

19 May 2025

RS and IDR Data Publication Project Team
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: data.publication@asic.gov.au

Dear Sir/Madam,

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

1. The Law Council of Australia welcomes the opportunity to provide feedback on Consultation Paper 383 *Reportable situations and internal dispute resolution data (Consultation Paper)*, which was released by the Australian Securities and Investments Commission (**ASIC**) on 10 April 2025.
2. This submission is made by the following Section Committees of the Law Council of Australia:
 - (a) the Financial Services Committee of the Business Law Section; and
 - (b) the Superannuation Committee of the Legal Practice Section(collectively, the **Committees**).
3. The Consultation Paper proposes an approach to the publication of reportable situations (**RS**) and internal dispute resolution (**IDR**) data reported to ASIC by firms that hold Australian financial services licences and Australian credit licences.
4. This submission sets out our comments on the proposal to publish RS and IDR data at firm level. We acknowledge the regulatory objectives of transparency and accountability, while highlighting the need for appropriate contextualisation and data presentation formats that enable fair and meaningful comparisons between firms. It is critically important to ensure that these proposed enhanced transparency measures operate fairly and properly, to ensure they do not adversely impact firms' willingness to be open and transparent in their regulatory reporting.

Summary of submission

5. The key matters the Committees wish to bring to ASIC's attention are as follows.
6. While the Committees support the publication of firm-level RS and IDR data to enhance transparency, the proposed presentation format requires modification and additional context to mitigate the risk of data misinterpretation or unwarranted reputational damage to firms.
7. The interactive dashboard format should be refined to include standardised metrics that enable meaningful comparisons between firms of similar size, complexity, and business models, with appropriate contextual explanations explaining why higher reporting numbers may reflect stronger compliance systems rather than poorer compliance.
8. ASIC should reconsider its approach to data elements that may create misleading impressions, particularly regarding investigation timeframes, remediation activities, and customer impact, where these metrics require significant knowledge of the context to be properly understood.
9. The publication of firm-level data should incorporate a phased approach, allowing a transitional period during which data quality issues can be addressed and firms can update their reporting systems to ensure consistency and comparability. This transitional period should include a preview mechanism for firms to review their own data presentation before public release, to identify and address any data quality or interpretation issues.
10. The proposed 32-page information sheet format is inappropriate for the depth and complexity of content being provided. The Committees recommend that ASIC reposition the guidance as a regulatory guide with numbered paragraphs for improved navigation and accessibility.

Submissions

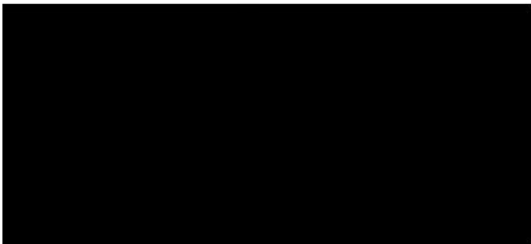
11. Please refer to *Annexure A—Submissions* for the Committees' specific submissions including the following:
 - Table 1: RS response table (feedback questions B1Q1 to B4Q1)
 - Table 2: RS response table (feedback questions D1Q1 to D1Q3)
 - Table 3: RS response table—Additional elements that you think should be published (feedback question D1Q4)
 - Table 4: IDR response table (feedback questions E1Q1 to E1Q3)
 - Additional submissions: Section C—the scope of data publication
 - Additional submissions: Section F—regulatory and financial impact

Conclusion and further contact

12. The Committees believe that, with appropriate refinement, the proposed framework has the potential to meaningfully enhance market transparency while supporting fair comparisons and accurate interpretations.

13. Given the significant consequences of this proposal for firms, the Committees strongly recommend that ASIC run a pilot program with a small number of firms of different sizes from different sectors to test the new framework, learn from the testing and then revise it as necessary before introducing it on an industry-wide basis.
14. The Committees would be pleased to engage further with ASIC to discuss any aspect of this submission. Please contact the Chair of the Financial Services Committee, [REDACTED] or the Chair (Submissions) of the Superannuation Committee [REDACTED] if you would like to do so.

