SUBMISSION

Submission to ASIC —Consultation Paper 311 Internal Dispute Resolution: Update to RG 165

August 2019

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Via email: IDRSubmissions@asic.gov.au

16 August 2019

Dear Ms Rush

Consultation Paper 311 Internal Dispute Resolution: Update to RG 165

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to ASIC's Consultation Paper 311 *Internal Dispute Resolution: Update to RG 165*.

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $2.8 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 16 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact me on (02) 8079 0808 or by email gmcrea@superannuation.asn.au, or Julia Stannard, Senior Policy Advisor, on (03) 9225 4027 or jstannard@superannuation.asn.au.

Yours sincerely

Glen McCrea

Deputy CEO and Chief Policy Officer

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1. General comments and outline of recommendations

ASFA welcomes the opportunity to respond to ASIC's proposals for reform of the complaints handling standards for the financial industry, as outlined in Consultation Paper 311 *Internal dispute resolution: Update to RG 165* (CP 311) and its accompanying draft updated Regulatory Guide RG 165 *Internal dispute resolution* (RG 165) and draft *Internal dispute resolution data dictionary* (data dictionary).

While the proposed standards have application to all 'financial firms', this submission is primarily focussed on the experience of members, beneficiaries and trustees of APRA-regulated superannuation funds.

An effective dispute resolution system undeniably plays a vital role in maintaining consumer confidence in the financial system, and ASFA considers it imperative that consumers have access to a transparent, fair and timely complaints process.

The superannuation industry has made considerable progress in recent years in improving its responsiveness to complaints from fund members and beneficiaries, including through adoption of the 45-day timeframe for handling complaints in the *Insurance in Superannuation Voluntary Code of Practice*. However, ASFA recognises there is room for further improvement, and has confidence in the commitment shown by our trustee members toward ongoing process enhancement.

The key reforms outlined in CP 311 and RG 165 involve:

- an expanded definition of 'complaint'
- a significant reduction in the timeframe allowed for internal dispute resolution (IDR) for superannuation complaints
- the imposition of increased requirements in relation to recording of data about complaints
- the creation of a new obligation to report data to ASIC.

Many aspects of the proposed standards are uncontroversial and represent practices that should already be embedded in trustees' complaints handling processes. Other aspects of the reforms will, if implemented as proposed, have a substantial and ongoing impact on trustees' operations.

The financial services industry is highly regulated, and we consider that the superannuation sector is subject to the most intense level of regulation. While ASFA supports reforms that improve consumer outcomes, we consider it vital when assessing any reform proposals to ensure there is both:

- a reasonable likelihood they will deliver the anticipated outcomes; and
- reasonable proportionality between those outcomes and any increase in the regulatory burden.

ASFA is of the view that some aspects of the proposed reforms fail to meet these threshold tests.

Our primary concerns in this respect include:

- The scope of the extended concept of 'complaint' is unclear, particularly in relation to identification of complaints made via social media.

  As the correct interpretation and application of all the requirements imposed by RG 165 requires a clear understanding of what will, in ASIC's view, constitute a 'complaint' **ASFA considers** that significant clarification is required. ASIC's concern should be directed to ensuring that financial firms have in place appropriate and directly accessible processes through which dissatisfied customers can make a complaint.

- The proposed reduction of the IDR timeframe for superannuation complaints from 90 days to 45 or potentially even 30 days, with limited ability to send a 'delay notification', fails to adequately recognise the complexity of many superannuation complaints. This may lead to a reduction in the quality of the IDR process, to the detriment of consumer outcomes.

  Many superannuation complaints involve complex issues and multiple parties in addition to the trustee and fund member — for example, complaints about payment of disablement or death benefits, or about defined benefit interests. The diligent resolution of these complaints typically requires the trustee to undertake a multi-layered process and/or obtain information or evidence from external parties.

  The imposition of an unrealistically short IDR timeframe will effectively require trustees to choose between rushing the IDR process — and potentially making their review decision based on incomplete evidence — or breaching the standard in relation to the maximum IDR timeframe. ASFA is concerned that a rushed IDR process will lead to an unnecessary increase in the number of complaints that proceed to external dispute resolution (EDR) before the Australian Financial Complaints Authority (AFCA). This would not, in our view, be an optimal outcome for consumers.

  ASFA supports a reduced IDR timeframe of 45 days for superannuation complaints, with clear recognition that circumstances will arise in which a trustee should be permitted to send an IDR delay notification. ASFA does **not** consider it appropriate to impose a maximum IDR timeframe of 30 days for superannuation complaints.

- The requirements in relation to recording and reporting of data are extensive, however — given the high-level nature of many of the data elements — it is not clear they will contribute toward the intended aim of helping ASIC target its surveillance and enforcement activities.

  The cost and effort to financial firms to implement the data recording and reporting obligations, and to comply with them ongoing, will be significant. In ASFA's view, this burden can only be justified if the requirements genuinely contribute toward enhanced monitoring of financial firms' IDR performance.

  ASFA considers the data recording and reporting aspects of the reforms would benefit from a more detailed consultation with stakeholders, including the providers of the 'regtech' solutions that will be needed to facilitate compliant reporting. As part of that process, there should also be further consideration given to the appropriate format for reporting of data and the process by which future changes to the reporting requirements will be managed.

- The implementation timeframes indicated in CP 311 for several of the requirements appear to be unrealistically tight, given the final version of RG 165 will not be available until December at the earliest.

  The effort required to implement the new IDR standards will be considerable. Given the number of aspects which require clarification, most of this work will have to occur after the final version of RG 165 has been published. Accordingly, it would be inappropriate for any aspect of the update to RG 165 to commence immediately upon its publication. **ASFA considers** that the 'non-transitional' requirements should not commence before 1 July 2020.

ASFA recommends that the 'transitional' commencement dates for several of the key requirements are also extended, to provide financial firms with adequate time to achieve compliance. In particular:

- compliance with the reduced timeframe to provide an IDR response — a transitional period should apply between 1 July and 31 December 2020. Financial firms should work towards implementation by 1 July 2020 to the extent possible, however ASIC should adopt a facilitative compliance approach such that non-compliance will not be pursued prior to 1 January 2021 provided firms are making reasonable efforts to comply
- recording of all complaints received, including those resolved immediately — commencement should be deferred to 1 January 2021 and further consideration should be given to the requirements for recording of complaints resolved immediately or within five days
- assigning a unique identifier to all complaints received — commencement should be deferred to 1 January 2021
- recording of prescribed data for all complaints received — commencement should be deferred to 1 July 2021, to enable collation and reporting of data to ASIC for the first six-monthly reporting period ending 31 December 2021. This extended timeframe is necessary to allow a more detailed consultation on the content, format and implementation of the reporting regime.

Given the magnitude of the proposed reforms, **ASFA also recommends** that ASIC reviews the effectiveness of the new IDR standards once all aspects of RG 165 — including the 45-day IDR timeframe for superannuation complaints, the new definition of 'complaint' and the data recording and reporting obligations — have been fully implemented bedded down.

The following sections of our submission address these issues, and the specific questions raised in CP 311, in more detail.

References in this submission to 'RG 165' are to the draft updated version of RG 165 attached to CP 311, unless otherwise stated.

2. Comments in response to the consultation questions

2.1. Reduced maximum IDR timeframes

B11Q1: Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide:

(a) reasons and any proposals for alternative maximum IDR timeframes; and

(b) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line.

B11Q2: We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints (other than the exceptions noted at B11(b) above). Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now?

Achieving an appropriate balance – IDR processes must be efficient but also adequate

ASFA accepts that it is appropriate to reduce the maximum IDR timeframe for superannuation complaints to 45 days, consistent with the timeframe adopted in the Insurance in Superannuation Voluntary Code of Practice. We do not support the imposition of a 30-day IDR timeframe for superannuation complaints.

The superannuation industry has, over recent years, made significant progress toward reducing complaint resolution timeframes and adopting a more consumer-focussed approach to complaints handling. ASFA members are committed to resolving complaints as quickly as is reasonably possible and recognise that an effective and efficient complaints handling process is critical to maintaining (or rebuilding) trust with consumers.

However, while it is understandable that consumers want their complaint with a financial firm to be resolved without undue delay, it is also important that consumers have the security of knowing their complaint has been adequately and fairly investigated and assessed and the financial firm's decision has been made in full consideration of all relevant facts. If a consumer has trust that the IDR process was conducted with proper diligence, they are likely to be more accepting of the outcome, even if the decision is not in their favour. Conversely, an unreasonably rushed IDR process will not deliver this level of security and trust and is likely to leave the consumer feeling a need to proceed to EDR to ensure a complaint has been fully considered.

The challenge is therefore to achieve a balance that provides financial firms with sufficient time to consider complaints but still meets consumers' reasonable expectations of an adequate but efficient IDR process. In ASFA's view, the length of time required to undertake that process will vary depending on the nature and complexity of the complaint.

In considering the appropriate IDR timeframe for superannuation complaints, it is important to recognise a few key features of superannuation:

- Superannuation is undeniably more complex than most other financial products, being subject to extensive and diverse legislative and regulatory requirements as well as common law concepts (including, importantly, trust law).
- Superannuation products and interests vary considerably in complexity, ranging from simple accumulation style accounts through to complex defined benefit interests and sophisticated income stream products.

- The delivery of superannuation products by trustees generally involves a higher degree of outsourcing than is the case for most other financial products, with trustees typically outsourcing some or all of their administration, investment management, insurance and actuarial services. While trustees must ensure they comply with prudential standards around outsourcing — and remain ultimately responsible for the outsourced function — the involvement of these parties is an additional factor that must be managed within the trustee's IDR process and involves setting clear service level agreements between the trustee and the outsourced service provider.
- The resolution of some types of superannuation complaints can also involve parties other than the superannuation trustee, its outsourced service providers and the fund member. For example:
    - resolution of complaints about disablement benefits may involve the need to obtain information and/or evidence from medical specialists, workers' compensation authorities, Medicare, occupational assessors and potentially the complainant's employer or former employer
    - objections or complaints relating to the payment of death benefits may involve obtaining information from numerous potential beneficiaries and/or the member's legal personal representative, and — depending on the circumstances — resolution may be delayed by matters as diverse as coronial inquests, criminal investigations, a potential beneficiary's objection to the member's will or the grant of letters of administration, or the need to obtain the results of DNA analysis.
    - complaints about administration of a family law superannuation split may involve the former spouse of the fund member.
- Complaints about superannuation can cover a diverse range of topics, from very simple matters through to matters that raise highly complex and/or technical issues, and the timeframe needed for their resolution varies accordingly.

