



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 165

Licensing: Internal and external dispute resolution

Chapter 7 — Financial services and markets

Issued 28/11/2001

From 5 July 2007, this document may be referred to as Regulatory Guide 165 (RG 165) or Policy Statement 165 (PS 165). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 165.1) or their policy statement number (e.g. PS 165.1).

What this guide is about

RG 165.1 This guide explains how ASIC will administer the dispute resolution provisions of the *Corporations Act 2001* (Corporations Act) as amended by the *Financial Services Reform Act 2001* (FSR Act). These provisions set out the obligations for:

- (a) a licensee (s912A(1)(g) and 912A(2));
- (b) an unlicensed product issuer (s1017G); and
- (c) an unlicensed secondary seller (s1017G),

to have a dispute resolution system available for their retail clients.

RG 165.2 A dispute resolution system must consist of:

- (a) *internal* dispute resolution procedures that comply with standards and requirements made or approved by us and that cover complaints made by retail clients about the financial services provided; and

- (b) membership of one or more *external* dispute resolution schemes approved by us that covers, or together cover, complaints made by retail clients in relation to the financial services provided.

RG 165.3 This guide sets out our role in relation to:

A internal dispute resolution (IDR) procedures

see RG 165.9–RG 165.34

B external dispute resolution (EDR) schemes

see RG 165.35–RG 165.95

Note: For a discussion of our approach to the other licensee obligations, see Regulatory Guide 146 *Training of financial product advisers* (RG 146), Regulatory Guide 164 *Licensing: Organisational capacities* (RG 164), and Regulatory Guide 166 *Licensing: Financial requirements* (RG 166).

Important note: The contents of this guide are based on the FSR Act at the date of this publication, Wednesday 28 November 2001, and the regulations made on 8 October 2001 for the purposes of the FSR Act. We do not expect the substance of this guide to be materially affected by proposed further regulations. However, we will review these regulations and, if necessary, amend any details of this guide.

Internal dispute resolution (IDR) procedures

RG 165.4 Section A of this guide will be of interest to entities subject to the dispute resolution provisions. It explains our requirements for IDR procedures, including:

- (a) the obligation of a licensee, an unlicensed product issuer and an unlicensed secondary seller to have approved IDR procedures;
- (b) the application of the Australian Standard on Complaints Handling (AS 4269–1995);
- (c) the coverage of IDR procedures;
- (d) the documentation of IDR procedures;
- (e) links between IDR procedures and EDR schemes; and
- (f) the self-certification process for complying with our IDR requirements.

Future guidance on IDR procedures:

Our requirements for IDR procedures set out in this guide represent the first stage of our policy development in this area. We will use the 2-year transitional period to review this policy and, in light of further consultation, will develop IDR standards that are tailored to the financial services industry. These will include, among other things, standards about appropriate IDR response time limits, the definition of “complaint” and relevant reporting requirements.

External dispute resolution (EDR) schemes

RG 165.5 Section B of this guide will be of interest to entities subject to the dispute resolution provisions who will need to join an approved EDR scheme, and also to EDR schemes that have these entities as members. It explains our approach to the approval of EDR schemes including:

- (a) the ongoing status of Regulatory Guide 139 *Approval of external complaints resolution schemes* (RG 139) and of those EDR schemes already approved under RG 139;
- (b) transitional arrangements relating to the approval of EDR schemes;
- (c) a licensee’s obligation to belong to an approved EDR scheme or schemes including during the 2-year transitional period;
- (d) the obligation of an unlicensed product issuer and an unlicensed secondary seller to belong to an approved EDR scheme;
- (e) how EDR scheme coverage will be assessed for the purposes of the new regulatory regime; and
- (f) other issues relating to the operation of EDR schemes and their approval.

Note: To give context to our policies about EDR you should also read RG 139, which provides detailed guidance about how we approve EDR schemes in the finance sector. You can get a copy of RG 139 from our website at www.asic.gov.au.

Terminology

RG 165.6 The dispute resolution provisions state that both IDR procedures and EDR schemes must cover complaints made by retail clients.

RG 165.7 Some stakeholders have asked us to distinguish between “complaints” and “disputes”. These terms, however, are not applied consistently across the finance sector, and this guide does not prescribe a standard use of these terms. In this guide, we use the term “complaint” to refer collectively to any enquiry, complaint or dispute, however defined, that may be dealt with under a given IDR procedure or by a particular EDR scheme. We will consult further about developing a standard definition of “complaint” for use across the finance sector.

RG 165.8 This guide provides more information about the extent of the coverage that a compliant IDR procedure and an approved EDR scheme should provide: see RG 165.12–RG 165.13 and RG 165.81–RG 165.89.

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A Internal dispute resolution (IDR) procedures

Our policy

IDR procedures and our requirements

RG 165.9 Under the dispute resolution provisions, entities subject to those provisions must have in place IDR procedures that comply with our requirements. These requirements are made by us in accordance with the regulations and are set out in this guide at RG 165.10.

RG 165.10 Our requirements for IDR procedures are that you:

- (a) satisfy the Essential Elements of Effective Complaints Handling in Section 2 of AS 4269–1995 (see RG 165.14–RG 165.15);
- (b) appropriately document the IDR procedures (see RG 165.17); and
- (c) have a system for informing complainants about the availability and accessibility of the relevant EDR scheme (see RG 165.18).

Tailoring IDR procedures

RG 165.11 Whether you are reviewing your existing IDR procedures, or establishing new IDR procedures, it is appropriate to take into account:

- (a) the size of your business;
- (b) the range of financial services you offer;
- (c) the nature of your customer base; and
- (d) the likely number and complexity of complaints.

