

From the Desk of Director Marija Pajeska



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Response to Addendum to Consultation Paper 311 – Internal dispute resolution: Update to RG 165

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to ASIC in respect of Addendum to Consultation Paper (CP) 311 – Internal dispute resolution: Update to RG 165.

ASDAA represents the interests of its members, who are from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors, or employees, of small to medium sized firms which hold an Australian Financial Services Licence (AFSL), but are not a Participant Member of the Australian Stock Exchange.

Information proposed to be requested in the Data Dictionary

In the Addendum to CP311, ASIC makes reference to Treasury Laws Amendment (Putting Consumers First-Establishment of the Australian Financial Complaints Authority) Act 2018. This Act resulted in amendments to the Corporations Act 2001 (Cth) which appear to be the basis of the development of these requirements, that is, Section 912(2B) of the Corporations Act 2001 (Cth) which states:

‘An instrument under subsection (2A) must not specify any information that is personal information within the meaning of the Privacy Act 1988.’

Section 6 of the Privacy Act 1988 defines personal information as follows:

‘Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.’

We are of the view that ASIC has no right to request the following information in the Data Dictionary on the basis that it is personal information as defined under the Privacy Act 1988 and that pursuant to Section 912(2B) of the Corporations Act 2001 (Cth) ASIC has no authority to collect such information:

- Complainant date of birth – personal information relating to complainant
- Complainant postcode – personal information relating to complainant
- Monetary compensation – may be subject to confidentiality agreement and therefore can't be disclosed unless financial firm breaches the terms of the confidentiality agreement.

We do not understand how the above mentioned information would add value to ASIC's efforts to develop and maintain the financial services consumer protection framework.

We argue that the only reason ASIC is collecting such information is for the purpose of Behavioural Research which is not the point of the IDR data reporting requirements. We do not see any reference in the law that allows ASIC to collect data for the purpose of Behavioural Research.

Table 1 below provides our specific comments in relation to ASIC's draft Data Dictionary.

Table 1: Draft Data Dictionary feedback

Data element name	ASDAA comments
1. Entity's complaint unique identifies	Reasonable
2. Name of subsidiary, brand or superannuation fund that the complaint is about	Provided that Not applicable is an acceptable response, reasonable
3. Complainant type	The options are very narrow as there are other types that would be relevant. It is recommended that ASIC use the categories available under the AMLCTF Act to define the Codes.
4. Complainant gender	Not applicable should be added as some Complainant types (eg. small business) do not have a gender
5. Complainant date of birth	ASIC is not entitled to this information as it is considered personal information under the Privacy Act 1988. The reason AFCA has this information is that the client provides it directly to AFCA. Therefore, this information should be removed from the data dictionary.
6. Aboriginal or Torres Strait Islander descent	From a behavioural research point of view we can see why ASIC would like this information however fail to see how this will assist in developing and maintaining the financial services consumer protection framework
7. Complainant postcode	ASIC is not entitled to this information as it is considered personal information under the Privacy Act 1988. The reason AFCA has this information is that the client provides it directly to AFCA. Therefore, this information should be removed from the data dictionary.