Appendix 1 to this submission provides further detail on the legal and practical considerations involved in resolving many of the common types of superannuation complaints, and their impact on the time needed for trustees to complete an adequate IDR process. Appendix 2 provides illustrative, real-life examples of some common types of superannuation complaints, to demonstrate the process steps involved and the parties involved, and to explain that is typically needed to complete each step. These examples clearly show the challenges trustees will face in reducing IDR timeframes for some complaint types to 45 days.

Taking all of these features into account, ASFA would caution against applying a 'one size fits all' approach with an unrealistically low IDR timeframe for superannuation complaints.

In preparing this submission, ASFA consulted extensively with our superannuation trustee members regarding their current resolution timeframe for superannuation complaints. All trustees reported a commitment to resolving complaints as quickly as possible, while ensuring that sufficient time is taken to ensure the decision reached is fair and reasonable.

ASFA members have reported to us that they are consistently achieving *average* resolution timeframes far shorter than 90 days. Many ASFA members have indicated they are actually *averaging* less than 45 days, and closer to 30 days for many types of complaints. However, other types of complaints involve specific challenges that on occasion make it impossible to meet even the current 90-day IDR timeframe. For these types of complaints, an IDR timeframe of 30 days would be unachievable on a consistent basis, and a timeframe of 45 days will be challenging.

ASFA is of the view the maximum IDR timeframe for superannuation complaints should **not** be reduced below 45 days.

Given the complexity of superannuation, we do not envisage that a maximum IDR timeframe of 30 days will ever be consistently achievable for all types of superannuation complaints. The imposition of an unachievably low maximum IDR timeframe across all superannuation complaint types would risk forcing trustees to choose between breaching RG 165 or adopting a rushed and incomplete IDR process. It would likely lead to an increase in the number of complaints that progress through to EDR and would not, in ASFA's view, result in an optimal customer experience.

The issue of IDR delay notifications only 'in exceptional circumstances'

Paragraph 165.118 states that if a financial firm is unable to respond to a complaint within the relevant maximum IDR timeframe, it must send an 'IDR delay notification' to the complainant before the end of that period. It further notes ASIC's expectation that this will occur "only in exceptional circumstances" but provides no examples of the types of circumstances that ASIC will consider to be 'exceptional'.

ASFA is of the view that the ASIC may need to reconsider the use of the term 'exceptional circumstances'.

As outlined above and in Appendix 1 to this submission, in order to resolve some types of superannuation complaints, the trustee is required to undertake an extensive process that often involves obtaining information or evidence from multiple parties external to the trustee — for example, complaints in relation to payment of disablement or death benefits.

Despite trustees' efforts to ensure their IDR process is conducted as efficiently as possible, there will inevitably be instances where a complaint is unable to be resolved within the prescribed minimum IDR timeframe because of delays in the provision of information or evidence that are outside the trustee's control. While these delays are unfortunate, they cannot accurately be described as 'exceptional' — for example, where a specialist medical opinion is required, wait times for appointments can routinely exceed 30 days.

In these cases, it is critical that trustees have the ability to send an IDR delay notification — the alternative would involve the trustee being effectively forced to make its IDR decision without access to all necessary information/evidence. If ASIC proceeds with its proposal to reduce the maximum IDR timeframe for superannuation complaints, the ability to send a delay notification will, in ASFA's view, become even more important.

Recommendation

IDR timeframes

- The IDR timeframe for superannuation complaints should not be reduced below 45 days.
- RG 165 should specifically recognise that circumstances will arise that necessitate the issue of an IDR delay notification by a superannuation trustee.

2.2. Definition of 'complaint' — additional guidance

B2Q1: Do you consider that the guidance in draft updated RG 165 on the definition of 'complaint' will assist financial firms to accurately identify complaints?

B2Q2: Is any additional guidance required about the definition of 'complaint'? If yes, please provide:

(a) details of any issues that require clarification; and

(b) any other examples of 'what is' or 'what is not' a complaint that should be included in draft updated RG 165.

The correct application of each requirement outlined in RG 165 relies on a clear understanding of what ASIC means by 'complaint'. In ASFA's view, the scope of the definition — and therefore ASIC's proposed new IDR standards — is unclear.

ASFA is of the view that ASIC's guidance on the definition of 'complaint' should be significantly more detailed and should provide more (and clearer) examples, to provide financial firms with more certainty in relation to their IDR obligations under the new standards. We also recommend that further consideration is given to how objections in relation to a superannuation trustee's proposed distribution of a death benefit are treated.

Complaints or objections in relation to a proposed death benefit distribution

In general terms, the legislated 'claim-staking' process for superannuation death benefits (reflected in section 1056 of the *Corporations Act 2001*) requires trustees to allow potential beneficiaries a period of 28 days in which to lodge an objection to the trustee's proposed benefit distribution. In effect, claim-staking involves its own specific, legislatively defined process to address dissatisfaction with a trustee's proposed death benefit distribution.

Adherence to this process enables a trustee to act both promptly and with certainty when ultimately paying a death benefit according to its determination, however there is a need to provide clarity regarding the interface between the claim-staking rules and the RG 165 requirements for handling of 'complaints'.

Where there are multiple potential beneficiaries for a death benefit, objections to a trustee's proposed distribution can be received throughout the 28-day claim-staking period, but the trustee cannot resolve their claim until the claim-staking period has ended and all potential beneficiaries have had their opportunity to lodge an objection. If a trustee changes its proposed distribution, a further claim-staking process is conducted. Once the trustee has made a final decision in relation to distribution of the death benefit, all potential beneficiaries are advised of the decision and their further rights in relation to dispute resolution if they remain dissatisfied.

While an objection in relation to a proposed death benefit distribution is an expression of dissatisfaction — and therefore a complaint as that term is commonly understood — ASFA considers they should be excluded from the definition of 'complaint' for RG 165 purposes where the trustee has followed the legislated claim-staking process, as the potential beneficiary will receive IDR as part of that process.

Clarity around the treatment of these objections is also necessary to ensure consistent and comparable reporting of IDR data. Trustees may currently apply different approaches to their internal reporting of death benefit objections — some collate these objections alongside other complaints, while others report them separately. It would be inappropriate for ASIC (or the public) to draw an adverse inference if a trustee's reported (or published) complaint data is inflated by the inclusion of death benefit objections/complaints, if these are not included in all trustees' data.

Complaints 'about' an organisation

We note that the draft update to RG 165 adopts the requirements of AS/NZS 10002:14 *Guidelines for complaint management in organizations*, rather than the comparable standard ISO 10002:2014 *Quality management — Customer satisfaction — Guidelines for complaints handling in organizations*, or the updated version of the latter, ISO 10002:2018.

The definition of 'complaint' utilised in AS/NZS 10002:14 differs significantly from that used in the previous version AS/NZS 10002:06 that is entrenched in the current version of RG 165—and from the definition used in the ISO 10002 series—by requiring expressions of dissatisfaction made "to **or about**" an organisation to be treated as a complaint, rather than simply expressions of dissatisfaction "to" the organisation.

While we accept that it is appropriate for ASIC to prescribe compliance with the current AS/NZS standard, we consider that the extended definition of 'complaint' has a fundamental impact on the entirety of the requirements set out in RG 165. As a result, we consider it critical that ASIC provides financial firms with clearer guidance about its expectations.

Our response to consultation question B1Q1 addresses the application of the definition to expressions of dissatisfaction made via social media — and states our view that a financial firm should not be required to treat expressions of dissatisfaction 'about' the firm made outside the firm's account/presence on a social media channel/platform, as a 'complaint'.

We consider it important that ASIC clarifies whether it intends to interpret the definition as having any additional scope beyond social media.

We note that increased clarity will remove some of the subjectivity from the process of identifying complaints. This is critical if the reforms to RG 165 are to successfully increase responsiveness and transparency in relation to complaints handling, and to ensure that the IDR data reported to ASIC is both comprehensive and consistent as between financial firms, especially for the purpose of identifying systemic issues.

Ensuring that an individual has 'standing' to make a 'complaint'

The definition of 'complaint' in AS/NZS 10002:14, and the requirements outlined in draft RG 165, fail to incorporate any concept of 'standing'. That is, they do not specify that a relationship must exist between the financial firm and the person making the 'complaint'.

This is of particular concern given ASIC's proposed requirements in relation to 'complaints' made via social media, since we understand that social media users may express dissatisfaction on behalf of friends and family members, not always with their consent.

ASFA would encourage ASIC to provide confirmation that in order to be considered a 'complaint' — and therefore be subject to the IDR requirements outlined in RG 165 — the expression of dissatisfaction must be made by an individual who has a relevant relationship with the financial firm, or by a person acting under the express authority of such an individual. With respect to superannuation, we suggest that this should be limited to those parties who are eligible to make a 'superannuation complaint' to AFCA under the provisions of Division 3 of Part 7.10A of the *Corporations Act 2001*.

Other clarifications

In addition to the points noted above, ASFA members have identified a need for greater clarity and/or guidance in relation to:

- the distinction between a 'complaint' and 'feedback'
- statements in paragraph RG 165.35(c) regarding "comments made about a firm where a response is not required" such as "feedback provided in surveys" and "reports intended solely to bring a matter to a financial firm's attention". In particular, it is unclear if these scenarios are intended to be blanket exceptions or whether the paragraph intends to depict specific examples in which it is implicit that there is no expectation of a response, and that such scenarios must always be considered on a case by case basis.

