropriate outcomes for affected consumers. Other available remediation outcomes should also be considered as part of the process: see Section F.

Table 1: Remedies to consider when determining and delivering appropriate outcomes

Misconduct or other failure	Possible remedies and considerations
Misconduct relating to providing financial advice	<p>In remediations relating to the provision of inappropriate advice, a licensee should consider the following key remedies:</p> <ul style="list-style-type: none"> • refunding advice fees plus foregone returns; • offering free remedial financial advice; • reimbursing for lost investment performance or interest; • compensating for lost or inferior insurance position; and • moving consumers into an appropriate product.
Fees for no service	See INFO 232 .

DRAFT

Misconduct or other failure	Possible remedies and considerations
Misconduct relating to insurance contracts	<p>In remediations that involve insurance products, when determining an appropriate remedy licensees should consider:</p> <ul style="list-style-type: none"> • the product design; • how the product was sold; and • whether it was likely that the consumer knew about and wanted the product, and relied on being able to make a claim. <p>Depending on the circumstances, possible remedies may include:</p> <ul style="list-style-type: none"> • refunding past premiums and interest; • revisiting previously declined claims and allowing for retrospective claims; • cancelling the policy with consumer consent and providing a refund of past premiums and interest from the date of sale to the date of cancellation; • providing remedial financial advice; • if the policy cannot be cancelled: <ul style="list-style-type: none"> – refunding or waiving of future premiums if the consumer is ineligible to claim; – providing free financial advice to ensure the product meets the consumer’s needs and circumstances; and/or – waiving eligibility criteria or other conditions. <p>For policies where claims have been made that were declined based on the offending eligibility requirements, licensees should reopen and reassess the claim. Where a payment is made for open policies, it may be acceptable that the claim payment be reduced with reference to outstanding premiums.</p>
Systems failures or errors related to banking products	<p>In remediations relating to systems failures or coding errors that have resulted in, for example, mischarged fees or interest, or the failure to provide benefits, discounts or waivers, a licensee should consider the following remedies:</p> <ul style="list-style-type: none"> • refunding fees plus interest; • compensating for lost interest, loss of benefits, discounts or waivers; and • compensating for any other costs incurred as a result of the misconduct or other failure (i.e. overdraft fees, late fees etc.).
Misconduct related to bundled fees	<p>If a consumer paid bundled fees (i.e. a single fee for a number of services or products including the subject of the misconduct or other failure in question) a licensee should consider the following remedies:</p> <ul style="list-style-type: none"> • refunding fees for the services or products not provided plus interest (the licensee should be able to calculate the relative financial value of the service(s) or product(s) not provided as part of a bundle); and • unbundling the products or fees. <p>If the licensee cannot ascertain the financial value of the service(s) or product(s) not provided as part of the bundled fee, assumptions should be made that are beneficial to consumers, including assumptions that might result in the entire fee being refunded.</p>

DRAFT

Misconduct or other failure**Possible remedies and considerations**

Misconduct related to consumer lease or credit contracts

In remediations following a breach of credit laws that has led to a consumer being provided with an unfair or inappropriate loan or consumer lease, a licensee should consider the following remedies:

- refunding fees, charges and interest (including any establishment fees, dishonour fees, late payment fees, monthly fees or enforcement fees);
- reducing interest rates;
- removing adverse information on a consumer's credit report;
- reducing the principal, or in certain circumstances waiving the total debt where a consumer cannot reasonably make ongoing loan repayments without hardship;
- where a loan or consumer lease has been secured, allowing the consumer to retain the underlying asset if appropriate for the consumer. In some situations it may be possible for any calculation of loss to account for the value of having had possession of the secured asset;
- accounting for any capital losses that have been incurred as a result of the loan;
- if the unaffordable loan or consumer lease resulted in bankruptcy, considering what other remedial action can assist the consumer; and
- providing or offering free remedial financial advice.

Principal reduction is called for when a consumer is suffering financial difficulty caused by the licensee's misconduct or other failure. It is generally not acceptable to lower regular repayments by extending the term of the loan (and expecting a consumer to remain indebted for longer than they had agreed).

Similar considerations should be made where other forms of lender error (e.g. failing to convert an interest only loan to principal and interest) has led to consumer loss.

DRAFT

Misconduct or other failure	Possible remedies and considerations
Misconduct related to superannuation products	<p>In remediations relating to superannuation product misconduct or errors, when determining an appropriate remedy licensees should consider:</p> <ul style="list-style-type: none"> • the direct financial impact of the misconduct or other failure as well as any subsequent transactions that either crystallised (member exit) or carried forward the misconduct or other failure (investment switch); and • any indirect events that may impact the remediation calculations, compensation eligibility and communication strategy. <p>There are a range of potential remedies to account for direct financial impact. Possible remedies may include:</p> <ul style="list-style-type: none"> • refunding or adjusting fees; • reimbursing an amount to reflect correct investment returns had the misconduct or other failure not occurred; • adjusting and/or refunding insurance premium calculations; • adjusting and/or refunding defined benefit calculation; and • reimbursing for foregone returns due to the delay in rolling over benefits. <p>If incorrect data was provided by an employer, trustees may need to consider flow-on impacts to benefit calculations, insurance benefit eligibility and cover levels, and preservation ages.</p> <p>It may be appropriate to offer remedial professional advice, particularly if the remediation is complex or if the member may need to switch products.</p> <p>Superannuation trustees should also consider the tax implications that may result from the remediation payment, particularly in communicating outcomes to their members.</p>
Unit pricing errors	See RG 94 .
Misconduct related to over-the-counter (OTC) derivative products	<p>In remediations relating to retail OTC derivative products, when determining an appropriate remedy licensees should consider:</p> <ul style="list-style-type: none"> • unfair pricing or execution (e.g. asymmetric pricing/negative slippage); • mispricing (e.g. false statements about the risk management (stating ECN/A-book when B-book/internalising risk)); • the refunding of inappropriate fees and charges (e.g. swap, overnight funding costs, spread); and • trading platform failures or outages (e.g. failed transactions, delayed execution of orders, or inability to manage open positions and/or risk).

Calculation of foregone returns or interest

RG 000.148 The overarching principle for determining compensation is that it aims to return consumers as closely as possible to the position they would have been in had the misconduct or other failure not occurred. To achieve this, licensees must account for the foregone returns or interest. This includes returns or interest within the licensee's product or service, or outside the product or service (or both), and specifically:

- (a) returns or interest the consumer would have received had the misconduct or other failure not occurred; and/or

DRAFT

- (b) interest the consumer would not have incurred had the misconduct or other failure not occurred,

RG 000.149 Licensees should consider whether one or more of the circumstances described in RG 000.150–RG 000.151 needs to be accounted for.

Foregone returns or interest within the product or service

RG 000.150 Foregone returns or interest within the product or service may include:

- (a) returns or interest the consumer would have received, for example where the misconduct or other failure relates to:
 - (i) financial advice provided to the consumer, the returns a consumer would have received if they had received appropriate financial advice; and
 - (ii) fees incorrectly charged to the consumer’s savings account, the additional interest the consumer would have received if these fees had not been charged; and
- (b) interest the consumer would not have incurred, for example where the misconduct or other failure relates to fees incorrectly charged to the consumer’s personal loan account, the additional interest incurred by the consumer attributable to these fees.

Example 19: Calculating actual foregone returns within the product or service

In 2020, CAPE Superannuation (CAPE) discovered that it had overcharged members’ administrative fees. These fees were deducted directly from members’ superannuation balances in 2016. The overcharged fee amount would have otherwise remained in members’ balances and continued to generate investment returns within the product.

CAPE is able to access its own data showing each member’s actual investment return (as a percentage) between 2016 (the date of the misconduct or other failure) and 2020 (the remediation payment date). CAPE applied this actual return to the overcharged fee amount to calculate what each member was owed. In other words, CAPE remediated members for both their overcharged fee amount and their associated foregone investment returns.

Commentary

This is an example of how a licensee may use the actual data or records to calculate the returns the member would have received had the misconduct not occurred.

DRAFT

Foregone returns or interest outside of the product or service

- RG 000.151 Foregone returns or interest outside of the product or service may include:
- (a) returns or interest the consumer would have received had they had access to the funds. This may also be known as time value of money, opportunity cost and/or change in purchasing power, and may include:
 - (i) where the misconduct or other failure relates to an amount paid by the consumer in fees that the consumer would have otherwise invested, returns or interest the consumer would have received from the investment; and
 - (ii) where the consumer has exited the product/service before the remediation is paid (e.g. where the consumer has since rolled into a different superannuation product), returns the consumer would have received in the new superannuation product; and
 - (b) interest the consumer would not have incurred, for example if the misconduct or other failure relates to:
 - (i) an insurance policy premium that the consumer has paid for with their credit card, the credit card interest the consumer would not have incurred but for the misconduct or other failure.

Example 20: Calculating actual foregone returns outside of the product or service

In the same scenario as Example 19, some of the overcharged members had since rolled their superannuation balance into a different fund. CAPE needed to know the returns the member would have received on the remediation amount from the date the member rolled over had the misconduct not occurred. CAPE requested the actual percentage returns from the trustees of each former member's new fund for the relevant periods. CAPE then rolled the benefits over to the former members' new fund, an amount totalling the overcharged fee amount, foregone returns within CAPE's fund and the returns the members would have received in the new fund.

Commentary

This is an example of how a licensee may use the actual data or records to calculate the returns the member would have received but for the misconduct.

Different approaches to calculations

- RG 000.152 The following three approaches are available for licensees to calculate foregone returns or interest, within and outside the product or service:
- (a) calculating the *actual foregone returns or interest*;
 - (b) applying *assumptions*; and
 - (c) applying a *fair and reasonable rate*.

DRAFT

RG 000.153 Licensees may apply a combination of approaches depending on the circumstances of the remediation. For example, the licensee may calculate the *actual foregone returns or interest* for the period the consumer was in the product, and apply a *fair and reasonable rate* from the date the consumer exited the product.

RG 000.154 However, licensees remediating unit pricing errors should follow [RG 94](#) when calculating foregone returns.

Actual foregone returns or interest

RG 000.155 Licensees may choose to calculate the actual foregone returns or interest. This could involve:

- (a) retrieving the actual product returns or interest data over the relevant period;
- (b) identifying the payment method for each consumer and the actual interest rate applied if paid by credit (where applicable); and/or
- (c) determining the actual returns or interest the consumer would have received when accounting for time value of money.

RG 000.156 Example 19 and Example 20 illustrate how a licensee might calculate actual foregone returns or interest.

Applying assumptions

RG 000.157 Alternatively, when calculating foregone returns or interest, licensees may choose to apply *assumptions* that are beneficial to consumers if this is more efficient. This approach should only be used if it satisfies the considerations at RG 000.98–RG 000.99 and can be reasonably justified, for example with a sample of actual data of foregone returns or interest from the affected consumer cohort. It may also be used if there are absent records, and the licensee is able to triangulate information from other external sources to justify a rate of return or interest.

