



Promoting Responsible Consumer Lending

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Dear Jacqueline

NCPA response to Consultation Paper 311 - Internal dispute resolution: Update to RG165

The National Credit Providers Association (NCPA) welcomes the opportunity to comment on ASIC's Consultation Paper 311 – Internal Dispute Resolution; Update to RG165.

Our members want to conduct their business in a compliant manner consistent with the conditions of their Australian Credit Licences ("ACLs") and the *National Consumer Credit Protection Act 2009* ("NCCP"). They also want their customer's experience of their services to be positive including when the customer has a complaint. This is not only good compliance but good business. Our members are, therefore, incentivised to adopt and apply best practice when handling consumer complaints. Our members, overall, agree with the policy discussion in paras 1-9 of CP311 with the caveat that mandatory reporting, to be discussed below, does impose costs which are disproportionately high for small to medium licensees.

In relation to the statistics in para 8, NCPA points out that in research conducted by CoreData for the NCPA in 2017 for its members surveyed, SACC loans only generated 4-5 complaints for every 10, 000 loans or 0.05% and MACC loans generated 9-10 complaints for every 10,000 loans or 0.10 % We believe this research has already been provided to ASIC officials but are happy to do so again if required. Although AFCA has yet to publish statistics identifying the sector specifically, the last FOS Annual Report, did not identify the proportion of complaints about SACCs and MACCS but did report that 12% of all complaints related to non-bank consumer credit. This would, of course, include many finance companies who are not NCPA members. Most NCPA members were members of the former Credit and Investments Ombudsman service which reported in June 2018 that 6.2% of its complaints were about small amount lenders. So, while NCPA members consider complaints handling, both IDR and EDR, to be an important compliance and customer service issue, their businesses generate relatively few complaints.

B1Q1 *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.

While NCPA is generally in agreement with harmonizing the definition of complaint in RG165 with the Australian Standard, we do not accept that this means that complaints made 'about' a licensee which are posted to any social media platform should then trigger all the obligations flowing from a 'complaint' such as recording, responding, processing and reporting to be discussed in more detail below.

While some members do engage social media consultants, they report to us that if RG165 was amended in this broad form and if those amendments became enforceable as envisaged in paras 22 and 23 of CP311, this would necessitate the employment of full time staff member to monitor the increasing number of social media platforms, Facebook, Twitter, Instagram, Pinterest and any other new ones that may enter the market. This is an unacceptable burden.

RG165 could be amended, NCPA agrees, to stipulate that a complaint either to or about a licensee on the licensee's own social account (e.g. Facebook) or sent by use of the messenger facility within such account, qualify as a complaint to be recorded, acknowledged, processed and reported. We therefore agree with the proposed RG165.37(a) but not (b).

We remind ASIC that almost all members have websites with complaints portals and that these are already monitored on a daily basis and/or have an alert function for the licensee's nominated Complaints or IDR officer.

B1Q2 *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.

NCPA largely welcomes the further detailed guidance in the proposed new RG165 in relation to the definition of complaint, subject to our responses to B1Q1 above.

It is already the practice of most NCPA members to adopt the concept 'expression of dissatisfaction' when defining complaints and completely accept that the euphemistic categorisation of such expressions as "inquiries" or "feedback" depending on the medium through which they are expressed is not good compliance practice.

B3Q1 *Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only? If not, you should provide evidence to show that this modification would have a materially negative impact.*

NCPA supports the proposal although it is not relevant to most members.

B4Q1

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

As a matter of general principle, NCPA supports all financial firms recording all complaints subject to the following caveats:

- a. As long as those complaints resolved within five (5) business days and which do not require an IDR response, are NOT required to be the subject of further reporting to ASIC. This seems unnecessarily intrusive and bureaucratic.
- b. There does not appear to be any consideration of complaints which are trivial or not actually about the financial product or service to the customer by the financial firm or its staff. For instance, a criticism of government policy or the Reserve Bank or credit providers generally should not be counted as a complaint for IDR purposes, time consuming for the staff as it may be.

We propose, therefore, amending the draft RG165.35 to add:

“(d) comments or statements by a consumer which are not specifically about the firm, its service, its staff or its financial products.”

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.

NCPA does not object as a matter of principle to firms having to assign a unique identifier to each complaint received. We are concerned about the potential privacy issues if that identifier could be used to identify the individual consumer. To avoid this, the complaint or IDR register which recorded the identifier would have to be separate (either electronic or paper based) from the complaint file which the appropriate complaints or IDR officer would have to open to properly deal with a substantive complaint ie one that was not resolved within 5 business days.