Recommendation

Definition of complaint: additional guidance

- Objections in relation to a superannuation trustee's *proposed* distribution of a death benefit should be excluded from the definition of 'complaint' for RG 165 purposes where the trustee has followed the legislated claim-staking process.
- ASIC should provide clearer and more detailed guidance as to its expectations in relation to the expanded definition of complaint to be entrenched in RG 165, particularly in relation to its extension to cover expressions of dissatisfaction to "or about" financial firms.

2.3. Definition of 'complaint' — AS/NZS 10002:14

1Q1: Do you consider that complaints made through social media channels should be dealt with under IDR processes? If no, please provide reasons. Financial firms should explain:

(a) how you currently deal with complaints made through social media channels; and

(b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm's own social media platform or an external platform.

ASFA acknowledges the powerful impact of social media as a tool for communication. Effective strategies for monitoring social media provide firms with an opportunity to identify and act on expressions of dissatisfaction, enhance the consumer experience, and maintain their reputation or 'brand'.

However, the approach to treatment of complaints made through social media as outlined in CP 311 and the update to RG 165 is, in ASFA's view, unclear and problematic and clarity is required in relation to a number of matters, as outlined below.

We consider that ASIC's concern should be directed to ensuring financial firms have in place appropriate and *directly accessible* processes through which customers can raise a complaint, rather than seeking to impose onerous monitoring requirements in relation to social media.

The process typically adopted by superannuation trustees toward social media

Based on information provided by ASFA's trustee members, we understand that a typical process for addressing potential complaints made via social media is as follows:

- the fund's presence on major social media platforms is monitored to detect expressions of dissatisfaction
- where such an expression is identified, the trustee will either respond to the individual's post, or via a private message (if supported by the social media platform)
- that response will invite the individual to contact the trustee offline (that is, outside the social media platform) to discuss their dissatisfaction in detail without the risk of revealing personal/confidential information on a public forum
- where contact is made by the individual and their identity can be verified, the expression of dissatisfaction will be treated as a 'complaint'
- if the individual fails to take up the opportunity to contact the trustee offline and discuss their dissatisfaction, no further action is taken on the basis that the individual's identity could not be verified, they were not contactable in a manner which reasonably protected their privacy, and/or it is reasonable to assume that a response was not expected.
- It is worth noting that the experience of many ASFA trustee members is that less than 50 per cent of individuals respond to an offer to pursue their dissatisfaction offline.

ASFA considers this to be a reasonable process and recommends that it is endorsed via guidance in RG 165. In particular, we consider that ASIC should confirm that a financial firm is not required to make more than one attempt to contact an individual in relation to an expression of dissatisfaction made via social media.

In addition, we would encourage ASIC to reframe its requirements around social media to require financial firms to implement processes to redirect an expression of dissatisfaction made on a public forum such as social media to a private channel. Financial firms should not be required to implement processes that may potentially encourage individuals to disclose on a public forum personal information or details in relation to their relationship with a financial firm. To do so would, in ASFA's view, leave individuals vulnerable to identity theft or other fraudulent activity.

What is meant by 'social media' channels and platforms?

We note that while RG 165 does not contain a definition of 'social media', paragraph 4.2 of AS/NZS 10002:2014 defines the term as "online social networks used to disseminate information through online social interaction". This definition is vague and uncertain, and no examples are provided in AS/NZS 10002:2014.

RG 165 provides no additional guidance on how the definition is to be interpreted. In particular, it provides no clarity in terms of the networks/channels that would be considered relevant.

We acknowledge that social media is an area that is subject to continuous innovation and development, and accordingly we do not expect ASIC to attempt to include in RG 165 a prescriptive list — any such list would quickly become out of date.

However, given that a failure to correctly deal with complaints made via social media would constitute a breach of RG 165, it is in our view incumbent on ASIC to express the requirements in RG 165 in a manner that provides financial firms with certainty regarding ASIC's expectations.

We anticipate that major platforms such as Facebook, Twitter, LinkedIn, Instagram and Tumblr are intended to fall within the scope of the definition and the requirements in RG 165. Beyond that, however, there is little certainty. Questions include:

- Is a website such as ProductReview.com.au 'social media'? ProductReview is a 'consumer opinion site', which 'provides a platform where people can rate and review services and products'.
- Many online news media sites — for example, The Australian, The Age, or the Daily Telegraph — allow readers to comment on the articles featured online. Is this considered to be 'social media'?
- At what point does a new/emerging social media platform become 'mainstream' enough that there is an expectation it will be monitored by financial firms?

We note that most financial firms operate a website and allow users to make contact through that website via a facility to lodge feedback or a complaint, inquiry or comment, or a 'live chat' application. Expressions of dissatisfaction (from identifiable and contactable complainants) made through such channels should be addressed as part of a financial firm's IDR process, however ASFA would not consider them to be made via 'social media', given they are effectively private communications between the individual and the firm.

It is absolutely critical that the requirements in RG 165 are redrafted to provide significantly more detail, and to provide examples of what ASIC does, and does not, consider to be 'social media', and which social media platforms financial firms are expected to monitor.

What is meant by "a firm's own social media platform(s)"?

RG 165 refers to "the firm's social media platform(s)" and "a firm's own social media platform(s)", and CP 311 draws a distinction between a firm's "own social media platform" and an "external platform".

In ASFA's view few, if any, financial firms could be said to operate their "own" social media platform. It would be more accurate to say that firms have an account or a presence on a platform operated by an external provider.

We consider it reasonable to expect a financial firm's IDR process to deal with complaints made on its presence on a social media platform or channel (to the extent the complainant is both identifiable and contactable). If an individual genuinely wishes to make a complaint via social media, it is in our view reasonable to require them to do so via the financial firm's presence on social media.

However, we are of the view it is **not** reasonable to expect financial firms to treat expressions of dissatisfaction about them outside their account/presence on a social media channel/platform, as a 'complaint'. It is simply impossible for a financial firm to monitor every social media channel through which an individual could express dissatisfaction — this would create an obligation on financial firms which is both open-ended and extremely onerous and resource intensive. In this respect, we note that since these platforms typically have no capacity for a financial firm to set up any type of notification to alert them to the fact they have been mentioned by a user of the platform, manual monitoring would be required.

Many expressions of dissatisfaction via social media are not genuine complaints:

Social media is a largely uncontrolled environment. It is a regrettable fact that the widespread use of screen names/pseudonyms often seems to embolden users to make comments and claims that they might not make in their own name or might not express through more traditional means of communication. To state it bluntly, social media is, for many users, a tool through which they can 'vent' dissatisfaction without any expectation of consequence.

While we do not doubt that many expressions of dissatisfaction made through social media are made by individuals who do hold the relevant financial service/product or have a relationship with the relevant financial firm, that will not always be the case. Whenever there is the ability for members of the public to post to a social media platform, there is the potential for 'trolling' to occur — for attention-seeking individuals to make posts claiming dissatisfaction when they in fact have no relationship with the financial firm.

This does not mean that social media should be disregarded for the purposes of a financial firm's IDR process. However, in ASFA's view it does indicate that ASIC should take care not to set the threshold too low for determining when an expression of dissatisfaction via social media constitutes a 'complaint'.

In particular, we consider that ASIC's concern should be directed to ensuring financial firms have in place appropriate and directly accessible processes through which customers can raise a complaint.

When will a complainant on social media be "both identifiable and contactable"?

Paragraph RG 165.37 indicates an expectation that a financial firm's IDR process will deal with complaints that are made:

(a) on a firm's own social media platform(s); and

(b) by a complainant who is both identifiable and contactable.

We anticipate that in many cases, complaints made via social media channels would not be traceable back to a complainant who is "both identifiable and contactable" as specified in RG 165.37(b). As noted above, many — potentially most — users of social media utilise a screen name or pseudonym rather than their actual name.

A further complication in this context is that few social media channels have any active form of verification of users' names, so there is little to prevent an individual adopting the name of another person.

As a result, we are of the view that very few expressions of dissatisfaction made via social media channels would meet the RG 165 concept of 'complaint' at first instance (without further investigation and contact).

To assist financial firms, we consider it important that RG 165 is amended to provide clear guidance around when a complainant on social media will be considered 'identifiable and contactable'.

As we have outlined above, where dissatisfaction has been expressed on a social media platform, superannuation trustees typically attempt to contact the individual via a post or a direct message, inviting them to make contact offline to discuss their concerns. Where the individual fails to take up that invitation, we consider it reasonable for the trustee to conclude that the individual is not 'identifiable and contactable' — and/or, potentially, that the individual did not expect a response to their expression of dissatisfaction.

Acceptance of complaints made via social media should not be a specific requirement

Most social media channels/platforms provide users with the ability to 'lock down' or not accept comments or posts.

We understand that some superannuation fund trustees use their social media presence purely as a one-directional way to provide information to fund members. These trustees do not allow comments or posts on their social media presence, but instead direct users who are seeking additional information to alternate points of contact (such as the fund's website, contact centre or mailing address).

This is, in ASFA's view, a perfectly acceptable business decision. When finalising RG 165, it is important that ASIC avoids imposing any requirements that seek to regulate or prescribe how financial firms operate their social media presence. In particular, ASIC should not require a financial firm to operate a comments function on social media for the purpose of receiving complaints.

Impact of requiring proactive monitoring of social media

We note that for many financial firms, monitoring of both mainstream and social media is generally conducted by staff outside the complaints management team. This function is typically conducted by a separate team with responsibility for managing the firm's 'brand' and may be partially outsourced. Implementation of ASIC's requirements will therefore require enhanced integration as well as training for social media/brand staff on how to identify and record complaints.

Recommendation

Complaints made through social media channels

The proposed requirements in RG 165 are unclear and require extensive revision. In particular:

- ASIC's concern should be directed to ensuring financial firms have in place an accessible and direct IDR process through which customers can raise a complaint
- ASIC should provide greater clarity around what it means by 'social media' and explicitly confirm that:
  - a financial firm's IDR process need only deal with complaints, from an individual who is identifiable and contactable, made on the firm's presence on a social media platform or channel
  - financial firms are not required to treat expressions of dissatisfaction 'about' them outside their account/presence on a social media channel/platform, as a 'complaint'.