Note: It will not be beneficial to consumers in a superannuation context to use a proxy or benchmark rates without some further evidence from the actual product data.

RG 000.158 Licensees should first consider whether using assumptions is appropriate in the circumstances, considering their relevant legal duties and obligations. For example, licensees remediating unit pricing errors should follow RG 94 where compensation is to be made using trust/scheme property.

Example 21: Calculating interest incurred outside of the product or service using assumptions

Greenworth Advisors Pty Ltd (Greenworth) discovered that a number of their customers had been mis-sold life insurance and were ineligible to claim.

DRAFT

Approximately 6% of affected customers paid for the insurance policy using a credit card issued by other financial institutions. These customers may have incurred interest on their card in relation to their purchase.

When determining an appropriate remediation outcome, Greenworth decided that, rather than trying to access records and calculate the actual credit card interest rate for each affected customer, they would use assumptions and apply the highest purchase interest rate available over the remediation period (20.49%).

Commentary

This is an example of how a licensee used assumptions that benefited consumers when calculating the interest incurred by the consumer. The use of assumptions also increased the efficiency of the remediation.

Example 22: Calculating interest incurred within the product using assumptions

Abacus Bank discovered in early 2019 that it had overcharged fees to some of its home loan customers' accounts for more than nine years, which would have affected the amount of interest the customers paid on the principal of the loan.

The licensee was able to determine the actual interest incurred since January 2012 within the product. However, Abacus Bank had large gaps in their records with respect to the affected customers' applicable variable interest rates between January 2010 and December 2011. Abacus Bank assessed the available internal and external data, including the distribution and change in interest rates over that period, and decided to use each customer's last known interest rate (i.e. the rate applied in January 2012) to account for the remaining two years.

Commentary

This is an example of how a licensee used assumptions to calculate the interest incurred by the consumer as a result of the misconduct. The use of the assumptions benefited consumers and made up for absent records.

While there was some risk that a consumer was charged slightly higher interest between 2010 and 2011 than they were in 2012, given the low variability and stability of interest rates during that period of time the assumption appropriately minimised the risk of under compensation.

Fair and reasonable rate

- RG 000.159 There may be circumstances when the licensee cannot determine the actual foregone returns or interest, or there is no data available to justify the use of assumptions over all or part of the relevant period.
- RG 000.160 A common use of a fair and reasonable rate will be to account for the time value of money. In other words, the consumer should be compensated for not having access to the funds they would have had but for the misconduct or other failure. This may be the case where:
- (a) the consumer paid for the product or services from their income/savings; and

- (b) the consumer has exited the product or service before the remediation payment.

RG 000.161 In making this assessment, the licensee should not make unfair assumptions about a consumer's investment behaviours.

RG 000.162 In these circumstances, licensees may apply a fair and reasonable rate. In doing so, licensees should first consider whether there is any legislation that may be relevant in terms of what fair and reasonable rate should apply. For example, in the case of insurance products, licensees should refer to the s57 of the Insurance Contracts Act and reg 38 of the *Insurance Contracts Regulations 2017*, which prescribes an interest rate reflective of the 10-year Australian Government bond rate plus 3%. We consider this rate to be fair and reasonable taking into account the principles at RG 000.163, and can be generally applicable to insurance contracts or other non-investment type remediations.

RG 000.163 If no relevant legislative rate applies, then it may be appropriate to apply a fair and reasonable rate that is:

- (a) reasonably high to ensure that consumers will not be disadvantaged by a licensee's inability to determine the actual foregone returns or interest or apply assumptions; and
- (b) objectively set by an independent body.

RG 000.164 The cash rate set by the Reserve Bank of Australia (RBA) plus 6% is another example of a fair and reasonable rate, particularly in circumstances when accounting for time value of money outside of an investment or superannuation product or service (that was the subject of the remediation). We consider this rate, which is effectively the Federal Court's post-judgment interest rate, is generally fair and reasonable because it is consistent with the principles set out in RG 000.163.

Note: The use of the RBA cash rate plus 6% does not infer that a remediation outcome has the same nature as a Federal Court post-judgment outcome.

RG 000.165 There is no one-size-fits-all approach, and we accept there may be circumstances that justify the use of an alternative rate. However, it is the licensee's responsibility to ensure that the rate that is applied is fair and reasonable taking into account the principles at RG 000.163.

RG 000.166 If using a fair and reasonable rate, licensees should ensure the decision and rationale is documented and appropriately communicated to consumers.

Example 23: Calculating time value of money outside an investment product using a fair and reasonable rate

In 2019, YAK Super discovers an error in the calculation of investment and administration fees and commences a remediation to compensate members for losses incurred since it began in 2005.

DRAFT

Some members, however, had since rolled their superannuation over to a new fund, and YAK Super no longer has records of the rollover. As it was not possible to know what returns the member would have received had the misconduct or other failure not occurred, and the member was unresponsive to communications, YAK Super decided (on top of the returns the member should have received within the product) to apply the RBA cash rate plus 6% on the refund amount from the date of rollover.

Commentary

In this example, it was appropriate to use the RBA cash rate plus 6% as it is consistent with the principles of a fair and reasonable rate in the circumstances.

Example 24: Calculating time value of money outside the credit product using a fair and reasonable rate

Mita Bank discovered that they had incorrectly charged fees on a number of its home loan products for more than 10 years. These fees were added to the balance of the loan and incurred interest at the home loan interest rate.

Some of Mita Bank's home loan customers had since exited the product after fully paying off their loan. Mita Bank was able to easily calculate the actual additional interest each of these customers had incurred within its own product up to the exit date.

However, it was difficult for Mita Bank to determine the consumers' foregone returns or interest outside of the product from the date the consumer paid off the fees and additional interest (i.e. the exit date when the full balance of the loan was paid) to the remediation date.

Mita Bank therefore decided to apply a fair and reasonable rate of the 10-year Australian Government bond rate plus 3% to account for the time value of money from the date of exit, to the date of remediation payment.

Commentary

In this example, it was appropriate to use the 10-year Australian government bond rate plus 3% as it is consistent with the principles of a fair and reasonable rate in the circumstances.

Compounding period

- RG 000.167 Where the relevant compounding period is known, licensees should use this compounding period to calculate foregone returns or interest. Where the relevant compounding period is not known, licensees should use daily compounding.

Considering the consumer experience in delivering outcomes

- RG 000.168 When designing the remediation process and determining how the consumer outcomes will be delivered, including the development of communications, licensees should consider the remediation experience for the consumer.

Remediation processes should minimise complexity, make it easy and be ‘fault tolerant’ for the consumers. See [Making it right](#) (PDF 2.5MB), p. 6.

Communications

- RG 000.169 Communicating effectively with affected or potentially affected consumers is a key element of a consumer-centred remediation and essential in delivering appropriate outcomes. A consumer-centred approach to communications includes:
- (a) understanding the consumers included in the remediation;
 - (b) understanding the consumer experience of the remediation;
 - (c) having a communications plan which at a minimum includes:
 - (i) communication frequency (RG 000.170);
 - (ii) communication channels (see RG 000.171); and
 - (iii) potential consumer ‘calls to action’ (see RG 000.173);
 - (d) writing communications with good communication principles; and
 - (e) testing, monitoring, and tracking the effectiveness of the communications and proactively adapting the approach when required.

Communication frequency

- RG 000.170 The frequency of communication will vary in any given remediation and should be scaled appropriately. Generally speaking there are three types of communication that will need to be made during the remediation: initial communication, ongoing communication (e.g. follow-ups, updates, reminders or other supporting communications), and final outcome communication: see [Making it right](#) (PDF 2.5MB), p. 7.

Communication channels

- RG 000.171 A multichannel communication approach is one that uses different communication channels simultaneously to increase reach and response rates. Licensees should engage with and inform consumers across different communication channels that are fit for purpose and appropriate to consumers’ circumstances and preferences.
- RG 000.172 Staff who communicate verbally with consumers should be appropriately trained and quality assurance processes should be used. Note that any material communication that is provided to a consumer verbally should also be followed up in writing within 10 business days: see [Making it right](#) (PDF 2.5MB), p. 7.

‘Calls to action’ in communications should be limited

- RG 000.173 A key principle of a consumer-centred remediation is that it should minimise complexity and consumer action. Accordingly, asking an affected or potentially affected consumer to take any action (i.e. a ‘call to action’) should be rare and should not be used to ask affected consumers who are likely to fall within scope (to a reasonable degree of certainty) to opt-in to a remediation.
- RG 000.174 Generally, licensees should prioritise using assumptions when records are absent rather than using a ‘call to action’, such as asking the affected or potentially affected consumers to provide more information or evidence of their loss. However, there may be times when a licensee will decide it is unavoidable to ask a consumer for a response or information, or to take some form of action in response to a communication, for example a communication that asks an affected consumer to nominate a bank account.
- RG 000.175 In some cases it may also be appropriate to ask consumers who likely fall out of scope of the remediation whether they wish to participate in the remediation, to test whether the full scope has been captured.
- RG 000.176 Refer to [Making it right](#) (PDF 2.5MB) (pp. 7–9) for more information about calls to action and what to do if consumers do not respond to a call to action.

Note: ‘Non-responsive consumers’ also includes consumers who are sent refunds in the form of a cheque and do not cash them.

Applying ‘reasonable endeavours’ to making remediation payments

- RG 000.177 We expect licensees to apply ‘reasonable endeavours’ to contact and make remediation payments to affected consumers, or to otherwise deliver the remediation outcome if non-monetary.
- RG 000.178 What ‘reasonable endeavours’ are appropriate in the circumstances should be determined on a case-by-case basis. Reasonable endeavours are not, for example:
- (a) prioritising timely finalisation over making successful contact and payment;
 - (b) relying on one single communications channel if other forms of contact are available and the consumer is unresponsive; or
 - (c) sending a cheque with no follow ups if left uncashed (see RG 000.196–RG 000.197).
- RG 000.179 Licensees may choose to triage affected consumers, by segmenting consumers into cohorts and making payments to the ‘easier’ cohorts or cohorts experiencing situational vulnerability first. Licensees may need to

DRAFT

apply a different communication strategy depending on certain characteristics of the consumers and the remediation to be provided to them: see RG 000.127–RG 000.129.

- RG 000.180 Licensees subject to notify, investigate and remediate obligations are required to take reasonable steps to make remediation payments within 30 days of completing the investigation if the consumer is eligible to receive payment. Licensees may consider this guidance in meeting those obligations. If remediation payments cannot be made within 30 days despite reasonable steps, while the licensee may have complied with this specific obligation, the broader obligations relating to the remediation still apply. This means reasonable endeavours to make the payments may still need to continue beyond the prescribed period.