Data element name	ASDAA comments
8. Is the complaint about the authorised representative or an AFS licensee or an authorised credit representative	Reasonable
9. Authorised representative or credit representative identifier number	Reasonable
10. Complaint status	Reasonable
11. Date received	Reasonable
12. Date closed	Reasonable
13. Date re-opened	Reasonable
14. Reason for re-opening	Reasonable
15. AFCA status	Reasonable
16. AFCA reference number or case unique identifier	Reasonable
17. AFCA date	ASIC already has access to this information as a result of the information provided to it by AFCA. Therefore, this information should be removed from the data dictionary
18. Product or service	<p>We note that ASIC's objective was to align the data elements to those used by AFCA and yet it appears that ASIC has failed to do that. The data elements proposed by ASIC are too specific and should be more high level, ie. replicate exactly what AFCA uses.</p> <p>The fact that multiple selections can't be made also creates the problem that a single complaint will need to be registered multiple times to capture the appropriate 'Product or service' categories thus the statistics will be misleading as it will show one single complaint as multiple complaints thus inflating the statistical data.</p> <p>The list of 179 data elements should be reduced to the 29 data elements used by AFCA for the AFCA datacube.</p> <p>If ASIC insists on retaining the 179 data elements, it should allow for in-cell lists, rather than multiple rows or columns.</p>
19. Complaint issue	There should be no limit on data code Inputs
20. Adviser number	Reasonable
21. Outcome in whose favour	Reasonable
22. Monetary compensation	<p>This should be removed and added as a code under data element 23.</p> <p>The Monetary compensation may be subject to confidentiality clauses and hence the financial firm, by disclosing such specific information, may inadvertently breach the confidentiality agreement.</p> <p>From a behavioural research point of view we can see why ASIC would like this information however fail to see how this will assist in developing and maintaining the financial services consumer protection framework.</p>
23. Other outcomes	Reasonable - We are of the view that data element 22 and 23 should be combined under one title 'Outcome' and 'Monetary compensation' should be one of the Codes.

ASIC's current position

In relation to ASIC's Current position regarding data collection (questions B4Q1 and B5Q1), elements of the data dictionary (question B5Q2) and data lodgement requirements (question B6Q1) we provide our comments in Table 2 below.

Table 2: ASDAA comments on ASIC's current position

CP311 question	ASDAA comments
B4Q1 – requirement to record all complaints	<p>We do not agree with ASIC's analysis of the requirements on the basis that Treasury Laws Amendment (Putting Consumers First- Establishment of the Australian Financial Complaints Authority) Act 2018 makes no reference to the requirement to record all complaints.</p> <p>We note that even AFCA does not include all complaints in its datacube. According to AFCA's document titled 'AFCA arrangements for comparative reporting of complaint data',</p> <p>'...each table will present only firms with 5 or more complaints accepted except for the transitional 2018-19 year'</p> <p>So, we are of the view that the exception that allowed firms not to record complaints resolved within five days should be retained to ensure that such complaints can still be resolved efficiently, honestly and fairly without being overcomplicated with additional paperwork and reporting requirements.</p> <p>The intent of the internal dispute resolution procedure is the resolution of complaints as quickly as possible whilst maintaining an efficient, honest and fair market.</p> <p>We must remember that a key element of an Adviser's role is to manage and maintain their relationship with their client and such relationships are based on trust, confidentiality and commitment to building a long term relationship.</p> <p>If an Adviser does not have the liberty to resolve issues and minor complaints with the client directly to ensure that a long term relationship is maintained with the client on the basis that issues and minor complaints now need to be formally investigated, resolved and reported this will adversely impact the nature of the relationship between clients and their Advisers</p> <p>If a client is not satisfied with the resolution they will formalise the complaint and it will be reported to ASIC as the complaint will be subject to independent review.</p> <p>By requiring all complaints to be reported it means that ASIC has lost sight of the requirement to maintain an efficient, honest and fair market and instead has placed a higher importance on data integrity.</p>
B5Q1 – creation of unique identifier	We have no objection with this requirement
B5Q2 – draft data dictionary	We refer you to Table 1 above titled Draft Data Dictionary feedback
B6Q1 – reporting on open complaints	We have no objection with this requirement

ASIC's specific questions

Our feedback to ASIC's specific questions are:

1. *Will the draft data dictionary be practical for industry to implement? If not why not?*

The practicality of implementing the reporting requirements for the data dictionary will be reliant on the IT infrastructure that ASIC will provide for the submission of reports. We understand that ASIC has proposed that financial firms will be required to create CSV files and upload them to the ASIC Regulatory Portal. We are concerned that some financial firms do not have the skill set to create CSV files or are able to efficiently upload files to the ASIC Regulatory portal and hence are of the view that this may not be practical or cost effective to implement.

The ASIC Regulatory Portal allows for ASIC to create standardised forms and hence a standard form should be available for those licensees who choose to use it to submit the IDR data. The licensee should have the ability to update the data in the form for each reporting period to avoid having to re-enter the information.