2.4. Recording all complaints received

B4Q1: Do you agree that firms should record all complaints that they receive? If not, please provide reasons.

ASFA agrees that it is appropriate to record all complaints received. We believe this this will lead to greater transparency and visibility of complaints within a financial firm's operations, creating an opportunity for the firm to address systemic issues and frustrations for customers, and to move towards proactive improvement of services.

However, the requirements proposed in the updated draft RG 165 regarding recording of complaints resolved within five days represent a significant change to the current process adopted by most financial firms. Implementation of these changes is likely to require substantial effort, including extensive training of staff and deeper integration of frontline systems and processes with firms' complaints handling processes. It will, in ASFA's view, be necessary to reflect this when determining the commencement for the recording requirement.

We further note that the need for frontline/call centre staff to collect and record the prescribed data set in relation to complaints resolved immediately will increase average call handling times (see part 2.5 for further comments on the prescribed data set). This will impede the capacity of frontline staff to engage efficiently with fund members and will impact on customer service levels and therefore customer satisfaction.

We suggest that ASIC reconsider whether these negative impacts do not outweigh the perceived benefits of the recording requirement, especially given the types of 'complaints' that are able to be resolved immediately by frontline/call centre staff — or within five days — are those that are extremely simple in nature.

As indicated earlier in this submission, we also consider the proposed definition of 'complaint' is lacking in clarity and — unless resolved — this will create uncertainty for financial firms in terms of identifying complaints and ensuring all complaints are recorded in compliance with paragraphs RG 165.57-62.

Recommendation

Recording all complaints received

Further consideration should be given to the level of recording required in relation to complaints resolved within five days.

2.5. Recording a unique identifier and prescribed data set for all complaints received

B5Q1: Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.

ASFA agrees that it is appropriate for financial firms to assign a unique identifier to each complaint received.

We note, however, that financial firms may frequently receive multiple contacts from a complainant, and additional issues may be raised during the IDR process. In our view, there would be merit in including guidance in RG 165 on how firms are to determine whether such scenarios involve one expanding complaint or multiple complaints, and at what point additional unique identifiers may need to be assigned.

It is important that RG 165 does not seek to prescribe the format for identifiers, and in this respect we support the comments in RG 165.60 that financial firms may design their complaint system to suit the nature, scale and complexity of their business, including the number of complaints they receive.

B5Q2: Do you consider that the data set proposed in the data dictionary is appropriate? In particular:

(a) Do the data elements for 'products and services line, category and type' cover all the products and services that your financial firm offers?

(b) Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail?

ASFA members have raised a number of concerns regarding the proposed data set in the data dictionary, as follows:

1. The proposed data set is extensive, and it is important that financial firms are given adequate time to comply with the recording requirements.

   Compliance with the IDR data reporting requirements will require financial firms to significantly increase the data they record in relation to complaints. By way of indication, some ASFA members have indicated they will be required to add around 25 data fields to their existing complaints management systems.

   Larger superannuation trustees — with higher numbers of members and a proportionately higher volume of complaints — would typically utilise complaints management software supplied by an external party. Their ability to comply with the data recording requirements, by the date proposed, will be impacted by the time taken by their software providers to make system upgrades available.

   As it is not anticipated that RG 165 will be finalised until December, ASFA is of the view it will be challenging for most software providers to have updated systems available, and for financial firms to have operationalised those system updates, by 30 June 2020.

   We consider that the data recording requirements should instead commence on 1 July 2021, to be in place for an inaugural six-monthly reporting period ended 31 December 2021 (see our response to B15Q1). This would allow time for further consideration of the data recording (and reporting) requirements, including targeted consultation and engagement with APRA and the ATO to ensure alignment, to the extent possible/relevant, with the reporting systems adopted by those regulators (see our additional comments in response to B6Q1).

   By way of observation on the compliance costs and impacts of the proposals, ASFA members are of the view that the uplift in technology, resources and staff training required to achieve compliance with the proposals will be significant.

2. Collection and recording of the full prescribed data set for complaints resolved immediately or within five days may have negative impacts on customer service that outweigh the perceived benefits.

   In part 2.4 we recommended that ASIC further considers its proposed new requirements in relation to recording of complains resolved within five days, to ensure the additional administration burden on funds and the potential impact on customer service levels can be justified. One potential suggestion to mitigate the negative impacts might involve prescribing a reduced data set for recording in relation to these complaints.

3. The proposed data element for 'complaint issue' does not provide adequate detail.

   One stated purpose for the reported complaints data is to target ASIC's ongoing surveillance and enforcement activities. Despite this, the codes for 'complaint issue' proposed in the data dictionary (table 1 item 32) are very high level and have been genericised in an attempt to accommodate all types of financial products and services. As a result, the responses to data element 32 would appear to be virtually useless for targeting purposes.

   Firms are required to provide a text description of the complaint issue (table 1 item 33) with a maximum of 4,000 characters. As this will be freeform there will be variability in the way firms describe issues and this may impede ASIC's ability to recognise emerging trends/issues. ASFA is of the view that freeform text of this length should be avoided/minimised as far as possible.

   To overcome this, we suggest that ASIC should consider either:

   - replacing the current list of codes for complaint issue with a specified set of descriptive issue codes suited to each type of financial product or service; or
   - adding a data element for mandatory completion where a financial firm selects code 11 ('other') for the complaint issue, requiring the firm to specify an appropriate category using a limited (maximum prescribed) number of keywords.

4. The proposed data elements 35 and 36, in relation to 'complaint remedy' and 'financial compensation', require clarification.

   Code 36 in relation to 'financial compensation' is a conditional field that is required to be completed "if the answer to data element 35 'Complaint remedy' is 1 (Financial remedy)". This effectively equates a 'financial remedy' with financial compensation.

   For many superannuation complaints, a financial remedy may be applied by a financial firm to rectify an error — to reinstate the complainant to the financial position they would have been in had the issue that led to a complaint not occurred. In contrast, 'compensation' typically has a connotation of an additional payment, over and above the amount to which a complainant was entitled. While it may be appropriate for some financial firms to pay compensation to 'settle' a complaint, superannuation trustees do not typically do so, given they hold their funds' monies on trust for the fund membership overall. We recommend that data element 36 be revised to refer to 'financial remedy' or 'financial component of remedy', rather than 'financial compensation'.

   ASFA also considers that it may be appropriate to expand data element 35 to include sub-categories capturing the nature of a complaint remedy, particularly where the remedy is non-financial.

5. The proposed 'guide for use' for data element 25 should be reconsidered.

   Data element 25 relates to the date a complaint was closed after re-opening. The 'guide for use' indicates a "response is required if the answer to data element 19 'Complaint status' is 2 (Re-opened)". We note that it would be possible for a complaint to have been re-opened, but to remain active — to have not yet been closed — at the end of the reporting period, especially if it was re-opened late in the period. In those cases, it will not be possible for financial firms to populate a response to data element 25.

6. Where a prescribed demographic data element is not already collected and is not material to resolution of the complaint, financial firms should have the option to report the element as 'unknown'.
7. Further consideration is required of how superannuation trustees record data about objections or 'complaints' in relation to proposed distributions of death benefits — refer our comments in part 2.2 of this submission.

Recommendation

Recording a prescribed data set

ASIC should review the proposed data elements and codes in line with the above considerations and extend the commencement date for the requirements, to allow additional time for consultation on the data recording (and reporting) proposals.

2.6. IDR data reporting

B6Q1: Do you agree with our proposed requirements for IDR data reporting? In particular:

(a) Are the proposed data variables set out in the draft IDR data dictionary appropriate?

(b) Is the proposed maximum size of 25 MB for the CSV files adequate?

(c) When the status of an open complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status?

ASFA has a number of concerns in relation to the data reporting proposals, as outlined below.

The proposed data variables

As outlined in our above response to B5Q2, ASFA is concerned that many of the proposed data elements are too high-level and generic and may not provide data that is meaningful for ASIC's analytical/targeting purposes. The extent of changes made to the data dictionary prior to its finalisation will impact the extent to which the data variables can be considered 'appropriate'.

While we are aware that there is an underlying intention to correlate, to the extent relevant/possible, the data set reported to ASIC with that used by AFCA, we understand that the latter may be subject to amendment and as a result, the two data sets may not be in alignment. We would encourage ASIC to liaise closely with AFCA prior to finalising the data dictionary, to ensure that inconsistency between the data sets is avoided.

ASFA considers that in order to ensure complaint reporting is comprehensive, an open complaint should continue to be reported to ASIC even where there has been no change in its status over multiple reporting periods.

The proposed data file format and size limitations

ASFA notes ASIC's comment that the CSV file format is considered to be "the most appropriate for IDR reporting purposes because it is processed by almost all existing applications likely to be used by our diverse regulated population" (CP 311, para 68).

While we agree that CSV is commonly used, its inherent limitations mean it is not, in ASFA's opinion, the optimal format to adopt for a new reporting regime. Given the expense and implementation effort required — for both ASIC and financial firms — in implementing a new reporting regime, it is critical that the format adopted is future-proofed to the extent possible. This would, in ASFA's view, involve adopting the optimum file format currently available and ensuring that a robust process exists to adapt to future technological advancements.

We note that the ATO has in recent years implemented a comprehensive data reporting regime for the superannuation industry, leading to the introduction of a package of data standards and reporting forms. The ATO reporting regime was developed through a process of extensive and iterative consultation with stakeholders, including 'regtech'/reporting service providers as well as superannuation funds. As part of that process, detailed consideration was undertaken in relation to appropriate file formats and development of a robust change management process to accommodate future updates to the standards. We further note that APRA is currently undertaking a process to replace the data reporting system currently used by its regulated entities ('Direct to APRA', or D2A), and has indicated it will be consulting on additional data requirements later this year.

In implementing the IDR reporting regime ASFA considers it imperative that ASIC liaises closely with its fellow regulators, to learn from their experience and to ensure alignment of the regimes to the extent possible. Development of a reporting regime in isolation from those that already apply to financial firms — or are currently under development — is likely to create inconsistent reporting requirements and impose unnecessary cost and burden on the industry.

