

14 May 2025

RS and IDR Data Publication Project Team  
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Dear RS and IDR Data Publication Project Team,

The Financial Advice Association of Australia<sup>1</sup> (FAAA) welcomes the opportunity to provide feedback on ASIC's proposed publication of IDR and reportable situations (RS) data, as set out in CP383.

This submission includes feedback on ASIC's proposed methodologies for the publication of IDR and RS data, however we note CP383 states that this proposal is "only an indication of the approach [ASIC] may take to the publication of data .... and not [ASIC's] final approach".

The FAAA is concerned that the CP383 approach is extremely unclear and that in the absence of greater certainty as to what the Regulator is proposing, we do not believe the proposal for IDR and RS data publication, as set out in CP383, is ready for implementation. In the absence of an example that clearly demonstrates how the data will be presented, it is extremely difficult to appreciate what is being proposed. We recommend ASIC consider conducting roundtables with industry and potential end users with demonstrations of 'mock' publications, to seek further input to ensure the final product meets the needs of end users. Consumer needs and understanding must be the focus of any public-facing data publication, however it is unclear to us who ASIC considers as the target audience and what their information needs are. Consideration must also be given to how people without a financial services compliance background, including the media, may interpret and use this information.

We are concerned that ASIC's anticipated initial publication of dashboards providing firm-level RS and IDR data is stated as September – December 2025 and suggest that ensuring any data publication is fit-for-purpose must be the priority over and above meeting this proposed timeframe.

The FAAA and our members are also concerned about the lack of information about the initial and ongoing costs of the Regulator's data publication project, given these will most likely be imposed on financial advisers

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<sup>1</sup> The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

and other financial services industry participants via the ASIC Levy. Any spend on this functionality should be cognisant of the value that it will generate for users, and this is not particularly evident to us at this stage.

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

Yours sincerely

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General Manager Policy, Advocacy and Standards  
Financial Advice Association of Australia

# **CP 383: Publication of firm-level IDR and RS data**

Effective date: 14/05/2025

Submitted to: ASIC



## Data publication target user

It is unclear to the FAAA who the data publication is targeting.

CP383 suggests the publication will assist licensees to identify areas where substantial numbers of significant breaches and IDR complaints are occurring and allow firms to target their efforts to improve their compliance and consumer outcomes in those areas. This ignores the fact that firms already have this data as it is information each firm is legally obliged to collect and provide to ASIC.

It is also suggested that the publication of IDR and RS data will enhance accountability and transparency, to provide an incentive for improved behaviour. This ignores the fact that ASIC also has this data for regulatory oversight purposes, which provides appropriate incentives for firms to improve in any areas that may be lacking. Equally, it ignores the complexity of the RS reporting regime and the issues with the IDR complaint thresholds, which create significant variability in the data collected by firms and confusion around the obligations, and arguably discourages compliance.

The FAAA recommend that licensees should not be the targeted end users of the data publication; and that the publication should not be used as a 'name and shame' tool to 'incentivise good behaviour'. This approach will likely just disadvantage firms that are doing the right thing. We would also question the prospect of this data being used for competitive marketing purposes, given the reality that it is not particularly reliable in terms of the underlying message. We are also concerned that it could be used to target the clients of licensees who demonstrate higher numbers of complaints and reportable situations and generate inappropriate concern and confusion.

We strongly believe that any public-facing publication of data must consider consumers as the true end user of the information; and that the approach taken to publish such data must focus on the needs of the consumer and not the detailed data that is captured via the ASIC Portal or regulatory oversight of firms.

To be able to consider the CP383 proposal based on how it will work in practice, it is critical to understand the publication in the context of the targeted end user. It is unclear whether ASIC has undertaken consumer research to determine the following matters, for example:

- Who is/will be the real end user – retail and wholesale consumers? (ie not licensees).
- What are their needs?
- Why would a consumer use the publication?
- What information is a consumer wanting to find out about a firm?
- How will a consumer understand and use information published about a firm?
- How will a consumer interact with the data publication?
- What should the publication look like to the consumer?

We suggest that a large percentage of the data reported to ASIC by licensees will have little meaning for consumers and may in fact serve to confuse consumers and lead to misinterpretation of the data that could disadvantage firms. Data publication should be very selective and serve to fill a consumer need as stated by consumers, not as assumed would be helpful based on the depth of data that is available. Without a clear example of what the proposed publication would look like and how it would work for a consumer, there is too much data proposed for publication for consumers to make sense of. There is an excessive level of detail proposed for publication that will not assist consumers.

It would be helpful to understand ASIC's analysis in regard to the kinds of data consumers are looking for about firms.

### **Data complexity and inconsistency**

The RS regime is extremely complex and requires firms to seek legal advice to meet their reporting obligations, the expense of which in some cases may discourage firms from complying with the full requirements. ASIC's overlay on the IDR obligations in the law has created very low thresholds for complaints reporting that captures matters resolved on the spot, including misunderstandings.

These are complex issues with the RS and IDR reporting regimes that have led to vast variations and inconsistencies in the data provided to ASIC. Until these underlying issues with both the IDR and RS reporting regimes are resolved, there is a risk that the publication of such data will disadvantage firms that are doing the right thing, including being more risk averse, and deliver little benefit for consumers.

The RS requirements must be amended to remove some of the reporting obligations (See below for recommendations regarding IDR data inputs). We are conscious that ASIC is proposing changes to the reportable situations regime that will reduce the number of matters that need to be reported and we question how this will be taken into account in terms of reporting historical data.