Obtaining up-to-date contact and payment information

- RG 000.181 Obtaining up-to-date contact details and payment information directly from a consumer should only be done in situations where reasonable endeavours to find the consumer’s details have been unsuccessful.
- RG 000.182 Reasonable endeavours to obtain up-to-date contact and payment information may include (but are not limited to):
- (a) utilising the expertise of recovery teams, where available;
 - (b) matching data with information held in other parts of the organisation, where possible;
 - (c) accessing or purchasing data from information merchants that might assist in locating consumers;
 - (d) contacting the representative, dealer or introducer who had initial contact with the consumer (where applicable); and
 - (e) contracting external specialists to assist in finding current details of the consumer—this might be appropriate where larger amounts of money are owed.
- RG 000.183 In circumstances where licensees do need to obtain contact and payment information directly from the consumer, the licensee should have regard to [Making it right](#) (PDF 2.5MB) (pp. 6–8).
- RG 000.184 If licensees cannot find any current contact details or have not received a response despite reasonable endeavours, licensees should, where possible, lodge the money in a relevant state, territory or Commonwealth unclaimed money regime or make a residual remediation payment if applicable: see RG 000.198–RG 000.209.

Low-value compensation threshold

RG 000.185 Licensees are expected to apply reasonable endeavours to contact and automatically pay consumers. If licensees have current payment information on file (such as a bank account, PayID or EFT details), those payments should be made regardless of value and regardless of whether the consumer is a current or former customer.

RG 000.186 However, for former customers owed \$5 or less (after interest) with no current payment information on file, rather than making reasonable endeavours to pay the money directly to the consumer, it is appropriate for the licensee to instead make a residual remediation payment to a charitable or community organisation (known as applying a ‘low-value compensation threshold’).

Note: In relation to unit pricing errors, [RG 94](#) allows licensees to impose a \$20 fixed dollar minimum to payments owed to exited members or lower at the licensee’s discretion.

RG 000.187 For all current customers (and former customers owed more than \$5), licensees should apply reasonable endeavours to contact them and make remediation payments automatically where possible and regardless of value. If the consumer cannot be contacted following reasonable endeavours, licensees should first consider whether an unclaimed money regime is available, and if not make a residual remediation payment to a charitable or community organisation: see RG 000.198–RG 000.209.

RG 000.188 For remediations conducted by superannuation trustees or fund managers of managed investment schemes using trust or scheme property, if a low-value compensation threshold is applied for exited members (or current members in certain circumstances: see [RG 94](#), p. 97), the consolidated compensation amounts under the threshold may be retained for the benefit of the beneficiaries/unitholders of the same fund/scheme. A residual remediation payment cannot be made using trust or scheme assets.

RG 000.189 If a licensee imposes a low-value compensation threshold, details of the remediation and the threshold applied should be disclosed on the licensee’s website. This includes where low-value compensation is retained for the benefit of unitholders/beneficiaries of the same fund (where relevant).

Note: This is consistent with [RG 94](#) in relation to unit pricing error remediations, pp. 83 and 98.

Where to return remediation money

RG 000.190 Where to return remediation money will depend on the nature of the underlying product or service subject to the remediation, and the circumstances of the affected consumer: see Table 2. For example, different

DRAFT

processes should be followed for money paid to superannuation fund members or investors in pooled investment vehicles.

Making payments to exited members of superannuation funds

- RG 000.191 Pursuant to s22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Unclaimed Money Act), superannuation trustees may transfer amounts held on behalf of former members to the Australian Tax Office (ATO) if the trustee reasonably believes this is in the members' best interests. The ATO is then required to take action in respect of amounts transferred to them, which may include paying the amount to a member's current superannuation account.
- RG 000.192 If a superannuation trustee has recent contact information for a former member, generally trustees should at least take reasonable steps to provide notice to the former member at their last known postal address, to give them an opportunity to provide alternative instructions prior to the superannuation trustee transferring any amounts to the ATO in accordance with the Unclaimed Money Act: see [Information Sheet 90](#) *Notifying members about superannuation transfers without consent* (INFO 90) for further guidance.

Table 2: Payments made in particular circumstances

Consumer is deceased	<p>If the consumer is deceased (who is not a former superannuation fund member), reasonable endeavours should be made to make the compensation payment to the estate of the deceased person.</p> <p>Where a former superannuation fund member for whom remediation is required has died, the trustee may consider paying these further amount(s) in accordance with the original death benefit distribution decision to those nominated by the member in any binding death benefit nomination or otherwise to the member's dependants or legal personal representative.</p> <p>Trustees should consider the legal requirements under the Corporations Act relating to the payment of a death benefit (where relevant).</p>
Consumer is bankrupt	<p>If the consumer is suspected as bankrupt, any compensation should generally be paid directly to the individual (rather than seeking to identify the relevant trustee, administrator or creditors).</p> <p>A compensation payment may or may not be claimable by a bankruptcy trustee, depending on the nature of the compensation and the misconduct or other failure.</p> <p>A consumer who is bankrupt may need to seek legal advice and inform their trustee about a compensation payment. Licensees may wish to provide the consumer support to seek legal advice in relation to the payment: see RG 000.210.</p>
Payments relate to loan products	<p>If payment relates to a credit or consumer lease product that was not suitable for a consumer, licensees should give consideration to the most appropriate method of compensation, including direct to the contract (i.e. reducing the balance of the loan) or direct to the consumer.</p>

DRAFT

Payments relate to superannuation accounts	<p>The superannuation trustee should take reasonable steps to contact members that have since exited the fund to rollover the amounts, or transfer the amounts to the ATO if it is in the best interests of the former or lost member: see s22 of the Unclaimed Money Act. The trustee should take reasonable steps to notify the former or lost member prior to making the transfer to the ATO in accordance with INFO 90.</p> <p>If the member has met a condition of release under Sch 1 to the <i>Superannuation Industry (Supervision) Regulations 1994</i> (SIS Regulations) in relation to a remediation amount, the member may apply to have these benefits cashed: see reg 6.18 of the SIS Regulations.</p>
Payments relate to pooled investment scheme products	<p>Refunds or compensation involving pooled investment vehicles should be treated in accordance with this guide and RG 94. In situations of conflict, RG 94 should be applied.</p>
Payments relate to trading accounts	<p>For remediations relating to trading accounts, payment should be made directly to the consumer (e.g. into their bank account), rather than transferred directly into the trading account.</p>

How remediation money should be returned

Automatic payments

- RG 000.193 In most cases, licensees should prioritise making automatic payments for example by electronic bank transfer, or by another viable means to process funds automatically. This could include a consumer's PayID details, or details of an account that a consumer holds with another reputable payment system.
- RG 000.194 If a licensee does not have account details that would enable an automatic payment to be made to the consumer, the licensee should consider if it is appropriate to contact the consumer to seek payment instructions, or to nominate an account for refunds to be credited to.

Use of cheques

- RG 000.195 In some cases, licensees may choose to send a cheque and give consumers the option of providing payment details. However, cheques should not be the default form of payment, and should be used only when other avenues for automatic payment are not reasonably available in the circumstances.
- RG 000.196 Licensees should monitor and record cashing rates, and reminders should be sent to consumers who have not cashed their cheques within a reasonable period of time. Supporting communications and reminders should provide the option of allowing a consumer to securely provide their bank account details.
- RG 000.197 For actions to take on uncashed cheques despite reasonable endeavours, see RG 000.201.

Example 25: Tracking cheque cashing rates

Licensee Zeta is close to finalising its remediation, having paid compensation into the bank accounts of 1400 of 1550 affected consumers.

Licensee Zeta has not yet paid 150 of the remaining affected consumers because it could not obtain their bank accounts details despite reasonable endeavours. It did, however, have address details for them which may or may not be current.

Licensee Zeta decides to send a cheque to each of the consumers alongside a communication that provides the consumer with the opportunity to update their bank account details for direct EFT payment.

Before sending the cheques, the licensee ensured that follow-up processes were in place to track and record the cashing rates of the cheques, and to send follow-up reminders to consumers. Licensee Zeta tracked the:

- number of cheques sent; and
- number of cheques cashed/presented.

Commentary

In this example, it was appropriate for the licensee to send cheques to the remaining consumers. Tracking the cashing rates helped the licensee know who to send follow-up messages to, and it also helped test the effectiveness of the communication approach.

Money that cannot be returned to consumers

RG 000.198 Money that cannot be returned directly to consumers, despite reasonable endeavours, cannot be kept by a licensee. Licensees must not profit from the misconduct or other failure. Licensees should first consider whether any state, territory or Commonwealth unclaimed money regime is available and if not, make a residual remediation payment.

Note 1: Residual remediation payments cannot be paid using scheme or trust property (such as the operational risk reserve). As such, these amounts may be retained for the benefit of the members or unitholders of the same fund or scheme.

Note 2: Licensees are responsible for the administrative expenses incurred in remediating consumers. Licensees should not pay expenses using the money that could not be returned to consumers.

Unclaimed money regimes

RG 000.199 All states and territories have legislation that enables them to accept and hold unclaimed money on behalf of people who are owed money. The Commonwealth also has legislation that covers, amongst other things, lost money related to superannuation, banking and life insurance. ASIC in particular is responsible for handling all unclaimed money from:

- (a) authorised deposit taking institutions, under s69 of the *Banking Act 1959* (Banking Act);
- (b) life insurance companies and benefit fund friendly societies, under s216 of the Life Insurance Act; and

- (c) companies with unclaimed money or property, under s414, 544, 601AD(2), 601AD(1A), 601NG, 668A, 668B, 1017E, 1343 and 1343A of the Corporations Act.

- RG 000.200 Money that is lodged into an unclaimed money regime is held on trust by the Australian Government as consolidated revenue and remains available for the rightful owner to claim (sometimes for a specific period of time) after it has been lodged. Funds should be lodged according to the timeframe established by the relevant regime. Some regimes may require a licensee to hold the lost money on trust for a period of time before lodgement.
- RG 000.201 If a consumer remains unresponsive despite a licensee's reasonable endeavours, the licensee should first lodge the money owed into a relevant unclaimed money regime, if available. This will ensure the money remains discoverable and accessible by consumers for as long as possible.
- RG 000.202 Licensees should be aware of their unclaimed money obligations under relevant state, territory and Commonwealth legislation, and carefully consider whether the obligations apply to the remediation payments in each case.
- RG 000.203 Most state, territory and Commonwealth unclaimed money regimes have a minimum threshold amount. For example, provisions in the Banking Act do not allow authorised deposit-taking institutions to lodge money less than \$500. In these circumstances it would be appropriate to pay amounts less than \$500 as a residual remediation payment following reasonable endeavours to return the money: see RG 000.205.

Note 1: See s69 of the Banking Act and reg 25 of the *Banking Regulation 2016*.

Note 2: Other state, territory and Commonwealth regimes may impose different minimum value thresholds (if any).

- RG 000.204 Licensees should clearly communicate that they will lodge the money into an unclaimed money regime to all consumers who were unresponsive—that is, all consumers they have attempted to contact—including details of how to lodge a claim for the remediation payment. Licensees should also try to notify consumers when they are holding the money on trust on behalf of the consumer in line with the relevant unclaimed money provisions if applicable.

Residual remediation payments

- RG 000.205 When an unclaimed money regime is not available (e.g. the amount does not meet the minimum threshold of the regime), a residual remediation payment should be made to a charity or not-for-profit organisation registered with the Australian Charities and Not-for Profits Commission within 12 months of the remediation finalising. We note if reasonable endeavours have been made, the residual remediation payment (or surplus) should be small.