To complete the data set proposed and considered below as well as maintaining a complaint file for the complaint represents yet another expensive imposition for licensees.

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 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?*

We note that the Data Dictionary says that it is synchronised with the AFCA data set. By requiring the same level of reporting from our members, NCPA suggests that ASIC is demanding the same level of reporting from individual firms' Internal Dispute Resolution systems as from statutorily authorised and mandated External Dispute Resolution scheme.

It is not only, in our view, unnecessarily bureaucratic, it is effectively a “double tax” imposition on licensees. They must pay their membership and case management fees to AFCA to support its dispute resolution functions including its reporting function and also pay again for the recording the same levels of data for its internal function.

There are 37 different data elements in the proposed data dictionary. Not all of them are relevant for NCPA members and some are directed more towards other types of licensees. Many of these elements will be completed as “Not applicable” for many complaints to NCPA members.

We suggest that this requirement, like many others under the NCCP and ASIC Regulatory Guidance be suitably scalable to the circumstances of small to medium sized licensees and the level of complaints they receive.

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.*

As a matter of principle, NCPA does not support the conversion of helpful guidance from ASIC into mandated regulation with this level of granular specification. This imposition favours, unfairly, the larger firms in the SACC and MACC sector and will contribute to the decline of the small to medium licensees. It also will lead to more offshore participants in the Australian small loan market. If this is ASIC's purpose, perhaps, in the name of transparency, it should make that publicly clear.

Taking the questions in order, assuming ASIC is determined on this course:

- a. As discussed above not all are relevant to consumer complaints about small loans;
- b. In terms of number of loans, yes for small to medium lenders.
- c. This doesn't really affect the licensee as the data base will still show the complaint status as “open”. So the answer is “yes.”

B7Q1

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

The first principle is that ASIC should NOT be publishing IDR data at the firm level. We repeat our remarks above about the difference between Internal and External Dispute Resolution. It may be justified to publish data for individual firms by the EDR scheme, AFCA, but not IDR.

The prospect of publication of IDR data for individual firms, particularly small firms, will almost eliminate the incentive for them to report complaints to ASIC. There will be no reputational reward for a firm to record, respond and resolve complaints and disputes internally. Will ASIC's publication of these internal and confidential statistics be accompanied by analysis of their relative perspective? Or will small to medium firms be measured the same against larger firms? How will the differences be analysed and explained?

We fail to see the public policy purpose served by this proposal. Is it to "name and shame" those licensees who have efficient, transparent and comprehensive IDR systems?

Aggregate data may be useful for policy purposes to identify trends and issues in the sector. Firm level data publication of internal processes is simply punitive and is likely to produce adverse consequences for the veracity of the proposed reporting regime.

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

NCPA agrees with the proposed requirements for IDR responses. They reflect current industry best practice and are supported.

B9-B11 Not relevant to NCPA members

B12 While NCPA agrees in principle that Customer Advocates should comply with RG165 and have heard anecdotal evidence of consumer confusion between the IDR and Customer Advocate processes of the banks, no NCPA members have Customer Advocate positions and most members would be too small to support one anyway.

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*

Many small to medium NCPA members do not have "boards" and "executive committees" in the sense discussed in this proposal. However, the proposals that a licensee, as part of its compliance documentation, identifies what is a systemic issue and establishes a process for the reporting of those issues to management and for the recording of management responses seems reasonable.

We suggest that the "regular" analysis of complaints data sets to look for systemic issues be conducted every six months by the appropriate officer and that a report of that analysis be conveyed to management.

B14 NCPA supports the adoption of the standard

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.*

If ASIC imposes all its proposals in the draft updated RG165 without the modifications suggested above and incorporates them into a legislative instrument as is proposed, then compliance with the new IDR regime becomes an important compliance issue for all licensees with almost existential consequences.

As such, considerable resources and time will be required for:

- a. New systems, compliance documentation and software;
- b. Training and more training of all relevant staff.

Small to medium members do not have the resources to allocate all at once to these tasks and larger members have more staff to train.

NCPA members will need until 30 June 2020 as a transition period for compliance with the new RG 165.78– RG 165.11.

NCPA members will need until 31 December 2020 to comply with the new recording requirements in RG165.57.