

12 February 2021

Greg Kirk  
Behavioural Research and Policy Unit  
Australian Securities and Investments Commission  
GPO Box 9827  
Melbourne VIC 3001

By email to: [IDRData@asic.gov.au](mailto:IDRData@asic.gov.au)

Dear Mr Kirk

## **ADDENDUM TO CONSULTATION PAPER 311 INTERNAL DISPUTE RESOLUTION: UPDATE TO RG 165**

The Australian Finance Industry Association (AFIA) appreciates the opportunity to provide further feedback in response to the Australian Securities and Investments Commission (ASIC)'s Consultation Paper.

As context for our submission, AFIA is a leading advocate for the Australian financial services industry. Our role<sup>1</sup> is to support our members to finance Australia's future. We believe that our industry can best support Australia's economy by promoting choice in and access to consumer and business finance, driving competition and innovation in financial services, and supporting greater financial, and therefore social, participation across our community.

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

### **OUR SUBMISSION**

In principle, we support Regulatory Guide 271 (RG 271) and the new internal dispute resolution (IDR) standards and requirements that are set out in it. We recognise the important role ASIC has in this, including the collection, lodgement and publication of IDR data.

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

In delivering its mandate, it will be important for ASIC to ensure that data reporting requirements are customer-centric, proportionate and appropriate for different sized financial institutions with different business models and capabilities.

This will allow for efficient and consistent IDR frameworks to be implemented across the industry, which will ensure consumers and small businesses have access to a more transparent, fair and timely complaints processes and assist ASIC with its data analysis .

We remain concerned by ASIC's current position, which is to include complaints resolved within 5 days in the IDR reporting process. Given the expansive definition of 'complaint' provided for in RG 271, there remains:

- uncertainty across the industry about what does and does not constitute a complaint, especially for minor 'expressions of dissatisfaction', and therefore a lack of clarity about what should be reported.
- confusion as to the value that the inclusion of reporting minor 'expressions of dissatisfaction' will deliver to ASIC.
- confusion as to how ASIC will analyse all this data and report timely feedback to industry so collectively they can learn and grow.

These issues will lead to significant variation in how firms interpret the obligations and operationalise their IDR reporting processes.

It will therefore be critical for ASIC to provide certainty to the industry on reportable complaints and ensure consistency across all reporting firms. Failure to do so will dilute the value of statistics to consumers due to a lack of comparative reporting and will be a missed opportunity to deliver real benefit and insight.

We understand that RG 271 will come into force on 5 October 2021. AFIA supports ASIC's proposal that the IDR data reporting requirements will not come commence at this time but after a test pilot of the data dictionary and ASIC's systems and that there will be staggered commencement dates and provisions for simpler reporting by smaller firms.

We note that ASIC will be collecting data on both *National Credit Code Protection Act 2009 (NCCP)* regulated and exempt products. From an industry and consumer understanding perspective, it will be important for ASIC to clarify in published data where a product may not actually be regulated by them. For example, the NCCP responsible lending requirements do not apply to a commercial loan but a small business could make a complaint to IDR or EDR.

Given the cumulative impact of changes underway in the financial services industry, including legislative and regulatory changes, compliance system and technology changes, it will also be critical that transitional periods are consulted on appropriately with industry.

It will also be important for there to be engagement with industry and ASIC about how they will look to define the 'smaller firms' that will be able to report in a simpler format, as the compliance burden and costs involved in implementing the data recording and reporting requirements should not be underestimated. AFIA is willing to facilitate a roundtable with members if this would be of benefit.

## OUR RECOMMENDATIONS

Attachment A provides more detail, but in summary, we recommend that:

1. The 5-day exemption for reportable complaints be maintained.
2. Further clarity be provided on what does not constitute a complaint under RG 271.
3. All recording requirements are customer-centric.
4. An ASIC interactive data portal is created, with clear alignment between ASIC and AFCA on the reporting and application of metrics used.
5. ASIC work with industry to determine methods and protocols for information transfer.
6. Data reporting should be on a 6-month basis, with the reporting period reviewed once the system is up and running.
7. There is a staggered roll out of complaint data fields.
8. Further clarification is provided on data field items 13, 19, 21 and 22.