We understand that individual IDR procedures will vary according to these factors.

Coverage and benefits of IDR procedures

RG 165.12 As a minimum, any IDR procedure must be able to deal with complaints made by “retail clients” as defined in s761G and related regulations, and this includes small businesses: see RG 165.47. We encourage you to develop IDR procedures that have broader coverage consistent with the nature of your business and your dealings with consumers.

RG 165.13 Wherever possible, you should seek to resolve complaints directly with your clients through your IDR procedures. It is better for all parties that a complaint is dealt with at the earliest possible stage.

AS 4269–1995

RG 165.14 Section 2 of AS 4269–1995 sets out the Essential Elements that your IDR procedures must contain. To give context to our IDR requirements you should read AS 4269–1995.

RG 165.15 In the Schedule to this guide we provide guidance on how we consider the Essential Elements of AS 4269–1995 apply to the financial services industry. There is additional guidance for implementing the Essential Elements in Section 3 of AS 4269–1995.

Other matters

RG 165.16 The regulations also expressly state that we may have regard to any other matter we consider relevant when making requirements for IDR procedures: see reg 7.6.02(1)(b) and 7.9.77(1)(b). After reviewing AS 4269–1995 for the purposes of this guide, we believe that there are two other specific requirements with which your IDR procedure must comply.

Documenting IDR procedures

RG 165.17 To make your IDR procedures as transparent and accessible as possible and to assist with staff training and awareness, you must document your IDR procedures. This includes setting out in writing:

- (a) the procedures and policies for:
 - (i) receiving complaints;
 - (ii) investigating complaints;
 - (iii) responding to complaints within appropriate time limits;
 - (iv) referring unresolved complaints to an EDR scheme;
 - (v) recording information about complaints;
 - (vi) identifying and recording systemic issues;
- (b) the types of remedies available for resolving complaints; and
- (c) internal structures and reporting requirements for complaint handling.

You should provide a copy of the procedures to all relevant staff. A simple and easy-to-use guide to the procedures should also be made available to consumers, either on request or when they want to make a complaint.

Links between IDR procedures and EDR schemes

RG 165.18 For a dispute resolution system to be fully effective, you need to establish appropriate links between individual IDR procedures and the relevant EDR scheme for those complaints that you cannot resolve directly. Your IDR procedures must therefore provide that if a complaint has been through the IDR procedures but remains unresolved, or is not resolved within the appropriate time limits, the relevant complaints handling staff:

- (a) inform the complainant that they have a right to pursue their complaint with an EDR scheme; and
- (b) provide details about how to access the relevant EDR scheme.

Compliant IDR procedures — self-certification

RG 165.19 To obtain an AFS licence, an entity that is subject to the dispute resolution provisions must self-certify that its IDR procedures comply with our requirements.

RG 165.20 You will also need to provide us with details of the position within your organisation that is responsible for the operation of the IDR procedures.

RG 165.21 To self-certify you will have to answer a series of questions about your IDR procedures and about how you have satisfied yourself that your IDR procedures comply with our requirements.

The self-certification and further information will be obtained:

- (a) from licensees via the licence application process; and
- (b) from unlicensed product issuers and unlicensed secondary sellers either when they lodge a Product Disclosure Statement (PDS) under s1015B or give notice that a PDS is in use under s1015D.

Note: We can cancel an AFS licence if an application was false in a material particular or materially misleading: see s915C(2).

Underlying principles/Explanation

IDR procedures and our requirements

RG 165.22 The regulations provide that when making or approving standards or requirements for IDR procedures, we must take AS 4269–1995 into account, as well as any other matter we consider relevant: see reg 7.6.02(1) and 7.9.77(1).

RG 165.23 Under the regulations we also have the power, in relation to IDR procedures, to:

- (a) vary or revoke a standard or requirement that we have made; and
- (b) vary or revoke the operation of a standard or requirement that we have approved (see reg 7.6.02(2) and 7.9.77(2)).

RG 165.24 AS 4269–1995 is a well recognised and useful starting point for establishing and assessing IDR procedures. It does not apply exclusively to financial services and has been drafted broadly so that it can:

- (a) apply to any industry in which consumers participate; and
- (b) be implemented by a business of any size.

RG 165.25 This guide provides further guidance on the application of AS 4269–1995 to the financial services industry, as well as outlining other matters we consider necessary for compliant IDR procedures.

RG 165.26 Generally, there is a 2-year transitional period in relation to the FSR Act. We will review AS 4269–1995 and this section of the guide during the 2-year transitional period and, in consultation with industry and consumer representatives, consider the development of IDR standards that are customised for the financial services industry. Any such standards would be released as a revised regulatory guide after appropriate public consultation. We expect that these will include standards about appropriate IDR response times and about the definition of “complaint”.

Coverage and benefits of IDR procedures

RG 165.27 The majority of complaints that your clients make about you will be dealt with under your IDR procedures. We believe that it is essential, therefore, for you to have effective IDR procedures in place so that complaints are dealt with promptly, fairly and consistently.

RG 165.28 IDR procedures can be used to deal effectively with, and monitor, all forms of consumer enquiry or complaint. The benefits of effective IDR procedures with broad coverage include:

- (a) the opportunity to resolve complaints quickly and directly;
- (b) the ability to identify and address recurring or systemic problems, which can thus lead to product or service improvements;
- (c) the capacity to provide solutions to problems rather than have remedies imposed by an external body; and
- (d) improved levels of customer confidence and satisfaction.

RG 165.29 Wherever possible, you should seek to resolve complaints directly with your clients through your IDR procedures. It is better for all parties that a complaint is dealt with at the earliest possible stage because it:

- (a) prevents complaints from becoming entrenched;
- (b) preserves customer relationships; and
- (c) is often the most efficient and cost-effective way for an organisation to deal with complaints.

