

19 May 2025

RS and IDR Data Publication Project Team
Australian Securities and Investments Commission
GPO Box 9827 Melbourne VIC 3001
BY EMAIL ONLY: data.publication@asic.gov.au

Dear RS and IDR Data Publication Project Team,

Viridian welcomes the opportunity to provide feedback on ASIC Consultation Paper 383 ("CP383").

Viridian Advisory Pty Ltd (AFSL 476 223), established in 2015, is a nationwide financial planning business with 123 employed and self-employed financial advisors.

For reasons outlined in this response Viridian purports the approach outlined in CP383 is counterintuitive and will lead to under reporting of Reportable Situations and Complaints, and disadvantaging firms such as Viridian that are aware of our legal requirements and are taking appropriate steps to meet these.

We do not believe that it will achieve ASIC's stated objectives in relation to Reportable Situations and Internal Dispute Resolution (IDR):

- a) "enhance accountability and transparency providing firms with an incentive for improved behaviour;
- b) help firms and consumers identify areas where substantial numbers of significant breaches and IDR complaints are occurring, and to assist with benchmarking performance against other firms; and
- c) allow firms to target their efforts to improve their compliance outcomes, consumer outcomes and firm performance" [Para 3 of CP383]

We acknowledge that ASIC must publish information about breaches and likely breaches of core obligations that are self-reported by licensees during the financial year in accordance with s912DAD of the Corporations Act¹. As outlined in the Hayne Royal Commission Response Bill 2020 Explanatory Memorandum², ASIC has discretion as to the contents and form of this publication (Para 11.121).

¹ https://www5.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s912dad.html

² [200911 Master EM FSR Bill 2020](#)

The recommended volume of data to be included in CP383 is contrary to the Explanatory Memorandum, implying that the majority of Reportable Situation and IDR data reported to ASIC should be provided in an interactive dashboard is excessive and redundant. [\[Feedback question B1Q1; B2Q1\]](#)

Recommendation 1: ASIC only publish the suggested (minimum) data outlined in the Explanatory Memorandum (para 11.121) ³as follows:

- *the name of the licensee;*
- *volume of reported breaches;*
- *breakdown of breach reports by corporate group; and*
- *the number of breaches compared to the size, activity or volume of the licensee's business.*

Recommendation 2: ASIC publish the data not via a superfluous interactive standalone downloadable dashboard, but as part of the ASIC Reportable Situation Insights report (static PDF), published within the required timeframe of 4 months at the end of each financial year.

Costs

The initial and ongoing costs of the data publication are not disclosed, and it is assumed that this is likely to increase the ASIC Levy whilst resulting in reputational damage and increased risk to financial firms that are doing the right thing. We note the Government's Cost Recovery Policy⁴ requires any cost recovery activities to consider "competition, innovation or the financial viability of those who may need to pay charges" [Para 11] and the efficiency and effectiveness of the use of available resources ... to achieve government policy outcomes" [Para 24].

Complexity and understanding of requirements

In 2021 Viridian engaged specific resources to analyse the new Reportable Situation regime and enhancements to the ASIC Internal Dispute Resolution reporting. As a result, we conducted a review of our policies and procedures, internal controls and our systems. We have a robust framework in place for the lodgement of incidents that may become reportable and/or classed as a complaint.

³ [200911 Master EM FSR Bill 2020](#)

⁴ <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/australian-government-cost-recovery-policy>

As such we are diligent in identifying, assessing and reporting Reportable Situation as required by the legislation. To date, Viridian has reported a number of Reportable Situation to ASIC since its commencement in October 2021.

We note in various industry forums, media and discussions that many licensees (particularly smaller practices) struggle to understand the Reportable Situation and IDR requirements and the proposed publication of data would be a further deterrence to report as required.

For example, in Holley Nethercote's 2025 Compliance Trends Survey Report (May 2025) 37.80% of respondents required complaints to be in writing, which is a deterioration from 2024 survey results, where 26% of respondents required complaints to be in writing. This application is contrary to the new 5 October 2021 requirements of ASIC RG271 Internal Dispute Resolution⁵ [para 271.20], showing the misunderstanding firms may have with broadening of the definition of 'complaint' and continues to be inconsistent between firms.

This Report also indicated 61% of licensees used internal non-legal resources to determine if an incident was reportable. The remaining licensees are using consultants, lawyers, internal legal resources etc. to do this determination. Given 40% of firms require external or specialist resources for reportable situation assessment, the data supports the view of complexity in analysing and identifying reportable situations, noting similar survey responses in previous years.

Misalignment of target audience for data publication

It is unclear who the intended end user of the publication of the Reportable Situation and IDR data is. CP383 states "Interactive dashboards will make complex data accessible and actionable for users, driving informed decision making and improving transparency." Para 24.