DRAFT

- RG 000.206 Where a licensee holds pooled funds, for example in a managed investment scheme or in a superannuation fund, residual remediation payments cannot be paid using scheme or trust property. It is appropriate that surplus funds are instead held for the benefit of members of the same relevant scheme or fund.
- RG 000.207 Generally, it will not be necessary for licensees to engage with us about an appropriate recipient of the residual remediation payment. However, if possible, the recipient should have a connection to the relevant consumer harm and should not be associated with the licensee undertaking the remediation.
- RG 000.208 If an affected consumer seeks compensation after the licensee has disbursed funds via a residual remediation payment, the consumer should still be paid the compensation they are owed, regardless of additional costs.
- RG 000.209 Licensees should be transparent about any residual remediation payment made and disclose it on their website.

DRAFT

F Other remediation outcomes to consider

Key points

Licensees should consider whether other non-monetary remedies or actions may be necessary to ensure fair and timely outcomes are achieved.

Legal or other forms of assistance

- RG 000.210 Licensees should consider whether it is appropriate to offer assistance to consumers to seek their own independent professional advice about the remediation and proposed remedy. Depending on the nature of the remediation—financial, legal and/or taxation advice might be advisable for all, or a class of the consumers receiving remediation.
- RG 000.211 This might be appropriate where the remediation or underlying issues are complex, or the size of the remediation offer is large compared to the consumer’s overall wealth. In these circumstances the consumer might reasonably want to test the offer but may not have the resources to do so.
- RG 000.212 Assistance could come in different forms—for example:
- (a) offering to reimburse the consumer for professional advice sought by the consumer (e.g. advice from a lawyer, taxation accountant or financial adviser);
 - (b) offering the services of a group of professionals independent of the business to provide advice to the consumer, free of charge (e.g. contracting a consumer legal centre, or financial counselling organisation to assist); or
 - (c) offering to cover the costs of any adverse tax consequences as a result of the remediation payment.

Tax implications of payments for consumers

- RG 000.213 Some remediation payments might have tax implications for consumers. Licensees should:
- (a) inform consumers in consumer communications about the tax implications;
 - (b) clearly communicate the different components of any compensation payment that might be subject to different taxation treatment (e.g. refund versus interest);

- (c) clearly communicate the time period that payments relate to; and
- (d) counsel consumers to seek advice, and for larger compensation payments, consider providing consumers with support to seek that advice.

RG 000.214 Compensation payments can result in different tax outcomes. The tax treatment of compensation payments will depend on factors such as who has the legal right to the compensation, what the money is paid for (is it a refund, loss on return on investment, or interest) and whether the consumer has retained or disposed of the investment. In the context of superannuation, it will also depend on whether the payments made increases the capital of the fund.

RG 000.215 Licensees should consider the ATO's general guidance about the tax treatment of certain remediation payments in the first instance. See, for example, the following ATO fact sheets:

- (a) [*Compensation received by super funds from financial institutions and insurance providers*](#);
- (b) [*Deficient financial advice*](#);
- (c) [*Fees where no service is provided*](#);
- (d) [*Overcharged insurance premiums*](#);
- (e) [*PAYG withholding and reporting obligations relating to remediation payments*](#); and
- (f) [*Super contribution caps*](#).

Note: There are more [ATO fact sheets on remediation](#) on the ATO website. For more information on engaging with the ATO, see RG 000.266–RG 000.268.

Postponement or cessation of action

RG 000.216 A licensee should refrain from commencing or continuing with legal proceedings or any other enforcement action (e.g. debt collection activities):

- (a) that could adversely affect a consumer who is the subject of a remediation until the remediation process has been completed and, where applicable, any resultant complaints to AFCA have been finalised and an AFCA response has been provided; and
- (b) where the legal proceedings are related to the underlying misconduct or other failure that has led to the need for remediation (e.g. where a consumer has been provided unsuitable credit and is now in default).

RG 000.217 The only exception to this is where the statute of limitations for that action is about to expire. In such cases, proceedings may be commenced but should be stayed until the remediation process and any resultant complaints to

AFCA have been finalised. Once the remediation process has been finalised, it might be determined that a fair outcome is for the court proceeding to be permanently ceased.

Pausing or waiving the statutory limitation period

- RG 000.218 Prolonged remediation outcomes will sometimes surpass the statutory limitation period or AFCA time limit for a consumer to take their own action.
- RG 000.219 This means that consumers are put in the difficult position of predicting whether the remediation will satisfactorily compensate their detriment, or whether they should separately pursue their own cause of action.
- RG 000.220 Where a consumer wishes to take individual action, and their ability to make an informed decision about doing so within the required time limit has been impacted by the existence of a remediation process, we consider that a licensee should waive the limitation period. Licensees may need to discuss this with their relevant professional indemnity (PI) insurer.
- RG 000.221 Licensees should consider whether other limits (e.g. monetary) that may constrain AFCA's jurisdiction to consider a complaint about a remediation should also be waived.

Note: AFCA maintains a right to refuse to accept a complaint that does not fall within its time or other limits, notwithstanding a licensee's willingness to waive those limits.

Settlement deeds

- RG 000.222 Licensees should generally not require settlement deeds in a remediation, or imply consent of the conditions attaching to a remediation payment if a consumer has not responded to the licensee.
- RG 000.223 The use of settlement deeds in remediations can be problematic, as:
- (a) they may act to limit or remove existing consumer rights, in particular the right to make a complaint through IDR and to AFCA, in situations where a consumer might not be able to determine whether an offer is adequate;
 - (b) they can require action on behalf of the consumer—for example, signing and returning the deed of settlement and release, and possibly requiring a witness. This is contrary to the principle that a remediation should be easy for a consumer and minimise consumer actions; and
 - (c) remediations are different from dispute resolution processes because they tend to involve large-scale decision making about consumers who

are unlikely to be aware of the underlying misconduct or other failure or actively involved in a remediation. Relying on implied consent is more problematic in these circumstances because individual circumstances may not be considered in remediation outcomes.

- RG 000.224 There may, however, be some limited circumstances where a licensee may be required to enter settlement deeds in order to comply with their legal duties or obligations, or obtain PI coverage. Licensees should consider whether the settlement deed is necessary, and its use is efficient, honest and fair in the circumstances.
- RG 000.225 If a settlement deed is required, we expect the deeds to be strictly limited to the specific misconduct or other failure that is the subject of the remediation payment. The settlement deed should not include confidentiality or non-disparagement clauses. For example, it should not restrict a consumer's ability to speak about the matter with ASIC (or other Commonwealth, state or territory agencies), an adviser (such as a financial counsellor or lawyer) or AFCA, including about the original misconduct or other failure that gave rise to the remediation outcome.
- RG 000.226 We expect licensees will take all reasonable steps to ensure a consumer's right to review a remediation outcome is not unreasonably restricted.

Note: For those licensees subject to the new notify, investigate and remediate obligations, pursuant to s912EB(10) of the Corporations Act and 51B(9) of the National Credit Act nothing in the section affects the right of the affected consumer to recover loss or damage that the consumer suffers, or will suffer, as a result of a reportable situation. This includes by way of internal or external dispute resolution.

G Resourcing, governance and accountability

Key points

Licensees should ensure remediations are adequately resourced: see RG 000.227–RG 000.234.

Licensees should also ensure that appropriate governance arrangements are in place (including when outsourcing or obtaining independent expert assurance, where appropriate): see RG 000.235–RG 000.252.

There should be proper record-keeping of the work that is done, and the conclusions reached: RG 000.253–RG 000.255.

Licensees should consider whether it may be in the public interest to report publicly on the remediation, and provide updates on progress: RG 000.256–RG 000.257.

Allocating adequate resources

RG 000.227 Adequate resources should be allocated to the remediation to ensure the process is efficient and fair. For larger remediations, senior management should assess, and regularly review, the need for resources and provide them promptly.

Note: AFS and credit licensees (other than APRA-regulated entities that are subject to other obligations) are required to have adequate resources to provide financial services or engage in credit activities authorised by the licence: see RG 000.282.

RG 000.228 What are adequate resources will depend on the size and complexity of the remediation. Adequate resources could include, but are not limited to:

- (a) adequate financial resources;
- (b) the appropriate number of people;
- (c) people with the relevant knowledge, qualifications, experience, skills, training and support;
- (d) the appropriate mix of people with different specialties;
- (e) appropriate record-keeping systems;
- (f) staff with sufficient seniority who are able to sign off on decisions or respond to unexpected challenges efficiently; and
- (g) adequate technological and data infrastructure, or other resources.

RG 000.229 If a licensee (other than APRA-regulated entities, who are subject to other obligations) does not have adequate resources to conduct the remediation process and to remediate consumers, it may be a breach of the licensee's

general obligations under s912A(1)(d) of the Corporations Act or s47(1)(l) of the National Credit Act.

- RG 000.230 We are likely to look more closely at the way in which a remediation is being conducted if the timeframe for remediating consumers is lengthy, taking into account (amongst other things) the nature of the misconduct or other failure and the number of affected consumers. Unjustified delays may indicate a lack of adequate resources to conduct the remediation, or that the licensee is not prioritising the remediation of consumers and acting efficiently, honestly and fairly. This may mean a breach of AFS licensing obligations.

Training of staff and utilising expertise

- RG 000.231 The selection, support and training of people involved in remediation are particularly important. Staff who are leading or managing the remediation should be aware of this regulatory guide, the [Making it right field guide](#) (PDF 2.5MB), consumer laws relating to financial products and services, AFCA approaches to complaint resolution and relevant industry codes of practice. Staff should also be trained in the licensee's remediation policy and process.
- RG 000.232 Licensees should also actively draw on the expertise they have available. This will vary across different organisations. Larger organisations should leverage their access to specialties such as marketing, consumer insights, behavioural insights, data analytics, data science, user experience design and so on to contribute to different aspects of the remediation.
- RG 000.233 If a licensee has a customer advocate, consider the role the customer advocate could play in shaping, overseeing, reviewing or making a positive difference to remediation processes.
- RG 000.234 A customer advocate who understands the complex issues and decisions made during the remediation process can assist in balancing the power imbalance between consumers and their financial firm by taking the consumer viewpoint and challenging decisions that might otherwise be seen to preference a licensee's interests over consumers.

Governance and accountability arrangements

- RG 000.235 Ensuring fair and timely consumer outcomes, including by remediating loss suffered as a result of misconduct or other failures, should be a priority for licensees. Licensees should develop and maintain a positive remediation culture, which can produce beneficial outcomes for both consumers and licensees.

DRAFT

RG 000.236 When a remediation is initiated, the governance arrangements and accountability structures required (including the type of involvement) will depend on the size of the licensee's business and the nature and scope of the remediation. The roles and responsibilities should be clearly understood by the licensee and person(s) with oversight over the remediation. These arrangements should be documented and made readily accessible internally.