### **Project costs**

ASIC operates under the government's cost recovery model for government agencies and as such must consider the impact of its expenditure on its regulated population versus the likely benefits.

Given the proposed data publication project covers a large percentage of ASIC's regulated population, and such costs will likely be recovered via ASIC's Industry Funding Levy, it would be reasonable for the estimated costs of this project to be released as part of the consultation process.

The Australian Government Cost Recovery Policy<sup>2</sup> (CRP) includes a requirement that government entities must consider as part of their cost recovery and policy program the impact of cost recovery on competition, innovation or the financial viability of those who may need to pay charges and the cumulative effect of other government activities. The CRP principle of 'efficiency and effectiveness' requires government to make "proper use of available resources (people, money and other supplies) to achieve government policy outcomes. Government activities should meet quantity, quality and other targets, be undertaken at minimum cost, and be conducted in accordance with applicable policy and legislative requirements".

Further consultation is necessary to ensure any public-facing publication of IDR and RS data delivers quality for consumers in an efficient, competition-neutral manner for ASIC's regulated population.

### **ASIC's scope of publication and comparability and integrity of data**

CP383 includes ASIC's considerations for determining the scope of the data publication. This includes improving firms' IDR and RS reporting practices and identifying 'potential outliers' (CP383.29).

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<sup>2</sup> <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/australian-government-cost-recovery-policy>

History indicates that ‘outliers’ commonly do not report failings to ASIC, while licensees who are doing the right thing continue to meet their reporting obligations. Some may even be over-reporting in order to be certain that they are complying with their obligations. Because of this, the publication of IDR and RS data risks stimulating under-reporting of ‘outliers’ while potentially ostracising compliant licensees in the process.

As stated by ASIC, those with more IDR and RS reports may just have better compliance systems that can effectively identify and record non-compliance or consumer dissatisfaction. Relying on such data to “identify potential outliers” as suggested in ASIC’s considerations for the scope of the data publication, seems counter-productive and risks publicly shaming those who are doing the right thing.

The reporting obligations for the IDR and RS regimes requires a significant amount of detailed data to be collected and submitted to ASIC. Given the amount of information collected by ASIC, we are concerned about the potential for the ‘over-publication’ of data that is of little use to consumers. As discussed below, we are concerned about the granular nature of some of the data proposed for publication.

For example, it is proposed that 39 RS data items be published on each firm. This is excessive and will likely serve to overwhelm and confuse consumers. It is also unclear as to how this large amount of data will appear to consumers using the publication – for instance, how will 1,000 RS reports for a very large licensee appear across 39 fields and how will this amount of data help a consumer?

There is a risk of overloading consumers with too much technical data that may have solid compliance and regulatory relevance, but has little meaning for consumers.

The scope of data publication should be driven by the need of consumers and appropriately filtered.

It is also important to appreciate that each reportable situations may be very different, and comparing them in terms of number of impacted clients or time to identify or time to resolve may be a meaningless exercise. The RS data does not take into account the complexity of each reportable situation. We are also very concerned that it is not proposed that the reporting will take into account the scale of each licensee. This could significantly compromise the message delivered to end users.

## Comparability

A key objective of the data publication is to enable comparability of financial products and services.

CP383 proposes that data will be published in an interactive dashboard that enables users to search and filter data to obtain insights, and:

“.... may allow filtering of data elements. For instance, users may be able to filter the number of RS reports by root cause, number of customers impacted by product and issue, or investigation timeframe by number of customers impacted.”<sup>3</sup>

However, it is unclear if users will be able to filter by product and services, or size of firm, for example. This filtering capability is critical to enable the comparison of ‘like with like’ across firms that provide the same

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<sup>3</sup> CP383.43

services and operate at the same or a similar scale. We suggest the AFCA Datacube is a good example of straightforward filtering based on clear and simple definitions, that improves comparability.

Subject to the resolution of other issues identified in this submission, the FAAA recommends that the data publication enable filtering by:

- Primary business
- Product and service
  - To at least tier 2 or 3 level data element description
  - For advice – professional personal advice, personal advice provided by superannuation funds, stockbroking and general advice
- Size of firm
- Name of firm
- Number of authorised representatives

We also recommend that stockbroking should be included as a stand-alone service.

To enable licensees to track comparable data between firms, licensees require real time access to the data through an API such as data.gov.au. This real time data should be able to be filtered to enable true comparisons of 'like' entities and facilitate greater interactivity between the dashboards.

## IDR data inputs

The concerns the FAAA has about the publication of IDR and RS data stem from the data inputs.

The IDR record keeping and reporting data requirements are reliant on an extremely broad and arguably subjective definition of complaint. ASIC has adopted the AS/NZS 10002:2014 definition of 'complaint' as:

*"[An expression] of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required."*

This means that a consumer is not required to expressly state the word 'complaint' or 'dispute', or put their complaint in writing, to trigger a financial firm's obligation to deal with a matter according to ASIC's IDR requirements. It also means the adviser/licensee must record 'expressions of dissatisfaction' even if the matter is resolved on the spot, such as a misunderstanding. The subjective nature of this definition, along with different business models and business processes, can result in firms capturing IDR data differently.

The following examples provided by FAAA members serve to illustrate this issue:

- A client leaves a message for an adviser. A day later the client calls again and makes a passing comment to the receptionist, in a light-hearted voice, that they are disappointed that the adviser hasn't returned their call yet. The adviser immediately calls the client, apologies, and assists the client with their enquiry. The client tells the adviser he was not upset and thanks the adviser for the call and is satisfied with the service.
- A client called an adviser on a Saturday wanting to ask a quick (non-urgent) question. While the client was initially dissatisfied the adviser did not return the call on the Saturday, they recognised it



was the weekend and were satisfied that the adviser called at the earliest opportunity when the adviser was back at work on Monday.