In the event that ASIC proceeds to prescribe a CSV format for data reporting, we note that a maximum file size of 25MB will, in many cases, be inadequate. ASFA members have indicated that they anticipate a need for a clear process to support instances where files exceed 25MB. Based on experience in relation to reporting regimes implemented by other regulators, data requirements can quickly exceed initial expectations and future-proofing for expanded data reporting should be considered as an integral part of establishing the data reporting regime.

Regardless of the technological model adopted, we welcome ASIC's commitment to offering a simpler data reporting form to smaller financial firms that receive only a few IDR complaints each reporting period (CP 311, paragraph 69).

Recognition of the time needed to implement reporting requirements

The data reporting proposals are extensive, and their implementation will involve the creation of an entirely new data reporting regime, requiring significant investment of time and effort from ASIC and financial firms. It is critical to allow sufficient time for consultation and a measured development of the regime, as a rushed implementation is likely to lead to a sub-optimal outcome and a need for remediation.

ASFA considers that the proposed timeframe for commencement of the data reporting requirements, with the first report due by 31 July 2021 in respect of the six-month period ended 30 June 2021, will not provide sufficient time to achieve this.

It is important that ASIC does not seek to rush either the data recording or data reporting requirements. Instead, we consider that ASIC should undertake a further and more detailed consultation with stakeholders on the detail and format of those requirements, including liaison with the ATO and APRA as noted above.

This extended consultation process should include the release of a draft of the legislative instrument prescribing the reporting requirements well in advance of their commencement.

We suggest that the reporting requirements should first apply to the six-monthly reporting period ended 31 December 2021.

Recommendation

IDR data reporting

ASIC should review the proposed data requirements in line with the above considerations and extend the commencement date for the requirements, to allow additional time for consultation on the data reporting (and recording) proposals.

2.7. Guiding principles for the publication of IDR data

B7Q1: What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?

ASFA welcomes ASIC's acknowledgment that the industry has some concerns regarding the publication of IDR data, and would encourage ASIC to undertake comprehensive consultation on this matter, with adequate time for all issues to be addressed, prior to the first round of IDR reporting.

We consider it important that data is published in a manner that promotes an appropriate level of transparency as to the IDR performance of financial firms and allows firms to benchmark their performance against others in the same sector.

However, it is also important that the approach to publication of data:

- ensures privacy and confidentiality is maintained in respect of complaints and complainants.
- ensures consistency and comparability of reported data as between financial firms in the same sector but does not make or allow for inappropriate and potentially misleading comparisons between data reported for different types of financial products/different sectors.

  As noted earlier in this submission, many superannuation complaints are complex and their resolution can involve parties other than simply the superannuation trustee and the member/beneficiary.

  This complexity is a well-recognised feature of the superannuation system, and we have outlined at part 2.1 in this submission the need for it to be reflected when setting the maximum IDR timeframes for superannuation complaints. It is also important that the complexity is recognised when considering how complaint data will be published — in particular, in ensuring that the IDR 'performance' of a superannuation trustee is not subject to adverse comparison against financial firms that provide simpler financial products and services.
- ensures data is aggregated at an appropriate level. In particular, where the financial firm is a licensee which operates multiple superannuation funds, data should be aggregated at the fund level rather than the parent/licensee level.
- incorporates a business size metric, so users of the reported data are able to understand a firm's IDR performance in the context of the size of its business operations.

- provides a meaningful level of granularity, for example regarding the categorisation of complaints.
- clearly communicates the meaning and relevance of each data item.

We note that AFCA has recently consulted on proposals for the publication of comparative reporting of complaints made in respect of financial firms. We encourage ASIC to liaise closely with AFCA to ensure alignment, where possible, of the reporting approach.

While AFCA has not yet released the final version of its comparative tables, we note that ASFA and others within the superannuation industry highlighted to AFCA the need to retain a business size metric to assist users with interpretation of the reported data. ASFA is of the view this sizing metric should not focus solely on a financial measurement (such as funds under management) but should relate to the number of product holders/customers/members.

We would encourage ASIC to undertake comprehensive consultation on this matter, with adequate time for all issues to be addressed, prior to the first round of IDR reporting.

Recommendation

Publication of IDR data

ASIC should ensure that consultation on its proposed approach to publication of reported data occurs well ahead of the first round of reporting.

2.8. IDR responses — minimum content requirements

B8Q1: Do you agree with our minimum content requirements for IDR responses? If not, why not?

ASFA recognises that a financial firm's response is a critical step in the IDR process. We acknowledge that a thoughtfully considered and expressed IDR response is important to maintaining consumers' trust in the financial firm (and in the financial sector more broadly).

We note that there is an inconsistency between paragraphs RG 165.21 and RG 165.84-85 and that RG 165.21 is, in our view, potentially misleading. Paragraph RG 165.21 states that "If a financial firm resolves a complaint within five business days, they do not have to give the complainant an IDR response". This is, in ASFA's view, a potentially misleading oversimplification, given that:

- paragraph RG 165.84 makes it clear that this position **only** applies if none of the exceptions in paragraph RG 165.85 applies
- paragraph RG 165.85 states that firms **must** provide a written IDR response, even where the complaint is resolved to the complainant's satisfaction by the end of the fifth business day, in circumstances which specifically include where the complaint is about "a decision of a superannuation trustee".

We strongly recommend that paragraph RG 165.21 is amended to remove the inconsistency with paragraphs RG 165.84-85.

We further note that paragraph RG 165.85 effectively appears to require the provision of a written IDR response, including reasons for the decision, in relation to all superannuation complaints. If this is correct, it would represent a substantial change from the existing requirements for superannuation trustees. Under current arrangements, trustees are required to provide written reasons for a decision in respect of all complaints relating to payment of a death benefit, but only on request for other types of complaint. ASFA considers that if the intention is to require written reasons for all decisions made by a superannuation trustee in relation to a complaint:

- this should be stated more explicitly in RG 165
- clarification should be provided about what constitutes a 'decision of a superannuation trustee' in this context.

With respect to the minimum IDR response content requirements outlined in RG167.75 for a complaint that is partially or wholly rejected by the financial firm, we have the following comments:

- The proposed requirements do not provide sufficient clarity to financial firms regarding ASIC's expectations as to what will constitute an adequate IDR response.

  The failure to provide an adequate IDR response will constitute a breach of a financial firm's obligations under RG 165. Accordingly, ASFA considers it appropriate for ASIC to specify in RG 165 the thresholds/objective measures it will use to assess the adequacy of an IDR response.

  It is important that certainty as to these requirements is provided at the outset, so they can be operationalised as part of the substantial effort that firms will need to undertake to implement the update to RG 165. It would, in ASFA's view, be inappropriate to leave these requirements stated in a manner that is subjective and open to interpretation by fund auditors or ASIC supervisory staff.

- It is, in ASFA's view, appropriate to consider the need for further responses where a complaint is resolved at the first point of contact.

  We support the comment in RG 165.76 that the level of detail in an IDR response should "reflect the complexity of the complaint and the nature and extent of any investigation conducted by the firm". It is, in our view, important that the response is proportionate to the complexity of the complaint. Many complaints are resolved to the complainant's satisfaction through an initial verbal contact, and frequently the complainant does not expect any further response. ASFA is of the view that in such instances, a written IDR response should not be required.

- The requirement in sub-paragraph (a) in RG 165.75 should be limited to the financial firm's IDR response addressing all the *relevant* issues raised in the complaint.

A further area that requires clarification relates to proposal B8(c), in relation to providing 'enough detail' for a complainant "to be fully informed when deciding whether to escalate the matter to AFCA or another forum".

We note that the recent commencement of AFCA as the EDR body for financial services has represented a more significant change for superannuation trustees than for other superannuation fund providers, as AFCA operates in a manner that is more similar to the former Financial Ombudsman Service than the Superannuation Complaints Tribunal (SCT). One aspect of this is that the SCT routinely excluded complaints outside its jurisdiction at the very outset of its process, whereas a complaint may proceed through several initial stages of AFCA's process before it is identified that it is outside (or may be excluded by) AFCA's Rules.

This procedural difference raises a question as to the level of detail that financial firms are required to include in their IDR responses about the types of complaints that AFCA can address. For example, where a superannuation trustee has identified that an individual's complaint relates to a matter that might be excluded under AFCA's rules, to what extent is the firm required to highlight this in its IDR response? Failure to highlight this might cause frustration for the consumer if their complaint is ultimately rejected by AFCA. However, we consider it inappropriate to require a financial firm to express any judgement regarding the likelihood of AFCA proceeding with a complaint and would encourage ASIC to confirm this in the final version of RG 165.

Recommendation

Minimum requirements for IDR responses

ASIC should provide additional clarification regarding the minimum requirements for IDR responses, addressing the points noted above.

2.9. IDR responses — superannuation trustees

B9Q1: Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, please provide reasons.

B10Q1: Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary.

ASFA considers that provided the proposed legislative instrument describes with sufficient clarity the 'core IDR requirements' of RG 165 that will be enforceable, this approach would be acceptable and there should not be a need for any additional minimum content requirements for IDR responses provided by superannuation trustees.

We recommend that paragraph RG 165.77 is amended to state:

> Superannuation trustees satisfy the requirement to provide written reasons for a decision (see s101(1)(d) of the SIS Act and s47(1)(d) of the RSA Act) when they provide an IDR response **in accordance with RG 165.74-76**."

We further recommend that paragraph RG 165.120 is amended to state:

> Superannuation trustees satisfy the requirement to provide written reasons for the failure by a trustee to make a decision on a complaint (see s101(1)(d) of the SIS Act and s47(1)(d) of the RSA Act) when they provide an IDR delay notification **in accordance with RG 165.118-119**."

We also refer to our response to:

- B8Q1 regarding the need for ASIC to more clearly specify in RG 165 its expectations regarding the minimum content for IDR responses
- B11Q1 and B11Q2 regarding the need for ASIC to clarify the circumstances in which an IDR delay notification may be sent.