Note: On 28 October 2021, the Government introduced into Parliament the Financial Accountability Regime Bill 2021. The Financial Accountability Regime if passed will apply to APRA-regulated entities, and will be jointly administered by APRA and ASIC. As part of this regime, the Minister may make rules prescribing responsibilities relating to accountable entities. As proposed by the policy paper on the list of prescribed responsibilities consulted on by the Australian Government, it is expected that accountable entities will need to nominate a person responsible for the management of remediation.

RG 000.237 Large remediations should have some level of oversight by a senior person who is able to make, and experienced in making, decisions for the business on a day-to-day basis. This person should receive regular and direct reporting on the progress of the remediation. For incorporated businesses, this may include reporting to the board or appointing a director or senior executive as the person responsible for the remediation.

RG 000.238 In some cases, it may also be appropriate to provide for oversight by a senior person who is internal to the business but removed from the operation of the remediation (e.g. the internal auditor, compliance officer or internal audit team). The person or persons providing oversight should not oversee their own work.

RG 000.239 The type of involvement of the person or persons overseeing the remediation could include:

- (a) review of the design of the remediation and testing its design;
- (b) general oversight of the remediation process and checking operational effectiveness; and
- (c) reviewing a selection of files to ensure assessments are being undertaken consistently and fairly.

RG 000.240 Where a licensee has a group structure with multiple financial services brands and businesses under its licence, the licensee should generally ensure it has an appropriate centralised remediation governance framework and independent oversight, with regular reporting to its board. This will mitigate institutional silos and promote information and intelligence sharing across the whole organisation.

Outsourcing

RG 000.241 Licensees may outsource parts of the remediation process. This may be appropriate if, for example, the remediation is particularly large scale,

DRAFT

complex or involves vulnerable groups and the licensee does not have the requisite internal function or capability. However, licensees are ultimately responsible for the remediation's operation and ensuring that it complies with the requirements in this guide.

- RG 000.242 When outsourcing a remediation function, it should be done in a way that maintains a consumer-centred approach. Licensees that outsource part, or all, of their remediation process should:
- (a) have measures in place to ensure that due skill and care is taken in choosing suitable service providers;
 - (b) have service level agreements in place that have regard to the guidance set out in this regulatory guide and any other relevant ASIC resources (such as [Making it right](#) (PDF 2.5MB));
 - (c) regularly monitor the ongoing performance of service providers; and
 - (d) appropriately deal with any actions by service providers that breach service level agreements or fall short of their obligations, including reporting any significant breaches to ASIC in accordance with [RG 78](#).
- RG 000.243 We encourage licensees to develop their own in-house remediation capabilities where possible. This will increase consistency, efficiency and learning in the long term.

When it is appropriate to engage an independent expert

- RG 000.244 In some situations, it may be appropriate for a firm or person external to the business and any related entities, who has the relevant expertise, to be engaged to provide independent assurance over the governance, design and operation of the remediation.
- RG 000.245 Engaging an independent expert may be appropriate for situations that include, but are not limited to:
- (a) large scale or complex remediations;
 - (b) when a number of assumptions are made that may materially affect the scope or amount of compensation;
 - (c) when the independent assurance forms part of an enforceable undertaking or ASIC imposed licence condition(s);
 - (d) when reporting to the public would be appropriate;
 - (e) when a licensee has nobody sufficiently independent internally; or
 - (f) when ASIC, APRA or AFCA requests the involvement of an expert.
- RG 000.246 If a remediation forms part of a court enforceable undertaking, in some cases ASIC may appoint the independent expert: see Section E of [Regulatory Guide 100 Enforceable undertakings](#) (RG 100).

- RG 000.247 An independent expert should usually be retained directly by a licensee and not through a third party (other than ASIC or another regulator if relevant).
- RG 000.248 Licensees should ensure that the expert they choose:
- (a) is, and remains, genuinely independent;
 - (b) is able to exercise objective and impartial judgement; and
 - (c) has appropriate measures to manage any conflicts of interests that might flow from the fact that they have been appointed by the licensee.
- RG 000.249 For a list of non-exhaustive factors that are indications of the potential risks to an expert's ability to exercise objective and impartial judgement—see Section E of [RG 100](#).
- Note: The guidance about expert impartiality is relevant to all remediations whether undertaken as part of a court enforceable undertaking or not.
- RG 000.250 Licensees should have regard to [Regulatory Guide 111](#) *Content of expert reports* (RG 111) and [Regulatory Guide 112](#) *Independence of experts* (RG 112) when commissioning an expert report.

Conflicts of interest

- RG 000.251 Licensees should have controls in place to ensure that there are no conflicts of interest, and that any staff or providers who are the subject of the remediation (if relevant) are not involved in the remediation and are unable to influence any persons who are involved (e.g. file reviewers, peer reviewers, decision makers and those providing oversight of the remediation).
- RG 000.252 An independent expert selected and appointed by the licensee should also ensure that they have appropriate measures to manage any conflicts of interest that may arise during the engagement, including from their appointment by the licensee.

Documenting the remediation and justifying decisions

- RG 000.253 Licensees should document the remediation methodology and process. Records should track key steps and decision milestones (many of which are outlined at various points in this guidance).
- RG 000.254 Good record keeping is an important part of any remediation and will help licensees:
- (a) track the remediation against consumer outcomes and monitor progress;
 - (b) justify the decision-making rationale;
 - (c) report to senior staff and ASIC if required;

- (d) demonstrate compliance with legal obligations and this guidance; and

Note: Licensees subject to notify, investigate and remediate obligations are required to keep records of the remediation in order to demonstrate compliance: see RG 000.326–RG 000.330.

- (e) learn from the remediation after it is finalised.

RG 000.255 Records will also help the licensee’s IDR team and AFCA to review a remediation decision if a consumer makes a complaint about their remediation outcome.

Reporting publicly

RG 000.256 In general, we believe licensees should be transparent about their remediations. Public reporting (e.g. prominent disclosure on the licensee’s website) will be especially important for a larger-scale remediation or a remediation that follows public reports of consumer losses, alleged misconduct or other failures.

RG 000.257 We may also from time to time publish details about the existence, progress or outcomes of the remediations that we are monitoring: see RG 000.343–RG 000.345.

H Engaging with external organisations

Key points

Licensees may need to engage with AFCA, the ATO, APRA and/or their PI insurer in relation to their remediation.

Australian Financial Complaints Authority

- RG 000.258 Licensees must have a dispute resolution system that consists of:
- (a) IDR procedures that comply with the standards and requirements made or approved by ASIC (see [RG 271](#)); and
 - (b) membership of AFCA.

Note: See [Regulatory Guide 267](#) *Oversight of the Australian Financial Complaints Authority* (RG 267).

- RG 000.259 AFCA can award compensation for direct financial loss suffered because of a licensee's misconduct or other failure, and decisions AFCA makes are binding on a licensee. When deciding on a remedy, AFCA seeks to ensure the consumer is compensated for financial loss attributable to the licensee.

- RG 000.260 Consumers have a right to have a remediation outcome decision reviewed. Licensees must communicate the options for review of the decision in their final communication.

- RG 000.261 If a consumer separately complains to a licensee about a matter that is the subject of an existing remediation or about the remediation itself (e.g. delays, lack of communication) then the IDR requirements apply.

Note: See Section B of [RG 271](#).

- RG 000.262 If the consumer is not satisfied with the licensee's IDR response, they have the right to make a further complaint to AFCA. Licensees must inform consumers of the contact details for AFCA when providing their IDR response.

AFCA's systemic issues role

- RG 000.263 Section 1052E of the Corporations Act requires AFCA to identify, refer and report systemic issues, serious contraventions and other reportable breaches to us, APRA, or the ATO.

Note: See [RG 267](#) at RG 267.198–RG 267.202.

DRAFT

RG 000.264 When AFCA identifies a systemic issue that is likely to affect consumers, AFCA will work with the licensee to ensure all parties affected are identified and appropriately compensated for any financial detriment, and appropriate action is taken to prevent the problem from recurring. If we are investigating, or overseeing the remediation of, the same or a similar systemic issue, we will work with AFCA to ensure a coordinated approach.

Note: For the purposes of [RG 267](#), a systemic issue is one that has been raised in a complaint or several complaints or is identified by information obtained by or provided to AFCA, which is likely to affect a class of persons beyond any person who lodged a complaint or raised a concern.

RG 000.265 It is a legislative requirement that a licensee take reasonable steps to cooperate with AFCA in resolving complaints. AFCA will report any non-cooperation to us.

Australian Taxation Office

RG 000.266 Licensees may need to engage with the ATO in relation to the taxation impacts on consumers when remediation payments are made and/or if there are uncertainties in relation to the tax treatment of the remediation payment.

RG 000.267 In some cases, drawing consumers' attention to ATO guidance about tax treatment of the remediation payment might be sufficient: see, for example, RG 000.215. In others, there may be more complex ramifications of payments and the nature of the remediation may not be covered by existing ATO guidance.

RG 000.268 It is important that licensees consider the taxation impacts on consumers early, and consider obtaining advice to determine the best way to ensure consumers receive an appropriate amount of compensation after any liability to tax is paid.

Australian Prudential Regulation Authority

RG 000.269 All APRA-regulated institutions must comply with certain breach notification requirements. A breach notification arises where an APRA-regulated institution is required, in accordance with the industry's relevant legislation, to notify APRA of a 'significant' breach of a prudential requirement.

Note: See s29JA of the SIS Act, s132A of the *Life Insurance Act 1995*, s38AA of the *Insurance Act 1973*, s62A of the *Banking Act* and s95 of the *Private Health Insurance (Prudential Supervision) Act 2015*.

DRAFT

- RG 000.270 If a breach of APRA-administered legislation involves financial loss to members, policy holders or depositors of the institution, APRA will generally refer the matter to ASIC if it has not already been dual-reported.
- RG 000.271 ASIC will usually have the primary supervisory role in relation to the conduct of the remediation. Depending on the circumstances, however, ASIC and APRA may take a coordinated approach in the supervision of the remediation (if necessary) and the rectification of the related misconduct or other failure.

PI insurers

- RG 000.272 Licensees must have arrangements for compensating consumers for loss suffered as a result of a breach by the licensee or its representatives of their obligations under Ch 7 of the Corporations Act.
- RG 000.273 Licensees with PI insurance policies should engage with their insurer at an early stage of the remediation process to assess the pool of funds available for the remediation.
- RG 000.274 Licensees should also consider discussing with their PI insurer, as early as possible in the remediation process, whether they would prefer to review any proposed remediation methodology or communications with clients. This is to minimise the risk that the rights of the PI insurer will be prejudiced by any action taken by the licensee that, as a consequence, may void or reduce cover.

I Interaction with licensing obligations and other laws

Key points

We expect licensees to conduct remediations in a manner that is consistent with the principles of this guidance and in line with their general licensing obligations. This guidance does not always consider all potential laws, legal obligations or private arrangements unique to particular licensees. Licensees should also be cognisant of those requirements.

Licensees should also be aware of how the remediation interacts with other obligations, such as IDR and breach reporting obligations, and remain aware of any imminent law reform.

