

Appendix B: Response tables – Financial Services Council response 14/5/2025

We encourage you to use these tables to respond to our proposals.

Table 1: RS response table (feedback questions B1Q1 to B4Q1)

B1Q1 Do you have any comments about the proposed format of the data publication, or any suggestions for the interactive dashboards?

The FSC welcomes the opportunity to provide feedback on ASIC's consultation paper *Consultation Paper 383: Reportable situations and internal dispute resolution data publication* (CP 383) which sets out ASIC's approach to publication, at a firm level, of data about reportable situations (RS) reports and internal dispute resolution (IDR) submissions.

Summary

The FSC has a number of concerns with the proposals set out in CP 383 and the proposed format of data publication, notably:

- The format will incentivise under reporting, is not necessary to improve firm behaviour, and will provide little consumer benefit.
- There is a risk of misleading comparisons across licensees and a risk of double counting or under counting breaches
- Data quality as well as scam and privacy concerns
- The format will lead to an increased regulatory burden and costs will materially increase
- The format does not reflect international practice and could have adverse reputational consequences for the Australian financial services industry

We note that the current data publication proposal will work against ASIC's important priority of looking for ways to simplify or reduce the regulatory burden on businesses where that extra regulation does not produce consumer benefit. Against the backdrop of broader economy-wide concerns to increase productivity, bolster investment and encourage more international businesses to participate in the Australian financial services industry, it is important that the dashboard is not seen as introducing an unnecessary or disproportionate regulatory burden on financial services businesses that would discourage this.

Given these concerns, the FSC recommends that ASIC consider a phased implementation process involving further constructive engagement with industry before any public publication of RS and IDR data, so that problems with the data publication dashboard can be identified early and where practicable eliminated before the dashboard is made widely available for public consumption. The FSC notes that ASIC has discretion as to the content and form of public reporting, and we are concerned the potential for consumer harm that may occur in naming licensees outweighs any proposed enhanced accountability and transparency or incentive.

The FSC is concerned that the proposed time frame of publishing RS data is unduly hasty and does not leave sufficient time to consult appropriately. Notably, it does not appear to facilitate a process to stress test the operations of the dashboards before they go "live".

We are supportive of ASIC consulting with licensees further on the suggestions and issues raised below – and in particular on the technical details of the proposed dashboards, including by allowing licensees to participate in a demonstration of their proposed functions. The relief that was proposed in CS16 (further relief in relation to misleading or deceptive conduct and civil penalty provisions) should also be implemented before making firm-level information publicly available.

Please see below our more detailed comments and suggestions.

Format will incentivise under reporting

CP 383 states that ASIC intends to publish firm-level RS and IDR data to enhance accountability and transparency and provide an incentive for improved behaviour. However, the FSC expects that this may unintentionally incentivise the reduction of reporting and potentially have a detrimental impact on behaviour, undermining the objectives of the RS regime.

Firms take different approaches to breach reporting, so firms that take a more conservative approach to reporting will look “good” relative to firms that err on the side of overreporting, and this could lead to an unlevel playing field for firms to the extent that consumers rely on this information when choosing between firms. For example, we anticipate that some licensees may, insofar as they have flexibility to do so due to the nature of the tests for assessing reportability (including the vagueness of words in the breach reporting provisions such as “reasonable grounds to believe”, “material” and “significant”), seek to reduce the number of RS reports they lodge with ASIC and APRA.

Risk and Compliance teams may face significant challenges in securing management support for RS reporting due to reputational concerns. Some firms may be hesitant to report certain matters to ASIC if they believe that the publication of these details could result in reputational damage for the firm.

If a particular group of similar firms is reporting a certain level of breaches, this may also incentivise a firm with a materially different level of breaches to take a more conservative view on their levels of reportable situations so that they are not seen as an “outlier” compared to its peer group. A firm may seek to “compete” with their peers on metrics involving the published data, noting the likely undesirability of appearing to be an outlier on these metrics.

In addition, if a group of firms is reporting a relatively “low” level of breaches, this may have the effect of reducing levels of vigilance among some peer group firms, lulled into a false sense of security by an apparent absence of problems in a given sector.

All of the above can lead to firm-level data being presented to the public in a way that is misleading. This could cause confusion, unnecessary wasting of time and resources of stakeholders and even lead to an increase in the risk of unwarranted litigation (including class actions). The FSC submits that ASIC should accordingly be cautious about what is made public and how it is presented.

Relatedly, the FSC notes that some licensees provide appropriate transparency concerning relevant breaches directly to clients under individual client agreements. Notifications of breaches may be communicated to clients through regular compliance letters, due diligence sessions, or upon client request. Disclosures of certain RS data only to impacted clients rather than via publicly accessible dashboards can be more appropriate in certain circumstances.

Format is not necessary to improve behaviour

CP 383 asserts that publishing firm-level data will allow firms to target their efforts to improve their compliance and consumer outcomes in relation to RS and IDR.