Both of these matters are arguably complaints that should have been recorded. If a client does not formally lodge a complaint, either verbally or in writing, advisers and licensee may interpret interactions with clients involving an element of dissatisfaction differently - some advisers may classify these as complaints, and others not. Financial service types that involve greater face to face interaction, such as financial advice, are more likely to experience conversations that could include elements that could be classified as complaints. Under the above examples, given the clients initially expressed that they were 'not satisfied', under the definition of complaint, these interactions should be recorded in the IDR register and reported in the licensee's data to ASIC.

Prior to the October 2021 changes to the Internal Dispute Resolution Regulatory Guide, complaints that were resolved within five days did not need to be recorded in the complaints register. This approach would better ensure that trivial, administrative matters, that were readily fixed, did not need to be reported and would not be viewed in the same context as more serious matters involving client detriment.

As indicated in ASIC's February 2025 Financial advice update, the Regulator found:

*"...variations in the volume of complaints reported by comparable firms as well as gaps in the IDR data. This indicates the data reported to ASIC may not fully reflect the complaints received by some firms. As a result, we are concerned that some firms are not reporting IDR data as accurately as is possible. Moreover, 5,035 firms declared no complaints to report for the full year. This number is higher than we expected."*<sup>4</sup>

This clearly shows that the Regulator has a concern about the consistency of the data input, resulting in unreliable and non-comparable data.

ASIC has made clear in CP383 that it does not and will not verify the IDR data provided by licensees. Given the issues with inconsistent reporting, the lack of an 'integrity check' of the data prior to publication will result in those who are doing the right thing and reporting to ASIC in line with the definition, appearing to have poor service based on the IDR data, compared to those who may be less compliant who may minimise their complaints reports.

This issue prevents the achievement of a primary objective of the publication of IDR data - to provide consumers with quality complaints data to allow them to compare licensee performance. It is also anti-competitive as it has the potential to promote the performance of one licensee over others, based on their subjective understanding of the reporting requirements.

Section 243C(1) of the ASIC Act states that ASIC *may* publish IDR data, including information given to ASIC under 912A(1)(g)(ii) of the Corporations Act. While this gives ASIC the power to publish IDR data, it also allows the Regulator to filter the IDR information it receives from firms, to ensure the publication is useful for readers of the publication and helps consumers make informed decisions, while not being anti-competitive.

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<sup>4</sup> <https://asic.gov.au/about-asic/news-centre/news-items/financial-advice-update-february-2025/>



To overcome data integrity issues and improve the comparability of licensee performance, the FAAA recommends:

- ASIC undertakes further investigations to determine if and why there is under-reporting of IDR data.
- ASIC clarify its guidance and instigate an education plan to improve consistency in IDR data reporting.
- to minimise the impact of inconsistency in IDR data reporting on comparability and firms that are doing the right thing, ASIC does not publish IDR data for the 2023/24 reporting periods, given the reporting regime was in its infancy during these timeframes.
- the commencement of the publication of the IDR data be delayed until ASIC has completed this work.

The FAAA also recommends the reporting and publication of IDR data be restricted to complaints that were unresolved for a set period of time, such as five business days, as per ASIC's previous approach to IDR record keeping:

“We recognise that applying this definition may result in increased administrative burdens and compliance costs in relation to capturing and maintaining records of minor expressions of dissatisfaction. Therefore, where a complaint or dispute (except for a complaint or dispute relating to hardship, a declined insurance claim, or the value of an insurance claim) is resolved to the customer's complete satisfaction *by the end of the fifth business day* after the complaint or dispute was received, you will not be required to apply the full IDR process—that is, to capture and record the complaint or dispute, as set out at Appendix 1 under ‘Section 8.1—Collection of information’.”<sup>5</sup>

## IDR reporting - prescribed form and ASIC portal

Critical to the publication of RS and IDR data is the ability of licensees to submit the required information. Firms are required to submit their IDR data using the prescribed form on the ASIC Portal. We have received the following feedback from members who have experienced significant difficulties in submitting data using these tools.

- Submitting data on nil IDR complaints is simple.
- ASIC templates are designed for any complaint for all types of licensees / firms that are required to report data. This has resulted in an extremely large number of fields and instructions, many of which are not relevant to financial advice licensees, particularly small licensees. There is a need for advice specific templates.
- The lodgement process is more suited to large licensees as they are more likely to have developed a program or macro digital process to automatically populate the required csv file, rather than manually entering complaints data in an on-line form. Such digital systems are expensive and potentially

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<sup>5</sup> RG165.80

uncommon for small licensees. Hence, it is likely that only large licensees are utilising ASIC's digital system for submitting IDR complaints data.