Licensing obligations

Providing services efficiently, honestly and fairly

- RG 000.275 Underpinning this guidance is the general obligation on AFS licensees and credit licensees to do all things necessary to ensure that the financial services or credit activities covered by the licence are provided efficiently, honestly and fairly: see s912A(1)(a) of the Corporations Act and s47(1)(a) of the National Credit Act. Complying with this ongoing obligation includes licensees taking responsibility for the consequences of their misconduct or other failures, and remediating consumers who have suffered loss as a result.
- RG 000.276 This obligation also extends to remediations of consumers who have suffered loss because of the licensee's current or former authorised representatives. It may also extend to misconduct or other failures of related entities described under RG 000.21.

Complying with contractual obligations

- RG 000.277 If a licensee has contractual obligations to consumers and breaches the terms of the contract (e.g. by failing to deliver products or services in accordance with the terms and conditions), this conduct could amount to a failure to provide financial services or credit activities efficiently, honestly and fairly.

Note: See Section C of [Regulatory Guide 104 AFS licensing: Meeting the general obligations](#) (RG 104) and Section C of [Regulatory Guide 205 Credit licensing: General conduct obligations](#) (RG 205).

DRAFT

- RG 000.278 Continuing and maintaining systems that are not capable of ensuring compliance with contractual or general conduct obligations to consumers may also amount to a breach of the efficient, honest and fair obligation.

Note: See, for example, *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790. The Commonwealth Bank of Australia (CBA) admitted and the Federal Court declared that CBA breached s912A(1)(a) of the Corporations Act (among other things) for failing to apply benefits to customer accounts when it was contractually required to do so, mischarging annual fees, and continuing and maintaining systems that were not capable of ensuring compliance with obligations to customers.

Complying with financial services and credit laws

- RG 000.279 As part of holding an AFS licence or credit licence, licensees must comply with financial services laws or credit legislation respectively: see s912A(1)(c) of the Corporations Act and s47(1)(d) of the National Credit Act.
- RG 000.280 This includes complying with the prohibitions on unconscionable conduct: see s12CA–12CC of the ASIC Act.
- RG 000.281 When communicating with consumers in relation to remediations the licensee should ensure it is not engaging in misleading or deceptive conduct: see s12DA of the ASIC Act, or making any false or misleading representations: see s12DB of the ASIC Act.

Adequate resources

- RG 000.282 With limited exceptions for some APRA-regulated bodies that are subject to other obligations, licensees are required to have available adequate resources (including financial, technological and human resources) to provide the financial services, or engage in the credit activities, authorised by the licence and to carry out supervisory arrangements: see s912A(1)(d) of the Corporations Act and s47(1)(l) of the National Credit Act respectively.
- RG 000.283 If a licensee does not have adequate resources to conduct the remediation process (when appropriate), and to remediate consumers, the licensee may be in breach of this obligation.
- RG 000.284 See RG 000.227 for more detail about what constitutes adequate resources in the context of a remediation.

Monitoring and supervision

- RG 000.285 Licensees are required to:
- (a) take reasonable steps to ensure that authorised representatives comply with the financial services laws or credit legislation (see s912A(1) of the Corporations Act and s47(1)(e) of the National Credit Act); and

- (b) ensure authorised representatives are adequately trained, and competent, to provide the financial services or engage in credit activities authorised by the licence (see s912A(1)(f) of the Corporations Act and s47(1)(g) of the National Credit Act).

RG 000.286 Where the misconduct or other failure is identified in relation to an existing representative, licensees should take steps to rectify any deficiencies in the representative's behaviour, and any resulting detriment should be remedied where appropriate.

Note: See [RG 104](#) and [RG 205](#) for further information.

Compensation

RG 000.287 Under s912B of the Corporations Act, and s48 of the National Credit Act, a licensee must have arrangements for compensating consumers for detriment suffered because of a breach of either Act by the licensee or its representatives.

RG 000.288 These arrangements must:

- (a) satisfy the requirements in the Corporations Regulations and National Credit Regulations. Licensees must obtain PI insurance cover that is adequate, considering the nature of the licensee's business and its potential liability for compensation claims (reg 7.6.02AAA and reg 12); or
- (b) be approved by ASIC as alternative arrangements.

Note 1: [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126) and [Regulatory Guide 210](#) *Compensation and insurance arrangements for credit licensees* (RG 210) set out what ASIC regards as the minimum requirements for adequate PI insurance. The guides also provide information about when we will approve alternative arrangements.

Note 2: The Corporations Regulations and National Credit Regulations provide exemptions from the requirements to have compensation arrangements for some AFS licensees who are regulated by APRA or are related to an entity regulated by APRA, however these entities are subject to other obligations.

Note 3: See also RG 000.273.

RG 000.289 Section 52(8) of the SIS Act requires superannuation trustees to formulate and give effect to a risk management strategy, and to maintain capital, a reserve, or both, covering the entity's operational risk.

Note: Further detail about the size of this reserve and how it may be used is set out in APRA's [Prudential Standard SPS 114](#) *Operational risk financial requirement*. APRA's Prudential Practice Guide SPG 114 *Operational risk financial requirement* notes that examples of operational risks that may lead to operational risk events are provided in APRA's Prudential Practice Guide SPG 220 *Risk management*. These practice guides can be accessed from the [Prudential and Reporting Standards for Superannuation webpage](#) on APRA's website.

DRAFT

RG 000.290 In response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the Australian Government committed to establishing a forward-looking and industry-funded compensation scheme of last resort that extends beyond personal advice. The scheme will operate as a last resort mechanism to pay compensation owed to some consumers and small businesses that receive a determination from AFCA but where the licensee is unable to pay. The proposed scheme will not apply to remediation programs unless an affected consumer has received an AFCA determination in their favour.

Note: On 28 October 2021, the Australian Government introduced the compensation scheme of last resort into Parliament by way of the Financial Services Compensation Scheme of Last Resort Levy Bill 2021, the Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2021 and Sch 3 to the Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021.

Obligations relating to superannuation trustees and fund managers

- RG 000.291 Superannuation trustees are required to hold an AFS licence and are subject to the terms of the trust deed, general law duties and statutory duties and obligations under legislation that includes the SIS Act—for example, to perform their duties and exercise their powers in the best financial interests of members under s52(2)(c) of the SIS Act.
- RG 000.292 Fund managers of registered managed investment schemes also have additional general law and statutory obligations—for example to act honestly and in the best interests of their members.
- RG 000.293 Superannuation trustees and fund managers must consider and balance their various obligations when applying this guidance, especially when dealing with trust or scheme property.
- RG 000.294 There may be times when a third-party licensee (such as an advice business, insurer or administrator) is conducting a remediation for misconduct or other failure affecting a superannuation trustee’s or fund manager’s members. Depending on the nature of the misconduct or other failure and the contractual relationship(s), trustees and fund managers may have obligations relating to pursuing and/or facilitating remediation payments from third-party licensees, such as obligations to ‘get in’ trust or scheme property and to ensure a member’s account is made whole.
- RG 000.295 This guidance is general only and will not take into account particular circumstances, trust deeds, duties or obligations specific to a fund or scheme.

DRAFT

Design and distribution obligations

- RG 000.296 Issuers and distributors of financial products must comply with the design and distribution obligations in Pt 7.8A of the Corporations Act.
- RG 000.297 The design and distribution obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to designing and distributing products.
- RG 000.298 If a consumer suffers loss or damage due to a licensee’s breach of the design and distribution obligations in s994B, 994C, 994D, 994E(1) or (3) of the Corporations Act, they can seek to recover that loss or damage in court by taking action against the entity.
- RG 000.299 When a consumer has suffered loss or damage—whether monetary or non-monetary or both—as a result of an entity’s breach of the design and distribution obligations, we expect that the entity will remediate the consumer. This may include:
- (a) waiving any conditions or obligations on the consumer under contract;
 - (b) terminating the contract at no cost or disadvantage to the consumer;
 - (c) refunding any money paid by the consumer plus interest;
 - (d) providing free remedial financial advice; and
 - (e) moving the consumer into an appropriate product.

Note: See [RG 274](#) at RG 274.248.

Record-keeping

- RG 000.300 Licensees have a number of record-keeping obligations that refer to different record retention periods (if any). These obligations are relevant to the identification of misconduct or other failures and its impact on consumers, as well as how efficiently a remediation will run.
- RG 000.301 Specific record-keeping obligations apply for AFS licensees and for credit licensees, including in relation to their authorised representatives and credit representatives respectively.

Note: See [Regulatory Guide 175](#) *Licensing: Financial product advisers—Conduct and disclosure* and [\[CO 14/923\]](#) in relation to record keeping and personal advice, and [RG 205](#).

- RG 000.302 Superannuation trustees have additional record-keeping obligations as set out under the SIS Act, SIS Regulations, and APRA prudential and reporting standards. For example, under s103 of the SIS Act, trustees must keep, and retain for at least 10 years, minutes of all meetings at which matters affecting the entity were considered, and s105 of the SIS Act requires trustees to keep copies of all member or beneficiary reports for at least 10 years.

DRAFT

RG 000.303 If a licensee outsources the record-keeping functions or allows a representative to hold records, the licensee remains responsible for complying with these obligations. Licensees should ensure that records held by a third party are readily accessible.

RG 000.304 If licensees have absent records as a result of breaches of record-keeping obligations and as a result cannot determine all consumers affected or what they are owed, we expect the licensee to apply assumptions where appropriate: see RG 000.111.

Documenting the remediation

RG 000.305 Licensees should ensure proper systems and processes are in place to document and record the remediation.

RG 000.306 Other than specific record-keeping obligations imposed on licensees, record-keeping requirements are implied by the general duties imposed under s912A of the Corporations Act and s47 of the National Credit Act. The relevant duties of a licensee that imply such a record-keeping obligation include:

- (a) the duty to do all things necessary to ensure that the financial services and credit activities covered by the licence are provided efficiently, honestly and fairly (see s912A(1)(a) and s47(1), respectively);
- (b) the duties to comply with the financial services and credit legislation and to take all reasonable steps to ensure its representatives comply with these laws (see s912A(1)(c)–(ca) and s47(1)(d)–(e), respectively);
- (c) the duty to have an adequate dispute resolution system (see s912A(1)(g) and s47(1)(h), respectively); and
- (d) the duty to have adequate risk management systems in place (see s912A(1)(h) and s47(1)(l), respectively).

RG 000.307 AFS and credit licensees also have a duty to take reasonable steps to ensure its representatives comply with its obligations under the Corporations Act and National Credit Act.

RG 000.308 The notify, investigate and remediate obligations impose criminal sanctions on particular licensees for failing to maintain records to demonstrate compliance with the requirement to notify, investigate and remediate misconduct.

Note: See s912EC(1) of the Corporations Act, and s51C(1) of the National Credit Act

DRAFT

Dispute resolution systems

RG 000.309 Licensees must have a dispute resolution system that consists of:

- (a) an internal dispute resolution (IDR) procedure that meets the standards or requirements made or approved by ASIC; and

- (b) membership of AFCA.