Yours sincerely,



**Chief Executive Officer
Law Council of Australia**

Annexure A: Submissions



Law Council
OF AUSTRALIA

Table 5: RS response table (feedback questions B1Q1 to B4Q1)

B1Q1 Do you have any comments about the proposed format of the data publication, or any suggestions for the interactive dashboards?	<p>The Committees support ASIC's proposal to publish data in an interactive dashboard, which has the potential to enhance market transparency and inform decision-making by consumers and industry participants. However, the current proposal requires further refinement to ensure it does not inadvertently create misleading comparisons or misrepresentations of firms' compliance performance.</p> <p>The Committees recommend the following specific modifications to the dashboard functionality:</p> <ul style="list-style-type: none">a) size-appropriate benchmarking that contextualises reporting data against firms of comparable scale, customer base, and business complexity, using standardised metrics (e.g., reports per X number of customers, or as a percentage of transactions processed, or products/services segmentation);b) inclusion of sector-specific filters enabling users to compare firms operating within similar regulatory frameworks and business models, preventing inappropriate comparisons being made between fundamentally different firms;c) providing statistical context for outlier data points, including appropriate notifications when values deviate significantly from industry averages, with explanatory notes on potential reasons for such deviations;d) including clear visual indicators that distinguish between first-time reports and updates to existing reports, to prevent creating a misleading impression about the volume of new reportable incidents; ande) including time-series functionality that enables users to view reporting patterns over time, with appropriate adjustments for seasonal variations and regulatory change impacts.
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<p>B2Q1 Do you have any comments on this proposal?</p>	<p>The Committees support making data available for download to facilitate independent analysis, subject to appropriate safeguards against misinterpretation or misuse.</p> <p>The Committees recommend that ASIC adopt the following measures to protect the integrity of downloaded data:</p> <ul style="list-style-type: none"> a) including comprehensive metadata and data dictionaries with all downloadable content, clearly explaining the limitations and appropriate interpretation of each data element; b) mandatory inclusion of all contextual statements and explanatory notes within any downloadable dataset to ensure these critical interpretive elements are not separated from the underlying data; a) using data formats that maintain relational integrity between different elements (e.g., ensuring remediation status is always contextualised against breach type and complexity); b) using standardised terms and definitions across the dashboard and downloadable content to ensure consistency in interpretation and analysis; and c) providing data quality indicators that signal where data may be incomplete or subject to significant variability between firms.
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<p>B3Q1 Do you have any comments about ASIC using explanatory notes and contextual statements to assist in the interpretation of the data elements?</p> <p>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?</p>	<p>The Committees strongly support ASIC's proposal to provide explanatory information to assist with data interpretation. The provision of appropriate context is essential to preventing misuse or misinterpretation of compliance data.</p> <p>The Committees recommend that ASIC expand its proposed contextual statements to include:</p> <ul style="list-style-type: none"> a) detailed explanations of how regulatory focus areas can influence increased reporting in certain categories without indicating systemic compliance deficiencies; b) specific guidance on the relationship between breach identification capabilities and reporting volumes, noting that more sophisticated compliance systems typically identify and report more issues; c) statistical analysis showing the expected correlation between firm size, customer numbers, and reporting volumes, with appropriate normalisation methods; d) clear statements warning of the limitations of drawing conclusions about corporate culture or compliance effectiveness based solely on raw reporting numbers; e) specific disclaimers regarding the potential impacts of regulatory change and updated guidance on reporting patterns, including transition periods following significant regulatory changes where the results of historical comparisons may be misleading when considered in isolation; and f) clear statements cautioning that differences in business models, customer demographics, and product offerings can legitimately result in different reporting patterns, without necessarily indicating variance in compliance standards.
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<p>B4Q1 Do you have any suggestions on potential features that ASIC should consider in future? Please provide details, including the benefits that suggested features would provide.</p>	<p>The Committees recommend that ASIC consider implementing the following enhancements in future iterations of the dashboard:</p> <ul style="list-style-type: none"> a) normalised reporting metrics that present data relative to appropriate denominators (e.g., per million transactions, per billion dollars under management, or per hundred thousand customers) to facilitate meaningful comparisons; b) integration of trend analysis tools enabling users to observe changes over time within individual firms and across industry segments, with appropriate adjustments for regulatory changes; c) capability to filter reports by materiality thresholds, allowing users to distinguish between technical or administrative breaches and more significant compliance failures impacting consumers; d) adopting standardised categorisation of root causes across the industry to enable meaningful comparison and identification of systemic issues; e) including resolution efficiency metrics that account for the complexity and scale of the matters being addressed; and f) developing benchmarking tools that enable firms to compare their performance against peers of similar size and business model, promoting continuous improvement within the industry.
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Table 6: RS response table (feedback questions D1Q1 to D1Q3)

The Committees have conducted a review of the proposed RS data elements in Tables 1–7 of the Consultation Paper and make the following observations.