- For small licensees, populating the required csv file to submit data on a small number of complaints is a problematic and extremely time-consuming manual process. Often it takes several attempts to successfully lodge the csv file in the ASIC Portal. This unnecessarily takes significant time for what should be a simple, smooth process.
- The csv files include many rules on data format for each field, as well as for the logic between fields, which are difficult to understand and not always relevant to advice licensees.
- The csv format is not suited to a person reading or reviewing the data. Small licensees manually create an excel file and convert it to csv format, as required. Once converted, it is difficult to review the content in the csv file to check it is correct prior to submitting. For example, it is common for the csv file conversion to leave blank rows in the document, which are then detected by the automated ASIC data scan and identified as incorrect, resulting in the licensee's data lodgement being failed by the Regulator. If a data lodgement fails, ASIC provides an error file to help the licensee adjust the csv file for re-lodgement. Although it is helpful that this is provided, some licensees require assistance to understand the error file to be able to make the required corrections before re-lodgement.
- The ASIC guide on the data rules is lengthy and best suited to a program or macro digital process. Feedback suggests the current guide is not as simple, clear, or easy to follow for a person entering manual data.
- Some compliance providers have created guidance and templates to help small licensees, which is used instead of the ASIC guidance. However, given the data has to be lodged in the ASIC Portal, feedback suggests there are still errors even when using an industry produced advice specific guide.
- Some smaller licensees who must rely on manual data entry, have received multiple 'fail notifications' in relation to data reporting, requiring significant time to lodge the data even if it is for a small number of minor complaints. This demonstrates the significance and impact the current system can have on licensees.
- The reporting process is not conducted in 'real time', which restricts visibility of changes to the data as the firms are reporting it.

We note that ASIC has provided an excel template that can be downloaded and populated with data. However, the excel template, once completed, must still be converted into a csv file to enable ASIC to utilise its digital data scanning.

Given the ASIC system automatically notifies the licensee via a fail or successful email, the Regulator would likely have data on lodgement success rates and issues that cause lodgement failures. It would be interesting to understand the fail rate where the file has only 1 or 2 complaint entries (which would be typical for a small licensee). We would also welcome feedback from ASIC as to whether, after three rounds of lodging IDR reports, the issues with lodging IDR data have reduced and if the lodgement success rate is increasing.

It would be helpful if ASIC provided an on-line form that allows firms to manually populate the IDR report directly into the ASIC Portal. In this case, the rule could be displayed on each field and provide an immediate error for incorrect data entry. This would be in line with the online reporting system provided for reportable situations data.

## IDR reporting obligations – application to new licensee

Paragraph 16 of the IDR Handbook states:

*The IDR data reporting obligation for firms in each relevant tranche crystallises when the submission window closes. If a financial firm is a type of firm included in Table 1 when the submission window closes, then that financial firm must submit IDR reports to ASIC for the reporting period corresponding to that submission window. For example, if the reporting period is 1 July to 31 December 2023, the submission window will open on 1 January 2024 and close on 29 February 2024. If a financial firm will be a type of firm included in Table 1 as at 29 February 2024, then that financial firm must submit its IDR report to ASIC for the 1 July 2023 to 31 December 2023 reporting period, before the submission window closes.*

The effect of ASIC's view is that a new licensee is required to submit an IDR Report even though the licence may not have commenced until after the actual reporting period closed. Including the submission period in the reporting timeframe applies the IDR reporting obligations retrospectively to new licensees, even though the entity did not hold an active licence during the reporting period.

We seek clarity from ASIC regarding the provision in the primary legislation that the Regulator has relied upon to draw this conclusion.

The FAAA recommends the requirement to submit an IDR report should not apply to new licensees whose licence does not commence before the end of the reporting period.

## Language and terminology

CP383.56 states that "All data elements are drawn from and match the descriptions and definitions of the data elements in the IDR data dictionary in the IDR handbook, with a few exceptions." There is a significant number of definitions in the IDR handbook. AFCA also has defined terms in its Terms of Reference and a separate glossary for its complaints Datacube. In addition, there are specific definitions relied upon in the primary legislation and ASIC guidance for the RS regime.

For the intent of the publication obligations to be realised, care must be taken to ensure the language used to explain the reported data is consumer-friendly (not jargon), clear and simple.

For example, the proposal to publish, is limited to significant breaches and likely significant breaches of the core obligations under the RS obligations. Whether a breach is 'significant' is not determined by a layperson's subjective view of what may be significant to them, rather it is defined in the law.

We seek clarity as to how ASIC will reconcile these definitions to allow interactivity between the dashboards; and critically, develop terminology and explanations that are simple, clear and consistent for the end user of the publications.

## **RS data inputs and proposed elements**

The RS regime, including the reporting obligations apply to products and services provided to wholesale and retail clients. However, the 'notifying and remediating clients affected by reportable situations' provisions only apply when personal financial advice on relevant financial products has been provided to retail clients.

CP383 proposes to publish data on firms' remediation of consumers affected by RS breaches, even though this obligation only applies to personal advice providers with retail clients. This unfairly singles out the financial advice profession (the only group legally captured through this data) and could be interpreted by consumers as advice providers being the 'outliers' of the financial system.

We are also concerned about the granularity of the data proposed for publication. There is a significant amount of data required to be reported to ASIC for oversight purposes. We would argue that much of this data is not relevant to the end user of the proposed published data and may result in confusion. Tables 1 to 7 include a total of 39 possible fields that may be reported. In the absence of an example of the publication, it is difficult to see how this will be useful to the end consumer.

We support the RS reports being limited to significant or likely significant breaches of core obligations, as proposed in CP383.30. However, given there is no rationale provided for excluding serious fraud and gross negligence, we are confused as to why the most serious of RS matters would be excluded from the reporting regime and thus for consumers to be uninformed about.

CP383.33 states that the dashboards will not include data relating to firms who have not submitted any reports, or who have only submitted RS reports that are excluded from publication. While we support this approach, we are also concerned that this will promote under-reporting by potential 'outliers'.

## **RS reporting – prescribed form and ASIC Regulatory Portal**

The ASIC online reporting system for reportable situations data is a vastly improved system compared with IDR reporting process.