The Reportable Situation framework itself is extremely complex for many financial firms to understand and apply, as acknowledged by ASIC in CP383. The proposed inclusion of 41 Reportable Situation data points and 19 IDR data points to be published supports the level of complexity involved in both these frameworks.

If the data is aimed at providing meaningful data for consumers, we assert that given the number, complexity, terminology and concepts it is unlikely to help consumers. It is also unclear at what point a consumer would refer to this data to make a meaningful decision about their financial firm.

⁵ <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-271-internal-dispute-resolution/>

In the financial advice space for instance, the purpose of a financial service is stated in the first regulatory document they receive (the Financial Services Guide) which provides them data aimed at “retail clients (to) receive key information about the type of financial services being offered by ‘providing entities’ ... (and) to decide whether to obtain financial services from an entity.”⁶ The published data is likely to cause confusion rather than provide meaningful information.

Further, there is no rationale as to why a consumer would need to download the proposed data and unclear why a firm would need to download its own data from ASIC when they already possess this data. [Feedback question B1Q1; B2Q1]

Firm level data does not need to be publicly available to achieve the firm related objectives stated at the start of this response. Firm internal analysis and trend reporting and comparisons with ASIC Reportable Situation Insights⁷ and other specific ASIC insights⁸ currently offers adequate insights and identifies areas for preventative measures.

Firms, such as Viridian, already undertake analysis in improvements to minimise and prevent Reportable Situation, as we have done since its inception. [Feedback question B2Q1]

Recommendation 3: Broaden the depth of ASIC’s current annual Reportable Situations Insights to include greater insights, averages and sector specific information, in addition to the basic firm level data recommended earlier in this response.

Proposed level of detail misaligned with objectives

Viridian is of the view that publishing firm level data will not achieve the stated objectives; and instead, firms are encouraged to continue to not report, and other firms may be encouraged to report less given the reputational risks and potential misuse by industry participants in how they market to attract consumers.

⁶ <https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/faqs-fsgs-and-website-disclosure-information/#:~:text=The%20purpose%20of%20an%20FSG,financial%20services%20from%20an%20entity.>

⁷ <https://asic.gov.au/regulatory-resources/financial-services/reportable-situations-for-afs-and-credit-licensees/reportable-situations-insights/>

⁸ <https://asic.gov.au/about-asic/news-centre/news-items/reportable-situations-findings-of-asic-s-review-and-how-licensees-can-improve-compliance-with-the-regime/?altTemplate=betanewsroom>

The proposed contextual statements:

- i. “a large number of RS reports or IDR complaints for a firm does not necessarily suggest a higher incidence of non-compliance or consumer dissatisfaction, but may in fact reflect stronger compliance systems that can effectively identify and record non-compliance or consumer dissatisfaction; and
- ii. no submissions for a firm does not necessarily indicate that there are no reportable situations or complaints” [CP383 B3]

are not sufficient to address the concerns raised, given the broader, more significant issues raised with the general approach Viridian has outlined above as well as the level of data that is being published. A firm, for example may promote itself as having nil complaints or breaches (and so an exceptional compliance record) which may not be accurate. [\[Feedback question B3Q1\]](#).

Recommendation 4: Rather than excluding any firm who has not reported any reports, list all firms where no data has been submitted with a more targeted contextual statement than proposed outlining that there is no distinction between firms with nothing to report vs. firms who have failed to report to clarify the point outlined in CP383 Para 39, that steps will not be taken to verify if non-submission is in fact a failure to submit.

For objective (a) above it is unclear how this will provide an “incentive for improved behaviour”, as naming firms will only act as an incentive to not report, which is the opposite to the desired outcome.

ASIC’s recent review of 14 licensees’⁹ compliance arrangements with the RS requirements, with low or no items reported, the key issues identified were:

- Slow identification and reporting,
- Lacking identification, escalation and recording of incidents,
- Gaps in compliance monitoring, and
- The above results in delayed rectification and remediation of clients.

⁹ <https://asic.gov.au/about-asic/news-centre/news-items/reportable-situations-findings-of-asic-s-review-and-how-licensees-can-improve-compliance-with-the-regime/?altTemplate=betanewsroom>

This review of the nominated licensees identified that the average time to complete an investigation was 39 days, the average time to report to ASIC after the breach first occurred was 534 days and the average time to finalise clients was 632 days.

The firms that haven't reported any items that ASIC sampled (assuming there were items to report), would appear in a positive light on the register. We reiterate, the Explanatory notes and Contextual Statements [CP383 B3] are insufficient to address the issues raised here.

Rather than penalising those licensees that are demonstrating reporting of Reportable Situation and within acceptable timeframes, ASIC could take an alternative targeted approach (or combination of) to achieve the stated objectives, such as that analysis recently reported on, mentioned above.

ASIC has immediate access to all current and historical data on all the relevant timings relating to Reportable Situation and which licensees have not lodged any or a low number, resulting in specific licensees that could be easily identified for information requests and surveillance purposes to enable ASIC to "conduct targeted surveillance of licensees with low numbers of reportable situations and, where appropriate, take enforcement action" as per the focus of ASIC's 2024-25 Corporate Plan¹⁰ (Page 22).