For product and issue data (RS-DE 2.2 and RS-DE 2.3), the publication of highly granular data at second and third-tier levels risks creating misleading comparisons based on statistically insignificant samples. The Committees recommend:

- a) publishing aggregated first-tier categories in the initial iteration of the dashboard, with the option to expand to more granular views in subsequent releases after sufficient data has been accumulated;
- b) implementing minimum threshold requirements before publishing granular data, to prevent drawing misleading conclusions based on small sample sizes;
- c) where second and third-tier data is published, including prominent disclaimers about the limitations of drawing conclusions from small sample sizes or statistically insignificant data points.

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 2.4	Root cause	There is potential for inconsistency in how firms categorise root causes, which could lead to misleading comparisons. ASIC should provide clearer guidance on root cause classification or consider aggregating categories to improve comparability.		
RS-DE 2.6	Significance Reason	The list of significance reasons sets out the specific grounds on which a contravention of a particular provision is a reportable situation. This data element will not assist in identifying why the report was required to be made. The significance reason gives no more information than identification of the relevant core obligation or legislative act/rule, as the significance reason depends on which core obligation or other legislative act/rule has been breached. This information also is likely to be highly confusing for consumers: for example, listing "Offence carries imprisonment penalty of at least 12 months" as a published data element is likely to give the impression that the reported breach should have resulted in an imprisonment or at least a prosecution. We therefore suggest that this data element should be not published at a firm level (or at all).		
RS-DE 3.1	Number of customers impacted	These metrics cannot be meaningfully compared across different business models and product types without appropriate contextualisation, and are likely to give a misleading impression about the extent of breaches. ASIC should implement appropriate denominators or percentage-based representations to enable meaningful comparison, and clearly distinguish between potential and actual impact.		

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 3.2	Customer financial loss	Data about customer financial loss (which presumably will be disclosed at a firm level on an aggregate basis for all breaches during the period) will not assist in identifying the impact on customers of any particular breach, and cannot be meaningfully compared across different business models and product types. Firm level figures for customer financial loss are also commercially sensitive, and publication could potentially be highly damaging to the firm reputationally and could give consumers who are clients the misleading impression that they may have suffered loss when this is not the case or where losses have already been remediated. We therefore suggest that this data element should be not published at a firm level.		
RS-DE 3.3	Number of instances	These metrics cannot be meaningfully compared across different business models and product types without appropriate contextualisation, and are likely to give a misleading impression about the extent of breaches. ASIC should implement appropriate denominators or percentage-based representations to enable meaningful comparison, and clearly distinguish between potential and actual impact.		
RS-DE 3.4	Number of reportable situations	These metrics cannot be meaningfully compared across different business models and product types without appropriate contextualisation, and are likely to give a misleading impression about the extent of breaches. ASIC should implement appropriate denominators or percentage-based representations to enable meaningful comparison, and clearly distinguish between potential and actual impact.		
RS-DE 3.5	Reports that have impacted the firm's ability to provide services under its licence	Information about a financial firm's ability to provide services is highly commercially sensitive. Publishing this data is likely to give consumers the impression that the licensee is not able to continue to provide services, which where the relevant breach has been rectified will be misleading to consumers and potentially highly damaging to the firm reputationally. We therefore suggest that this data element should not be published at a firm level		

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 4.1	Time taken to identify and commence investigation into breaches	<p>These data elements require significant contextualisation to avoid creating misleading impressions. The Committees recommend:</p> <ul style="list-style-type: none"> a) publishing timeframes with clear segmentation based on complexity, materiality and scope of the matters being investigated; b) including explanatory context demonstrating how more thorough investigations may appropriately take longer to complete, particularly for complex matters with significant customer impact; c) differentiating between delays attributable to regulatory engagement or external dependencies versus internal process factors; and d) providing industry benchmark ranges for investigation timeframes across different breach categories rather than raw averages that may mask legitimate complexity factors. 		
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			
RS-DE 4.4	Investigation timeframe			
RS-DE 4.5	Investigation trigger	Publication of this data creates a risk of distorting incentives for identification mechanisms, potentially encouraging firms to direct reporting through certain channels to improve perceived metrics. This data element should be either excluded or presented with explicit causal analysis explaining how varying business models naturally lead to different identification channels.		