## CLOSING REMARKS

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

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

AFIA would appreciate the opportunity to discuss our recommendations and provide further information about the specialised products, services, and technologies offered across our diverse membership and the expectations of their customers.

Should you wish to discuss our submission or require additional information, please contact me or Chalisa Parekowhai, Associate Director Policy at [REDACTED].

Kind Regards,

**Karl Turner**

Chief Operating Officer and Executive Director, Policy & Risk Management

## ATTACHMENT A:

### RECOMMENDATION 1 – THE 5-DAY EXEMPTION FOR REPORTABLE COMPLAINTS BE MAINTAINED

We recommend that ASIC revisit their stance on removing the 5 day exemption rule due to the significant additional cost impost and administrative burden on industry, and to ensure the provision of richer and more consistent information to ASIC and consumers.

Due to the very broad definition of 'complaint' provided for in RG 271, there is uncertainty about what does and does not constitute a complaint, especially for minor 'expressions of dissatisfaction'. The current definition allows for a certain level of subjectivity, and by including a requirement for all complaints resolved within 5 days to be part of the IDR reporting process, there will be significant variation in how firms interpret the obligations and operationalise their IDR reporting processes. This will likely obscure the reportable data and will be a missed opportunity for the industry to publish meaningful IDR data, providing a real benefit to consumers.

There is also an attendant risk that organisations will be commercially and reputationally disadvantaged by reporting a higher volume of disputes compared to other reporting organisations which may have different systems, recording and a different level of commitment to improving service delivery.

Further, the requirement to record all expressions of dissatisfaction will impose a significant burden on industry. We note that Regulatory Guide 165 recognised the significance of this impost and dealt with it practically, by excluding minor expressions of dissatisfaction resolved within 5 days from the requirements<sup>2</sup>. Removing this exclusion runs contrary to current government policy designed to reduce administrative burdens on financial service providers, reduce costs borne by industry and potentially consumers and improve the flow of credit to the economy.

It will also likely lead to the disempowering of frontline staff who may no longer be able to resolve simple expressions of dissatisfaction at the first point of touch. This leads to IDR inefficiencies, increased dissatisfaction and decreases the quality of consumer outcomes.

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<sup>2</sup> <https://download.asic.gov.au/media/5720809/rg165-published-30-july-2020.pdf> at 77

It is therefore critical that the value of recording and reporting of such minor expressions of dissatisfactions is clearly articulated by ASIC to industry. There is concern that the reporting of significant volumes of minor expressions of dissatisfaction will add unhelpful 'noise' to the reporting, which will obscure the richer, more meaningful, information that relates to the more complex complaints which cannot be immediately resolved.

## **RECOMMENDATION 2 - FURTHER CLARITY PROVIDED ON WHAT DOES NOT CONSTITUTE A COMPLAINT UNDER RG 271**

In the event that ASIC is unable to implement Recommendation 1, it will be critical that further clarity is provided on what does not constitute a complaint under RG 271.

We note that RG 271 provides a definition for a 'complaint' and further guidance on types of expressions of dissatisfaction which are to be categorised as complaints<sup>3</sup>.

While there is guidance that is useful, in part in describing what is not a 'complaint'<sup>4</sup>, further explanation and examples are needed in order to provide clarity to our members.

We believe there is an important difference between an enquiry (e.g. why have I been charged so much interest?), an expression of dissatisfaction (e.g. I think I have been charged the wrong amount of interest), and a complaint (e.g. the interest you have charged me doesn't match the agreed rate) which needs to be further defined and clarified.

Additionally, we recommend that ASIC provides:

- a clearer definition for an enquiry and confirms that they will not need to be recorded
- more detailed examples and explanations to cover 'enquiries' and 'expressions of dissatisfaction' that are not reportable, as the potential impact to the volumes of recorded complaints and the internal systems required of our members will be significant.

With ASIC publishing complaint data, it is important that the above are provided to ensure a cohesive and consistent approach across the industry is adopted, otherwise there will be a missed opportunity for clearer benchmarking.