However, the following member feedback questions the usefulness of the RS data required to be reported:

- The large amount of questions takes significant time to answer.
- This is a point of frustration given much less information could be provided to ASIC to complete their assessment on whether they need to follow-up the licensee. For example, ASIC could initially require the reporting of information on:
  - number of clients impacted,
  - monetary value of client detriment, and
  - whether there is fraud or serious misconduct.
- Members question why the full data set is necessary, given there have been minimal incidents of ASIC contacting a licensee for further information or to initiate any action against the licensee. One compliance provider noted that, out of assistance they provided for 50 breach reports over the last 2

years, none of them resulted in ASIC contacting the licensee to request more information or to initiate any action against the licensee.

- The questions are often multi-choice options, with concerns raised about whether the options provided allow advice licensees to answer the questions completely or correctly. Improvements could be made to the questions to facilitate the provision of more accurate data.
- There are too many similar fields in the ASIC form making it unclear which breaches should be recorded in which fields. This has resulted in firms entering the data differently. There is a need for clearer guidance from ASIC as to how they should enter the RS data to ensure consistency.

There is a view that the RS information currently provided serves to populate an ASIC database with little consumer protection benefit or insights for the profession that will improve the quality of advice for clients. Given most licensees, particularly smaller licensees, seek assistance to navigate the legality of the obligations and the wording of the questions in the prescribed form to answer the questions correctly, and the cost of this external legal/compliance adds to the cost of advice for consumers, it is critical to ensure the data required to be reported is absolutely necessary for regulatory oversight and serves a consumer purpose.

ASIC should not just consider removing some reportable situations, but also consider whether a lesser data set can be collected for some reportable situations. Licensee feedback suggests the ASIC relief has not alleviated this issue.

ASIC should also seek continual feedback on the questions in the RS prescribed form and conduct ongoing analysis to progressively improve the data they collect. The inconsistency in RS reporting across licensees impacts the quality and accuracy of the data for publication.

The FAAA suggest there is scope for ASIC to collect less upfront data and recommend ASIC review the RS data reporting requirements and consider a two-staged approach to RS reporting – stage 1: initial data; and stage 2: further data if certain thresholds are reached in the initial data reporting process.

## Reporting by multi-functional entities

We seek clarity as to how the data will be published in relation to firms that provide multi-functional products and services to consumers. For example, a licensee that provides financial advice and MDA services to clients. We question the value of reporting this RS and IDR data for that licensee if it is not published separately – i.e. data related to the advice service, versus the MDA related-data is separately reported in the data.

This might be important to ensure searches for complaints or breaches by product/service type is accurate and not tainted by the fact that it is provided by multi-functional firms. For example, searches for financial advice related data results in IDR and RS data relevant to the provision of financial advice only and does not include data about other services and products provided by licensees.

The publication should make a clear distinction as to the products and services the data relates to for each firm, and allow users to filter the data as recommended above. This is particularly important for the reporting of data related to larger licensees who operate multiple business lines.

## RESPONSE TO ASIC CONSULTATION QUESTIONS

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

As stated above, we remain highly uncertain about the proposed format for data publication. We do not understand how this will work and how multiple reportable situations involving 39 separate fields can be reported as meaningful firm-level data.

In principle, and subject to our other concerns, FAAA supports the proposal to present RS and IDR data in two separate interactive dashboards with the aim of allowing users to view the data in various ways.

However, the IDR and RS (i.e. the remediation elements of the RS obligations) regimes are part of the broader consumer compensation framework, which includes AFCA and the CSLR. CP383.16 states: “The IDR data reporting framework is the culmination of many years of work with industry to record, improve and standardise the quality of dispute resolution data.” This indicates an aim to publicise standardised ‘end to end’ (i.e. IDR to EDR) dispute resolution data.

It is unclear if and how the ASIC proposal would align with AFCA’s comparative reporting of complaints data and any future publication of data from the CSLR, to ensure consistency for end users and enhance comparability across the entire compensation framework for users. We appreciate ASIC’s efforts and considerations to-date to align the AFCA and IDR reporting data, including those discussed in Report 693<sup>6</sup>. For example, “the types of issues that are escalated to AFCA are only a subset of the issues dealt with at IDR”.

While we note the challenges this presents, we suggest consideration be given to how this data, when published at a firm level, will be used by the end user, such as a consumer, to ensure it is understandable and meaningful. For example, not all the data required to be submitted to ASIC for IDR reporting purposes will be helpful for end users of published firm level data. Rather, it may confuse users and unfairly result in a mis-interpretation of the licensee’s performance.

To facilitate more accurate and useful meaning of the data for consumers, and in an effort to provide an end to end picture of complaints data, we suggest a consistent approach be considered in relation to key aspects, including:

- the definitions and explanations of data elements ASIC intends to use to assist users in understanding the data
- any mechanism that is ultimately used for determining the business size of each firm to aid comparability across firms. We note that ASIC have indicated that firm size will initially be excluded from the data publication. As discussed above, we consider firm size provides significant context for users, and filtering based on firm size is necessary for comparability.

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<sup>6</sup> REPORT 693: Response to submissions on ASIC’s internal dispute resolution data consultations

- product categories for firms – what are the categories for products and services, and how will ASIC determine which categories the firm and complaints belong to? As discussed above, product and services categories should go beyond the first tier level proposed in Attachment C of CP383.