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 5.4	Compensation status			<p>"Compensation timeframes are influenced by multiple factors, including customer engagement requirements, complexity of loss calculations, and the need to ensure comprehensive remediation. Rigorous remediation processes that consider all potential impacts may require more time to complete."</p> <p>"Where a firm has determined compensation is not required, this may reflect appropriate assessment against established legal and regulatory standards, rather than a failure to remediate affected customers."</p>
RS-DE 6.3	Rectification status	These elements require clearer presentation of the legitimate reasons why certain matters may take longer to remediate, including regulatory complexity, third-party dependencies and technical implementation requirements		<p>"Complex breaches including those requiring system changes or third-party vendor engagement, may legitimately require longer rectification timeframes. Longer timeframes may indicate a more comprehensive approach to rectification rather than a remediation deficiency."</p> <p>"The complexity of remediation programs often correlates with the thoroughness of a firm's approach to addressing underlying issues and preventing recurrence, not just addressing immediate customer impacts."</p>

Table 7: RS response table—Additional elements that you think should be published (feedback question D1Q4)

The Financial Services Committee recommends inclusion of the following additional data elements to enhance the completeness and contextual understanding of RS reporting:

Data element	Please provide detailed reasons why the data element should be published
Breach frequency metrics	Normalised breach frequency metrics that adjust for firm size, customer base and transaction volumes, enabling more meaningful comparison between firms of different size.
Breach identification proportions	The proportion of self-identified versus externally identified breaches, which can provide insight into the effectiveness of internal compliance systems.
Repeat or recurring issues	Indicators of repeat or recurring issues, which may be more representative of systemic compliance deficiencies than absolute numbers of breaches.
Quantified compliance	Quantification of proactive versus reactive compliance activities, which would provide a more comprehensive view of a firm's compliance culture.
Governance engagement	Metrics on governance engagement, such as board and senior management oversight of significant breaches, which would provide insight into organisational culture and compliance prioritisation.
Change to compliance frameworks	Information about changes to compliance frameworks implemented in response to identified breaches, which would demonstrate the effectiveness of firms' remediation approaches.

The Superannuation Committee does not seek to propose or recommend the publication of additional data elements at this stage.

Table 8: IDR response table (feedback questions E1Q1 to E1Q3)

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 2.1 to IDR-DE 2.4	Complainant demographics	<p>Committees consider that:</p> <ul style="list-style-type: none"> a) this data should be published only at an industry level rather than firm level, as firm-level demographic information could potentially identify individual complainants, particularly for smaller firms or niche products; b) if demographic data is published at the firm level, it should be subject to appropriate de-identification protocols, including minimum threshold requirements before publication and aggregation of categories where necessary to protect privacy; c) clear explanatory notes should be provided regarding the limitations of demographic data, particularly where a significant proportion of complaints include “unknown” demographics; and d) ASIC should provide guidance on the appropriate interpretation of demographic data to prevent drawing unwarranted conclusions about firms’ treatment of particular demographic groups. 		

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 3.1	Number of complaints	<p>ASIC should:</p> <ul style="list-style-type: none"> a) present complaint volumes with appropriate denominators (e.g., per X number of customers, per X number of accounts, per \$X assets under management) to enable meaningful comparisons between firms of different scales; b) include explicit explanatory notes that organisations with strong complaints cultures and accessible escalation channels typically receive and process more complaints as complaints, than those with barriers to complaint lodgement, and that higher complaint volumes may indicate superior consumer engagement rather than inferior service quality; c) provide trend analysis showing changes in complaint numbers over time, with annotation of significant system or process changes that may impact complaint capture and classification; d) undertake statistical analysis to identify and appropriately contextualise outliers, preventing misleading conclusions from being drawn about firms that deviate from industry averages; and e) present complaints data in the context of the firm's customer service interactions volume, to provide perspective on the proportion of interactions that result in complaints. 		