## **RECOMMENDATION 3 – ALL RECORDING REQUIREMENTS ARE CUSTOMER-CENTRIC**

We believe that complaints should be managed from a customer-centric perspective and therefore recommend that:

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<sup>3</sup> <https://download.asic.gov.au/media/5720607/rg271-published-30-july-2020.pdf> at RG 271.27-271.32

<sup>4</sup> <https://download.asic.gov.au/media/5720607/rg271-published-30-july-2020.pdf> at RG 271.33-271.35

- The unique identifier for all complaints reported to ASIC should be based on the firm's existing architecture and should allow for multiple products to come under one unique identifier (i.e. one complaint). Failure to include this could skew the data for firms that offer multiple products. For example, if a firm were to receive a complaint about their performance in general (e.g. I am unhappy being your customer given the service provided) then that firm would then need to record a separate complaint for each product the customer uses. This would:
  - make it difficult to provide a timely resolution to the customer
  - make it harder to analyse the root cause of the complaint (which is important for compliance with upcoming Design and Distribution Obligations)
  - deliver minimal value to the customer, ASIC or the firm
  - unfairly disadvantage firms offering multiple products as their volume of complaints will appear larger than the reality.
- Vulnerability should be removed as a data field that is captured as each firm will have their own perspective on how they define a vulnerable customer. By requiring customer vulnerability to be flagged, it could distort the data and unfairly disadvantaging firms who apply a broader definition of vulnerability. Further, by requiring customer vulnerability to be flagged at the time the complaint is made, it could inadvertently have a flow on effect to other processes.

For example, it poses a number of issues about whether firms will then have to provide information to the customer (upon request) that they have been classified as vulnerable (as all other mandated recordable information is to be made available to the customer) and whether vulnerability will need to be flagged where there are multiple parties involved with different roles on a contract (e.g. borrower/guarantor) and they may not all be vulnerable. Additionally, it will cause unnecessary complexity in situations where, at the time of complaint, a customer is incorrectly flagged as either vulnerable or not vulnerable and the status needs to be changed later on.

- Complaint channels can be recorded. However, there needs to be the option to record multiple channels for the same complaint (e.g. a customer writes an email and also makes the same complaint via social media).
- The gender data field is also afforded a 'not stated or unknown option'. It is pleasing to see our recommendation adopted so that a 'not stated or unknown option' is provided to several

other data elements asking for demographic information.. Firms should not be required to record and report data which customers may be sensitive about sharing.

#### **RECOMMENDATION 4 – AN ASIC INTERACTIVE DATA PORTAL IS CREATED, WITH CLEAR ALIGNMENT BETWEEN ASIC AND AFCA TO THE REPORTING AND APPLICATION OF METRICS USED**

We recommend that for firms that have multiple business units or brands under one licence, they should be able to report the complaints data as one single file. ASIC will need to consider how the report will be published and whether it will be under the one licence or the business name.

It will be essential for both ASIC and AFCA to align how they report, to avoid distorting the benchmarking and reporting between the two organisations.

We recommend that ASIC carefully considers the issues with the AFCA Datacube when looking to implement their own portal. In particular apply some of the learnings such as:

- ambiguity in the AFCA Datacube as to how firms are defined as small, medium and large (which detracts from the usefulness and makes it difficult to make effective comparisons)
- improving the analysis and comparability of granular data fields
- ensuring the data portal is pilot tested appropriately across the industry before implementation.

It is critical that ASIC provide clarification on what metrics will be used when defining a firm's size and how normalisation for scale will work. It will be important to have clear definitions and to have these definitions aligned between ASIC and AFCA so that firms can be correctly benchmarked.

Additionally, we note the difficulty members have when using the AFCA Datacube and recommend that the ASIC data portal is pilot tested appropriately across the industry.

We support ASIC's commitment to introduce data validation technology. However, it will be important to also commit to providing an opportunity for industry to review their data before it is published (as is the case for AFCA data).

#### **RECOMMENDATION 5 – ASIC WORKS WITH INDUSTRY TO DETERMINE METHODS AND PROTOCOLS FOR INFORMATION TRANSFER**

We recommend that ASIC work with industry to determine a set of protocols for data recording, reporting and information security. It is important that these specifics are clearly detailed so that data



are consistent, clear, timely and can be easily processed. It is also important that data are held securely at each stage of the process. Such an approach will lessen compliance costs for industry while assisting in the delivery of the intended policy goals. For example, when APRA designed their new data collection tool they consulted with industry on multiple occasions before implementation.

