



ASIC
Australian Securities &
Investments Commission

ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98

I, Sarah Edmondson, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 30 July 2020

Sarah Edmondson

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98*.

2 Commencement

This instrument commences as follows:

- (a) subject to paragraph (b)—on the day it is registered on the Federal Register of Legislation;
- (b) section 6 of this instrument commences on the later of 5 October 2021 and the day this instrument is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under:

- (a) in relation to Part 2 of this instrument:
 - (i) subsection 11(4) of the *Australian Securities and Investments Commission Act 2001* for the purposes of subparagraphs 912A(2)(a)(i) and 1017G(2)(a)(i) of the *Corporations Act 2001*; and
 - (ii) subsection 12A(6) of the *Australian Securities and Investments Commission Act 2001* for the purposes of:
 - (A) paragraph 47(1)(b) of the *Retirement Savings Accounts Act 1997*;
 - (B) paragraph 101(1)(b) of the *Superannuation Industry (Supervision) Act 1993*;
 - (C) subparagraph 47(1)(h)(i) of the *National Consumer Credit Protection Act 2009*;
 - (D) subparagraph 47(1)(e)(i) of the *National Consumer Credit Protection Act 2009* as notionally inserted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010*;

- (iii) subsection 47(2A) of the *Retirement Savings Accounts Act 1997* and subsection 101(1B) of the *Superannuation Industry (Supervision) Act 1993*;
- (b) in relation to Part 3 of this instrument—subsections 926A(2) and 1020F(1) of the *Corporations Act 2001* and subsection 109(3) of the *National Consumer Credit Protection Act 2009*.

4 Definitions

In this instrument:

approved deposit fund has the same meaning as in the SIS Act.

complaint has the meaning given by paragraphs 27 – 32 of Regulatory Guide 271.

Corporations Act means the *Corporations Act 2001*.

Credit Act means the *National Consumer Credit Protection Act 2009*.

credit licensee means a person who holds an Australian credit licence.

financial firm means:

- (a) a financial services licensee;
- (b) a person to whom section 1017G of the Corporations Act applies;
- (c) a credit licensee;
- (d) an unlicensed carried over instrument lender;
- (e) a trustee of a regulated superannuation fund or of an approved deposit fund;
- (f) an RSA provider.

financial services licensee means a person who holds an Australian financial services licence.

regulated superannuation fund has the same meaning as in the SIS Act.

RSA provider has the same meaning as in the RSA Act.

Regulatory Guide 271 means ASIC Regulatory Guide 271 *Internal Dispute Resolution* as published on 30 July 2020.

RSA Act means the *Retirement Savings Account Act 1997*.

SIS Act means *Superannuation Industry (Supervision) Act 1993*.

unlicensed carried over instrument lender has the meaning given by subsection 5(1) of the Credit Act as notionally inserted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010*.

Part 2—Standards and requirements

5 Standards and requirements for internal dispute resolution procedures

- (1) ASIC makes and approves the standards and requirements mentioned in the following paragraphs and tables of Regulatory Guide 271:
 - (a) in “**Definition of complaint**”:
 - (i) paragraphs 27 – 29 (including the note);
 - (ii) paragraph 32 (including the notes);
 - (b) in “**Definition of complainant**”:
 - (i) paragraph 39 (including the note);
 - (ii) paragraphs 41 and 42;
 - (c) in “**Outsourcing IDR processes**”:
 - (i) paragraph 48;
 - (d) in “**What an IDR response must contain**”:
 - (i) paragraphs 53 (including the notes) and 54;
 - (e) in “**Maximum timeframes for an IDR response**”:
 - (i) paragraphs 56 – 60 and Table 2;
 - (ii) paragraphs 64 – 66 (including the notes) and paragraph 69;
 - (iii) paragraph 71;
 - (iv) paragraph 75;
 - (v) paragraphs 76 – 78;
 - (vi) paragraphs 79;
 - (vii) paragraphs 81 – 85 (including the notes);
 - (viii) paragraphs 86 and 87 (including the notes), 89, 92 and 93 (including the note) and 99 and 100 (including the notes);

- (f) in “**The role of customer advocates**”:
 - (i) paragraphs 109 and 110 (including Note 1);
 - (g) in “**Links between the IDR process and AFCA**”:
 - (i) paragraphs 111 – 113;
 - (h) in “**How to manage systemic issues**”:
 - (i) paragraphs 118 – 120 (including the note);
 - (j) in “**Enabling complaints**”:
 - (i) paragraph 134;
 - (ii) paragraph 141;
 - (k) in “**Resourcing**”:
 - (i) paragraphs 142 and 143;
 - (ii) paragraphs 146 and 147;
 - (l) in “**Responsiveness**”:
 - (i) paragraphs 163 and 165;
 - (m) in “**Policy and procedures**”:
 - (i) paragraph 172;
 - (n) in “**Data collection, analysis and internal reporting**”:
 - (i) paragraph 179 and 183.
- (2) A word or expression that is defined in Regulatory Guide 271 has the same meaning for the purposes of the paragraphs and tables of Regulatory Guide 271 mentioned in subsection (1).