The FSC submits that making this data public is not necessary to enable firms to do this. If the data is made available to industry without being made available to the public, this would still provide firms with the same information. Firms will still be able to target efforts to improve their compliance outcomes, consumer outcomes and firm performance if they are provided with firm-level and industry-level data without it being made available to the public. Conversely, by making the data public it is likely that, in addition to the concerns voiced in the previous section, many firms will focus scarce resources on the messaging of this information to the public and minimising the potential adverse media reporting and reputational impacts that publication may lead to. Diverting limited compliance resources away from other more productive tasks (such as customer remediation of a reported breach or identification of other breaches) would negatively impact consumers.

Relevantly, the FSC notes that in ASIC Report 800 Insights from the reportable situations regime: June 2023 to June 2024 released in October 2024, ASIC provides statistics that show 13% of the AFS licensee population lodged a breach report and 4% of credit licensees lodged a breach report. It is difficult to see how naming firms who lodge reports, will incentivise the majority of licensees who have never reported to improve their compliance and consumer outcomes.

Format is too complex for consumers

The proposed dashboards contain a large number of data elements. Yet many of these proposed data elements are not useful or helpful to consumers and instead are likely to confuse them. For example, information that identifies a particular legislative provision, rule or element of ASIC regulatory guidance may be of interest to regulators but is of no practical benefit or not likely to be meaningful to consumers. Furthermore, it is only going to make the dashboard unnecessarily cluttered, complex and unwieldy. The FSC suggests the data elements mentioned in our reply to Table 2 below (Questions D1Q1 to Q3) should be removed for these reasons.

CP 383 notes that the dashboard is intended to be used by consumers. Where the target audience for certain data elements is not consumers, but rather industry participants, then it would seem logical that only industry participants are provided with such relevant data elements.

In its introduction to Table 1, CP 383 also recognises that publishing more granular information than has been proposed in CP 383 would make it more difficult for users to interpret the data and would reduce the readability and comparability of ASIC's data publication. The FSC submits, however, that the proposed suite of data elements is already too granular.

The proposal to include a glossary with definitions and explanations of the differences between certain data elements is a sensible idea but care must be taken so that it is not unnecessarily long and unduly focussed on technical issues that are not of interest to consumers. For example, CP 383 suggests that it may include the difference between number of RS reports submitted

and the number of reportable situations reported – the FSC submits that the number of reportable situations is a particularly difficult technical issue (see below) that is only likely to confuse consumers and should not be included as a data element at all.

Risk of inappropriate manipulation of data

A difficulty we have at this stage in commenting on ASIC’s proposal is understanding how the published data will be formatted and how it may be filtered, manipulated and compared.

As an example, CP 383 [50] and [51] appear to state that ASIC proposes to publish data at a “firm level” only and not at an “RS report” level. However, ASIC’s comments, e.g., at RS-DE 2.5 refer to ASIC proposing to publish a breakdown of “data elements by significance reason to allow users to identify why the report was required” which is unclear – it could be read to suggest ASIC is open to users filtering and manipulating data down to the RS report level. (Similar comments by ASIC are contained in respect of other data elements suggesting users will be able to understand the nature of “the breach” (our underlining), e.g., at RS-DE 2.7 and 2.8.).

The FSC would not support ASIC publishing any data in a dashboard which, whether with filtering or without, allows users to obtain information about individual RS reports. That is for reasons including (a) those articulated by ASIC at CP 383 [51], (b) information at a RS report level, whether because of filtering or otherwise, may be misleading or confusing for users without that information being accompanied by important contextual information of the specific kind that would typically accompany a letter to the customer about a remediation. For example, a person who holds a particular product may, with RS report specific information, form the view they are entitled to compensation in respect of a breach relating to that product when they are not. Persons affected by a breach may also form the view they are entitled to compensation on the basis there is a positive compensation amount payable for the entire group of affected persons when they are not.

The FSC expects this will be of special concern for a licensee who has reported a smaller number of breaches and, for that reason, information about those breaches is easier to filter down to the RS report level and there is a heightened risk of confidential corporate or customer information being discernible from individual RS report data.

Risk of misleading comparisons across licensees

CP 383 does not state whether the dashboards will have a function to allow for comparisons to be made across licensees. If the dashboards will have that function, noting ASIC’s comments at CP 383 [29(c)], the FSC is concerned that licensees’ published data may be different among licensees such that comparisons are not “apples with apples”. For example, RS reports are required to be made when there are “reasonable grounds for believing” there has been a relevant breach of law. But licensees take different approaches to when that threshold has been crossed. Similarly, licensees take different approaches to when breaches result in “material” loss within the meaning of s912D(4)(d) of the Corporations Act or when breaches are “significant” as assessed through s912D(5) of the Corporations Act. We accept that a consequence of any dashboard publishing data “at a firm level” will be that a user can consider one licensee and then consider a second licensee, in effect comparing the two. However, the FSC would not support the dashboard itself having a function allowing for comparisons because of the inherently problematic

nature of a comparison between two licensees which make RS reports using different approaches, as the dashboard would, in effect, suggest an accurate comparison can be made.