Recommendation

IDR responses—superannuation trustees

Subject to some clarifications to RG 165, there is no need to issue a separate legislative instrument regarding the provision of written reasons by superannuation trustees.

2.10. Role of customer advocates

B12Q1: Do you agree with our approach to the treatment of customer advocates under RG 165? If not, please provide reasons and any alternative proposals, including evidence of how customer advocates improve consumer outcomes at IDR.

B12Q2: Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position.

ASFA agrees that the review of unresolved complaints by a customer advocate may improve consumer outcomes provided there is sufficient transparency as to the role and function of the advocate. We note, however, that the role of the customer advocate is not one that has been heavily adopted within the superannuation industry at this time.

It is our understanding where financial firms are currently utilising a customer advocate, there are differences in the models applied. We are aware of two distinct models and consider that ASIC should reframe its guidance in RG 165 to address both.

1. Some financial firms involve their customer advocate as a potential step in the standard IDR process, where the other process steps have not been adequate to determine the appropriate outcome for a particular complaint.

   In ASFA's view, under this model the consumer advocate is undeniably part of the underlying IDR process and it is important that all IDR steps — including the customer advocate's involvement — are completed within the maximum IDR timeframe.

2. Another model involves the financial firm offering an additional and independent review by a customer advocate as an option a complainant can request on receipt of their IDR outcome at the conclusion of the IDR process, instead of immediately proceeding to EDR. Alternatively, the customer can proceed to EDR, without seeking a review by the customer advocate.

   We understand that where financial firms use this model, a fresh investigation of the complaint is conducted by the customer advocate, who is independent from the financial firm's staff with responsibility for complaints handling. The complainant retains the right to seek EDR if they remain unsatisfied at the conclusion of the customer advocate's review.

   Under this model, the customer advocate review is entirely voluntary for a complainant. It is intended to provide a further opportunity to resolve the complaint and has no impact on the complainant's ability to seek EDR if that is their preferred course of action. Anecdotally, we understand that where a complaint is referred to a customer advocate, only a small number of complainants choose to proceed to EDR.

As the customer advocate role is quite new and still evolving, we would support further detailed consultation on how any new standards or requirements might apply to this unique function, to avoid any unintended consequences.

Recommendation

Customer advocates

ASIC should undertake further consultation in relation to customer advocates to ensure its final requirements reflect the different models adopted — in particular, recognising that while some financial firms incorporate the customer advocate role as a step in the IDR process, others use it as an additional and independent review of the IDR outcome, available at the customer's request.

2.11. Systemic issues

B13Q1: Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.

ASFA agrees that the proposals will generally strengthen the accountability frameworks of financial firms and assist in delivering improved outcomes for consumers.

We consider that increased board oversight is a positive step and will help to entrench 'best practice', providing further security and transparency for customers. We agree that reports to the board and executive committees should include metrics and analysis of consumer complaints, including about any systemic issues that arise out of those complaints. It is our understanding that financial firms currently conduct root cause analysis on complaints, however given the importance of this function we accept that it is appropriate for it to be specifically reflected in ASIC's requirements.

However, we note that while other sections of CP 311 and RG 165 acknowledge the need to allow financial firms to develop processes and systems that reflect the complexity and scale of their operations, ASIC's proposals in relation to systemic issues seeks to allocate specific tasks to a particular job function. We consider that ASIC should avoid imposing requirements that are overly prescriptive or that dictate a specific organisational structure that must be adopted by financial firms.

While agreeing that it is critical that complaint data is analysed to identify systemic issues, we consider that contact centre/frontline staff will not have the time, functionality or training to do so. For many financial firms, it will in ASFA's view be appropriate for the roles involving the recording of new complaints and assessment of those complaints for potential systemic issues to be operationally separate.

In addition, we consider that RG 165 should be revised to provide further clarity around:

- the concept of 'systemic issue', with examples of what ASIC would, and would not, consider to be systemic issues — including examples specifically relevant to superannuation
- ASIC's expectations that:
    - financial firm staff who handle complaints must 'regularly analyse' complaint data sets and 'promptly' escalate possible systemic issues (proposals B13(c) and (d) and paragraphs RG 165.132(b) and 133(a))

- financial firms must have in place processes and systems to ensure systemic issue escalations are followed up and reported on internally 'in a timely manner' (proposal B13(e) and paragraph RG 165.133(b)).

Guidance would be appreciated on the frequency and timeframes that ASIC considers appropriate for these activities.

Recommendation

Systemic issues

RG 165 should be revised to provide greater clarity around a financial firm's obligations in respect of dealing with systemic issues but avoid prescribing operational responsibility for identification of those issues.

2.12. IDR standards

B14Q1: Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons.

In general terms ASFA considers that the approach to the application of AS/NZS 10002:2014 appears to be appropriate.

However, as expressed elsewhere in this submission, we have some significant concerns regarding aspects of ASIC's proposals, including in relation to the interpretation of 'complaint' and the lack of clarity around requirements applying that definition to expressions of dissatisfaction made on social media channels.

The uncertainty around these matters will not be resolved until ASIC has published its final requirements, and financial firms will then require a period of time to operationalise those requirements — including revising their preparatory work to take into account any amendments made by ASIC — before they can reasonably be expected to comply.

As a result — and as noted in section 2.13 below — we do not consider it appropriate for any of the requirements in RG 165 to commence immediately upon publication of the updated regulatory guide.

2.13. Transitional arrangements for the new IDR requirements

B15Q1: Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your proposals for alternative implementation periods

B15Q2: Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.

The reforms proposed by CP 311 and the update to RG 165 are substantial and will require financial firms to invest significant time, effort and expense in order to achieve compliance.

Implementation of the reforms will include:

- recruitment and training of additional complaints-handling staff
- changes to processes
- updates to existing systems and, for many funds, the adoption of entirely new systems to provide for reporting of data to ASIC
- extensive changes to fund collateral including websites, letters and regulated documents
- renegotiation of contracts with outsourced service providers.

We note that the reforms come at a time when the superannuation sector is undergoing significant regulatory change, and there is a need to ensure that trustees are able to implement reforms in an appropriately measured manner, without compromising the consumer experience.

As outlined in this submission, a number of fundamental aspects of the proposals require further clarification, and certainty on these points will not be received until the final version of RG 165 has been published, along with the related legislative instrument. We understand from CP 311 that this is not expected to occur until sometime in December. This lack of clarity will severely limit the extent to which firms are able to proceed with implementation of the proposed reforms.

Given these considerations, ASFA has significant concerns regarding ASIC's proposals for commencement of both the immediate and transitional requirements of RG 165.

ASFA is concerned that aligning the commencement date for the 'immediate' (non-transitional) requirements with the publication date of the updated RG 165 provides financial firms with little certainty regarding the available timeframe to implement the requirements. We recommend that ASIC instead sets a specific commencement date for the 'immediate' requirements of RG 165. Assuming the final version of RG 165 is published in December, we would consider 1 July 2020 to be an appropriate commencement date for the 'immediate' requirements.

In terms of the requirements for which ASIC has suggested transitional arrangements, we consider the proposed timeframes too short. Assuming publication of RG 165 in December, we recommend alternate transitional commencement dates as follows:

1. To provide an IDR response to a complainant within reduced maximum IDR timeframes

   Rather than a commencement date of 31 March 2020, a transitional period should apply between 1 July 2020 and 31 December 2020. Financial firms should work towards implementation by 1 July 2020 to the extent possible, however ASIC should adopt a facilitative compliance approach such that non-compliance will not be pursued prior to 1 January 2021 provided firms are making reasonable efforts to comply.

   This transitional period should apply both to compliance with the reduced IDR timeframes and to communication of those timeframes — that is, it would be appropriate for ASIC to provide transitional relief in relation to firms' prescribed disclosures regarding IDR (similar to that provided in relation to the recent commencement of AFCA as the EDR body for financial services). We recommend that ASIC consult separately in relation to the necessary disclosure relief.

2. To record all complaints received by the financial firm, including those that have been resolved immediately and/or by the firm's frontline staff

We consider that the proposed 30 June 2020 commencement date will be challenging for many financial firms, particularly given systems and processes may need to be extensively revised to capture additional data in relation to complaints resolved immediately or by frontline staff. Commencement of the recording requirement should be extended to 1 January 2021.

3. To assign a unique identifier for all complaints received by the financial firm

   Rather than 30 June 2020, commencement of this requirement should be deferred to commence on 1 January 2021.

4. To record prescribed complaint data for every complaint received by the firm

   This requirement should be deferred to commence on 1 July 2021, to enable collation and reporting of data to ASIC for an inaugural six-monthly reporting period ending 31 December 2021. This would, in ASFA's view, allow a greater period for consultation on the proposed data set, as recommended in our response to B5Q2 and B6Q1.

5. To report IDR data to ASIC in accordance with ASIC's data reporting regime

   This requirement should be deferred to set the endpoint for the first six-monthly reporting period as 31 December 2021. This extended timeframe is necessary to allow a more detailed consultation on the content, format and implementation of the reporting regime.

In the event that the final version of RG 165 is published later than December 2019, ASFA is of the view a further deferral of both the 'immediate' and 'transitional' commencement dates noted above may be necessary.

Recommendation

Commencement of the revised IDR standards

ASIC should extend the proposed commencement dates as outlined above to provide financial firms with adequate time to implement the revised IDR standards following the publication of the final version of RG 165, and the associated legislative instrument.

3. Other matters

3.1. Clarifying the implications of a breach of RG 165

Failure to comply with the requirements of RG 165 will constitute a breach of a financial firm's obligations under subsection 912A(1)(g)(i) of the *Corporations Act 2001*. Breaches of section 912A are reportable to ASIC where a number of threshold conditions are met, including that the breach is 'significant'.

We note that paragraph 97 of CP 311 notes that ASIC is considering "giving guidance on when financial firms that fail to meet the maximum IDR timeframes must submit a breach report to ASIC for failing to comply with s912A(1)(g)(i)".

