



E-ADVICE STEADFAST GROUP

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CHANGES TO INTERNAL DISPUTE RESOLUTION REQUIREMENTS

BACKGROUND

Following a period of consultation throughout much of 2019, the Australian Securities and Investments Commission (**ASIC**) has released updated internal dispute resolution guidance for financial firms in the form of *Regulatory Guide 271 Internal Dispute Resolution (RG 271)* and related legislative instrument *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 (ASIC Instrument)*.

The new guidance and ASIC Instrument provide updated requirements for how Australian financial services (**AFS**) licensees (and other financial firms) should deal with consumer and small business complaints under their internal dispute resolution (**IDR**) procedures. ASIC hopes that the updated requirements “*drive fair and timely complaint outcomes for consumers and sharpen industry’s focus on systemic issues*”.

The updated guidance includes a number of standards and requirements that are enforceable, with enforceable obligations being clearly marked within the guidance.

Previously, ASIC’s guidance on IDR procedures was contained in *Regulatory Guide 165 Licensing: Internal and External Dispute Resolution (RG 165)*. The new RG 271 **comes into effect from 5 October 2021**. This means complaints that are made to AFS licensees before 5 October 2021 should continue to be dealt with under the requirements in RG 165. However, licences will need to be prepared to comply with the new requirements on and from 5 October 2021.

This e-Advice outlines some of the key requirements that insurance brokers will need to comply with under ASIC’s updated IDR regulatory regime.

However, this e-Advice is an overview only and does not address all requirements prescribed by RG 271 and the ASIC Instrument. Insurance brokers should familiarise themselves with these documents and the new requirements, particularly given a number of those requirements will be enforceable by ASIC.

WHAT ARE THE KEY CHANGES?

A short comparison table of RG 165 and the new RG 271 can be found in **Attachment 1**.

We have set out below the key differences that AFS licensees will need to be aware of.

Definition of ‘complaint’

The definition of ‘complaint’ under RG 271 is very similar to the definition given under RG 165. This definition is enforceable under the ASIC Instrument.

The definition of ‘complaint’ is set out as: “[*An expression] of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is implicitly expected or legally required.*”

ASIC expects licensees to take a proactive approach to identifying complaints. A consumer does not need to expressly state the word ‘complaint’ or ‘dispute’ to trigger IDR procedures.

Relevantly, in RG 271 ASIC specifies that the following expressions of dissatisfaction are complaints:

- Posts on a social media channel owned or controlled by the licensee, where the author is both identifiable and contactable (for example, expressions of dissatisfaction posted on a licensee's Facebook page).
- Complaints about a matter that is the subject of an existing remediation program, or about the remediation program itself (for example, complaints about delays in remediation payments).
- Complaints about the handling of an insurance claim.

Insurance brokers will need to have appropriate procedures to identify relevant 'complaints'.

Definition of 'small business'

The ASIC Instrument adjusts the definition of 'small business', for the purposes of IDR procedures, to align with the Australian Financial Complaints Authority's (AFCA) definition, which broadly defines a small business as a business with less than 100 employees at the time of the act or omission that gave rise to the complaint.

A body corporate that is a member of a group of related bodies corporate that has 100 employees or more will not fall under the definition of 'small business'.

The above approach is in contrast to the current 'small business' definition under Chapter 7 of the Corporations Act which only applies to a business with less than 20 employees (unless it is a manufacturing business). However, importantly, that definition will still apply other than in respect to IDR procedures.

This means that when an insurance broker receives a complaint from a business, it will need to consider whether the complainant meets the IDR 'small business' test (regardless of whether it would not be a 'small business' for other purposes, such as financial services disclosure requirements). Brokers will need to follow the new IDR requirements for all businesses that meet this test.

Adjusted maximum time frames for providing an IDR response

The time frame for providing a response to an insurance-related complaint has been **shortened from 45 calendar days to 30 calendar days**. The maximum timeframes are enforceable provisions.

Delays are permissible where the complaint is particularly complex or circumstances beyond the licensee's control cause the delays (however, the licensee must inform the complainant, within the 45 day timeframe, of the reasons for the delay and their right to complain to AFCA if they are dissatisfied).

Further, similarly to under RG 165, IDR responses do not need to be provided if the licensee closes the complaint within five business days of receipt (because the complaint has either been resolved to the complainant's satisfaction, or the licensee has given the complainant an explanation and/or apology when the licensee can take no further action to reasonably address the complaint). This exception does not apply if the complainant requests a written response, or if the complaint is about hardship, a declined insurance claim, or the value of an insurance claim.

While not an enforceable requirement, ASIC expects licensees to provide acknowledgement of a complaint (verbally or in writing (by email, post or social media channels)) within 24 hours (or one business day) of receiving it, or as soon as practicable.

The guidance makes clear that the maximum time frames for providing a response are applicable to all IDR processes, including those where there is an internal appeals or escalation mechanisms (that is, multi-tiered IDR processes).

Insurance brokers will need to be aware of, and comply with, these time frames when dealing with complaints.

Content of IDR responses

As is the current position, the IDR response must inform the complainant of the final outcome of their complaint (either confirmation of actions taken to resolve the complaint, or reasons for rejection of the complaint), the right to take the complaint to AFCA

if they are dissatisfied with the IDR response and AFCA's contact details.