Recommendation 5: Identified firms could be subject to an Information request for example:

- *The firm's definition of an incident?*
- *Process/system is your incidents recorded in?*
- *Who can lodge an incident in the firm and how?*
- *Provide the firm's incident register etc*
- *What is the process for determining a Reportable Situation*
- *How many complaints were identified as a RS?*

Identified licensees may be requested to provide some evidence above and explanation on those data points that appear to be outside of expected timeframes

¹⁰ [ASIC Corporate Plan | ASIC](#)

without adequate explanation e.g. timeframes to identify, investigate, report to ASIC, remediate, rectify.

Recommendation 6: Identified firms could be asked to submit their Incident register for analysis by ASIC.

Recommendation 7: Based on data submitted to ASIC where the appears to be delays could be requested to provide further information.

Exclusion of individual licensees

Excluding licensees that are individuals in the reporting of data does not make sense if the purpose is to compare licensees. For instance, if a self-licensed individual had a significant number of Reportable Situation, and they are excluded from publication, this defeats the purpose of the stated objective and appears to be biased. Individually named licensees are explicitly noted to be included in the publication of data in the Explanatory Memorandum (para 11.124).

Recommendation 8: Include all licensees in the data publication, regardless of the individual being the licensee.

Specific field commentary

As per our recommendations 1 and 2, Viridian proposes that high level data indicating the firm, number of reports and key data that allows the size of the firm to be demonstrated (such as number of representatives) only be included. In CP383 the proposed fields to be published reflect all ASIC Data Dictionary Items for IDR and most fields for Reportable Situation publication.

We highlight below some examples of concerns regarding specific data points for Reportable Situations. These are similar concerns to several other fields also, including those for IDR reporting, likely leading to inappropriate interpretation of data.

- Description of RS [[Feedback question D1Q4](#)]
Excluding the description may lead to the reader forming incorrect insights by comparing dissimilar incidents (in contrast to the objective to provide meaningful comparison across firms). Complex issues are likely to take longer to investigate and resolve than simple ones.

- Name of act/rules breached [\[Feedback question D1Q4\]](#)
Though it is proposed the high-level Core Obligation Provision that is breached will be published, the specific act or rules breached will not be named. In the absence of no description, not specifying the exact rule breached could lead to ambiguity. For instance, a best interests duty breach is considerably different to failing to meet CPD provisions, areas likely to be perceived with different severities, but both reportable.
- Number of reports (RS-DE 2.1) [\[Feedback question D1Q1\]](#)
The number of reports per firm is largely irrelevant without context of the size of the firm and its number of representatives. Smaller firms would reasonably have fewer reports than large organisations, even where the average number of events per representative is higher. The inclusion of a median number may assist.
- Time taken for first instance of the breach to the discovery of the breach [\[Feedback question D1Q1\]](#)
Some breach types will have longer timeframes to identify than others. For example, a superannuation cap breach is likely to be identified through an ATO Excess Notice, which may not be provided until 21 months after the breach occurred. In contrast, other breaches are likely to be apparent sooner. Publishing the time taken to identify breaches (without context) is likely to cause comparison between dissimilar events and mislead.
- Time Taken to complete compensation [\[Feedback question D1Q1\]](#)
Estimates for the time to complete compensation is expected field may lead to biases in under-estimating timeframes. It appears this field will not be visible once an actual rectification date is provided. Hence, there is little incentive to provide realistic or conservative estimate if a firm is more focused on the perception of their published data, than accuracy.
- Investigation timeframe [\[Feedback question D1Q1\]](#)
Some breach types will naturally have longer investigation times than others and may include delays outside of the investigators control. For example – where an investigation requires additional data to be provided by the client or a third-party, this is likely to extend the investigation timeframe. Publishing the time taken to investigate breaches without context as to what the breaches are is likely to cause comparison between dissimilar events and mislead.

Frequency of updates

Para 35-38 of CP383 suggest that Reportable Situation data will be published annually, with reports made using the portal update function published in the following annual cycle. Delaying an update by up to 12 months is likely to discourage firms from the timely reporting of issues which could potentially be resolved within the 30-day reporting period, as an unresolved issue will be publicly visible for a full year.

Recommendation 9: Increase the frequency of updates to the data in the proposed interactive format. However, Viridian's recommendation is to not publish data in the recommended interactive tables and instead include in the static (PDF) Reportable Situation Insights on an annual basis (including any updates).

We would welcome the opportunity to discuss our feedback in more detail and to participate in any industry roundtables. Please contact [REDACTED] on [REDACTED] if you have any questions relating to this submission.

Yours sincerely,

[REDACTED]

General Manager Advice

[REDACTED]

Head of Governance and Regulatory Compliance