Other matters

Documenting the IDR procedure

RG 165.30 IDR procedures need to be documented to:

- (a) enable the relevant staff to understand and follow the procedures;
- (b) promote accountability and transparency of the procedures;
- (c) facilitate the ease of understanding and accessibility of the procedures for consumers (ie via the production of user-friendly guides); and
- (d) facilitate the self-certification process.

RG 165.31 The need to document IDR procedures and the process for doing so also ensures that effective procedures are properly thought out and established.

Links between your IDR procedures and EDR schemes

RG 165.32 If a complaint remains unresolved after it has been dealt with under your IDR procedures or after the relevant time limit has expired, then it is important that you tell the complainant about the

availability of the EDR scheme to which you belong. You are also required to provide details about how a consumer can access the relevant EDR scheme in any Financial Services Guide (s942B(2)(h) and 942C(2)(i)) or PDS (s1013D(1)(g)) that you issue.

RG 165.33 It is important that consumers are made aware of the availability of the EDR scheme, so that they know what further steps they may take to pursue an unresolved complaint.

Compliant IDR procedures — self-certification

RG 165.34 You may have existing IDR procedures that you rely on to meet current licensing obligations or industry standards. If so, you should review these procedures against this guide before you provide us with your self-certification.

B External dispute resolution (EDR) schemes

Our policy

The approval of EDR schemes and RG 139

RG 165.35 The dispute resolution provisions state that EDR schemes must be approved by us in accordance with the regulations: see s912A(2)(b) and 1017G(2)(b). The regulations state that we must take the following matters into account when considering whether to approve an EDR scheme:

- (a) accessibility;
- (b) independence;
- (c) fairness;
- (d) accountability;
- (e) efficiency; and
- (f) effectiveness,

as well as any other matter we consider relevant: see reg 7.6.02(3) and 7.9.77(3).

Under the regulations we also have the power to:

- (a) approve an EDR scheme for a specified period of time;
- (b) approve an EDR scheme subject to conditions, including conditions in relation to the independent review of the operation of the scheme; and
- (c) vary or revoke approval of an EDR scheme (see reg 7.6.02(4) and 7.9.77(4)).

RG 165.36 The specific guidelines against which we approve EDR schemes are set out in RG 139. These guidelines were developed to closely reflect the six matters that are set out in the regulations. Therefore, we will continue to use RG 139 as the basis for our EDR approval role under the new regulatory regime, in addition to our policy set out in this guide.

Approving EDR schemes

RG 165.37 An EDR scheme will need to review its membership profile to decide whether it wishes to be approved by us. If an EDR scheme has members that are subject to the dispute resolution provisions, it may wish to be approved so that these members can use confirmation of their scheme membership to satisfy their EDR obligation.

Note: The dispute resolution provisions referred to in this guide are s912A(1)(g), 912A(2) and 1017G, which set out the obligations of licensees, unlicensed product issuers and unlicensed secondary sellers to have a dispute resolution system.

RG 165.38 RG 165.58 explains when an entity subject to the dispute resolution provisions may need to join more than one EDR scheme.

EDR schemes already approved under RG 139

RG 165.39 An EDR scheme that is already approved under RG 139 at FSR commencement will not have to lodge another application with us for approval under the new regulatory regime. Such an EDR scheme will continue to be approved under RG 139 and we will provide the scheme with further written confirmation of its approval under the new regulatory regime subject to RG 165.40.

RG 165.40 If an EDR scheme with existing RG 139 approval does not meet the minimum coverage requirements of EDR schemes approved under the new regulatory regime (see RG 165.44–RG 165.54), we will place a condition on that EDR scheme's approval requiring it to make the necessary amendments to its Rules within a specified reasonable period of time after FSR commencement.

Approval of EDR schemes during the 2-year transitional period

RG 165.41 Approval of an EDR scheme is at our discretion and is neither automatic nor guaranteed.

RG 165.42 An EDR scheme that is not approved under RG 139 at FSR commencement, but wishes to be approved for the purposes of the new regulatory regime, must apply for approval from us within the first year of the 2-year transitional period. An application should be lodged with us in accordance with Part D of RG 139. Applications for approval of an EDR scheme under RG 139 received before FSR commencement will be treated as applications under the new regulatory regime. We will confirm this with each of the relevant EDR scheme applicants.

RG 165.43 We cannot guarantee that an EDR scheme will be approved by us within the 2-year transitional period — even if it satisfies all of the approval guidelines — unless its application is lodged in the time frame set out in RG 165.42.

Coverage of an approved EDR scheme

RG 165.44 An EDR scheme's coverage is set out in its Rules. When a scheme lodges an application for approval under RG 139 for the purposes of the new regulatory regime, we will assess the adequacy of its coverage having regard to:

- (a) the *types of complainants* that can access the scheme;
- (b) the *types of complaints* that the scheme can deal with; and
- (c) the scheme's *monetary claims limit*.

RG 165.45 Some EDR schemes in the finance sector already have a coverage that extends beyond the requirements of the law in these three areas. This guide contains guidance about the minimum level of coverage that an EDR scheme should provide to be approved. We encourage schemes to maintain a broad coverage that is consistent with the business of their members and the participation of consumers in the relevant industries.

Types of complainants

RG 165.46 The Rules of an approved EDR scheme must set out what types of complainants can access the dispute resolution procedures.