RG 271 also requires that if the licensee rejects (wholly or partially) a complaint, the IDR response must clearly set out the reasons for the decision by:

- identifying and addressing the issues raised in the complaint;
- setting out the licensee's findings on material questions of fact and referring to the information that supports those findings; and
- providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum.

Accordingly, insurance brokers may need to update templates for IDR responses to ensure all relevant information is provided to a complainant. The IDR response content requirements are enforceable.

Systemic Issues

RG 271 introduces new, enforceable obligations and standards which focus on the identification and management of systemic issues (including the role of boards and 'front line' staff in this process). A systemic issue "*is a matter that affects, or has the potential to affect, more than one consumer*". An example of this might be a disclosure document that is inadequate or misleading, or a documented

procedure that does not comply with legal requirements.

RG 271 requires licensees to:

- encourage and enable staff to escalate possible systemic issues they identify from individual complaints;
- regularly analyse complaint data sets to identify systemic issues;
- promptly escalate possible systemic issues to appropriate areas within the organisation for investigation and action; and
- report internally on the outcome of investigations, including actions taken, in a timely manner.

Reports to executive committees and/or the board must include metrics and analysis of consumer complaints including about systemic issues identified through those complaints.

If an investigation confirms that a systemic issue exists, ASIC expect licensees to take prompt action to identify affected consumers and provide fair remediation.

WHAT SHOULD BROKERS DO TO PREPARE FOR THE CHANGES?

In anticipation of the new IDR requirements commencing on 5 October 2021, AFS licensees will need to familiarise themselves with the requirements and:

- build internal capacity to handle complaints;
- establish clear lines of reporting and accountability for complaints;
- update IDR processes and systems to align with the new IDR requirements;
- upskill staff who are responsible for handling complaints; and
- train representatives (including authorised representatives) to handle and escalate

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complaints in accordance with the new IDR requirements.

MORE INFORMATION

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ATTACHMENT 1

Note: Obligations in the RG 271 column marked with an asterisk are enforceable requirements.

Topic	RG 165 (effective until 5 October 2021)	RG 271 (effective on and from 5 October 2021)
Definition of ‘small business’	A business employing fewer than: (a) 100 people (if the business manufactures goods or includes the manufacture of goods); or (b) 20 people (otherwise).	*The ASIC Instrument replaces the ‘small business’ definition in section 761G of the Corporations Act with the following: “(a) in relation to an obligation in this Chapter to have an internal dispute resolution procedure – a business...that has less than 100 employees at the time of the act or omission that gives rise to the complaint, but not including a body corporate that, at that time, is a member of a group of related bodies corporate and that group has 100 employees or more; (b) otherwise – a business employing less than: (a) if the business is or includes the manufacture of goods – 100 people; (b) otherwise – 20 people.”
Definition of ‘complaint’	AS ISO 10002–2006 definition of complaint: “An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.”	*AS/NZS 10002:2014 definition of complaint: “[An expression] of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.”

Topic	RG 165 (effective until 5 October 2021)	RG 271 (effective on and from 5 October 2021)
Acknowledgement of receipt of complaint	ASIC expects licensees to immediately acknowledge the receipt of complaints or disputes and address them promptly in accordance with their degree of urgency.	ASIC expects licensees to acknowledge the complaint within 24 hours (or one business day) of receiving it, or as soon as practicable. Licensees may acknowledge a complaint verbally or in writing (email, post or social media channels).
Maximum timeframes (standard complaints)	No later than 45 calendar days after receiving complaint.	*No later than 30 calendar days after receiving the complaint.
Content requirements for IDR responses	<p>A ‘final response’ requires that you must write to the complainant or disputant, informing them of:</p> <ul style="list-style-type: none"> (a) the final outcome of their complaint or dispute at IDR; (b) their right to take their complaint or dispute to AFCA; and (c) the contact details of AFCA. 	<p>*An ‘IDR response’ is a written communication to the complainant, informing them of:</p> <ul style="list-style-type: none"> (a) the final outcome of their complaint or dispute at IDR (either confirmation of actions taken to fully resolve the complaint or reasons for rejection or partial rejection of the complaint); (b) their right to take the complaint to AFCA if they are not satisfied with the IDR response; and (c) the contact details of AFCA. <p>Additionally, if the complaint is rejected or partially rejected, the IDR response must clearly set out the reasons for the decision by:</p> <ul style="list-style-type: none"> (a) identifying and addressing the issues raised in the complaint;

Topic	RG 165 (effective until 5 October 2021)	RG 271 (effective on and from 5 October 2021)
		<ul style="list-style-type: none"> (b) setting out the licensee's findings on material questions of fact and referring to the information that supports those findings; and (c) providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum.
Customer advocates	No equivalent obligation.	<p>*RG 271 permits a licensee to offer a complainant the option of escalating their complaint to the customer advocate, as an alternative to AFCA, after an IDR response is issued.</p> <p>When making such an offer, the licensee must not prevent complainants from exercising their right to access AFCA—for example, by presenting the customer advocate as a mandatory step in the IDR process.</p>
ASIC IDR Standards	RG 165 has a table setting out the application of the Guiding Principles and Sections 5.1, 6.4, 8.1 and 8.2 of AS ISO 10002–2006 to the financial services and credit industries.	<p>RG 271 outlines ASIC's IDR standards in Part E that reflect the requirements for effective complaint management.</p> <p>*Certain of the standards are enforceable.</p>
Systemic Issues	No relevant guidance appears in RG 165	<p>*RG 271 sets out requirements for identifying and escalating systematic issues.</p>