Data element #	Data element	Do you have any comments on the proposed data element?	Are there any reasons the data element should not be published?	Are there any specific contextual statements that may help users to interpret the data element?
IDR-DE 3.7	Number of days taken to resolve complaints			<p>Committees suggest providing the following specific contextual statements (or words to similar effect):</p> <ul style="list-style-type: none"> a) "Complex complaints involving multiple products, services, or requiring detailed investigation naturally require longer resolution timeframes. Longer resolution times may reflect more thorough investigation rather than inferior complaints handling." b) "Resolution timeframes should be considered alongside complaint outcomes and complexity factors. A thorough resolution process that takes longer but results in comprehensive remediation may deliver superior consumer outcomes compared to expedited processes." c) "Firms with higher proportions of complex products or vulnerable customers may demonstrate longer average resolution timeframes without indicating systemic deficiencies in their complaints handling processes." d) "Firms that engage in genuine attempts to resolve complex complaints rather than closing them prematurely may show longer average resolution timeframes, reflecting a commitment to substantive rather than merely procedural resolution."

Additional submissions: *Section C—the scope of data publication*

Determination of scope (C1)

The Committees acknowledge ASIC's approach to determining the scope of data publication and offer the following observations and recommendations regarding the proposed scope.

The Committees support the alignment of RS data publication with ASIC's existing data reporting publication obligation. However, given the sensitivity of this information and its potential impact on firms' reputations, the Committees recommend:

- a) taking a staged approach to publication, beginning with aggregated industry-level data for at least six months before progressing to firm-level publication;
- b) prior to firm-level publication, providing firms with a preview of their own data presentation to identify and address any data quality or interpretation issues, with a formal mechanism to review and correct data before publication where reporting errors are identified;
- c) establishing a formal mechanism for firms to review and, where appropriate, correct data before publication where reporting errors are identified; and
- d) developing clear protocols for managing disputed data, including provisions for firms to provide explanatory context where they disagree with how ASIC has represented their data.

Types of reports included (C2)

The Committees note the proposed limitation of the scope to significant breaches and likely significant breaches of core obligations. The Committees support this approach as it focuses on more material matters. To enhance the utility and reliability of the published data, the Committees recommend:

- a) clear delineation or visual distinction in the dashboard between actual significant breaches and likely significant breaches, to avoid creating a misleading impression about confirmed compliance failures versus potential issues still under investigation;
- b) exclusion of matters subsequently determined not to be significant breaches, or where initial assessments of significance were revised following investigation;
- c) regular review of the scope parameters to ensure they continue to capture the most relevant and material information; and

- d) developing clear taxonomy for categorising breach types to enable more consistent reporting, and more meaningful comparisons across the industry.

Historical data and frequency of publication (C3)

The Committees note ASIC's proposal to publish RS data annually and IDR data biannually. The Committees recommend:

- a) aligning the publication timeframes with existing industry reporting cycles to minimise the administrative burden on firms;
- b) providing clear guidance on how historical data will be presented, particularly where reporting requirements or methodologies have changed;
- c) including appropriate contextual statements that highlight significant regulatory changes or industry developments that may impact data comparability across different time periods; and
- d) implementing a consistent approach to updating historical data when firms provide corrections or additional information about previously reported matters.

Additional submission: *Section F—regulatory and financial impact*

The Committees note ASIC's consideration of the regulatory and financial impact of the proposed data publication framework, and offer the following observations. The Committees note that the implementation of firm-level data publication will create both direct and indirect costs for firms, including:

- a) systems and process adjustments to ensure data accuracy and consistency in anticipation of public reporting;
- b) additional technology and compliance resources dedicated to reviewing and validating data prior to submission;
- c) resources required to explain published data to stakeholders, including customers, shareholders, and regulators;
- d) potential reputational impacts requiring management attention and resources; and
- e) costs associated with staff training to ensure consistent application of reporting classifications and processes.

To minimise imposing an unnecessary regulatory burden while achieving the objectives of the data publication framework, the Committees recommend that ASIC:

- a) consider granting exemptions or modifications for smaller firms where the compliance burden may be disproportionate to the regulatory benefit;
- b) develop standardised explanatory materials that firms can leverage when communicating with stakeholders about published data;
- c) establish formal channels for ongoing industry feedback on the implementation and refinement of the data publication framework;
- d) issue clear guidance about ASIC's expectations for how firms should interpret and respond to their published data, including appropriate benchmarking approaches; and
- e) conduct a post-implementation review approximately 12 months after the commencement of firm-level publication to assess the effectiveness, benefits, and costs of the framework.