Note 1 to paragraph 1 of CP383 states that the term ‘licensee’ is used in the paper in the context of the RS regime; while ‘firm’ is used in relation to IDR. While we understand the legal parameters for this distinction, given the proposal to present the RS and IDR data in separate dashboards that interact, we seek clarity as to how ASIC plans to reconcile this difference in this terminology (and other definitional differences) in a manner that allows appropriate interactivity between the dashboards.

We note the vast number of definitions included in the ASIC IDR Handbook. While we note that this Handbook is drafted as industry regulatory guidance and covers all licensees subject to the IDR regime, these definitions are drafted using a legal style, tone and language and we are concerned that this type of drafting will impact user understanding of critical definitions needed to explain the published data.

We also note ASIC’s IDR Insights Report 801 states: “We group the aggregate complaint counts into thematic categories based on the types of products and issues reported by the financial firms. We have not restricted the data in the thematic categories to data submitted by firms with a primary business in the category.” It is unclear, based upon the CP383 consultation, how the list of definitions in the Handbook, and the thematic categories used for the IDR industry reporting, will be consolidated for use as a consumer-friendly ‘glossary’ for firm-level data that allows comparability across the IDR/EDR framework; and to allow interactivity between the two dashboards. Our discussion above on comparability of data is also relevant to this issue.

Please see our response to B3Q1 below for related discussion.

## **B2Q1 Do you have any comments on this proposal?**

ASIC proposes to make some of the data available for download; and that data available for download will not be more granular or detailed than the data published in the dashboard.

The ability to download the data will likely be useful for users of the dashboards, as we have seen through the ASIC Financial Adviser Register.

Consideration should be given to implementation measures to:

- minimise the manipulation of downloaded data
- maintain the quality and context of the data to ensure its meaning is not lost once downloaded, and
- ensure key definitions and context statements are embedded in the downloaded data to maintain consistency in data meaning as much as possible.

It is unclear which data would, and would not, be available for download.



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

For the intent of the publication obligations to be realised, care must be taken to ensure the language used to explain the data is consumer-friendly (not jargon), clear and simple.

We provide the following feedback on specific explanatory notes and contextual statements as proposed in section B of CP383.

**B3(a)** proposes “a glossary with definitions and explanations of the differences between certain data elements (such as the difference between the number of RS reports submitted and the number of reportable situations reported)”. The wording of this proposal is unclear and is not consumer friendly.

For example, the proposal to publish ‘significant breaches’ and ‘likely significant breaches’ of the ‘core obligations’ and the number of ‘reportable situations reported’ are terms from the Act and would be unlikely to be known or understood by users of the publication, particularly consumer. Whether a breach is ‘significant’ is not determined by a layperson’s subjective view of what may be significant to them, rather it is defined in the law. The terms ‘reportable situations’ and ‘significant breach’ have very specific regulatory meaning but may confuse end users who may associate different meanings with such terms.

Terminology and explanations should be developed that are simple, clear and consistent for the end user of the publication, and accessible at individual data cells.

**B3(b)(i)** proposes the inclusion of: “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 that can effectively identify and record non-compliance or consumer dissatisfaction”. While we appreciate ASIC’s acknowledgement of the risk of data publication disadvantaging firms that are doing the right thing, we suggest more consideration is needed to overcome this issue prior to the publication of IDR and RS data.

As recommended above, ASIC must take the time to further investigate IDR and RS under-reporting issues and causes, improve the prescribed forms on the ASIC Portal for IDR and RS reporting, review the amount of data required to be reported to ensure the obligations are fit-for purpose, and improve industry understanding of the reporting obligations to improve consistency, relevance and comparability, prior to the publication of IDR or RS data.

If consumers are to be told not to rely upon this data, then what is the purpose of publishing it? If the reporting is not going to provide context on the relative size of different firms/licensees, then this is also going to risk misleading users of this data and impact its comparability. This is complex data and the meaning that is derived from it is important. Including these contextual statements is necessary given known issues with the data, however providing these contextual statements also undermines the data.

**B3(b)(ii)** proposes “a statement that no submissions for a firm does not necessarily indicate that there are no reportable situations or complaints”. While we acknowledge the intent of this statement is to educate users about the issue of reporting variances and potential under-reporting amongst licensees, as worded this statement may serve to undermine the credibility of the data.

**B3(b)(iii)** proposes “a statement that some breaches or likely breaches are still under investigation and information about them could change from year to year” however it is unclear who is the party investigating the matter – the licensee or ASIC. The investigating party goes to the heart of the seriousness of the breach and the action or inaction of the licensee. If it is the licensee investigation, as suggested in the example above, care must be taken to explain that some investigations are reliant upon information being provided by third parties, including government agencies, and can delay the completion of an investigation by a licensee.

ASIC intends to provide “appropriate explanatory notes and contextual statements [to] help users understand and interpret the data and improve its readability and comparability”. While we agree with this intention and the critical need for explanatory notes and statements to be included, there is also a risk that such notes won’t be read by users so data elements must be simple, clear, comparable and appropriate for public release. This also highlights the need to ensure explanatory statements remain embedded into appropriate fields in downloadable data spreadsheets.

A glossary and explanatory statements are necessary. However, given the highly technical and detailed nature of the data proposed for publication, and the number of data elements, we question whether a glossary and explanatory statements will make it easier for consumers or confuse them further.

We note the proposal to include disclaimers in the data publication. Again, while this is understandable, it will likely confuse consumers.

The status of open investigations, particularly amongst multiple reportable situations may be unnecessary detail, that will not be beneficial for users. As detailed below, we are concerned that the level of data proposed for publication is unnecessarily granular. The more detailed the data, the higher risk of misinterpretation and misunderstanding.

