

26 February 2021

Amanda Fairbairn
Policy Lawyer, The Behavioural Unit
Australian Securities and Investments Commission
By email: remediation@asic.gov.au

Dear Ms Fairbairn

Consultation Paper 335 Consumer remediation: Update to Regulatory Guide 256

Thank you for the opportunity to provide comment on Consultation Paper 335 Consumer remediation: Update to Regulatory Guide 256 (CP 335). Ecstra Foundation's submission relates to Section G of CP335 'Remediation money that cannot be returned to consumers'.

About Ecstra Foundation

Ecstra Foundation (Ecstra) is a not-for-profit grant making organisation registered with the Australian Charities and Not-for-profits Commission (ACNC).

Ecstra exists to help build the financial wellbeing of all Australians within a fair financial system. To achieve this purpose, Ecstra:

- Provides grants to support and strengthen community financial capability and wellbeing
- Develops and supports money education and awareness campaigns
- Engages with communities and organisations focused on improving consumer outcomes
- Measures, evaluates and shares evidence and insights on what works in improving financial wellbeing in Australia.

Established in 2018, Ecstra has awarded over \$11 million in grants to over 100 organisations working to build the financial wellbeing of Australians.

We work with consumer organisations committed to helping Australians navigate an increasingly complex financial system and to improving consumer outcomes. Examples of recent consumer focused grants include:

- Funding the 'Demand a Refund' toolkit, developed by Consumer Action Law Centre. The toolkit helps consumers generate a complaint letter to

negotiate a refund on unnecessary and costly 'add-on' products sold to them when buying insurance products.

- Financial Rights Legal Centre's report on open insurance, which identifies the risks and opportunities to consumers of the application of the Consumer Data Right to the general insurance industry. This landmark report is the first comprehensive analysis of Open Insurance in Australia and importantly, examines the use of big data from a consumer perspective.
- Australian Multicultural Community Services' multilingual resources help older Australians from multicultural backgrounds identify elder financial abuse, navigate complex financial systems and talk about financial matters.

Our initial funding received through the Community Benefit Payments scheme means consumers are always at the centre of our work.

Remediation money paid to charities and not-for-profits has been used for consumer benefit

While Regulatory Guide 256 'Client review and remediation conducted by advice licensees' (RG 256) does not currently contain detailed guidance on how licensees should treat remediation money that cannot be returned to consumers, it makes clear that licensees must not profit from a misconduct or other compliance failure. Further, it provides that where compensation money to be paid is below \$20 (and other elements are met) this may be directed to an appropriate organisation such as a not-for-profit (RG 256.135).

In line with current guidance, it is practice for some licensees such as banks and insurance providers to donate unreturned remediation funds to charities and not-for-profits in such circumstances. In some instances these funds have been directed to charities and not-for-profit organisations committed to providing better outcomes for Australian consumers.

These donations enable these organisations to develop consumer focused initiatives which deliver positive outcomes in the broader community. This includes initiatives to increase consumer rights awareness, provide information and assistance to redress consumer harm and strengthen consumer protections, and to assist consumers who may be vulnerable and need more help navigating complex financial systems.

Payment of unreturned remediation money to charities should be an available option for licensees

Ecstra supports provision of clearer guidance on the treatment of remediation money that cannot be returned to consumers.

However, where best endeavours requirements have been met and a consumer remains unresponsive, Ecstra submits that payment of unreturned remediation money to a charity or not-for-profit registered with the ACNC

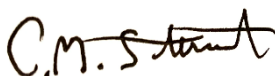
should remain an available option to licensees (rather than a 'last resort' option as proposed in CP 335):

- Charities and not-for-profits provide essential services that individuals and communities rely on and trust. Those working in financial capability and consumer protection deliver specialist support to vulnerable consumers as well as to the broader community. Directing unreturned remediation money to these organisations ensures that the funds are used for the direct benefit of consumers, the primary purpose of which is to achieve better outcomes for consumers. This approach aligns with the policy objectives of Regulatory Guide 265, which includes improving outcomes for consumers (RG 256.28).
- Where payment is made to a charitable trust or foundation, the governance processes in place for distribution of funds provides additional oversight mechanisms to ensure unreturned remediation money is used for the benefit of consumers. This includes the application of independent and transparent funding principles, selection criteria, reporting requirements and approval processes for distribution of funds.
- Unreturned remediation money that is paid to state or federal unclaimed money regimes will be absorbed into consolidated revenue. These unreturned remediation amounts may therefore be applied to spending that does not have a direct nexus to consumer benefit (or the relevant consumer harm) and may be used for purposes that do not have any connection to delivering better outcomes for consumers (given that consolidated revenue may be spent by government on a broad range of initiatives).
- The proposed 'best endeavours' requirement on licensees to find and pay consumers together with transparency/communication requirements regarding treatment of unclaimed funds, will provide greater assurance that licensees have taken appropriate steps to return money directly to consumers before they make a charitable donation.

ASIC could consider additional guidance to aid licensees' selection of suitable charities and not-for-profits as recipients of unreturned remediation monies. This could be in the form of a principles-based approach. Through our work, we note that some licensees have indicated that more guidance on suitable recipients would be beneficial to ensuring funds are paid to appropriate organisations and in a timely manner.

Please contact Stephanie Hui, Policy and Research Manager, Ecstra Foundation at stephanie.hui@ecstra.org.au if you have any questions about this submission.

Yours sincerely



Caroline Stewart
CEO, Ecstra Foundation