ASFA would strongly encourage ASIC to provide guidance on this matter, in order to promote consistency of breach reporting by financial firms.

3.2. Impacts of the proposed reforms

The intent of the reform proposals is to improve financial firms' responsiveness to customer complaints and to increase transparency and accountability in relation to complaints handling. As a general proposition, ASFA agrees that these are beneficial outcomes.

However — as with the implementation of any new regulatory requirements — ASFA considers it vital to ensure there is both:

- a reasonable likelihood the reforms will deliver the anticipated outcomes; and
- reasonable proportionality between those outcomes and any increase in the regulatory burden.

Many aspects of the proposed standards are uncontroversial and represent practices that should already be embedded in trustees' complaints handling processes. Other aspects of the reforms will, if implemented as proposed, have a substantial and ongoing impact on trustees' operations.

We have noted in the earlier sections of this submission a number of concerns regarding the detailed requirements. We have highlighted the aspects that we believe need clarification and recommended a number of improvements that will, in our view, support the intent of the reforms while minimising the risk of adverse impacts.

In terms of the likely cost and other impacts the reforms will have on superannuation trustees, we note that a significant implementation effort will be required to bring trustees' IDR frameworks into initial compliance with the update to RG 165. This will involve, at a minimum:

- substantial changes to processes for identification and subsequent handling of complaints
- integration of social media monitoring functions with complaints handling
- enhancement of existing records management systems, to accommodate the increased data recording requirements
- major updates to fund collateral, including:
    - templates for all letters and other correspondence referencing the IDR process
    - fund websites
    - regulatory disclosure materials, including periodic statements, statements provided to a non-member spouse (in relation to a payment split under the *Family Law Act 1975* superannuation splitting regime) and product disclosure statements
- implementation of new systems to facilitate reporting of data to ASIC
- development and delivery of training for staff involved in any of the impacted business areas (including frontline/contact centre, social media, complaints handling, reporting)
- renegotiation of service level agreements in contracts with outsourced service providers, such as fund administrators and insurers.

The reforms will also have an impact on trustees' operations on an ongoing basis. Given the number of aspects of the reforms that still require clarification, members have found it difficult to assess these impacts. Estimates provided by ASFA member trustees suggest there will be appreciable impacts on staffing, depending on the size of the fund and the complexity of the products offered and its typical complaint profile.

3.3. Review of effectiveness of the updated IDR standards

Given the magnitude of the proposed changes reflected in the draft update to RG 165, ASFA considers it would be appropriate for ASIC to undertake a review of the updated IDR standards once all aspects — including the new 45-day IDR timeframe for superannuation complaints, the new definition of 'complaint' and the data recording and reporting obligations — have been fully implemented and bedded down.

Recommendation

Review of effectiveness of the updated IDR standards

ASIC should review the effectiveness of the updated IDR standards after all aspects of RG 165 have been fully implemented and bedded down.

Appendix 1: Understanding the diversity and complexity of superannuation complaints

In part 2.1 of this submission, we highlighted a number of factors that distinguish superannuation complaints from those relating to other types of financial products.

This appendix provides more detail on the legal and practical considerations involved in resolving many of the common types of superannuation complaints. These considerations have a direct impact on the time needed for trustees to complete an adequate IDR process.

Some superannuation complaints are relatively 'simple'

Many consumer complaints about superannuation are relatively simple and straightforward in nature — they involve a single issue or subject matter, and all information necessary to facilitate the trustee's decision making is in existence and within the discretion/control of the trustee (or its outsourced service providers).

In ASFA's view, many complaints about administration of a member's interest can be considered 'simple' complaints. Examples would include complaints about:

- the time taken to process an investment switch or a rollover or benefit payment
- whether a member has satisfied a condition of release for a benefit payment (including whether legislative requirements for 'financial hardship' were met)
- whether fees were correctly deducted, or earnings were correctly applied
- whether an accumulation account balance was correctly calculated.

'Simple' superannuation complaints are often fact-based and transactional in nature. It would be usual to expect that all information necessary to consider and resolve complaints of this nature would already be in existence, albeit some or all of it may need to be obtained from an outsourced service provider. ASFA superannuation trustee members already report average resolution timeframes under 45 days for these types of complaints.

Some superannuation complaints are more 'complex'

In contrast with the simpler complaint types described above, other types of superannuation complaints are more 'complex' in nature. These include matters where:

- the complaint involves multiple parties or particularly complex products
- the trustee has been provided with new evidence that requires assessment
- there is a need for the trustee to obtain additional or specialist information from external parties over whom the trustee has no control.

A common feature of many of these complaints is the need to obtain information or evidence, that is not currently in existence, from external parties — by which we mean parties other than the fund member or the trustee's outsourced service providers. When the time currently taken for trustees to resolve such complaints is examined, the largest component by far is the wait time for these external third parties to provide the trustee with the information it needs to make its decision, and this is generally outside the trustee's control.

In ASFA's view, 'complex' superannuation complaints include:

- Complaints about disability benefits

  Consideration of complaints about a member's eligibility for a disability benefit will often require specialist medical evidence to be obtained, for example because the member has not previously presented evidence (or sufficient evidence) about their medical condition, the member's medical status has changed, or conflicting medical reports have been received. Wait times typically to access specialists can often be extensive, commonly exceeding 30 days. There may then be a need to wait for the results of investigative medical tests to become available. These processes are entirely outside the control of the trustee.

  Depending on the circumstances, there may be a need to access records held by Medicare and/or the relevant workers' compensation authority.

  Disability related complaints may also require engagement with the member's employer, to ascertain their ability to meet the requirements of their role, and a workplace assessment may need to be conducted. This may again involve delays, which the trustee may have little ability to influence.

  It is not always possible for these steps to occur simultaneously, and even where conducted with maximum efficiency it would not be uncommon for the process to take in excess of 45 days.

  Following the completion of these steps, there is a need to allow reasonable time for the trustee (and insurer) to reconsider their decision in light of the new medical evidence.

- Complaints or objections about payment of death benefits, which generally involve an extensive process of information gathering to identify all potential beneficiaries and the assessment of competing claims.

  Consideration of objections or complaints relating to the payment of death benefits may involve numerous potential beneficiaries and/or the member's legal personal representative. Depending on the circumstances, resolution of death benefit related claims can also be delayed by matters as diverse as:

  - coronial inquests (to ascertain the cause — or in some cases even the occurrence — of the member's death)
  - the need to obtain results of DNA testing (to verify or disprove a potential beneficiary's relationship to the deceased)
  - criminal investigations (where a potential beneficiary is suspected of involvement in the member's death)
  - a request to postpone distribution because a potential beneficiary is challenging the member's will or the grant of letters of administration.

  As noted in part 2.2, the payment of death benefits is governed by legislated 'claim-staking' rules which in effect contain their own IDR process. Given this, ASFA considers that while an objection to the *proposed* distribution of a death benefit is a 'complaint' as that term is commonly understood, it should be excluded from the definition of 'complaint' for RG 165 purposes where the trustee has followed the legislated claim-staking process.

- Complaints about defined benefit interests, which will typically involve consideration of complex benefit calculations and may require evidence to be obtained regarding the individual's earnings at relevant points in time, to confirm 'final average salary'.

We anticipate that there will commonly be a need for 'IDR delay notifications' to be issued in respect of these complex complaint types, where the trustee is simply unable to conclude its consideration of the complaint within 45 days. (See our comments in part 2.1 regarding the proposed restriction on the issuing of IDR delay notifications.)

The IDR timeframe needs to accommodate both 'simple' and 'complex' superannuation complaints

As noted in part 2.1 of this submission, ASFA is of the view the maximum IDR timeframe for superannuation complaints should not be reduced below 45 days.

We have also recommended in part 3.3 that, once all requirements in the updated RG 165 — including the new 45-day IDR timeframe for superannuation complaints, the new definition of 'complaint' and the data recording and reporting obligations — have been implemented and bedded down, a review is undertaken to assess the effectiveness of the new IDR standards.

If, following that review, ASIC considers there is need for a further reduction in IDR timeframes, we emphasise that it will be critical to achieve an outcome that balances both the efficiency and adequacy of the IDR process. We do not envisage that a maximum IDR timeframe of 30 days will ever be consistently achievable for all types of superannuation complaints — rather, it would be necessary to distinguish in RG 165 between 'simple' and 'complex' superannuation complaints, along the lines earlier in this Appendix. It would, in ASFA's view, be inappropriate to impose a maximum IDR timeframe of any less than 45 days for 'complex' superannuation complaints.

We acknowledge that recognition of different categories of complaints, each with their own maximum IDR timeframe, would not achieve ASIC's aim of applying a single IDR timeframe to all financial sector complaints. However, the alternative — imposition of a single, unachievably low maximum IDR timeframe across all superannuation complaint types — risks forcing trustees to choose between breaching RG 165 or adopting a rushed and incomplete IDR process. It is likely to lead to an increase in the number of complaints that progress through to EDR and will not, in ASFA's view, result in an optimal customer experience.

Appendix 2: Process illustrations: common superannuation complaints

As outlined in our submission, ASFA is of the view that a maximum IDR timeframe of less than 45 days is unrealistic — and will not be consistently achievable — for many superannuation complaints.

In this Appendix we have provided example process flows for:

- a 'simple' administration complaint
- a 'complex' administration complaint
- a complaint about payment of disablement benefits
- a straightforward objection about a death benefit distribution
- a complaint about a defined benefit interest.

These examples are based on genuine scenarios experienced by ASFA trustee members and are intended to provide insight into the steps typically required to address each type of complaint and the time that may be required to complete a diligent IDR process.

'Simple' administration complaint

The following illustrates the process for a 'basic' or 'simple' administration-related superannuation complaint, such as one related to insurance premiums and/or default insurance cover.