Note: See s912A(1)(g) and 1017G(1) of the Corporations Act, s47(1)(h) and (i) of the National Credit Act, s101(1) and (1A) of the SIS Act, and s47(1) and (2) of the *Retirement Savings Accounts Act 1997* (RSA Act).

RG 000.310 Dispute resolution standards and requirements are set out in:

- (a) [RG 271](#), which explains how financial firms must meet their obligations; and

Note: There are particular standards and requirements in [ASIC Corporations, Credit and Superannuation \(Internal Dispute Resolution\) Instrument 2020/98](#) and highlighted in RG 271 that are enforceable.

- (b) [RG 267](#), which sets out how we will administer ASIC's powers and perform our oversight role over AFCA.

RG 000.311 While there are similarities between internal and external dispute resolution obligations and remediation obligations, there are also distinct differences:

- (a) Internal dispute resolution: Licensees must review complaints initiated by consumers;
- (b) Remediation: Licensees proactively initiate the identification of consumers who may have been affected by an identified misconduct or other failure (regardless of the existence of complaints);
- (c) External dispute resolution: AFCA reviews complaints by consumers if they are not satisfied with the licensee's decision following IDR.

Interaction between remediation, internal dispute resolution and AFCA

RG 000.312 When a remediation process is being conducted, the IDR obligations will not apply to most of the consumers within the scope of the remediation. This is because these consumers will have been selected by the licensee and will not have made a complaint about the actual or potential misconduct or other failure.

RG 000.313 However, where a complaint is made to a licensee about a matter that is within the scope of an existing or finalised remediation, the IDR requirements set out in [RG 271](#) (including maximum IDR timeframes) apply to that matter. The inclusion of a complaint in the remediation does not exempt a licensee from its IDR obligations.

RG 000.314 If a consumer who is in a remediation program complains about the remediation itself before they receive a remediation outcome letter (e.g. about delays, lack of communication), or complains about the outcome of the remediation, the IDR requirements set out in RG 271 (including maximum IDR timeframes) apply to that matter.

DRAFT

- RG 000.315 Following the resolution of the internal dispute resolution process, the consumer should be directed to AFCA if they wish to review the decision further.
- RG 000.316 If a licensee has resolved complaints that later become the subject of a remediation, the licensee should investigate whether the outcome of that complaint was equivalent to or better than the outcome they would have received during the remediation process. If not, the licensee should revisit the complaint and consider providing additional compensation or outcomes.

When to refer consumers to AFCA

- RG 000.317 It is important that consumers have access to AFCA if they are not satisfied with the decision made in relation to whether the misconduct or other failure has occurred and whether the remediation provided is appropriate.
- RG 000.318 Licensees should provide consumers with relevant information about the outcome of the remediation, taking into account good communication principles: see Resource C in [Making it right](#) (PDF 2.5MB). We recognise, however, that there may be some limited circumstances where it is appropriate to withhold certain information and documents. These circumstances might include where the release of information would endanger a third party or where it would compromise general security measures.
- RG 000.319 Licensees should clearly advise consumers that they can have their remediation outcome reviewed by AFCA, following the outcome of the internal dispute resolution processes.
- RG 000.320 To ensure that consumers have access to AFCA, depending on the nature of the misconduct or other failure, licensees may need to consider waiving any monetary or time limit, or other limits that may constrain AFCA's jurisdiction: see RG 000.218.

Breach reporting

- RG 000.321 AFS and credit licensees must report to ASIC a range of conduct that the law describes as 'reportable situations': see s912DAA of the Corporations Act and s50B of the National Credit Act. This may include conduct engaged in during the remediation process in breach of s912A(1)(a) of the Corporations Act or s47 of the National Credit Act, if it constitutes a significant breach.

Note: For guidance about what is a reportable situation, see [RG 78](#) at RG 78.24–RG 78.33 and at Example 3(g) of Table 2: Examples of deemed significant breaches.

- RG 000.322 AFS and credit licensees must report to ASIC using the prescribed form (through the ASIC Regulatory Portal) within 30 days after first knowing, or

DRAFT

are reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen: see s912DAA(2)–(3) of the Corporations Act, and s50C(2) and 50B(4) of the National Credit Act.

RG 000.323 Reportable situations include (among other things) breaches that are deemed significant, such as breaches of ‘core obligations’, and breaches resulting in, or likely to result in, material loss or damage to consumers. This includes material loss or damage for one consumer: see [RG 78](#) at RG 78.45. Other breaches may be significant having regard to certain factors under s912D(5) of the Corporations Act or s50A(5) of the National Credit Act.

RG 000.324 Many remediations will result from reportable situations. When lodging the prescribed reportable situation form, licensees must provide details of any remediation that has been or is being developed to compensate consumers who have suffered loss, including expected timeframes, and should provide information about the completion of remediation.

Note: See [RG 78](#), Table 8 for further information.

RG 000.325 If the misconduct or other failure is not reportable to ASIC, but requires compensation to consumers or needs to be rectified in some other way, we expect licensees to take appropriate remedial action even though they are not required to report the breach. In other words, licensees should be remediating misconduct or other failures regardless of whether they are reportable situations.

Obligations to notify, investigate and remediate

RG 000.326 AFS licensees who provide personal advice to retail clients and credit licensees who provide mortgage broking services to consumers (and their representatives) are required to follow the notify, investigate and remediate obligations in certain circumstances: see [INFO 259](#). Licensees must consider these obligations in the context of their broader obligations under the existing remediation framework.

RG 000.327 If the obligations are triggered, the licensee must notify the affected consumers of the reportable situation, investigate the nature and full extent of the reportable situation and remediate affected consumers within certain timeframes. Licensees must also maintain records to show compliance with these obligations.

Note 1: These obligations are set out for AFS licensees in Pt 7.6, Div 3, Subdiv C of the Corporations Act, and for credit licensees in Pt 2-2, Div 5, Subdiv C of the National Credit Act.

Note 2: See [INFO 259](#) for more information.

DRAFT

- RG 000.328 The obligation on AFS licensees and credit licensees to notify, investigate and remediate is broadly as follows:
- (a) firstly, when a licensee has reasonable grounds to believe there has been a certain reportable situation, the licensee is required to:
 - (i) within 30 days, take reasonable steps to notify affected consumers of the reportable situation; and
 - (ii) within 30 days, start an investigation into the nature and full extent of the reportable situation (including the loss or damage the affected consumer suffered or will suffer). The investigation should be completed as soon as is reasonably practicable after it is commenced; and
 - (b) secondly, once an investigation is complete, the licensee is required to:
 - (i) within 10 days, take reasonable steps to notify affected consumers of the outcome of the investigation; and
 - (ii) within 30 days, take reasonable steps to pay affected consumers remediation of an amount equal to the loss or damage.

Note: Under these specific obligations, licensees are required to pay remediation to a consumer if they reasonably believe the consumer has suffered or will suffer loss or damage as a result of the reportable situation, and the consumer has a legally enforceable right to recover that loss or damage.

- RG 000.329 These obligations are aimed at a subset of licensees (those that provide personal advice and credit assistance) and address conduct that historically remained undetected for undue periods. It does not replace existing obligations, but builds on the existing remediation framework under a licensee's general obligations. Financial advisers and mortgage brokers will need to comply with both this guide and the new obligations to notify, investigate and remediate when conducting remediations.

Note: See paragraphs 12.12 to 12.13 of the [Explanatory Memorandum to the Financial Sector Reform \(Hayne Royal Commission Response\) Bill 2020](#) (Explanatory Memorandum).

- RG 000.330 To illustrate, the [Explanatory Memorandum](#) makes clear that in circumstances where a person falls out of scope at any stage of the obligations to notify, investigate and remediate, the licensee must continue to consider the requirements under the existing remediation framework in deciding whether it is efficient, honest and fair to remediate.

Note: See paragraphs 12.33 and 12.126 of the [Explanatory Memorandum](#) and [INFO 259](#) for more information.

DRAFT

J Our role in remediations

Key points

Licensees should be proactively conducting remediations irrespective of our involvement.

There may some cases, however, where we will consider using the various regulatory tools and actions available to us if a licensee has not remediated consumers appropriately, or if a licensee is not conducting its remediation in accordance with this guidance.

Our role in remediations

- RG 000.331 We may become aware of misconduct or other failures and remediation through proactive surveillance, reports of misconduct from the public or code monitoring bodies, information sharing from other Commonwealth financial sector regulators such as APRA or the ATO, or reports of systemic issues from AFCA.
- RG 000.332 We will generally not be actively involved in remediations. Getting a remediation right is the responsibility of a licensee. A licensee should not:
- (a) wait for us to require it to start a remediation process once they have identified the misconduct or other failure causing consumer loss; or
 - (b) assume that notifying us of the existence of a breach and linked remediation means that we have assessed whether their remediation process is adequate.
- RG 000.333 In some cases, we will decide that we require further information about, or involvement in, a particular remediation. A licensee should engage with us in an open, constructive and cooperative way and give high business priority to the resolution of the remediation.

Reporting the remediation to ASIC

- RG 000.334 Many remediations will result from a reportable situation and therefore should be reported to us through the breach reporting regime: see RG 000.321–RG 000.325. If a remediation does not meet the significance test and is not due to a reportable situation, then it does not need to be reported to us.

DRAFT

- RG 000.335 When submitting a breach report pursuant to s912DAA of the Corporations Act or s50B of the National Credit Act, AFS and credit licensees are required to provide information relevant to any consumer loss suffered and remediation conducted, and to notify us when it is complete.
- RG 000.336 Depending on the circumstances, we may ask a licensee to provide specific information and metrics to us about the remediation and its progress on a regular basis using the prescribed breach reporting form, or through other channels as requested on a case-by-case basis.
- RG 000.337 We may also give written notice to direct a licensee to provide a written statement containing specified information about a remediation that we are aware of. We may require that this statement be audited or prepared by a suitably qualified person. This might be on a one-off or on a periodic basis.

Note: See, for example, s912C of the Corporations Act or s30 and 33 of the ASIC Act.

When ASIC will take action in relation to a remediation

- RG 000.338 We expect remediations will be initiated and conducted consistent with this guidance, in line with a licensee's legal obligations irrespective of our involvement.
- RG 000.339 If we determine that a licensee has not remediated consumers when it should have, or that a licensee is not conducting its remediation in accordance with this guidance, we may consider using the various regulatory actions and tools available. These may include (but are not limited to):
- (a) general monitoring of the remediation process;
 - (b) reviewing and commenting on the design and conduct of the remediation;
 - (c) requesting regular reporting on the progress of the remediation, and providing feedback on those reports;
 - (d) enforcement action;
 - (e) varying relevant licensing conditions;
 - (f) issuing public statements;
 - (g) requesting a senior executive or relevant accountable person to provide a compliance attestation that the remediation complies with this guidance;
 - (h) seeking an independent expert report on the design and conduct of the remediation;
 - (i) using other regulatory tools; or
 - (j) a combination of the above.