In relation to the practicality and necessity of the information proposed in the draft data dictionary we refer you to Table 1 above titled Draft Data Dictionary feedback.

2. *If your financial firm has multiple business units or brands under the one licence, would you prefer to report the complaints data separately or as one single file?*

We are of the view that each financial firm should have the flexibility to decide what works for them, ie. a single report or multiple reports.

3. *The data dictionary captures multidimensional data by allowing each complaint to have one product or service, up to three issues and up to three outcomes. Where there are multiple issues and outcomes, this is captured using in-cell lists, rather than multiple rows or columns. Is this approach appropriate?*

We agree with the approach of allowing for multiple issues and outcomes to be captured using in-cell lists, rather than multiple rows or columns. We are of the view that the same approach should be used for product or service, ie. capturing data using in-cell lists. The reason being is that the use of multiple rows to define the product or service will over inflate the data and a single complaint would be shown as multiple complaints which would be misleading and deceptive from:

- a financial firm point of view as it would be providing the wrong information to ASIC; and
- an ASIC point of view as it will be knowingly misrepresenting the statistical information by overstating complaints data.

4. *Do you support quarterly reporting of IDR data? If not, what are the additional costs of reporting data on a quarterly rather than half yearly basis?*

No, annual reporting is the ideal situation to start with. Such reporting could coincide with a financial firms requirement to submit its financial year end reports to ASIC.

Increasing it to quarterly reporting is unnecessary and would result in a financial firm having to report some complaints on multiple occasions especially considering the length of time AFCA takes to resolve complaints that have been escalated to AFCA.

5. *Do you support the two proposed additional data elements that would capture consumer vulnerability flags and the channel via which the complaint was received? If not, why not?*

We do not support the proposal as we do not understand how such data will assist ASIC in its efforts to develop and maintain the financial services consumer protection framework.

Such information is more relevant to behavioural research which is neither the purpose of the collection of such data nor is it stipulated under law that ASIC is entitled to collect data to conduct behavioural research.

6. *When we publish the IDR data, how can we best contextualise the data of individual firms? Are there any existing metrics of size and sector that would be appropriate for this purpose?*

The current model that is available which ASIC appears to be trying to align its data reporting requirements to is the AFCA datacube so logically these are the metrics that ASIC should be considering.

7. *Which IDR data elements do you think will be most useful for firms to benchmark their IDR performance against competitors?*

We find it interesting that ASIC is seeking industry to benchmark their IDR performance when the purpose of this exercise is to develop and maintain the financial services consumer protection framework.

Benchmarking in no way achieves this end goal because it looks at a firms ability to resolve complaints efficiently rather than taking the time to review and understand the issues surrounding a complaint and ensure that those issues are clearly understood by all parties involved in the complaint.

ASIC and Treasury already put pressure on financial firms to resolve complaints within strict time frames and we understand that timing is of the essence when it comes to complaints resolution. Such time frames encourage financial firms to allocate adequate resources in order to review and resolve complaints efficiently.

However to now assign benchmarks for financial firms to use to compare their IDR performance against is irresponsible and detrimental to industry as a whole. It means that the focus will change from reviewing and resolving complaints in order to ensure that financial services were provided honestly,

efficiently and fairly to reviewing and resolving complaints in order to ensure that complaint resolution timelines are maintained and met.

If any benchmarks are to be used by industry they should be based on quality of services provided and assessment of complaints will not give a true picture of relevant information to benchmark against.

Regulatory and Financial impact statement (RIS)

We note that ASIC has not included a Regulatory and Financial impact statement (RIS) in the consultation paper. According to the Australian Government Department of the Prime Minister and Cabinet a 'RIS is required for all measures that seek to impose mandatory obligations on business and the community, including codes and advisory instruments for which there is a reasonable expectation of widespread compliance.'

We are of the view that taking into consideration the impact that the proposed changes will have on financial firms and consumers both from a practical point of view and the costs of compliance, ASIC had a duty of care to include the RIS in the consultation paper.

ASDAA appreciates the opportunity to provide this Submission to Treasury on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Director of Communications, on [REDACTED].

Yours Sincerely

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