



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Amendment) Instrument 2023/282

This is the Explanatory Statement for *ASIC Corporations (Amendment) Instrument 2023/282*.

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

Summary

1. *ASIC Corporations (Amendment) Instrument 2023/282* amends *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* by extending the lodgement window from one to two months for each period, providing an additional staged approach to the commencement of the obligations to report to ASIC IDR information, and providing minor clarification amendments on the reporting requirements and updated IDR data reporting handbook.

Purpose of the instrument

2. 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.”

3. 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 and are given effect by *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98*. 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

4. Extensive consultation has been undertaken in relation to the underlying IDR standards and requirements in RG271, and on issues relating to the timing, form and manner of IDR data reporting, as detailed in the Explanatory Statement to *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205*, which this instrument amends.
5. Further consultation has not been undertaken for this instrument because
 - a. it merely defers an obligation for most affected firms by six months, rather than removing or adding an obligation;
 - b. as all affected firms were expecting to report for the period ending 30 June 2023, there is a need to advise of this change as soon as possible and to provide firms with clarity; and
 - c. amendments, outside of the introduction of an additional tranche, are minor and provide clarification of the IDR data reporting requirements.

Operation of the instrument

6. Section 4 of the instrument states that each instrument specified in the Schedule is amended as set out in the applicable items in the Schedule.
7. Item 1 of the Schedule to the instrument amends section 4 of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* replacing the definition of ‘closed’ to clarify that it relates to complaints received by financial firms and does not include complaints that were subsequently reopened by the financial firm and remain open at the time.
8. Item 2 of the Schedule to the instrument amends the definition of ‘IDR data reporting handbook’ in section 4 of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* to reference an updated version of the handbook which provides greater clarity on recording IDR data and reporting it to ASIC.
9. Item 3 of the Schedule to the instrument relabels the definition of ‘initial cohort’ as ‘first tranche firm’ in section 4 of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* so that ‘first tranche firm’ is defined.
10. Item 4 of the Schedule to the instrument inserts in section 4 of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* the definition of ‘second tranche firm’.

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11. Item 5 of the Schedule to the instrument amends subsection 5(1) of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* to remove previous transitional provisions and standardise the requirement for IDR information to be given to ASIC within two months after the end of each reporting period. It also clarifies that complaints received by the licensee are to be included.
 12. Item 6 of the Schedule to the instrument amends paragraph 5(1)(a) of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* to clarify that complaints that are covered by a licensee's internal dispute resolution procedure are to be included.
 13. Item 7 of the Schedule to the instrument amends subparagraph 5(1)(b)(ii) of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* to clarify when a financial firm needs to report complaints that were made before the current reporting period. Where a complaint was made before the start of the financial firm's initial reporting period, there is no requirement to report these complaints, even if they are not closed. A complaint is to be reported where it was made after the start of the initial reporting period for the financial firm and the complaint was not closed for the whole of the current reporting period. That is, a complaint that was closed prior to the current reporting period and remained that way for the whole of the current reporting period does not need to be reported. Where such a complaint was open at the end of the last reporting period or was reopened, or reopened and closed again, during the current reporting period it must be reported. A complaint is not reopened where it has been escalated to the Australian Financial Complaints Authority for external dispute resolution after being closed at IDR.
 14. Item 8 of the Schedule to the instrument inserts after subsection 5(2) of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* two additional subsections that provide for financial firms to notify ASIC if they have no complaints to report for a reporting period and that this is to be provided within two months after the end of the reporting period.
 15. Item 9 of the Schedule to the instrument repeals paragraphs 6(a) and (b) of the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* and replaces these with new paragraphs to extend the staged approach to implementation of the obligations to three tranches. The first tranche firms having already commenced reporting, the second tranche firms to commence reporting for the period ending 30 June 2023, and all other firms to commence reporting for the period ending 31 December 2023.
 16. Item 10 of the Schedule to the instrument adds to the end of *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* a new Schedule 1, which identifies the financial firms that are second tranche firms.
 17. The instrument will commence on the day after it is registered on the Federal Register of Legislation.

Incorporation by reference

18. As amended by the instrument, *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* incorporates by reference certain sections of the IDR data reporting handbook dated 28 April 2023. The IDR data reporting handbook is available on the ASIC website.
19. 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 order that the specific reporting requirements are given legal effect, while remaining in an accessible format on the ASIC website. The IDR data reporting handbook has been updated to provide greater clarity on recording IDR data and reporting it to ASIC.
20. *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* 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.
21. 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

22. The Instrument does not have retrospective application.

Legislative instrument and primary legislation

23. 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 2001 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.

Duration of the instrument

24. The amendments made by the instrument do not affect the duration of *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205*.

Legislative authority

25. The instrument is made under subsections 912A(2A) of the Corporations Act 2001.
26. The instrument amends *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205*. Where an Act confers a power to make an instrument, the power is to be construed as including a power to amend the instrument: see subsection 33(3) of the Acts Interpretation Act 1901 (as in force as at 1 January 2005, per section 5C of the Corporations Act).
27. The instrument is a disallowable legislative instrument.

Statement of Compatibility with Human Rights

28. 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

29. This instrument amends *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* by extending the lodgement window from one to two months for each period, providing an additional staged approach to the commencement of the obligations to report to ASIC IDR information, and providing minor clarification amendments on the reporting requirements and updated IDR data reporting handbook.

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*.