RG 165.47 An approved EDR scheme must, as a minimum, be able to deal with complaints from retail clients as defined in s761G and related regulations. The definition of retail client varies depending on whether the relevant financial product is a general insurance product, a superannuation product, a retirement savings account product (within the meaning of the RSA Act), or any other type of financial product. A small business may be a retail client. A small business is a business employing fewer than:

- (a) 100 people (if the business is or includes the manufacture of goods); or
- (b) 20 people (otherwise).

Each EDR scheme will need to review its Rules to make sure that retail clients (including small businesses that are retail clients) are able to access the scheme.

Types of complaints

RG 165.48 The Rules of an EDR scheme set out what types of complaints a scheme can deal with — ie what is an “eligible” complaint.

RG 165.49 When we assess an EDR scheme for approval, we will review its Rules to make sure that it offers adequate coverage to deal with any enquiry, complaint or dispute as is appropriate, regardless of the specific terminology used.

RG 165.50 An approved EDR scheme does not have to deal with all complaints that a retail client may make about a particular financial service or the conduct of a financial service provider. There are some types of complaints that a scheme may legitimately exclude from its Rules, eg a complaint that is solely about a member’s commercial policy.

RG 165.51 When we approve an EDR scheme we also effectively approve any exclusions from that scheme’s coverage. These exclusions may vary across schemes depending on the nature of the financial services covered; however, we will take a consistent approach in assessing what are reasonable exclusions from that scheme’s coverage.

RG 165.52 We will also take into account the scheme’s capacity and expertise to deal with the full range of financial services it intends to cover.

Monetary limit for claims

RG 165.53 Most EDR schemes have a monetary claims limit. This limit represents the maximum monetary amount that may be claimed against a member under that scheme’s Rules. *The monetary limit applies to the value of the claim made by the consumer, rather than the value of the underlying financial product or service that is the subject of the complaint.*

RG 165.54 The dispute resolution provisions do not prescribe a monetary claims limit for approved EDR schemes. Before we approve an EDR scheme we will review its monetary claims limit, having regard to:

- (a) the nature of complaints made to that scheme; and
- (b) the limits operated by other EDR schemes with similar coverage.

EDR obligations of entities subject to the dispute resolution provisions

Licensees

RG 165.55 A licensee that is subject to the dispute resolution provisions is required to be a member of one or more approved EDR schemes that cover, or together cover, complaints by retail clients in connection with the provision of all financial services covered by the licence.

Unlicensed product issuers and unlicensed secondary sellers

RG 165.56 An unlicensed product issuer and an unlicensed secondary seller must be a member of one or more approved EDR schemes that cover, or together cover, complaints against them by retail clients about the financial services provided in relation to any of their financial products.

RG 165.57 An unlicensed product issuer and an unlicensed secondary seller should notify us of their EDR scheme membership details at the time they lodge a copy of their first PDS with us (see s1015B) or at the time they issue their first PDS: see s1015D.

When will an entity subject to the dispute resolution provisions be required to join more than one approved EDR scheme?

RG 165.58 Some EDR schemes are limited in coverage to a particular industry or industries, eg general insurers or banking institutions. This means that an entity subject to the dispute resolution provisions that provides a broad range of financial products or services to retail clients may need to join more than one scheme to meet its EDR obligations.

Licensing and EDR membership during the 2-year transitional period

RG 165.59 Generally, if an entity wants to apply for an AFS licence during the 2-year transitional period, it must be a member of one or more approved EDR schemes when applying for the AFS licence. However, this requirement does not apply during the 2-year transitional period if there is no approved EDR scheme available for the applicant to join that covers some or all of the financial services to be provided: see reg 10.2.47 (licensees) and 10.2.87 (unlicensed product issuers and secondary sellers).

RG 165.60 For licensees relying on the exemptions in reg 10.2.47, we will apply a licence condition that during the 2-year transitional period the licensee must still belong to one or more EDR schemes — even if these schemes are not approved — that cover, or together cover, complaints by retail clients in connection with the provision of all financial services covered by the AFS licence.

RG 165.61 The circumstances in which an applicant may or may not be granted an AFS licence during the 2-year transitional period are set out in the following examples.

Example A

You are a member of one or more approved EDR schemes that can deal with complaints about *all* of the financial services that you provide to retail clients under the AFS licence.

Result: An AFS licence may be granted.

Example B

You are a member of one or more EDR schemes that are not approved but can deal with complaints about *all* of the financial services that you provide to retail clients under the AFS licence.

Result: An AFS licence may be granted with conditions relating to membership of an EDR scheme. However, refer to RG 165.63 to find out what you must do by the end of the 2-year transitional period.

Example C

You are a member of one or more EDR schemes (approved or unapproved) that cannot deal with complaints about *all* of the financial services that you provide to retail clients under the AFS licence.

Result: An AFS licence will not be granted. You will first need to join another EDR scheme that can handle the balance of complaints about those financial services that you provide to retail clients under the AFS licence. However, refer to RG 165.63 to find out what you must do by the end of the 2-year transitional period.

Example D

You are not a member of any EDR scheme (approved or unapproved).

Result: An AFS licence will not be granted. You will need to join an EDR scheme or schemes that can deal with complaints about *all* the financial services that you provide to retail clients under the AFS licence.

RG 165.62 If the Superannuation Complaints Tribunal can deal with complaints about any of the financial services provided by a licensee, the licensee will not need to join an EDR scheme for those financial services: see RG 165.71–RG 165.73.

What happens at the end of the 2-year transitional period?

RG 165.63 By the end of the 2-year transitional period all licensees must belong to one or more approved EDR schemes. The approved scheme (or schemes) must cover (or together cover) complaints by retail clients in connection with the provision of all financial services covered by an AFS licence.