Relatedly, if the dashboards do not include licensees which have not lodged RS reports or reported IDR data (we think they should include them - see our comments below), we expect users of the dashboards will struggle to make comparisons whether or not those dashboards have a comparison function.

Risk of double counting or under counting

CP 383 [30] states that ASIC is proposing to publish data about RS reports lodged with both ASIC and APRA, the APRA reports apparently included to pick up those reports which would otherwise have been lodged with ASIC were it not for s912DAA(5) of the Corporations Act. In practice, we understand firms may in fact report to both ASIC and APRA even where, because of that section, a RS report lodged with APRA is taken to have been lodged with ASIC (as, in our experience, ASIC prefers reports to be lodged in the form used by ASIC). We are concerned to ensure such “additional” RS reports lodged with ASIC are not counted twice in the data published by ASIC (i.e. as a report lodged with APRA and as a separate report lodged with ASIC). Similarly, we are concerned to ensure that licensees which lodge RS reports only with APRA (as contemplated by s912DAA(5)) have those RS reports included in the data published by ASIC (as contemplated by CP 383 [30]). Were those reports not included in the published data, licensees which provide those additional reports to ASIC would be unfairly disadvantaged.

Data quality concerns

CP 383 notes that the RS and IDR data is to be published as it is reported to ASIC and that ASIC will not take steps to confirm or verify its accuracy prior to publication. ASIC has also stated its intention not to confirm or verify firms’ failure to submit reports. This underscores the concerns we’ve raised above about the utility for consumers of publicising this data.

ASIC notes that “we may, in exceptional circumstances, exclude data from the dashboards where we become aware that reports have been made in error”. It is not clear why it should only be in exceptional circumstances. It would seem sensible that where ASIC is aware of reports made in error, they should be excluded as a matter of course.

CP 383 also notes that some data elements are taken directly from questions in the prescribed form, “while others result from calculations involving multiple fields”. The risk of error is increased when calculations must be carried out. ASIC should provide further clarity as to the processes that will be adopted to reduce the risk of error during the calculation process.

Relatedly, CP 383 notes that ASIC is not required and does not intend to publish information about reportable situations involving gross negligence or serious fraud. However, if ASIC is to publish firm-level data, arguably it would be helpful for consumers to have this information available to them. It is not clear that there is a compelling rationale for leaving this type of information out simply because there is no requirement to include it.

Given the inherent flaws in the collection and publication of data outlined above, making it all public for general consumption by consumers may lead to misleading or incorrect information being relied on when it otherwise would not be. This could lead to

circumstances of consumer harm. It could also lead to unwarranted adverse publicity for the financial services industry more broadly.

Scam and privacy concerns

The RS and IDR dashboards should be reviewed to minimise the risk of information being used by bad actors to target certain demographics or firms. The FSC urges caution that the dashboard does not publish data elements that enable third parties to directly or indirectly identify certain vulnerable cohorts and exploit them through scams and other criminal activity.

In particular, the FSC has concerns that the IDR dashboard potentially risks breaching the privacy regulatory requirements that ASIC is subject to. Given that ASIC is obligated to publish a Privacy Impact Assessment Register (in accordance with Section 15 of the Privacy (Australian Government Agencies – Governance) APP Code 2017), it would be helpful for ASIC to articulate its consideration of its privacy obligations, noting that *Table 9: Complainant demographics* specifically indicates that the combination of fields being proposed for publishing could result in an individual being identified.

Additionally, references to foreign entities, especially where they are domiciled in jurisdictions with different privacy laws, could pose regulatory risks.

It is well known that Australians are facing a growing risk of scams and privacy breaches. The FSC is concerned that the proposed format releases too much information into the public domain.

Regulatory burden and costs may materially increase

The FSC anticipates that the proposed format of firm level reporting may lead to a material increase in the amount of time and resources some firms will need to dedicate to explaining granular reporting with their customers and other stakeholders. It is likely that a number of questions and comments about firm-level reporting will be posed by these stakeholders which will need to be appropriately dealt with. This will impact compliance and governance teams within firms at all levels, from customer facing staff through to senior management and potentially board level discussions. Some licensees will need to invest more resources, increasing the cost of providing financial services.

It is not clear that this increased regulatory burden will lead to material improvements in customer outcomes, particularly when many of the RS reports concern minor or technical breaches that do not result in consumer loss or damage. We note this would work against ASIC's stated aim of seeking to simplify regulatory requirements for regulated entities.