Action/step	**Comments**	**Timeframe**
Receipt of complaint		Day 1
Triage of complaint		Day 2
Acknowledgement of complaint	If the substance of the complaint is unclear, this step can also include seeking clarification and also understanding the outcome expected by the complainant.	Day 2
Request information from other areas of the business	This can include: • confirmation of the cause/trigger for the complaint • confirmation of inception of account • confirmation if any application received	Day 3

Action/step	Comments	Timeframe
	• review of addresses • review of disclosure documents issued to member • checking if the application of default insurance is in line with Trust Deed and Insurance Policy. Depending on the situation, obtaining the necessary information can take up to 10 business days.	
Receipt of information from other areas of business		Day 14-17
Review of all information and finalise investigation to see if a refund of premiums is appropriate in line with delegations.	If a refund is possible, request to correct areas of business and confirmation of processing can take up to 10 business days	Day 17-20
Finalise IDR Response to member		Day 21-25

Complex administration complaint

The following illustrates a more complex administration-related complaint, for example one relating to an allegation that investment earnings were incorrectly applied when an individual moved from an accumulation account to an income stream account

Action/step	Comments	Timeframe
Receipt of complaint		Day 1
Triage of complaint		Day 2
Acknowledgement of complaint	If the substance of the complaint is unclear, this step can also include seeking clarification and also understanding the outcome expected by the complainant.	Day 2
Request Information from other areas of the business	This can include: • confirmation of the cause/trigger for the complaint • confirmation of inception of account • confirmation if any application received • review of member applications for 'switching' to the income stream account	Day 3

Action/step	Comments	Timeframe
	• reviewing member investment selection within 'accumulation account' • review of time taken to process request and whether in line with business rules and regulations • review of disclosure documents issued to member to ensure any timeframes disclosed have been adhered to Depending on the situation, obtaining the necessary information can take up to 10 business days.	
Receipt of information from other areas of business - it becomes clear there was an error in delay of processing application leading to reduction of 'exited' account balance and 'opening' balance of income stream account	Identification of error – review of potential solution and looking at associated issues • calculations need to be performed to ascertain the difference in account balance • income stream account has commenced, therefore cannot 'correct error' by simply adding monies to the complainant's account • 'roll back' of income stream account will be required, with fresh reporting to the complainant and the ATO showing the corrected 'exited' account balance from the accumulation account and 'opening' balance for the income stream.	Day 14-17
Call to member to explain issue and proposed resolution		Day 18-20
Request issued to relevant business area seeking calculations (generally an investments team or administrator investments team)	Generally, calculations can take up to 10 days to be performed	Day 17-20
Calculations received from business – request issued to 'roll back' income stream account in order to add the additional funds	Depending on whether any payments have been issued this can take 5-10 days	Day 27-30
Confirmation that income stream account has been 'rolled back', new 'opening balance' applied and request issued to create account	This can vary depending on the product line and the type of income stream and may take 3-5 days	Day 35-40
IDR response to member with outcome and explanation		Day 45-50

Objection to a trustee's proposed distribution of a death benefit

The following outlines a typical and relatively straightforward scenario where a potential beneficiary of a death benefit objects to the trustee's proposed distribution of that benefit.

The below example is based on a situation where the trustee's proposed distribution is to allocate 100 per cent of the death benefit to the deceased member's de facto spouse, with only one objection received from an adult child of the deceased member. We note that this is a simple example; it is not uncommon for objections to be received from more than one potential beneficiary, at varying times throughout the claim-staking process and for the process to be delayed by diverse reasons as outlined in Appendix 1. Trustees typically adopt a process to ensure any such objections are reviewed within 10 days of the end of the claim-staking period, to ensure all parties have been afforded procedural fairness in raising any objection.

As noted in part 2.2, ASFA considers that objections/complaints in relation to *proposed* death benefit distributions should be excluded from the definition of 'complaint' for the purposes of RG 165 where the trustee has followed the legislated claim-staking process.

Action/step	**Comments**	**Timeframe**
Receipt of objection on day 5 of 28-day claim-staking period		Day 1
Initial review of objection – notes allegations de facto spouse relationship had ceased prior to the date of death. Objection received from solicitor representing the adult children advising "additional information to support objection would be forthcoming"	This is a common example of a scenario where an objection is received with limited information but must be acknowledged as an objection.	Day 2
Letters advising receipt of objection issued to parties	Required letters issued advising of initial objection	Day 5-10
Request for further information issued to solicitor	This can include information to support the assertion that the relationship with the de facto had ceased before the member death	Day 10
Call from de facto spouse requesting information about objection process	• Generally, trustees will not disclose the details of the objection due to privacy concerns • In some cases the de facto spouse may be requested to provide some additional supporting material as well, for example statutory declarations to support the claim the relationship was intact at date of death, evidence of a committed	Day 14

Action/step	Comments	Timeframe
	relationship (which can include financial information, proof the parties were living together), evidence of ongoing relationship.	
Receipt of some additional information from the solicitor representing the adult child, noting that further information will be provided shortly.		Day 30
• Call to solicitor seeking confirmation of when information will be provided • Call to de facto spouse to see if any additional information will be provided to support claim		Day 35
Review of all information	Review determines that while the de facto relationship was intact at the date of death, one of the adult children was receiving regular and ongoing financial support from the deceased member. Further information is required to ascertain if the adult child could be considered a 'financial dependant' at the date of death.	Day 35-40
Letter to solicitor: • outlining that additional information needs to be received by a certain date in order to review • seeking confirmation if one of the adult children was receiving regular and ongoing support from deceased member		Day 45
Additional information received from solicitor and de facto spouse.	• Whilst it is confirmed that one of the adult children did receive some financial support, it is unclear if it was regular and ongoing. Clarification is required as the adult child may have had an expectation of ongoing support therefore could be considered a financial dependant. • Information received from the de facto spouse supports the conclusion that the relationship was intact at date of death.	Day 60
Financial information received from adult child which shows any financial support ceased two years prior to the member's death. Information provided		Day 65

Action/step	Comments	Timeframe
from the adult children does not clearly support their claim that the de facto relationship had ceased at date of death, but rather indicates their belief the de facto spouse was not financially dependent on the deceased		
Trustee review of all information provided	Decision is maintained	Day 70
IDR Response	A letter confirming the trustee's proposed distribution of the death benefit is issued to all parties, explaining: • the purpose of superannuation • a de facto spouse does not need to show financial dependence • children are considered 'dependants' by definition under the legislation • non-financial dependant adult children are less likely to have relied upon any financial support from deceased. De facto spouse had an expectation to share life, including into retirement etc therefore decision maintained.	Day 75

Complaint in relation to disability benefits

The process map below illustrates a scenario where a fund member has complained about a trustee's decision to decline payment of an insured total and permanent disablement (TPD) benefit, and additional information is required in order to resolve the complaint.

While this is a common scenario, we acknowledge that it will not apply in all cases—in some cases the period elapsed for particular steps can be shorter, and additional medical evidence and/or information is not required for all TPD complaints.

Action/step	Comments	Time frame
An insurer decides to decline a TPD claim		
The trustee is also obligated to also assess the claim and make its own decision	If the trustee agrees the decision to decline the claim is fair and reasonable, it issues a letter advising the complainant the claim is declined. This will include the prescribed disclosure around the IDR process.	

Action/step	Comments	Time frame
The member complains about the decline of the TPD claim and provides further information	The trustee receives the complaint, acknowledges it and sends a copy of it to the Insurer.	Day 1
The insurer is afforded a reasonable amount of time to review the new information	The insurer must be given the opportunity to review its decision. Ideally the review will occur as quickly as possible, in practice a period of up to 14 days is not uncommon.	Day 3
Insurer's review completed	The insurer advises that the new information provided by the member may impact its decision.	Day 17
The insurer advises that further medical information is required and requests a review by an independent medical expert (IME)	The insurer must obtain further information to consider the complaint. This information may include: • WorkCover file • Medicare file • Taxation returns Obtaining WorkCover and Medicare files can commonly take several months. The insurer may decide it is necessary to have the complainant assessed by an IME due to conflicting information on file. An appointment with an IME typically will not be available immediately and may in practice take a month or more to schedule. Assume for this illustration the next available appointment is in four weeks.	Day 45
Parties await the new IME report	The IME report is typically provided to the insurer within 2 weeks of the consultation.	Day 59
The insurer considers the IME report, is satisfied the complainant does not meet the TPD definition and declines the claim	Typically, it may take 7 days for the insurer to review the claim including the new IME report. Original decision to decline the claim is affirmed.	Day 66
The insurer provides its decision to the trustee.	The trustee must review the insurer's decision to assess its fair and reasonableness. The process to review the insurer's decision and provide a final complaint response to the complainant may take up to 7 days.	Day 73

Defined benefit complaint

For a member in a particular defined benefit fund, calculation of their benefit involved two components, pre and post a specific date, due to a change in benefit design some years ago in a predecessor fund transferred into the 'current fund' as part of a successor fund transfer.

The complaint raised claims in relation to:

- An alleged failure to communicate the change in benefit design when it occurred.
- Calculation of the complainant's Final Average Salary.
- The affect the accrued surcharge liability offset account had on the complainant's final pension entitlement.
- Issues related to surcharge liabilities going back to the complainant's membership in the predecessor fund.

The steps that needed to be taken to address the complainant's issues included the following:

- Obtaining trust deeds for the predecessor fund at the time of the benefit design change (the 'current fund' had been provided with the trust deed of the predecessor fund applicable as at the time of the successor fund transfer but not all previous versions of the deed).
- Attempts to obtain past disclosure material issued by the predecessor fund on the benefit design change.
- Obtaining information from the complainant to understand the basis for his issue about Final Average Salary, including payroll statements.
- Obtaining confirmation of salary for defined benefit purposes from the employer-sponsor.
- Seeking information from the employer-sponsor to better understand the benefit design change made by the predecessor fund (as its trustee was no longer in existence).
- Obtaining advice from the Plan Actuary that the member's additional voluntary accumulation amount could be used to pay off his accrued surcharge liability offset account so it would not reduce his final pension.
- Checking data migrated from the predecessor fund to ensure surcharge liability information was loaded correctly.

Given the complexity of the complaint and the process taken to resolve it, the trustee required the full 90-day IDR period currently applicable for superannuation complaints.