RG 165.64 If a licensee does not join an approved EDR scheme or schemes by the end of the 2-year transitional period they will be in breach of 912A(1)(g).

Confirming EDR scheme membership

Licensees

RG 165.65 If you are a licensee, you must show us that you are a member of an approved EDR scheme or schemes as required under the dispute resolution provisions. During the 2-year transitional period, you may also show us that you are a member of an EDR scheme that is not approved.

RG 165.66 This means that when applying for an AFS licence you will need to:

- (a) provide us with proof of your membership of an EDR scheme or schemes, including the date of membership; and
- (b) provide us with details of the position in your organisation with primary responsibility for dealing with the EDR scheme(s).

Unlicensed product issuers and unlicensed secondary sellers

RG 165.67 If you are an unlicensed product issuer or an unlicensed secondary seller, you must show us that you are a member of an approved EDR scheme or schemes as required under the dispute resolution provisions. This means that when you first issue a PDS you will need to:

- (a) provide us with proof of your membership of an approved EDR scheme or schemes, including the date of membership; and

(b) provide us with details of the position in your organisation with primary responsibility for dealing with the EDR scheme(s),

either when you lodge a PDS under s1015B or give notice that a PDS is in use under s1015D.

Changes to EDR scheme membership — notification and consequences

Licensees

RG 165.68 If you are a licensee, you must provide us with a written report as soon as practicable, and no later than 3 days, after becoming aware that the status of your EDR scheme membership has changed. This may arise when:

- (a) you fail to renew your membership of an approved EDR scheme or schemes;
- (b) you change your membership from one approved EDR scheme to another; or
- (c) your membership of an approved EDR scheme is terminated because of non-compliance with the Rules or a decision of that scheme.

RG 165.69 The written report should set out the reasons for the circumstances in (a), (b) or (c) above.

Note: Under s912D, a licensee must provide ASIC with a written report as soon as practicable, and in any event no later than 3 days, after becoming aware that it can no longer meet, or has breached, an obligation under s912A or 912B.

Unlicensed product issuers and unlicensed secondary sellers

RG 165.70 If you are an unlicensed product issuer or an unlicensed secondary seller, you must make sure that you have a dispute resolution system in place as required under the dispute resolution provisions at the time that you first issue a PDS: see RG 165.67. Failure to have such a system in place for your retail clients is an offence.

Superannuation Complaints Tribunal

RG 165.71 The Superannuation Complaints Tribunal (SCT) is a statutory tribunal and is not required to be approved by us. Furthermore, the dispute resolution provisions relating to EDR schemes do not apply in relation to complaints made by retail clients

that may be dealt with by the SCT: see s912A(2)(b)(ii) and 1017G(2)(b)(ii).

RG 165.72 It is likely that the SCT will be able to deal with all retail consumer complaints about the financial services provided by certain entities subject to the dispute resolution provisions. These entities will not need to join an EDR scheme approved by us.

RG 165.73 If the SCT cannot deal with complaints about all the financial services provided by an entity subject to the dispute resolution provisions, that entity must also belong to an approved EDR scheme that can deal with those complaints that fall outside the SCT's jurisdiction.

Note: See RG 165.58, which describes the requirement for entities subject to the dispute resolution provisions to belong to one or more EDR schemes to cover all their activities.

Underlying principles/Explanation

Approval of EDR schemes and RG 139

RG 165.74 The six matters set out in the regulations that we must take into account when considering whether to approve an EDR scheme are taken from *Benchmarks for industry-based customer dispute resolution schemes*, published by the Department of Industry, Science and Tourism in August 1997.

RG 165.75 We had explicit regard to these matters when we developed RG 139 in consultation with our stakeholders: see RG 139.19. Because of the relationship between the matters set out in the regulations and RG 139, we are satisfied that RG 139 remains the appropriate basis for our EDR scheme approval policy.

RG 165.76 A review of RG 139 was scheduled for August 2001. We have postponed this review until after the end of the 2-year transitional period so that the review takes into account the effect of the new regulatory regime on EDR schemes in the finance sector.

Approving EDR schemes under the dispute resolution provisions

EDR schemes already approved under RG 139

RG 165.77 EDR schemes that have been approved under RG 139 may have to make some amendments to their Rules in order to have

their approval under the new regulatory regime confirmed, eg these amendments may relate to the coverage of the EDR scheme.

RG 165.78 We will review the Rules of each EDR scheme with existing RG 139 approval and inform the scheme of any required amendments to its Rules for approval under the dispute resolution provisions. We will approve such an EDR scheme under the dispute resolution provisions by placing a condition on its approval. EDR schemes with existing RG 139 approval that do not require any amendments to their Rules will be sent a letter confirming their approval under the dispute resolution provisions.

Approval of EDR schemes during the 2-year transitional period

RG 165.79 The approval process for EDR schemes has typically taken some months to complete. EDR scheme applicants will need to factor this in when timing the lodgment of their applications for approval during the 2-year transitional period.

RG 165.80 We will publish the names of approved EDR schemes and the names of EDR schemes seeking approval on our website (www.asic.gov.au).

Coverage of an approved EDR scheme

RG 165.81 The new regulatory regime introduces a more consistent approach to EDR coverage across the finance sector. The approval process allows us some discretion in determining what is adequate coverage for each EDR scheme applicant.

Types of complainants

RG 165.82 The definition of “retail client” is used in a number of contexts throughout the Corporations Act (as amended by the FSR Act). It has not been specifically defined for EDR purposes.

RG 165.83 We note that some EDR schemes currently operating in the finance sector either do not accept complaints from small businesses or accept complaints from a narrow class of small businesses. Each approved scheme will now have to deal with complaints from small businesses that are retail clients as defined under the Corporations Act.