Format does not reflect international practice

Related to the increased regulatory burden and costs that will flow from the proposed format, the FSC is concerned that the proposal does not compare favorably against other jurisdictions.

We note that the level of public disclosure proposed by ASIC is inconsistent with the practices of other regulators internationally. To the best of our knowledge, no equivalent publication scheme exists in countries such as the United Kingdom and the United States and is not endorsed by the International Organisation of Securities Commissions (IOSCO).

Reputational concerns for Australian financial services industry

Because of the likelihood of the occurrence of the problems outlined above, the FSC expects that adverse media publicity will quickly follow the first iteration of public firm level reporting. This adverse media coverage will likely reflect badly on firms and other stakeholders including ASIC. Any misinterpretation of data could be amplified through incomplete media publicity.

For example, if a firm is exposed as having an unusually high level of RS reports or IDR complaints, questions may be posed as to what action ASIC has taken against that firm. Where comparisons are made across a number of years, these questions may be amplified as media seek to sensationalise any enforcement action (or lack thereof) taken by ASIC. This could lead to wider unfair comparisons made about the relevant firm as well as the financial services industry more broadly.

Similarly, if the dashboard enables bad actors to use the information published to identify and exploit vulnerable cohorts (see our comments above) it is difficult to avoid the conclusion that adverse media publicity will follow.

Recommendation - ASIC should adopt a phased implementation process including pilot testing of the dashboards

Given the above concerns, the FSC recommends that ASIC consider a phased implementation process so that problems with the data publication dashboard can be identified early and where practicable eliminated before the dashboard is made widely available for public consumption.

The FSC recommends that ASIC consider a phased implementation process so that problems with the data publication dashboard can be identified early and where practicable eliminated before the dashboard is made widely available for public consumption.

The FSC notes that there is no indication of a phased implementation for publishing this data and we suggest considering a phased approach. For example, the process could be separated into Phase 1 and Phase 2 as follows.

Phase 1: Implement a trial basis for transparent reporting to be made available to licensees only. This will allow licensees to understand what is being published and activate continuous improvement processes. Feedback can be gathered to refine the published information, ensuring it remains fit for purpose. This phase also allows licensees with a healthy transparent culture to leverage benchmarking data to drive better outcomes for consumers voluntarily.

Phase 1 may initially involve, for example, the publication of data across each sector in the financial services industry (e.g. banking, life insurance, superannuation, personal advice and others), rather than “firm level” data. This could involve a function of the dashboards to show aggregate and average data across each financial services sector. For example, if the dashboard can identify the total number of licensees in a sector, as well as the average number of breaches per licensee in that sector, we see that as likely being helpful for users.

The FSC suggests that the format adopted in Report 800 published in October 2024 could be the basis for a more incremental approach to providing specific licensee level detail.

Should ASIC be minded to publish “firm level” data, we suggest that data should initially be limited to a smaller number of key data elements, with the publication of additional data elements to occur later in accordance with ASIC’s experience using the dashboards, user feedback and industry consultation. We have made a number of suggestions below as to specific data elements that we think should be removed – if ASIC is minded to keep them then as a compromise we suggest that they at least be removed from the early iterations of any firm level reporting format until there has been sufficient experience with the operations of the dashboards.

Another option which ASIC may want to consider is making public firm-level data on an anonymised basis, at least in the initial stages of introducing the new format. While FSC appreciates that the provisions of section 912DAD Corporations Act as read alongside the accompanying explanatory memorandum contemplate the publication of “licensee-level” data, ASIC has discretion as to the contents and form of the publication and in our view is not strictly *required* to mention specific licensees by name.

Phase 2: After at least two cycles of publishing information and feedback from licensees, release the information to the public. This will help consumers make informed decisions about licensees’ handling of complaints and breaches.

This phased approach also should help manage potential scam and privacy risks as mentioned above.

The FSC is concerned that the proposed time frame of publishing RS data is unduly hasty and does not leave sufficient time to consult appropriately. Notably, it does not appear to facilitate a process to stress test the operations of the dashboards before they go “live”. We would be supportive of ASIC consulting with licensees more on the suggestions above – and in particular on the technical details of the proposed dashboards, including by allowing licensees to participate in a demonstration of their proposed functions. Pilot testing the dashboards would allow licensees to make any additional submissions before any wider publication of the dashboards (noting CP 383 page 5 states ASIC currently anticipates initial publication in September to December 2025). The relief that was proposed in CS16 (further relief in relation to misleading or deceptive conduct and civil penalty provisions) should also be implemented before making firm-level information publicly available.

Points for clarification

“We are not proposing to publish information in free-text fields”

The CP proposes that ASIC will not publish information that is submitted in free-text fields.

The FSC requests that ASIC provide clarify in respect of the following two issues:

- How will the ‘Other – free text field’ responses be reflected in the dashboard. For e.g. When you select ‘Other’ in response to the question “What triggered the investigation or made you aware of the matter?”, the licensee is required to specify the other trigger or regulator. Similarly, when you select ‘Other’ in response to the question “How was the rectification achieved or how do you intend to achieve the rectification?”, the licensee must provide further details.