**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?**

The stated primary intent of the IDR and RS reporting regimes is to incentivise appropriate conduct and to improve regulatory oversight of the financial services industry.

In response to B3Q1 and B4Q1, as discussed above, we recommend that classifying the size and product/service of the firm is critical for comparability. This should include the ability for the user to filter the data by firm size.

We seek clarity as to whether the data will indicate whether any IDR complaint or RS breach resulted in ASIC investigation or action. This would likely improve the transparency of ASIC’s regulatory surveillance and enforcement activity, particularly in relation to the industry cost recovery levies imposed on regulated entities.

**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.**

The publication of data must be based on what is already required to be provided to ASIC. The data ASIC collects should be for the primary purpose of regulatory surveillance and enforcement. Licensees should not be required to provide additional data simply for publication purposes.

Any additional information to the proposed data publication must be of benefit to the end user.

Table 10: Complaint information

Some of the data elements included in table 10 are already defined in the IDR Handbook including IDR-DE 3.11: Complaint outcome. The IDR Handbook includes definitions for the following eight complaint outcomes:

- Service-based remedy
- Monetary remedy
- Contract/ policy variation
- Decision changed
- Other remedy
- Withdrawn/ discontinued
- Referred to another financial firm
- No remedy provided/ apology or explanation only.

We note the IDR Handbook also states that “complaints at EDR are out of scope for IDR data reporting”, even though industry feedback to ASIC had indicated that the ‘proportion of complaints escalated to AFCA’ was one of the most useful elements of the data for benchmarking their IDR performance against other firms.<sup>7</sup>

If the intent of the data reporting and publication requirements is to “record, improve and standardise the quality of dispute resolution data” – i.e. across the IDR/EDR framework – we suggest that “escalated to AFCA” would be a helpful inclusion.

**RS data elements –response to questions D1Q1 to D1Q3**

As stated above, we are concerned that ASIC’s identification of data for publication appear to be based on the entirety of the data elements included in the prescribed form for RS reporting. We strongly recommend this approach be reversed and data for publication be selected based on information consumers want and need, which should be informed by consumer research. Such data should be tempered by a ‘laypersons’ view of the information, not based on a person who is informed about IDR and RS obligations as such people would not represent the understanding of the vast majority of Australians. It is unclear from CP383 if ASIC has undertaken any research of consumers in this regard.

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<sup>7</sup> CP383, page 40

We are also concerned about the volume of data ASIC proposes to publish. We strongly suggest that this should be reassessed and significantly reduced based on the needs of users.

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 1.2	Licence type	<p>The significant breach provisions in s912D include (4)(d)(iii) which, for AFS licensees, includes all cases where the breach results or is likely to result in material loss or damage to the person, whether wholesale or retail client. However, the RS remediation obligations only apply to retail clients where personal advice is provided. RS-DE 5.3 relates to data of 'customers compensated to date'.</p> <p>The distinction in licensee between retail/wholesale, and personal and general advice, as well as personal advice provided by superannuation funds and stock broking, should be explained and noted at the licensee level. These definitions should be able to be filtered by the user. This will facilitate comparability and help minimise mis-allocation of data to the wrong services.</p>		
RS-DE 1.8	Reports submitted on behalf of more than one related licensee	<p>Will the data identify which licensee within the group the data relates to? Consumer may be aware of the licensee but not parent company. Also, this may be unfair for all in the group to be tainted by the data of other licensees within the group</p>		
RS-DE 2.2	Product	<p>The first-tier product and service in Attachment C includes financial advice. While we support the simplicity of this approach, consideration should be given to the inclusion of professional personal advice / personal advice provided by superannuation funds / stockbroking / general advice as necessary second-tier classifications.</p>		
RS-DE 2.4	Root cause	<p>There are 17 categories of 'root-cause' included in RG78, which are defined in a technical manner to facilitate reporting for regulatory oversight purposes. While we understand the desire to mirror these categories, however, in the absence of an example of how the 'root-cause' data will appear to consumers, we are concerned about the number and technicality of these categories.</p>		
RS-DE 2.6	Significance reason	<p>As discussed above, the term 'significance' will have a different meaning to consumers than the legal definition under which firms must report data to ASIC. The offenses and reasons for the breach as listed in Table 15 are too technical and based on legal definitions and jargon. These are too legalised and will be open to misunderstanding by consumers who are not familiar with the obligations or legal terms/language.</p>		
RS-DE 2.7	Core obligation provision	<p>We question the value for consumer' decision making of including core</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 2.8	Act or Rule breached	obligation provision in the Corporations Act that the data relates to, or the Act/rules the firm has breached. This is unnecessary and extremely technical for most Australians and risks overwhelming and alienating consumers from the data.		
RS-DE 3.1	Customers impacted	Without an example of how this would appear and be used in a published dashboard, we are concerned how this data would be interpreted by a consumer. For example, if a firm reported 10 minor breaches that resulted in no customer financial loss, this should be indicated some way, so it is not interpreted as more serious.		
DE-RS 3.2	Customer financial loss	This proposed data element suggests that customer financial loss will be published based on customers affected by a single breach. It is unclear whether it is also intended to publish 'total customer financial losses' caused by all RS breaches of the licensee.		
RS-DE 3.3	Number of instances	While this data is valuable for informing the Regulator of potential systemic issues within a firm or industry, this level of detail is not necessary for consumers. This is not consumer-friendly data and will not assist consumers to make an informed decision.		
RS-DE 3.4	Number of reportable situations			
RS-DE 3.5	Reports that have impacted the firm's ability to provide services under its licence			

**Table 4: Identification and investigation of breaches**

We suggest this data is excessive and will not assist consumers. We are also concerned that investigation times are commonly influenced by matters outside of the control of the firm and that each breach and each investigation is unique. This context is not represented by the proposed data elements and risks unfairly disadvantaging firms.