RG 165.84 Where appropriate, we encourage EDR schemes to accept complaints from a broader range of complainants than set out in the “retail client” definition.

Types of complaints

RG 165.85 Finance sector EDR schemes in Australia have typically been developed along institutional lines. They therefore tend to deal with complaints about the specific types of financial services that those institutions have traditionally provided.

RG 165.86 In order to gain approval, EDR schemes will have to deal with the majority of consumer complaints about the financial services they cover. However, we recognise that all EDR schemes apply legitimate exclusions in their Rules that act to limit the coverage that the scheme provides.

RG 165.87 Examples of the types of complaints that may be typically excluded from the Rules of an approved EDR scheme include complaints:

- (a) that have already been, or should be, dealt with in another forum;
- (b) relating solely to the member's commercial policy;
- (c) relating solely to the underlying performance of an investment.

RG 165.88 We will continue to monitor the types of complaints that are both included in and excluded from different EDR schemes.

Monetary limit for claims

RG 165.89 If, as part of our approval process, we seek to increase the monetary claims limit applied by a particular EDR scheme, we will first liaise with relevant industry and consumer representatives about the relative costs and benefits of increasing the monetary limit.

Transitional arrangements

RG 165.90 You can still continue to operate under the old regulatory regime under which you are licensed, registered, or exempt from licensing or registration, for the duration of the 2-year transitional period. After the 2-year transitional period you must have an AFS licence issued under the new regulatory regime, unless an exemption applies, to be able to continue to carry on a financial services business.

Note: Refer to Consultation Paper 26 *Licensing and disclosure: Making the transition to the FSR regime* (CP 26).

RG 165.91 If you apply for an AFS licence during the 2-year transitional period, you must be a member of one or more approved EDR schemes, unless there is no approved EDR scheme available for

you to join that covers some or all of the financial services to be provided. If you apply for an AFS licence after the 2-year transitional period, you must be a member of one or more approved EDR schemes in order to be eligible for an AFS licence.

Changes to EDR scheme membership — notification and consequences

RG 165.92 If your membership of an approved EDR scheme is not renewed, or is terminated, and you are not a member of an alternative approved EDR scheme that can deal with all relevant complaints, you will fail to comply with one of your AFS licence obligations and we may consider taking action against you.

RG 165.93 Under s912D a licensee must provide us with a written report as soon as practicable, and in any case within 3 days, after it becomes aware that it can no longer meet or has breached an obligation under its licence.

RG 165.94 It is a condition of approval of an EDR scheme that the operators of the scheme inform us of any non-compliance by a member and of any membership that is terminated. Under RG 139 operators of the scheme must inform us of systemic issues and serious misconduct. As a condition of approval under RG 139, we can require the Rules of the EDR scheme to allow the scheme to terminate the membership of a non-compliant member. RG 139 further stipulates that a scheme should not terminate a member without informing us. This is important because we may need to consider further action against the member.

RG 165.95 We want to prevent a member whose membership has been terminated by one scheme from simply joining another scheme without our knowledge. Upon being informed that a member has:

- (a) been non-compliant with the Rules of a scheme;
- (b) been terminated from membership of a scheme; or
- (c) failed to renew membership of a scheme,

we have a number of options for dealing with the matter. Where that member is a licensee we can, in the most serious cases, convene a hearing to determine whether the licence should be suspended or cancelled.

Schedule: IDR procedures and AS 4269–1995

RG 165.96

Note: This Schedule provides guidance on how ASIC will apply the Essential Elements of the Australian Standard on Complaints Handling (AS 4269–1995) to the financial services industry. We give examples of how the elements might operate in practice. These elements may apply differently depending on the size and nature of your business.

You will need to obtain a copy of AS 4269–1995 and be aware of its requirements. Copies can be obtained from the Standards Australia website at www.standards.com.au.

IDR procedures and AS 4269–1995

AS 4269–1995 provision	Application to licensees
<p>Commitment [AS 4269–1995, 3.2]</p>	<p>There should be commitment to IDR procedures at all levels of an organisation, particularly the higher levels. In larger organisations, for example, commitment at the level of the board or other relevant governing body is essential to ensuring IDR procedures are integrated into the culture of the organisation. Such commitment can be demonstrated by:</p> <ul style="list-style-type: none"> (a) ensuring all relevant staff are aware of, and educated about, IDR procedures; (b) ensuring that adequate resources are allocated to IDR; and (c) implementing management systems and reporting procedures to ensure timely and effective complaints handling and monitoring.
<p>Fairness [AS 4269–1995, 3.3]</p>	<p>In the interests of ensuring that complaints are dealt with fairly, IDR procedures should allow adequate opportunity for both parties to make their case. Wherever possible, a complaint should be investigated by staff not involved in the subject matter of the complaint.</p> <p>In responding to complaints, you should give reasons for reaching a decision on the complaint and adequately address the issues that were raised in the initial complaint. ASIC considers that, where practicable, reasons for a decision should be in writing and should refer to applicable provisions in legislation, codes, standards or procedures.</p>
<p>Resources [AS 4269–1995, 3.4]</p>	<p>Determining whether a licensee has allocated sufficient resources to its IDR procedures will depend in part on the size of the organisation, the products and services provided and the retail client base of the financial services provider.</p> <p>ASIC considers that, at a minimum, when implementing IDR procedures you should:</p> <ul style="list-style-type: none"> (a) establish a contact point for complainants; (b) nominate staff to handle complaints who have sufficient training and competence to deal with those complaints, including the authority to settle complaints or ready access to someone who has the necessary authority; and (c) ensure adequate systems are in place to handle complaints promptly, fairly and consistently. <p>For larger organisations with a large retail client base, ensuring adequate resources might include such matters as providing a toll-free/local call facility where complaints can be logged and appointing sufficient staff to deal with complaints. For smaller organisations, adequate resources might include ensuring a senior staff member is available to deal with complaints.</p>