	<ul style="list-style-type: none">• In relation to the compensation fields, users of the dashboard will only have access to numbers/statistics without context which could be misleading. For example, unit pricing errors resulting in a breach of the Fund constitution – compensation is not paid where the 30bps threshold is not met, and the rationale for this would be found in the description (free text field).
B2Q1 Do you have any comments on this proposal?	<p>As a general matter we support making some data available for download, provided it does not lead to outcomes that are contrary to the intention of the overall framework or other unintended consequences. For example, we would not support the published data being made available to be downloaded which could be manipulated to obtain information about individual RS reports. That is for the same reasons as set out in response to B1Q1 above.</p>

B3Q1 Do you have any comments about ASIC using explanatory notes and contextual statements to assist in the interpretation of the data elements?

Explanatory statements and contextual statements may cause confusion

The FSC agrees that there can be merit in adding contextual statements and explanatory statements. However, they should be treated with caution as they will not always assist the consumer. Ultimately while they can draw attention to interpretation problems, they may not show the consumer how best to deal with them.

The inherent problem with several data elements is that they are not necessarily determinative of positive or negative circumstances or behaviour. Thus consumers are likely to be confused by these data elements and not find them helpful. Explanatory or contextual statements will not always help.

For example, a statement that “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” is problematic and potentially confusing for a consumer as they are unlikely to know what they should do with the data. Should they treat a given firm with high RS reports with more caution because it probably has more dissatisfied customers? Or should they be more willing to do business with that same firm because it probably has strong compliance systems? The same data element can lead customers to two diametrically opposite conclusions. If the objective is to assist consumers and prevent harm it is not clear how the data or accompanying statement would achieve this.

Similarly, a statement that “no submissions for a firm does not necessarily indicate that there are no reportable situations or complaints” leaves the consumer in doubt as to how to interpret this data element. Should the consumer be more confident in a firm that has made no submissions? Or less confident? Or not place any reliance on this data – in which case it is not clear what is the purpose of providing this data to the consumer in the first place.

Given this, it is doubtful whether providing explanatory notes and contextual statements will always help users understand and interpret the data and improve its readability and comparability. In particular, they would not for example be sufficient to avoid the concern we have that the publication of RS report specific information might be misleading or confusing to users. We also do not think that a general statement about the differences among the size of licensees would be sufficient to avoid the concern that publishing data without information about the size of licensees will be misleading or confusing to users.

We have set out below some suggested additions.

B3Q2 Are there any other types of explanatory statements we should also publish, or particular issues that they should cover? If so, what are they?

Breach severity: explain that the number of reported breaches does not necessarily reflect the severity of the breach (e.g. sending a notice a day late might have practically no impact on the customers but could impact a lot of customers and be reportable. Whereas a single breach of a different provision impacting only one customer might have more severe consequences). There are no materiality thresholds built into the current reporting regime. Most reported breaches are minor. Yet customers will not understand this if the data is not properly explained.

Reasonable grounds: Our reporting obligation arises where “there are reasonable grounds to believe that a reportable situation [i.e. a breach] has arisen”. Certain provisions may not be applied consistently across different entities, and different entities may arrive at different conclusions depending on the complexity of the matter and the information available. Only a court will be able

	<p>to determine whether a breach has actually occurred. An explanatory statement along the following lines should be included to reflect this inconsistency in reporting: “This data is based on the subjective assessments of licensees and may not be determinative of whether an actual breach has occurred.”</p> <p>Accuracy of data: include a statement that ASIC does not take steps to confirm or verify the accuracy of the data submitted by licensees (or to confirm or verify licensees’ failure to submit reports) for the purpose of data publication.</p> <p>Comparisons: if the published data will not allow for filtering at the “fund” level or the “product” level (as suggested below), explanatory notes and contextual statements may be necessary to explain to users that any data they review may not allow for “apples with apples” comparisons. For example, published data about a company which operates a “trustee for hire” business model, would have limited utility insofar as it may relate to a fund or funds other than the specific user’s fund (including because each of those funds may be administered by a different administrator).</p> <p>Remediations and compensation: insofar as ASIC proposes to publish data about remediations and compensations, we think there should be explanatory notes and contextual statements clarifying that, for remediations involving third parties (e.g. a trustee’s remediation involving an advice licensee) time taken to remediate and compensate depend, in part, on that third party. Without the full context, this could be misleading. That is, remediation and compensation paid without the context of revenue earned could appear high. It would also be misleading to the extent it does not show consumers where PI insurance applied, especially where large values apply. It may cause consumers to doubt the financial stability of the firm.</p>
<p>B4Q1 Do you have any suggestions on potential features that ASIC should consider in future? Please provide details, including the benefits that suggested features would provide.</p>	