RS-DE 4.1	Time taken to identify and commence investigation into breaches	There is broader context behind all data provided by licensees. In reality, the investigation timeframes can be significantly impacted by matters outside the licensee's control. For example, if a RS breach involves excess superannuation contributions, the licensee must wait until it has received critical information about the matter from the ATO in order to report on the complaint. Some licensees indicate it has taken up to ten months for ATO to respond to information requests. Taken out of this context, the publication of investigation timeframes could be misleading. While these data elements provide relevant regulatory insights, they are all extremely similar and they will likely confuse anyone who does not work in financial services compliance. It will appear repetitive and confusing. We question the benefit of publishing timeframes.
RS-DE 4.2	Time taken from first instance of the breach to discovery of the breach	
RS-DE 4.3	Time taken from discovery of the breach to the start of the investigation	

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 4.4	Investigation timeframe	<p>The data elements should be simplified into the most important and relevant data for consumers, based on consumer research.</p> <p>We are concerned about the publication of investigation timeframe data with no capacity to provide contextual or qualifying data to explain variances from an individual firm and an individual breach perspective.</p> <p>We also question the value of the compilation of this data across multiple reportable situations into the one firm-level data point.</p>		
RS-DE 4.5	Investigation trigger	<p>How firms are identifying breaches is not relevant to consumer. This is unnecessary.</p>		
RS-DE 4.6	Investigation completion status	<p>The proposal to include this data element is due to the proposal to update reported information based on subsequent submissions by firms as the firm's investigations progress.</p> <p>We suggest this is extraneous and will add significant complexity to the dashboard for users.</p> <p>A simple approach would be to only publish breaches once – either when the breach is first reported, or once the investigation has been completed.</p> <p>We also question the value of this data where there are multiple reportable situations and how this fits into the one firm-level data point.</p>		

**Table 5: Compensation and remediation**

As discussed above, we are concerned about the publication of data related to a legal obligation that only applies to a small percentage of firms under ASIC's purview.

There is a technical and legal difference between compensation, remediation and rectification. However, a layperson will not understand this difference and an explanatory note will likely alienate and confuse consumers who understandably may see these as interchangeable terms that, to them, hold the same meaning. This may also be the case for people working within the finance sector who do not hold compliance roles.

This information should either be removed or consolidated into one data element.

**Table 6: Rectification**

These data elements are too detailed and unhelpful. For the purposes of publication and to help users this should be limited to - has the licensee rectified the issue - yes, no, in progress.

Based upon our overall opposition to the inclusion of the data in this table, we will refrain from providing feedback on each data element in this table.



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 6.4	Is the breach continuing?	This data is very confusing and will make the dashboard excessively complex. It is unclear how this data element interacts with updating published data – for example, once a firm reports that the breach has been closed/finalised, will the published data be automatically updated in real time?		
RS-DE 6.5	Reports with previous similar reportable situations	While the re-occurrence of similar breaches in a firm is critical intelligence for the Regulator and firm to identify potential systemic issues both at a firm and industry level, this data is too subjective and detailed for consumers and can be taken out of context by consumers. We suggest simple high level data on the number of breaches should be able to be presented in a manner that demonstrates ongoing issues within a firm, without adding more data elements that will likely overwhelm and confuse consumers.		
RS-DE 6.6	Prevention status	To help consumers, rectification data should be limited to - has the licensee rectified the issue - yes, no, in progress. Yes, would indicate that the issue has been rectified, implying (from a layperson's perspective) that the issue has been fixed in a manner that would prevent its re-occurrence.		
RS-DE 7.1	Number of total submissions	This will confuse consumers. Consumers do not need to identify the number of initial reports versus the number of updates to be able to distinguish between the number of actual significant breaches versus updates to licensees' reports on a previously reported significant breach.		
RS-DE 7.2	Submission type	<p>This is too technical and unnecessary for consumers and most financial services personnel and hence, will be misleading and could be easily misunderstood and taken out of context.</p> <p>The data elements published should be limited to one submission per breach.</p>		

## IDR data elements - response to questions E1Q1 to E1Q3

The IDR data dictionary in the ASIC IDR handbook includes an extensive number of very detailed definitions based on legal meanings of terms. This is understandable given its primary purpose is to provide regulatory guidance to firms. However, we suggest this dictionary is too large for defining terms relevant to the data publication. We suggest a glossary should be restricted to a similar scale and type as included in the AFCA Datacube glossary.



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?
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**Table 9: Complainant demographics**

It is unclear as to the reason for including this data and we question its relevance and appropriateness for the end user. We do have some concerns that publication of this demographic data may present some risks of publishing information that might result in the identification of complainants.

**Table 10: Complaint information**

As mentioned above, there are a significant number of definitions included in the IDR handbook. We recommend these be consolidated for the purposed of data publication. To facilitate continuity of meaning for consumers, there should be alignment in the definitions used in the AFCA Datacube and ASIC data publication.

Given the diverse range of products and services provided to consumers, the FAAA supports the proposed use of three levels of data. We note the definitions included in the IDR handbook for financial advice include general advice (185) and personal advice (186). Consideration should be given to expanding this list to include professional personal advice / personal advice provided by superannuation funds / stockbroking / general advice.