AS 4269–1995 provision	Application to licensees
Visibility [AS 4269–1995, 3.5]	<p>You should take reasonable steps to ensure that consumers know about the existence of your IDR procedures and how to make a complaint. This information should be readily available, not just at the time a consumer wishes to make a complaint. It is a requirement under the FSR Act to include information about IDR procedures in Financial Services Guides and PDSs, including how the procedures can be accessed.</p> <p>You should make details about your IDR procedures available in a convenient and accessible form. The details could be on your website or in a short document that is handed to customers when a complaint is made or on request. The document could set out what a complainant must do to lodge a complaint and how you undertake to deal with the complaint. All staff who deal with customers, not just complaints handling staff, should also have an understanding of the IDR procedures.</p>
Access [AS 4269–1995, 3.6]	<p>You should have simple and accessible arrangements for making complaints. Complaints do not need to be in writing and, in some cases, insisting that complaints are in writing can be a disincentive to the complainant, eg if the complainant has poor writing skills. The IDR procedure should enable complainants to make a complaint by any reasonable means, eg letter, telephone, in person or email.</p>
Assistance [AS 4269–1995, 3.7]	<p>You should have the resources to offer complainants some assistance with making their complaint if required.</p>
Responsiveness [AS 4269–1995, 3.8]	<p>Your IDR procedures should include clear response times for dealing with a complaint and the complainant should be made aware of these response times.</p> <p>As a general rule, you should aim to respond to a complaint as soon as possible, and where a complaint is not resolved at the time of complaint, you should acknowledge the complaint promptly. ASIC considers that you should substantially respond to a complaint within a maximum of 45 days,* but in a shorter period if possible. If you cannot respond to the complainant within 45 days, you should inform the complainant of the reasons for the delay and of their right to refer the matter to the relevant EDR scheme.</p> <p>By substantially responding to a complaint, ASIC means that you should:</p> <ul style="list-style-type: none"> (a) accept the complaint and, where appropriate, offer redress; or (b) offer redress without accepting the complaint; or (c) reject the complaint with reasons.
	<p>It is important that consumers are kept informed of the progress of their complaints. If you are unable to substantially respond to the complaint, a holding response should be sent to the complainant which explains why you are</p>

AS 4269–1995 provision	Application to licensees
	<p>not in a position to respond and gives an indication of when a further response will be made.</p> <p>It may be reasonable for you to consider shorter time frames for different types of complaints (eg administrative complaints, performance-related complaints and advice-related complaints) depending on the size of the organisation, the client base and the types of products and services offered under the AFS licence. You should also take into account any time frames for responding to complaints as set out in relevant industry codes of conduct.</p> <p>* The time limit of 45 days will not apply in those instances where either s101 of the <i>Superannuation Industry (Supervision) Act 1993</i> or s47 of the <i>Retirement Savings Accounts Act 1997</i> applies. Each of these provisions allows a maximum time limit of 90 days for responding to a complaint or inquiry.</p>
Charges [AS 4269–1995, 3.9]	ASIC considers that material explaining IDR procedures should be provided free of charge to complainants.
Remedies [AS 4269–1995, 3.10]	<p>As a general rule, remedies should be fair and may be non-financial as well as, or instead of, financial. Where a financial remedy is considered appropriate, the aim should be to provide fair compensation. As a minimum, compensation should be given for any direct loss or damage caused as a result of a breach of your obligations when providing a financial service.</p> <p>ASIC considers that when determining the appropriate remedy and the extent of loss or damage, you should consider relevant legal principles, relevant codes of conduct, concepts of fairness and relevant industry best practice.</p>
Data collection [AS 4269–1995, 3.11]	<p>Your procedures and management systems should include provisions for keeping details about the complaints received. Complaints handling data is a useful means of tracking compliance issues or risks.</p> <p>ASIC may require you to produce complaints data in certain circumstances. You should, therefore, keep this data in accessible form.</p> <p>To use complaints data effectively, it will be important to be able to analyse complaints according to categories, such as type of complainant, subject of complaint, outcome of complaint, and timeliness of response.</p>
Systemic and recurring problems [AS 4269–1995, 3.12]	You should ensure that the IDR procedures enable you to address systemic issues or recurring complaints identified in the complaints data. This will encourage the identification of compliance issues or risks, which can be investigated to determine their causes and then rectified.

AS 4269–1995 provision	Application to licensees
	<p>Complaints, for example, might be classified according to breaches of law, such as:</p> <ul style="list-style-type: none"> (a) failure to provide a Financial Services Guide, Statement of Advice and/or PDS; (b) failure to disclose remuneration; (c) failure to provide appropriate advice; (d) failure to meet consumer protection standards or codes of conduct; (e) fraud; and (f) other. <p>We note that breaches of the licensee obligations must be reported to ASIC within 3 days: see s912D.</p>
Accountability [AS 4269–1995, 3.13]	<p>Reports about complaints should be prepared for the senior management of your organisation. Data about your complaints should also be available for inspection by ASIC in certain situations, eg during surveillance.</p>
Reviews [AS 4269–1995, 3.14]	<p>You should review your IDR procedures at least every 2–3 years to ensure that the complaints systems are operating effectively. A larger organisation might benefit from an independent review.</p>

Key terms

RG 165.97 In this guide:

“AFS licence” means an Australian financial services licence under s913B that authorises a person who carries out a financial services business to provide financial services

Note: This is a definition contained in s761A.

