



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205

This is the Explanatory Statement for *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. This instrument specifies the information that financial services licensees must give ASIC relating to their internal dispute resolution (IDR) procedures, and the operation of those procedures. The law also requires unlicensed product issuers, credit licensees, trustees of a regulated superannuation fund or an approved deposit fund and RSA providers to report to ASIC as if they were a financial services licensee.
2. The Instrument mandates that IDR data must be provided to ASIC every six months in a specified form. The instructions for recording IDR data and reporting it to ASIC are set out in the IDR Data Reporting Handbook, parts of which are incorporated into the Instrument. Each six-monthly report must cover all complaints that are required to be covered by a firm's IDR procedure. The Instrument identifies eleven companies that form part of an initial cohort that will report six months ahead of all other affected firms. This reporting will include IDR information that is required to be reported by the financial services licensees that the companies are responsible for.

Purpose of the instrument

3. This Instrument gives effect to the internal dispute resolution data reporting framework established by the *Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018* (AFCA Act). The Revised Explanatory Memorandum to the AFCA Act described the purpose of IDR data reporting at page 51:

“The enhanced IDR framework will also require IDR Firms to report their IDR activities in accordance with ASIC requirements. ASIC will be provided with the power to determine the content and form of IDR reporting by IDR Firms.

This new reporting requirement is necessary to improve both the data that is collected and the format and reporting of IDR dispute data. Improved information

will assist ASIC in monitoring trends, identifying emerging issues and determining regulatory priorities in the dispute resolution system.

ASIC will be able to publish information (including firm specific data) that it receives under the new reporting requirements. Publishing such information will provide valuable information to consumers and drive firms to improve their IDR practices by increasing transparency about the performance of their firm relative to other firms.”

4. On 2 September 2021, ASIC published Regulatory Guide 271, *Internal dispute resolution*. This regulatory guide sets out enforceable IDR standards and requirements which underpin the IDR data reporting framework. In particular, enforceable paragraph RG 271.179 states that firms must record all complaints that they receive and that they must have an effective system for recording information about complaints.

Consultation

5. ASIC has conducted extensive public consultation on the underlying IDR standards and requirements in RG 271, and specifically on issues relating to the timing, form and manner of IDR data reporting which are set out in this instrument. This consultation included:
 - a. Consultation Paper 311 (CP 311) in 2019, which included a draft data dictionary and questions related to the format of the data and ASIC’s approach to publication;
 - b. the addendum to Consultation Paper 311 in 2021, which included an updated draft data dictionary and our responses to some of the comments received in CP 311, and
 - c. the release of pilot versions of the IDR data requirements ahead of a pilot testing period involving 7 firms in 2021.
6. These consultation papers, as well as (non-confidential) submissions received are available on the ASIC website. One of the stated objectives, in consulting on the IDR data framework documents, has been to align the IDR definitions and glossary descriptions with those applied by the Australian Financial Complaints Authority, as far as practicable.

Operation of the instrument

7. This instrument commences on the day after it is registered on the Federal Register of Legislation.
8. Section 5 creates the requirement for certain IDR information to be provided to ASIC, via ASIC’s regulatory portal system. IDR information is defined in section 4 of the instrument by reference to tables 4 and 6 of the IDR data dictionary which form part of ASIC’s IDR data reporting handbook. This information must also be reported to ASIC in the manner and format specified in Appendix 1 and Appendix 2 of the IDR data reporting handbook.

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9. Section 6 specifies that section 5 applies to a particular licensee, or unlicensed product issuer or trustee from a different date depending on whether that licensee is named in the initial cohort of 11 entities that must start reporting for the period ending 31 December 2022.
 10. Section 6 also includes a note which identifies that the IDR data reporting requirements made under section 912A of the Corporations Act also apply to other types of person as if they were a financial services licensee. This includes the following:
 - a. a person to whom paragraph 1017G(1)(d) of the Corporations Act applies;
 - b. a credit licensee: see paragraph 47(1)(ha) of the Credit Act;
 - c. a trustee of a regulated superannuation fund, or of an approved deposit fund, to whom paragraph 101(c) of the SIS Act applies;
 - d. an RSA provider to whom paragraph 47(1)(d) of the RSA Act applies.
 11. For those 11 companies named in the initial cohort, section 6 means that they must report IDR information on an ongoing basis starting from the reporting period that ends on 31 December 2022. All other relevant firms must report IDR information on an ongoing basis starting from the reporting period that ends 30 June 2023.
 12. Section 7 also provides that for the avoidance of doubt, nothing in the Instrument requires a financial services licensee to give ASIC any information that is personal information within the meaning of the *Privacy Act* 1988.

Incorporation by reference

13. The instrument incorporates by reference certain sections of the IDR Data Reporting Handbook as published on 30 March 2022. The IDR Data Reporting Handbook is available on the ASIC website.
14. The IDR Data Reporting Handbook contains information on the format that IDR data must adhere to, and how this data must be reported to ASIC through ASIC's regulatory portal. Parts of the IDR Data Reporting Handbook are incorporated by reference in the instrument in order that the specific reporting requirements are given legal effect, while remaining in an accessible format on the ASIC website.
15. The Instrument also incorporates by reference ASIC Regulatory Guide 271 *Internal Dispute Resolution* (Regulatory Guide 271) as published on 2 September 2021 since the definition of "IDR response" in the Instrument has the same meaning as in paragraphs 53 and 54 of Regulatory Guide 271. Regulatory Guide 271 is available on the ASIC website.
16. The Instrument complies with section 14 of the Legislation Act 2003, as all material incorporated by reference is already in existence at the time the instrument is made (and before the Instrument commences).

Retrospective application

17. The Instrument does not have retrospective application.

Legislative instrument and primary legislation

18. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
- (a) The instrument is made under a specifically delegated power which is set out in the primary legislation at section 912A(2A) of the *Corporations Act* and is intended to complement the requirements or objectives in the primary legislation; and
 - (b) The matters contained in the instrument are appropriately used to deal with specific, technical and machinery issues or where necessary to provide flexibility to keep pace with industry developments. As a consequence, if the matters in the instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of businesses. This would result in additional cost and unnecessary complexity for other users of the primary legislation.
19. A five-year sunset period is considered appropriate for the Instrument in order to provide sufficient certainty to industry, who will be incorporating the IDR data requirements into their IDR systems and processes.
20. ASIC will review the instrument ahead of its repeal and consult on options for amending or remaking it as appropriate.

Legislative authority

21. This instrument is made under subsection 912A(2A) of the Corporations Act 2001.
22. This Instrument is a disallowable instrument.

Statement of Compatibility with Human Rights

23. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

1. This instrument requires various persons, including financial services licensees and credit licensees who deal with retail clients to provide data on all complaints they receive through their internal dispute resolution function.

Assessment of human rights implications

2. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

3. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.