



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

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

Dear ASIC

The Financial Planning Association (FPA) welcomes the opportunity to provide feedback on the *Addendum to Consultation Paper 311 Internal dispute resolution: Update to RG 165*.

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

The FPA welcomes the reduced data elements and alignment between internal and external dispute frameworks. The simplification will help with the reporting requirements and help comparisons between internal and external dispute resolutions.

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

The FPA supports quarterly reporting periods.

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?

- A. a data element to record whether the *consumer or small business* has been flagged as experiencing vulnerability at the time the complaint is made; and

The FPA is keen to understand the intent and implementation of this data element. In terms of purpose, we can see how understanding whether complaints have any associations with specific vulnerable groups and warrant targeted remediation for the identified groups.

For example, a regulatory solution could also be tied into the product distribution obligation and help assess the effectiveness of certain products target market determination and how it should take into account vulnerability. That is, restricting access to certain financial products from identified vulnerable groups that have previously raised complaints based on financial products sold to them.

Similarly, it may identify the need for additional resources, regulation or guidance to vulnerable groups through the complaints data.

However, its implementation raises some concerns in the capturing process, such as:



- How do you identify or test for a consumer or small business experiencing vulnerability?
- How does the data element influence disciplinary outcome?
- Are there privacy implications or risks in capturing and reporting this data?

For example, the test may include - assessing whether the consumer has previous and identifiable health or mental vulnerabilities leading up to the complaint such as addictive behaviour (i.e. gambling).

Similarly, the problem is also extended to 'vulnerable' small businesses. The FPA foresees physical office disruption through pandemic or natural disaster may put small businesses in 'vulnerable' positions but seek clarity whether financial position leading to bankruptcy would be considered 'vulnerable'. Similarly, whether the unexpected passing of a major business partner or family member (for a sole trader) would be considered a vulnerability. Hence, the FPA recommends the term 'vulnerability' should be defined through further guidance or a standardised test to ensure a consistent interpretation and reporting.

Lastly, these subjective tests are usually scrutinised and heavily considered at present as part of the EDR process. For example, if at the time of the sale of a financial product that led to the complaint, the individual/small company may have experienced a traumatic event leading to them being considered 'vulnerable' and recorded as such. Whether the circumstances which led to the event causing 'vulnerability' to be assigned may or may not change the outcome of the case and if, how and whether this was disclosed to our understanding remains private to the case and the tribunal. Thus, the public display of a consumers' or company's vulnerability may impede on their privacy right.

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?

ASIC could consider a number of metrics for the purpose of contextualising the data provided by individual firms. In saying this, for example, there are a number of conflicting measures of business size. Given ASIC is considering publication of IDR data, it would be reasonable to consider AFCA's definition of a 'small business'. However, in addition to the AFCA rules definition of 'small business', the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) also has its own definition of small business, as does the ABA Code, the Fair Work Act 2009, the ATO, the Australian Consumer Law and the Australian Bureau of Statistics.

While the FPA supports the 'small business' as defined by the AFCA for the alignment of IDR and EDR in this instance, it is important that ASIC make it clear how to define whichever metric is used to contextualise between individual firms.

We expand below, but would highlight that ASIC uses fixed measures in relation to the ASIC funding levy, for example for financial planning licensees it uses a per planner variable component to the levy, and therefore per planner might be a reasonable metric to contextualise data for comparability (although not the only one as noted below).



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

For IDR benchmarks, it'll be best that they are aligned with EDR benchmarks. This should make data points more useful for financial firms to communicate and demonstrate to consumers and allow a fair comparison between businesses of different sizes.

Some suggested benchmarks are:

- A. % complaints received and resolved
- B. % complaints transferred to the external dispute (AFCA)
- C. % of complaints resolved in complainants favour
- D. The average time to return a response or resolve
- E. Complaints per planner for financial advisers.
- F. Complaints per 100 clients

We recommend a benchmark based on the number of clients should appropriately indicate a firm's ability to handle complaints as companies and clients per financial adviser can vary in size, but clients are a fairly consistent measure across all financial service providers which can assist in comparing not only within but across different financial service products and services. This benchmark would resolve the problem of inconsistent definitions of 'small business' which focus on financial statements or staff numbers, whereas this benchmarking emphasises a firm's ability to provide consumer protection.

If you have any questions, please contact me directly on [REDACTED].

Yours sincerely

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