“AS 4269–1995” means the Australian Standard on Complaints Handling, AS 4269–1995

“ASIC” means the Australian Securities and Investments Commission

“Corporations Act” means the *Corporations Act 2001* (as amended by the FSR Act) and includes regulations made for the purposes of the Act

“dispute resolution provisions” means s912A(1)(g), 912A(2) and 1017G

“EDR scheme” means an external dispute resolution scheme: see s912A(2)(b) and 1017G(2)(b)

“entities subject to the dispute resolution provisions” means licensees, unlicensed product issuers and unlicensed secondary sellers who provide financial services to retail clients

“financial product” means generally a facility through which, or through the acquisition of which, a person does one or more of the following:

- (a) makes a financial investment (see s763B);
- (b) manages financial risk (see s763C);
- (c) makes non-cash payments (see s763D)

Note: See Div 3 of Part 7.1 for the exact definition.

“Financial Services Guide” means a document that must be given to a retail client in relation to the provision of a financial service in accordance with Div 2 of Part 7.7

Note: See s761A for the exact definition.

“FSR Act” means the *Financial Services Reform Act 2001* or the Corporations Act (as amended by the FSR Act)

Note: The provisions contained in Schedule 1 will form part of the Corporations Act from 11 March 2002. Schedule 1 contains the financial services licensing provisions under Parts 7.6 to 7.8 and the financial product disclosure provisions under Part 7.9.

“FSR commencement” means 11 March 2002, the date fixed by proclamation under s2(2) of the FSR Act on which Schedule 1 of the FSR Act is to commence

Note: Schedule 1 contains the financial services licensing provisions under Parts 7.6 to 7.8 and the financial product disclosure provisions under Part 7.9.

“IDR procedure” means an internal dispute resolution procedure: see s912A(2)(a) and 1017G(2)(a)

“licensee” means a person who holds an AFS licence

“licensee obligations” means the obligations of a licensee as set out in s912A, 912AB, 912B and the requirement to be of good fame and character as included in s913B

“new regulatory regime” means the financial services licensing and product disclosure regime under the Corporations Act (as amended by the FSR Act)

“old regulatory regime” means (as applicable) the relevant old legislation and relevant industry codes, standards or practices (however enforceable at law) related to the provision of financial services and applying immediately before FSR commencement

“Part 7.9” (for example) means a Part of the Corporations Act after FSR commencement (in this example numbered 7.9), unless a contrary intention appears

“PDS” means a Product Disclosure Statement

“Product Disclosure Statement” means a document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Part 7.9

Note: See s761A for the exact definition.

“RG 139” (for example) means a regulatory guide (in this example numbered 139)

“reg 7.6.04” (for example) means a regulation of the *Corporations Regulations 2001* (in this example numbered 7.6.04)

“regulations” means the *Corporations Regulations 2001*

“retail client” means a client defined as such under s761G and Chapter 7 Part 7.1 Div 2 of the regulations

“RSA Act” means the *Retirement Savings Account Act 1997*

“Rules” means the document, whatever called, that sets out the jurisdictional limits, procedures and operating structure for an EDR scheme (this document is typically called the Terms of Reference, the Constitution or the Rules)

“s912A” (for example) means a provision of the Corporations Act after FSR commencement (in this example numbered 912A), unless a contrary intention appears

“SIS Act” means the *Superannuation Industry (Supervision) Act 1993*

“Statement of Advice” means a document that must be given to a retail client in relation to the provision of personal advice in accordance with Subdivisions C and D of Div 3 of Part 7.7

Note: See s761A for the exact definition.

“2-year transitional period” means a period of 2 years starting from FSR commencement (ie from 11 March 2002 to 10 March 2004)

“unlicensed product issuer” means an issuer of a financial product who is not a licensee

“unlicensed secondary seller” means a person who offers the secondary sale of a financial product under s1012C(5), (6) or (8) and who is not a licensee.

Related information

RG 165.98

Headnotes

complaints, dispute resolution procedures, EDR schemes, IDR procedures, licensee, retail clients, unlicensed product issuer, unlicensed secondary seller, AS 4269–1995

Regulatory guides

RG 139 *Approval of external complaints resolution schemes*

RG 146 *Training of financial product advisers*

RG 164 *Licensing: Organisational capacities*

Legislation

Corporations Act Parts 7.6–7.9, Part 7.1 Div 3, Part 7.7 Div 2, Part 7.9 Div 2, 761A, 761G, 912A, 912AB, 912A(1)(g), 912A(2), 912A(2)(a), 912A(2)(b), 912A(2)(b)(ii), 912B, 912D, 913B, 915C(2), 941A, 941B, 942B(2)(h), 942C(2)(i), 1012C(5), (6) and (8), 1013D(1)(g), 1015B, 1015D, 1017G, 1017G(2)(a), 1017G(2)(b), 1017G(2)(b)(ii), regulations 7.6.02(1), 7.6.02(1)(b), 7.6.02(2), 7.6.02(3), 7.6.02(4), 7.9.77(1), 7.9.77(1)(b), 7.9.77(2), 7.9.77(3), 7.9.77(4), 10.2.47, 10.2.87, FSR Act s2(2), RSA Act s47, SIS Act s101

Consultation papers

CP 23 *Licensing: External and internal dispute resolution procedures*

CP 26 *Licensing and disclosure: Making the transition to the FSR regime*

Media releases

[MR 01/193] ASIC releases second package of policy proposal papers for the FSR Bill, 6 June 2001

[MR 01/319] Revised timetable for FSR publications, 11 September 2001