6 Requirements relating to written reasons

- (1) ASIC specifies the requirements mentioned in subsection (2) in relation to written reasons:
 - (a) for the purposes of paragraph 47(1)(d) of the RSA Act—for any decision of the RSA provider (or failure by the RSA provider to make a decision) relating to a complaint; and
 - (b) for the purposes of paragraph 101(1)(d) of the SIS Act—for any decision of a trustee of a regulated superannuation fund other than a

self managed superannuation fund or of an approved deposit fund
(or failure by the trustee to make a decision) relating to a complaint.

- (2) ASIC specifies the requirements mentioned in the following paragraphs of Regulatory Guide 271:
 - (a) in “**What an IDR response must contain**”:
 - (i) paragraphs 53 (including the notes) and 54;
 - (b) in “**Maximum timeframes for an IDR response**”:
 - (i) paragraphs 56 – 60 and Table 2;
 - (ii) paragraphs 64 – 66 (including the notes) and paragraph 69;
 - (iii) paragraph 75;
 - (iv) paragraph 79;
 - (v) paragraphs 81 – 85 (including the notes).
- (3) A word or expression that is defined in Regulatory Guide 271 has the same meaning for the purposes of the paragraphs of Regulatory Guide 271 mentioned in subsection (2).

Part 3—Declaration

7 Obligation to comply with internal dispute resolution procedure

Financial services licensees

- (1) Part 7.6 (other than Division 4 and 8) of the Corporations Act applies in relation to financial services licensees as if paragraph 912A(1)(g) were modified or varied by, after subparagraph (i), inserting:

“(ia) in relation to an internal dispute resolution procedure for the purposes of paragraph (2)(a)—comply with the internal dispute resolution procedure; and”.

Product issuers and regulated persons

- (2) Part 7.9 of the Corporations Act applies in relation to issuers and regulated persons covered by section 1017G as if subsection 1017G(1) were modified or varied by, after paragraph (c), inserting:

“(ca) in relation to an internal dispute resolution procedure for the purposes of paragraph (2)(a)—comply with the internal dispute resolution procedure; and”.

Credit licensees

- (3) The provisions to which Part 2-6 of the Credit Act applies apply in relation to credit licensees as if subsection 47(1) were modified or varied by omitting paragraph (h) and substituting:

“(h) both:

- (i) have an internal dispute resolution procedure that:
 - (A) complies with standards and requirements made or approved by ASIC in accordance with the regulations; and
 - (B) covers disputes in relation to the credit activities engaged in by the licensee or its representatives; and
- (ii) comply with the internal dispute resolution procedure; and”.

Unlicensed carried over instrument lenders

- (4) The provisions to which Part 2-6 of the Credit Act applies apply in relation to unlicensed carried over instrument lenders as if subsection 47(1) as notionally substituted by regulation 25E and Schedule 2 to the *National Consumer Credit Protection Regulations 2010* were modified or varied by omitting paragraph (e) and substituting:

“(e) both:

- (i) have an internal dispute resolution procedure that:
 - (A) complies with standards and requirements made or approved by ASIC in accordance with section 48; and
 - (B) covers disputes in relation to the credit activities the lender engages in in relation to the carried over instrument; and
- (ii) comply with the internal dispute resolution procedure; and”.

8 “Small business” definition for internal dispute resolution

Part 7.6 (other than Division 4 and 8) of the Corporations Act applies in relation to financial services licensees, and Part 7.9 of the Corporations Act, applies in relation to issuers and regulated persons covered by section 1017G, as if the definition of ***small business*** in subsection 761G(12) were omitted and substituted with:

“***small business*** means:

- (a) in relation to an obligation in this Chapter to have an internal dispute resolution procedure—a business (including a primary production

business within the meaning of section 995.1(1) of the *Income Tax Assessment Act 1997*) 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:
 - (i) if the business is or includes the manufacture of goods—100 people:
 - (ii) otherwise—20 people.”.

Part 4—Transitional

9 Application

This instrument applies in relation to a complaint received on or after 5 October 2021 by a financial firm.