We recommend that upon finalisation of the data reporting and recording requirements, an information session is held with key data and IT personnel from ASIC and from our members. This will ensure that there is sufficient clarity in ASIC's expectations from an IT systems perspective and that members can be confident in the system requirements required to comply with the proposed requirements.

#### **RECOMMENDATION 6 – DATA REPORTING SHOULD COMMENCE ON A 6 MONTH BASIS, WITH THE REPORTING PERIOD REVIEWED ONCE THE SYSTEM IS UP AND RUNNING,**

We note ASIC's observation that many firms are already reporting on complaints internally on a quarterly basis. However, implementing a new system will require a lot of resources and therefore we recommend that data reporting should be on a six monthly basis.

We recommend that once the ASIC data system is up and running properly, and industry has a better idea about time and resources involved in lodging the report, the reporting period is then reviewed in consultation with industry.

#### **RECOMMENDATION 7 – THERE IS A STAGGERED ROLL OUT FOR COMPLAINT DATA FIELDS**

We note ASIC's confirmation that they will stagger commencement dates for the data reporting and recording requirements.

As part of this, we recommend that ASIC implements a staggered roll out for the data complaint fields, as this will allow industry the time to adapt and learn from the issues they will likely encounter when implementing the new requirements. The resource burden that these requirements will have on industry should not be underestimated, and it will be important that the industry has a reasonable period of time to adjust and amend their systems to become compliant.

In the event that ASIC does not maintain the 5 day exemption rule as outlined in Recommendation 1, we recommend that complaints resolved within 5 days form part of a phase 2 of the roll out, with ASIC prioritising the areas which pose to have the most benefit, from a consumer and industry understanding perspective.

## **RECOMMENDATION 8 – FURTHER CLARIFICATION BE PROVIDED ON DATA FIELD ITEMS 13, 19, 21 AND 22.**

We recommend that further clarity is provided on the data fields 13,19,21 and 22.

### **Item 13**

This field requires a financial service provider to report the date a complaint is reopened. Further clarity needs to be provided on how the data is to be reported in circumstances where other elements are brought into the dispute upon re-opening. It is unclear currently as to whether this would be considered a new complaint, a re-opened complaint, or both a new complaint in respect of the new matters raised, and a reopened complaint in respect of the former matters raised.

### **Item 19**

This field requires the recording of the complaint issue and refers to table 13. However, table 13 is not exhaustive, particularly in light of the expansive definition of complaint. This will lead to complaints that do not fit any of the proposed categories. For example, there does not appear to be an appropriate category for complaints relating to hardship (other than those applications already declined), poor customer service, inability to access an internet banking facility, denials of liability or fraud. We recommend that this element has an 'other' category included.

### **Item 21**

This field requires reporting of who the outcome is in favour of and provides binary options in favour of the complainant or in favour of the entity. However, outcomes will often not be binary. For example, a consumer may express dissatisfaction that they cannot access their internet banking facility. The firm then assists the customer in navigating to the password unlock facility. It does not appear to be correct to record this as an outcome that is in favour of any party. Another example may be where a customer raises dissatisfaction with their current interest rate, which is higher than a special offer rate by a competing bank. The firm then seeks permission to discuss other products the other firm offers that may be of interest to the customer. The customer may elect to move to a different product. While this move may benefit the customer, it would not appear to be correct to record the outcome as being in the consumer's favour. We recommend that a 'Not Applicable' option is made available.

Further clarification as to how this field will be reported is essential. It is unclear based on the current conditional fields if this data field is meant to be objective, or if it will be counted in the publication of the data as an admission of wrongdoing.

We note that there could be any number of reasons why a complaint is resolved in favour of the complainant even though there was no wrongdoing on the part of the firm. It will be important for ASIC to provide further clarity on this data field and to consider carefully how it will publicise such data. Failure to publish this data field in the correct context could unfairly disadvantage firms that have worked willingly to come to an agreement with the complainant, despite no wrongdoing on the firm's part.

## **Item 22**

This field requires the recording of monetary compensation. In many cases, monetary compensation will not be ascertainable. For example, in resolution of a hardship dispute, there may be an agreed interest concession. While this is, in effect, monetary compensation, the amount may not be ascertainable as it will depend on the timing of payments that are made by the consumer. We recommend that a 'Not Ascertainable' option is made available.