



Consultation Paper 383: Reportable situations and internal dispute resolution data publication

Submission to Australian Securities and Investments Commission

Insurtech Australia for and on behalf of its members

About this Submission

Insurtech Australia (Insurtech, we, us, our) welcomes the opportunity to engage with the Australian Securities and Investments Commission (ASIC) to lodge a submission on its Consultation Paper 383: 'Reportable situations and internal dispute resolution data publication'.

This submission was drafted by Insurtech in consultation with our members. In developing this submission, our members participated in a roundtable session to discuss their experience with the reportable situations (RS) and Internal Dispute Resolution (IDR) reporting and the implications of the reporting regime proposed. Input was provided by members and partners who have experience with the current requirements.

Our response focuses on the strategic objectives of the proposal and the impact of the proposals on our members. In particular, our response considers how the proposals will impact early stage insurance businesses and those seeking to innovate within the insurance industry through new products, technologies and business models.

We have not provided detailed responses to the data elements as our comments relate to the proposal at a high level.

About Insurtech Australia

Insurtech is Australia's leading not-for-profit industry association for insurance technology (Insurtech) and insurance innovation. Our mission is to make Australia a world leader in Insurtech and insurance innovation by supporting and growing the Australian Insurtech community, including Insurtech startups, insurers, hubs, accelerators and investors, and advocating on behalf of our members.

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Strategic perspective

ASIC's consultation proposes that the publication of licensee-level data supports the key objectives of the RS and IDR regimes to:

- (a) enhance accountability and transparency in relation to complaints handling and the identification and management of breaches, providing firms with an incentive for improved behaviour, and improving trust and confidence in the financial system;
- (b) help firms and consumers identify areas where substantial numbers of significant breaches and IDR complaints are occurring, and to assist with benchmarking performance against other firms; and
- (c) allow firms to target their efforts to improve their compliance outcomes, consumer outcomes and firm performance.

Insurtech Australia response

Insurtech Australia members are concerned that the publication of granular, licensee-level data will not advance the objectives described above, and indeed could damage public trust and confidence and discourage innovation in the sector, as outlined below.

1. Data is unlikely to be sufficiently consistent to be used for benchmarking across licensees or issues

RS and IDR data is not comparable across licensees. For example, the business profile and, in turn, the nature and volume of operational incidents in a start-up is very different to a large incumbent insurer. Licensees that deal with end-customers will have a different dispute profile than, for example, a global reinsurer. These practical realities make it difficult to compare data sets between licensees.

In addition, conclusions about what is a reportable situation, breach or potential breach of the law can be, in practice, highly subjective and therefore inherently lacking consistency. Many laws and regulations leave considerable grey area as to specific compliance requirements in different circumstances. Only the courts, or the regulator, can make a definitive determination as to whether a breach has actually occurred.

For example, the category of 'misleading and deceptive conduct' can cover everything from minor typos on a website, to resolving a claim a few days after an original estimate was provided, to excessive fees being charged without proper disclosure. Lawyers and compliance staff assessing these types of cases in practice can reach reasonably different conclusions based on their training, prior experience or internal guidance materials.

Therefore, it is unlikely that publishing firm-level data will allow for meaningful comparison across firms or assist firms to target their efforts to improve outcomes/performance based on that data.

2. There is a high risk of data being misinterpreted

There is a high risk that the data will be misinterpreted by the general public and result in a misleading impression of actual compliance and operational governance at individual firms. This would leave licensees open to inappropriate reputational damage and even potential unfounded litigation and financial impacts.

Licensees report breaches and potential breaches in good faith, based on their interpretation of laws and regulations and estimates of which clients were affected and by how much at a particular point in time. Breach reports can be affected by external factors, such as the introduction of new regulatory requirements.

To the general public and media, an increase in a particular licensee's reported incidents could appear to be an undisclosed business failing, when in fact it may be a temporary increase caused by a change in staffing, new guidance issued by a regulator, a merger/acquisition or a new product being offered.

Importantly, the public is unlikely to understand that a reported breach or dispute is not necessarily evidence of wrongdoing or failings or that there was resulting financial loss for customers. This is particularly the case for IDR data. For instance, given that licensees must include all complaints in their IDR reporting, disputes may be recorded in situations where the licensee is not at fault. For example, disputes can arise from a simple customer misunderstanding or a policy limitation that was not fully understood, despite no wrongdoing by the licensee. As a result, publishing IDR data risks conflating the mere existence of a complaint with actual wrongdoing by the licensee.