Table 2: RS response table (feedback questions D1Q1 to D1Q3)

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons why the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
RS-DE1.6	Licence to which the breach relates		We do not think this data point will be meaningful for consumers.	
RS-DE1.7	Who committed the breach (the licensee or representative)		<p>We do not think this data point will be meaningful for consumers. In addition, the inclusion of breaches by a licensee's representative/s may lead to significant counting where:</p> <ul style="list-style-type: none"> - a representative acts on behalf of a number of licensees (who will have either co-reported or individually reported the same breach); or - the representative also holds its own AFSL (in addition to acting as a representative of another licensee) in which case both licensees need to report the breach in line with paragraph RG78.28 	

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons why the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
RS-DE1.8	Reports submitted on behalf of more than one related licensee	<p>First, how will this information be reflected in the dashboard. For example, customers impacted – if 10 clients are reported as having been impacted in a report submitted by licensee A on behalf of licensee B, and 6 client impacts relate to licensee A and 4 relate to licensee B, will the number of clients impacted be reported as 10 against both licensee A and B.</p> <p>Second, why does this field refer to reports submitted on behalf of more than one <i>related</i> licensee as that doesn't correctly reflect the question in the ASIC portal. The portal asks whether the report is being submitted on behalf of more than one licensee - there's no reference to the licensees being related. It is not clear how ASIC intends to distinguish between reports that are made on behalf of related licensees from those that are made on behalf of unrelated licensees.</p>		

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons why the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
RS-DE 2.6	Significance reason		We do not think this data point will be meaningful for consumers.	No.

RS-DE2.7	Core obligation provision		This is unlikely to be useful given it will have limited meaning to consumers. If this is to be included, then a description of the provisions should also accompany it (however, this may add unnecessary complexity to the dashboard). This is also relevant to publication of Act or Rule breached.
RS-DE2.8	Act or Rule breached		We do not think this data point will be meaningful for consumers.
RS-DE 3.1	Customers impacted	Where a report is currently unable to confirm final numbers/dates/amounts for the above ASIC will take the estimated values. We do not think this is a good approach as estimated values can often be very different from the actual values. Also, different firms will take different approaches to estimates and this will make meaningful comparisons between firms all the more difficult.	<p>If ASIC publishes this data using estimates it will likely not be accurate and therefore misleading; also consumers will not have a clear indication of what proportion of the values of each of these data elements are based on estimated values and not actual values. We propose that ASIC only publish actual values, i.e., where reports confirm final values.</p> <p>Furthermore, when aggregated, this data point will not be meaningful for consumers.</p>

RS-DE 3.2	Customer financial loss	Where a report is currently unable to confirm final numbers/dates/amounts for the above ASIC will take the estimated values. We do not think this is a good approach as estimated values can often be very different from the actual values.	If ASIC publish this data using estimates it will likely not be accurate and therefore misleading; also consumers will not have a clear indication of what proportion of the values of each of these data elements are based on estimated values and not actual values. We propose that ASIC only publish actual values, i.e., where reports confirm final values.
RS-DE 3.3	Number of instances		We do not think this data point will be meaningful for consumers. We understand that this metric is being interpreted differently by industry. ASIC has previously provided guidance on these fields noting the difficulty in having consensus from industry as to how to interpret these fields. This is leading to under/over reporting depending on interpretation and further adds to complexity for the end consumer. ASIC can still publish data on magnitude/materiality of reportable situations through other data fields collected e.g. member impact, duration of breach which is less open to subjective interpretation.

RS – DE 3.4	Number of reportable situations	<p>The FSC suggests that this data element should <u>not</u> be published until consistency is achieved. ASIC has previously acknowledged in their September 2022 Discussion Paper on Reportable Situations:</p> <ul style="list-style-type: none"> ▪ licensees have adopted a variety of interpretations to responding to this question, and using Example 2 in the Discussion Paper, responses may range from 1 to 100,000 which is vastly different; ▪ achieving consistency would require ASIC to provide licensees with guidance (which has <u>not</u> occurred); and ▪ ASIC said it relies on other questions for meaningful measures of the magnitude of the customer impact (for example, questions about the number of clients impacted, and the amount of financial loss). ASIC also considers the magnitude of the breach can more effectively be ascertained using the concept of ‘instances’. <p>If this data element were to be included, ASIC should publish context or an explanation acknowledging the various interpretations adopted by licensees and this data element should be read in conjunction with number of instances and number of clients impacted.</p> <p>Importantly, we note there are deemed significant provisions that drive notification of reportable situations to ASIC. These matters are technical in nature and can have no impact on the consumer.</p>
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			Where the licensee is diligent in committing to better practices by articulating more granular requirements within the Compliance Plan or the relevant Scheme Constitution for the MIS, the licensee may have inflated numbers of reportable situations, which would be confusing to the consumer who would normally associate higher numbers of reported breaches with poorer providers of financial services.
RS-DE 3.5	Reports that have impacted the firm's ability to provide services under its licence		<p>We do not think this data point will be meaningful for consumers.</p> <p>The data may lead to an alarmist response from the audience as to the true nature of the information in the context of the breach report it relates to.</p>
RS-DE 4.1 and RS-DE 4.3	<p>Time taken to identify and commence investigation into breaches</p> <p>Time taken from discovery of the breach to the start of the investigation</p>	At face value these two fields seem very similar and can lead to consumer confusion as to the differences. These fields should be included in ASIC's proposed glossary of definitions and explanations of the differences between certain data elements.	<p>"Time taken from discovery of the breach to the start of the investigation" should be removed as there is some overlap with the first element listed.</p> <p>Clients would be more concerned about how much time has passed from the date when the error occurred to when the investigation was started. Whereas it's likely that the time difference between "discovery" and the "start of the investigation" would have limited value to clients and can also be confusing.</p> <p>Given the limited value in this information, it would be best to remove this data element altogether as it is more likely to create confusion (particularly if the database covers a wide range of data points).</p>