DRAFT

- RG 000.340 Where a licensee has engaged in a breach of the law that has led to a need to remediate, separate consideration may be given to enforcement action in relation to the underlying conduct that led to the consumer loss.
- RG 000.341 We may accept a court enforceable undertaking proposed by a licensee that covers remediation, if we consider it will achieve an effective and appropriate regulatory outcome that is in the public interest. For example, we may commence civil proceedings against a person but also accept an undertaking that results in remediation outcomes for a wider class of affected consumers than those referred to in the court proceedings.

Note: See [RG 100](#) for more information.

ASIC public statements

- RG 000.342 We have a statutory obligation to publish information about breach reports lodged with us each financial year. We must publish the information on our website within four months after the end of the financial year: see s912DAD of the Corporations Act and s50D of the National Credit Act.
- RG 000.343 We may also publish information about the existence, progress and/or outcomes of remediations that we are monitoring. In the interests of transparency, we may publish names of entities if doing so will promote market integrity and consumer protection. This decision will be balanced against other factors such as the impact on the identifiable entity, on fair and orderly markets, and on regulatory proceedings and competition.
- RG 000.344 In accordance with [Information Sheet 152](#) *Public comment on ASIC's regulatory activities* (INFO 152), there are limitations on informing the public of our regulatory activities.
- RG 000.345 Where we have accepted an enforceable undertaking from a licensee that requires reporting by an independent expert, our policy is that we will make publicly available a summary of the final report, or a statement that refers to the contents of that report, on our enforceable undertakings register on our website. We may also refer to the contents of the report publicly.

Key terms

Term	Meaning in this document
AFCA	Australian Financial Complaints Authority—The external dispute resolution scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
affected client	Refers to both a client and a consumer as these terms are defined in the Corporations Act and the National Credit Act under the notify, investigate and remediate obligations
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ATO	Australian Taxation Office
Banking Act	<i>Banking Act 1959</i>
consumer	A person or small business. It includes, at a minimum: <ul style="list-style-type: none"> • an individual consumer or guarantor; • superannuation fund member or third-party beneficiary eligible to make a complaint to AFCA under s1053, or taken to be a member of a regulated superannuation fund or approved deposit fund, or a holder of an RSA, as provided for by s1053A, but excludes shareholders; and • a small business as defined in modified s761G of the Corporations Act Note: This definition includes a former and/or current customer.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
credit activity (or credit activities)	Has the meaning given in s6 of the National Credit Act

DRAFT

Term	Meaning in this document
credit assistance	Has the meaning given in s8 of the National Credit Act
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
Explanatory Memorandum	Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020
financial firm	<p>Firms covered by s912A(1)(g) and 1017G(1) of the Corporations Act, s47(1)(h) of the National Credit Act, s47(1) of the RSA Act and s101(1) of the SIS Act:</p> <ul style="list-style-type: none"> • AFS licensees; • unlicensed product issuers; • unlicensed secondary sellers; • credit licensees; and • RSA providers <p>Note 1: We may require other financial entities that are exempt from the requirement to hold a licence to have an IDR process that complies with the standards and requirements that apply to licensees. For example, fintech businesses relying on the ERS exemption.</p> <p>Note 2: Unlicensed COI lenders are a type of financial firm. The IDR obligations set out in this guide apply to unlicensed COI lenders, but they are not required to be a member of AFCA</p>
financial service	Has the meaning in Div 4 of Pt 7.1 of the Corporations Act.
IDR procedures (or IDR processes)	The internal dispute resolution procedures that meet the requirements and standards made and approved by ASIC under RG 271 and ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98
INFO 232 (for example)	An ASIC information sheet
Insurance Contracts Act	<i>Insurance Contracts Act 1984</i>
licence	An AFS licence, credit licence or RSE licence
licensee	An AFS licensee, a credit licensee and an RSA provider
Life Insurance Act	<i>Life Insurance Act 1995</i>
loss	Includes actual or potential loss, detriment or disadvantage suffered by one or more consumers. Loss could be monetary or non-monetary
managed investment scheme	Has the meaning given in s9 of the Corporations Act
member	A member of a superannuation entity, and includes a prospective member

Term	Meaning in this document
misconduct or other failure	<p>Misconduct or other failure relating to the provision of financial services or engagement in credit activities covered under or authorised by a licensee's relevant licence. It covers conduct described in RG 000.21–RG 000.29.</p> <p>Note: Misconduct or other failure extends to the decisions, omissions and behaviour of a licensee, and its current and former authorised representatives, third-party service or product providers, consultants and other significant related entities.</p>
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Regulations	<i>National Consumer Credit Protection Regulation 2010</i>
notify, investigate, and remediate obligations	Obligations for AFS licensees under in Pt 7.6, Div 3, Subdiv C of the Corporations Act, and credit licensees in Pt 2-2, Div 5, Subdiv C of the National Credit Act
PI insurance	Professional indemnity insurance
remediation	A process to investigate the extent of the misconduct or other failure and, if appropriate, return all consumers who have suffered loss as a result of the misconduct or other failure to the position they would have otherwise been in, as closely as possible
representative	<p>Means:</p> <ul style="list-style-type: none"> • a person authorised in accordance with s916A or 916B to provide a financial service or financial services on behalf of the licensee; and • a representative as defined in s5 of the National Credit Act
residual remediation payment	Remediation money that cannot be returned to affected consumers despite reasonable endeavours and an unclaimed money regime is unavailable
RG 104 (for example)	An ASIC regulatory guide (in this example numbered 104)
RSA	A retirement savings account as defined in the RSA Act
RSA Act	<i>Retirement Savings Accounts Act 1997</i>
RSA provider	A retirement savings account provider
RSE	A registrable superannuation entity (e.g. a regulated superannuation fund)
s912A (for example)	A section of the Corporations Act (in this example numbered 912A), unless otherwise specified

DRAFT

Term	Meaning in this document
significant related entity	<p>An entity that is a subsidiary of the licensee and the effect of the subsidiary on the licensee (or its business or activities) is or is likely to be material and substantial.</p> <p>Note: A significant related entity of a superannuation trustee includes a wider variety of entities than subsidiaries. For example, it includes entities such as other related bodies corporate of the trustee and entities with certain control relationships with the trustee (see also the definition of connected entity in section 10(1) of the SIS Act, and s50AAA of the Corporations Act).</p>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SIS Regulations	<i>Superannuation Industry (Supervision) Regulations 1994</i>
superannuation fund	Has the meaning given in s10(1) of the SIS Act
superannuation trustee	A person or group of persons licensed by APRA under s29D of the SIS Act to operate an RSE (e.g. superannuation fund) (also known as an 'RSE licensee')
systemic issue	A matter that affects, or has the potential to affect more than one consumer
time value of money	Compensation for the time in which a consumer did not have access to the funds they would have had but for the misconduct or other failure
Unclaimed Money Act	<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>

DRAFT

Related information

Headnotes

adequate resources, AFCA, AFS licensees, APRA, assumptions, ATO, compensation, consumer remediation, credit licensees, detriment or disadvantage, file reviews, fund managers, general licencing obligations, governance arrangements, IDR, independent expert, licensee, loss, managed investment schemes, misconduct or other failure, PI insurance, record keeping, remediation, retail client, RSA provider, settlement deeds, superannuation trustees, tax, unit pricing

Regulatory guides

[RG 78](#) *Breach reporting by AFS licensees and credit licensees*

[RG 94](#) *Unit pricing: Guide to good practice*

[RG 100](#) *Enforceable undertakings*

[RG 104](#) *AFS licensing: Meeting the general obligations*

[RG 111](#) *Content of expert reports*

[RG 112](#) *Independence of experts*

[RG 126](#) *Compensation and insurance arrangements for AFS licensees*

[RG 146](#) *Licensing: Training of financial product advisers*

[RG 175](#) *Licensing: Financial product advisers—Conduct and disclosure*

[RG 205](#) *Credit licensing: General conduct obligations*

[RG 206](#) *Credit licensing: Competence and training*

[RG 210](#) *Compensation and insurance arrangements for credit licensees*

[RG 256](#) *Client review and remediation conducted by advice licensees*

[RG 267](#) *Oversight of the Australian Financial Complaints Authority*

[RG 271](#) *Internal dispute resolution*

[RG 274](#) *Product design and distribution obligations*

DRAFT

Information sheets

[INFO 90](#) *Notifying members about superannuation transfers without consent*

[INFO 152](#) *Public comment on ASIC's regulatory activities*

[INFO 232](#) *Fees for no service: Remediation*

[INFO 259](#) *Complying with the notify, investigate and remediate obligations*

Legislative instruments

[\[CO 14/923\]](#) *Record-keeping obligations for Australian financial services licensees when giving personal advice.*

[ASIC Corporations, Credit and Superannuation \(Internal Dispute Resolution\) Instrument 2020/98](#)

Legislation

ASIC Act, s12DA, 12DB, 12CA, 12CB, 12CC, 30, 33

Banking Act, s62A, 69

Banking Regulation 2016, reg 25

Corporations Act, Ch 7; Pt 7.6, Div 3, Subdiv C; Pt 7.8A; Pt 7.10; s414, 544, 601AD, 601AD, 601NG, 668A, 668B, 912A, 912B, 912C, 912D, 912DAA, 912EB, 912EC, 912DAD, 994B, 994C, 994D, 994E, 1017E, 1017G, 1052E, 1343, 1343A

Corporations Amendment (Professional Standards of Financial Advisers) Act 2017

Corporations Regulations, reg 7.6.02AA

Explanatory Memorandum, paragraphs 12.12, 12.13, 12.33 and 12.126.

Financial Accountability Regime Bill 2021

Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021, Sch 3

Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2021

Financial Services Compensation Scheme of Last Resort Levy Bill 2021

Insurance Act 1973, s38AA

Insurance Contracts Act, s57

DRAFT

Insurance Contracts Regulations 2017, reg 38

Life Insurance Act, s132A, 216

National Credit Act, Pt 2; Pt 2-2, Div 5, Subdiv C; s47, 48, 50A, 50B, 50C, 50D, 51B, 51C

National Credit Regulations, reg 12

Private Health Insurance (Prudential Supervision) Act 2015, s95

SIS Act, s29JA, 52, 101, 103, 105

SIS Regulations, Sch 1; reg 6.18

RSA Act, s47

Unclaimed Money Act, s22

Cases

Australian Securities and Investments Commission v Commonwealth Bank of Australia [2020] FCA 790

Other documents

ATO, [Compensation received by super funds from financial institutions and insurance providers](#)

ATO, [Deficient financial advice](#)

ATO, [Fees where no service is provided](#)

ATO, [Overcharged insurance premiums](#)

ATO, [PAYG withholding and reporting obligations relating to remediation payments](#)

ATO, [Super contribution caps](#)

[Making it right: How to run a consumer-centred remediation](#) (PDF 2.5MB)

SPG 114 *Operational risk financial requirement*

SPG 220 *Risk management*

Note: SPG 114 and SPG 220 can be accessed from the [Prudential and Reporting Standards for Superannuation webpage](#) on APRA's website.

[SPS 114](#) *Operational risk financial requirement*

DRAFT