Further, ASIC has previously noted concerns with licensees that record no or very few incidents in their incident register. However, to the public (or media), these licensees may be incorrectly viewed as having 'better' compliance arrangements.

We do not consider that providing explanatory notes or contextual statements will appropriately address the risk of misinterpretation, as the general public does not have sufficient context or knowledge to evaluate or easily interpret the significance of raw, technical RS and IDR data.

3. Publication of granular data may result in reports being 'managed' by management and boards, making them less useful for ASIC's surveillance purposes

The subjectivity around reporting of breaches and potential breaches may lead to licensees 'managing to a number' that is viewed as an 'appropriate' level of incidents. This would limit any enhancement to accountability and transparency.

ASIC has already stated that licensees are expected to report at least some breaches and internal disputes, as having nothing to report could reflect poorly on the licensee's compliance arrangements.

However, if ASIC publishes firm-level data, on a non-anonymised basis, this could discourage a strong compliance and customer service operation and any improvement to RS and IDR reporting practices. This is because, to the public, licensees that are more robust and thorough in identifying and reporting incidents could appear weaker on compliance and customer service than those that downplay or do not appropriately identify and report incidents. It is likely that licensees will, as a result, try to find an 'acceptable' middle ground.

This may also result in significantly increased board and management time to scrutinize and justify each report against some target number. This is not an appropriate function for boards, which should focus on the overall risk and compliance program effectiveness. Additionally, investigations, and time taken to report to ASIC, may become longer because of concerns about 'estimates' being included in published data, rather than confirmed numbers/figures.

3. The risks identified above will discourage innovation

In pursuing innovation, there must be a tolerance for mistakes; making mistakes is a valuable learning process, particularly for start-up organisations that are scaling their operational infrastructure. We cannot operate as an industry with a zero tolerance for error.

This is not to say customers shouldn't be protected from poor conduct and operational failings. Australia has a world-leading financial ombudsman service which provides for objective review and remediation when mistakes do occur, and transparency around outcomes. Each licensee must also hold professional indemnity insurance, and pursue customer remediation where appropriate.

An excessive public focus on individual incidents will not address underlying operational and conduct issues when they arise but will further promote the regulatory 'blame culture' which will drive innovation away from our shores.

Alternative approaches

Insurtech Australia recognises that ASIC is expected to publicise the information derived from the RS and IDR regimes and we support greater transparency. However, this needs to be done carefully.

As noted earlier, we do not believe that including caveats and explanations of the nature of the data, as ASIC is proposing, is sufficient to mitigate these concerns. Most readers are unlikely to focus on 'fine print' disclaimers. The general public, as well as the media, simply does not have sufficient context to evaluate the significance of raw breaches and disputes data.

In contrast, AFCA's external reporting of disputes submitted to it is an objective, consistent data set that is vetted as to validity at a granular level (unlike the ASIC data, which ASIC has said will not be verified for accuracy). AFCA data highlights unresolved internal disputes that were serious enough to escalate, correctly categorised by industry and product type.

Insurtech Australia recommends that ASIC more actively encourage consumers to consult AFCA's published data to get a picture of a particular licensee's customer dispute activity. This data set provides far more useful information for the general public.

In respect to RS data, an alternative approach would be for ASIC to publish statistics only for individual licensees relating to breaches that meet a certain threshold, such as those causing financial loss to customers above a set amount. However, while this information is likely to be more objective, consistent and comparable, it potentially leaves licensees open to vexatious litigation for cases where no liability has been admitted. Loss figures are often preliminary and based on estimates, where a breach or error may not even have occurred, or where remediation is offered as a gesture of goodwill even where there is no clear liability to that customer.

Our recommendation is that ASIC continue to publish trend analysis of aggregate breaches, using its insight and judgement to highlight areas where licensees should focus their attention. If more granular data is published, we recommend this continue to be on an anonymised basis, by reference to the 'type' or 'sector' in which the licensee operates (e.g. general insurance, life insurance, credit, superannuation etc.) to mitigate the risks we have identified.