RS-DE 4.4	Investigation timeframe	Where a report is currently unable to confirm final numbers/dates/amounts for the above ASIC will take the estimated values. We do not think this is a good approach as estimated values can often be very different from the actual values.	If ASIC publish this data using estimates it will likely not be accurate and therefore misleading; also consumers will not have a clear indication of what proportion of the values of each of these data elements are based on estimated values and not actual values. We propose that ASIC only publish actual values, i.e., where reports confirm final values.
RS-DE 4.5	Investigation trigger		<p>We do not think this data point will be meaningful for consumers.</p> <p>Potential concerns with publishing the existence of whistle-blowers.</p>
RS-DE4.7	Number of complaints associate with a report		<p>This data element is likely to mislead consumers. The number is often lower than what would normally be experienced by the licensee when reportable situations are notified to ASIC in a timely manner. The focus of the notification process is on the details of the breach, and therefore the portal does not enable licensees to amend this detail when the final submission is made. The reality of reportable situations that are more complex and pervasive in nature to the licensee is that most complaints are received later or as a result of undertaking rushed or poorly conceived remediation actions.</p>

RS-DE 5.1	Time taken to complete compensation	Where a report is currently unable to confirm final numbers/dates/amounts for the above ASIC will take the estimated values. We do not think this is a good approach as estimated values can often be very different from the actual values.	If ASIC publish this data using estimates it will likely not be accurate and therefore misleading; also consumers will not have a clear indication of what proportion of the values of each of these data elements are based on estimated values and not actual values. We propose that ASIC only publish actual values, i.e., where reports confirm final values.
RS-DE 5.4	Compensation status		This data element requires context without which it is likely to leave the consumer with a misleading impression. The priority to provide timely notifications to ASIC often results in impacted clients not having compensation to address the adverse financial impact. A significant number of reportable situations would therefore be noted as 'Started' or 'Intended but not yet initiated'. Consumers not realizing this context could incorrectly regard licensees with large numbers of unfinished compensation as poorer providers of financial services than a licensee with more complete compensation processes. The reality is that executing compensation is a complex process involving the drafting, issuance, and coordination of communications with affected consumers. It may also lead to licensees taking longer to complete notification of reportable situations to avoid this risk.
RS-DE 5.5	Remediation arrangement		The data lacks utility without context as to the type of breach it relates to. Otherwise it is simply a reference to the type of remediation response employed by the firm during the reporting period which will appear generic in nature.

RS-DE 6.1	Time taken to complete rectification	Where a report is currently unable to confirm final numbers/dates/amounts for the above ASIC will take the estimated values. We do not think this is a good approach as estimated values can often be very different from the actual values.	If ASIC publish this data using estimates it will likely not be accurate and therefore misleading; also consumers will not have a clear indication of what proportion of the values of each of these data elements are based on estimated values and not actual values. We propose that ASIC only publish actual values, i.e., where reports confirm final values.
RS-De 6.2	Rectification method		The data lacks utility without context of the type of breach it relates to. Otherwise it is simply a reference to the type of rectification method employed by the firm during the reporting period which will appear generic in nature.
RS-De 6.3	Rectification status		The data lacks utility without context of the type of breach it relates to. Otherwise it is simply a reference to the type of rectification status employed by the firm during the reporting period which will appear generic in nature.

Table 3: RS response table—Additional elements that you think should be published (feedback question D1Q4)

Data element	Please provide detailed reasons why the data element should be published
Nil RS reporting	<p>CP 383 [56] and IDR-DE 3.2 state that, for the proposed IDR data to be published, “[i]f there are no complaints for which a financial firm is required to give ASIC IDR information for a reporting period, the firm must give ASIC a confirmation that it did not have any complaints for that reporting period, or a ‘nil submission’”. We would support this requirement and ASIC’s proposed publication of this data element. In relation to RS reports data, CP 383 does not appear to make a similar proposal. We think the published data should include licensees which do not lodge any RS reports by noting the licensee did not lodge any RS report in the relevant period. We think that visibility is useful for users of the RS dashboard to have, particularly when most likely some of these firms that do not lodge any RS reports do have breaches to report. Consumers may believe the omission of a licensee means they are better. This could lead to increased potentially of consumers selecting firms who do not have robust compliance monitoring, or worse - unlicensed providers. The risk of consumer confusion increases when broader context is omitted. For example, number of advisers operating under the license, total number of clients advised under a license.</p>
Date firm became subject to reporting requirements	<p>Similarly, the dashboards would benefit from including information about the date the licensee obtained its AFSL and became subject to the requirements to lodge RS reports and IDR information. Without that information, new licensees may appear to have lodged fewer RS reports and have few IDR complaints than they would in a full year.</p>

Data element	Please provide detailed reasons why the data element should be published
Size	<p>This comment relates to differences among sizes of licensees. Based on ASIC Report 800, the FSC expects larger licensees (with greater numbers of customers, products and transactions) to have higher numbers of RS reports and IDR complaints. CP 383 [26] states that in the initial publication of RS report data ASIC does not propose to include “information to classify the size” of the licensee, with CP 383 [87] noting that for benchmarking their IDR performance against other licensees complaint volumes “relative to firm size” was one of the most useful elements of the data. Moreover, AFCA publishes EDR data with reference to the licensee size (“very large”, “large”, “medium”, “small”, “very small” or “unknown”). We are concerned that publishing data without information about the size of licensees will be misleading or confusing to users. We think the size of licensees is a critically important contextual data point for any publication of RS and IDR data and, without that information, published RS and IDR data would lack meaning. An unintended consequence of not including that information is likely to be, in our view, a potential customer choosing a licensee with disproportionate emphasis on the number of RS reports or IDR complaints identified in the dashboards, without appreciating (a) the correlation that scale is expected to generate higher numbers of RS reports and IDR complaints and (b) the benefits of scale (including in relation to risk management practices). We note that in the explanatory memorandum [11.121] it was suggested that additional publication could include ‘the number of breaches compared to the size, activity or volume of the licensee’s business’.</p> <p>In respect of “size”, ASIC may wish to consider various options. One option would be to adopt the model used by AFCA (as explained above). Another option would be to publish data about each licensees’ number of customers or by revenue (as ASIC does in “Report 800 - Insights from the reportable situations regime: July 2023 to June 2024” based on Form FS70 lodgements), either of those numbers being a suitable proxy in our view for licensee size. Another option, which is different to the first two options, would be not to publish “absolute” data but publish “relative” data. In this option, the licensees’ RS reports and complaints data would be published, for example, by number of customers (e.g. RS reports/complaints per 10,000 customers).</p>
Trustee funds and products	<p>For licensees which are trustees, we would support a function of the dashboards which allowed filtering by licensees’ “funds” and those funds’ “products”, where ASIC holds this data. We see that as likely being helpful for users.</p>
Filtering by period	<p>Going forward, when future years’ data is published, query whether ASIC proposes the dashboards will allow for filtering by period.</p>

Table 4: IDR response table (feedback questions E1Q1 to E1Q3)

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 3.1	Number of complaints	Care should be taken to avoid double counting. Some firms often get complaints that are not meant for them, but legally required to be referred to the correct licensee. Under the IDR Handbook they report these as “referred to another financial firm” in the Resolution Category of ‘Complaint Outcome’ in handbook. It would amount to double counting if they were to be included twice. An example is a complaint comes in to Firm A either directly from a complainant or from AFCA, and Firm A then forward it on to Firm B (the correct responsible party) with AFCA and the complainant’s knowledge. But Firm A would report the complaint to ASIC with outcome (referred to another firm). Firm B would also report the complaint with a different outcome.		

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 3.11	Complaint outcomes	The 8 pre-determined data elements may be difficult for consumers to determine whether the complaint was found in favour of the firm/business, customer or a negotiated outcome and risk causing confusion. This is important as it can indicate where the fault lays.		

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 3.12	Monetary remedies	<p>CP 383 notes at paragraph 60 that an individual complaint can cover up to three product, issue and outcome categories and “there is no implied order or link between the products, issues and outcomes. Rather, all data elements recorded are taken to relate to the complaint as a whole. For example, a firm reports a complaint that is about two products, a credit card and a personal transaction account, and the complaint outcome is a monetary remedy. The monetary remedy outcome is taken to relate to both products, not one or the other”.</p> <p>This may mean there is a potential over reporting of monetary remedies through the dashboard and again may cause confusion.</p>		