**24 November 2026**

Law Council
OF AUSTRALIA

*Business Law Section*

Australian Securities and Investments Commission
Level 7, 120 Collins Street
Melbourne VIC 3000
By email: rri.consultation@asic.gov.au

Dear Sir/Madam

**Consultation Statement 65—Proposed remake of ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205**

1. This submission in response to *Consultation Statement 65 Proposed remake of IDR data reporting instrument* (**CS 65**), released by the Australian Securities and Investments Commission (**ASIC**) on 16 October 2026, is made by the Financial Services Committee (the **Committee**) of the Business Law Section of the Law Council of Australia. The Committee appreciates the extension of time granted by ASIC for the lodgement of this submission.

## *Key Points*

2. The Committee's key points are as follows:

   (a) the Committee supports the proposed remake of ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205 (the **Current Instrument**) and the small-bank annual reporting option, which formalises the position currently supported by ASIC's class no-action letter dated 24 September 2025 (the **No-Action Letter**);

   (b) the Committee supports extending the reduced (annual) reporting frequency to all reporting firms, consistent with Action 5 of the Council of Financial Regulators' *Review into Small and Medium-sized Banks* (final report, August 2025) (the **CFR Report**), subject to the matters set out in Section B;

   (c) the Committee supports the proposed definitional amendments (the expanded "closed" complaint definition and the self-contained "IDR response" definition), subject to the drafting observations in Section C;

   (d) the Committee recommends that clear transitional provisions deal with the cross-over from the No-Action Letter and the election mechanism for annual reporting, as set out in Section D; and

   (e) the Committee invites ASIC to consider, in this and future remakes of instruments of this kind, either a longer sunset period (such as the default 10-year period applicable under section 50 of the *Legislation Act 2003* (Cth) (**Legislation Act**) or the embedding of the core reporting mechanics in primary legislation or regulations, as set out in Section E.

## *Submissions*

### *A. The remake and the small-bank annual reporting option*

3. The Committee supports the proposed remake of the Current Instrument and the proposed amendment to give small banks (being those on the lowest tier of the Australian Prudential Regulation Authority's (**APRA**'s) banking prudential framework) the option to report IDR data annually rather than every six months. The amendment gives effect to Action 4 of the CFR Report and provides small banks with the legal certainty that a time-limited no-action position cannot provide.

4. The Committee recommends that the definition of "small bank" in the remade instrument be linked directly to the relevant tier of APRA's banking prudential framework (as it evolves, including the three-tiered proportionality framework foreshadowed in the CFR Report) rather than to any ASIC-maintained list, and that ASIC publish and maintain an operational list of entities eligible to rely on the option for transparency purposes.

### *B. Extending the reduced reporting frequency to all reporting firms*

5. ASIC has expressly invited feedback on whether the reduction in reporting frequency proposed for small banks should be extended to all reporting firms. The Committee supports that extension. In the Committee's view:

   (a) annualised reporting across the regime is consistent with the broader direction of the CFR Report (including Action 5's commitment to ongoing review of regulatory reporting requirements to ensure they remain fit for purpose);

   (b) the compliance-cost rationale that justifies annual reporting for small banks applies, in principle, across the broader population of reporting firms, and extending the relief avoids the creation of an asymmetric regime in which equally proportionate relief is denied to similarly situated non-ADI licensees (consistent with the CFR Report's observation that the Government may wish to consider similar changes for other smaller licensees which are subject to the regime); and

   (c) ASIC retains its supervisory and information-gathering powers, including in particular the power under section 912C of the *Corporations Act 2001* (Cth) (**Corporations Act**) to direct a financial services licensee (or a class of licensees, or all licensees) to provide a statement containing specified information about the licensee's financial services business, whether on a one-off, periodic or event-triggered basis. Equivalent and complementary powers apply in relation to credit licensees under the *National Consumer Credit Protection Act 2009* (Cth) )(**NCCP Act**) and more generally under the *Australian Securities and Investments Commission Act 2001* (Cth). These supervisory backstops materially mitigate the data-currency trade-off identified in CS 65.

6. If ASIC proceeds with the extension, the Committee recommends that ASIC also consider:

   (a) explaining the revised reporting cycle in the Explanatory Statement and on the public IDR data dashboard, so that users of the dashboard can interpret the data appropriately;

   (b) preserving in the instrument, or by reference to its supervisory powers, the ability to require more frequent or ad hoc reporting from particular firms (or classes of firms) on risk-based grounds; and

   (c) whether a staggered annual reporting cycle (for example, with firms allocated across different reporting windows by licensee class or category) would smooth the operational burden on ASIC's data function and maintain the ongoing usefulness of the dashboard across the year.

### *C. Definitional amendments*

7. The Committee supports the proposed expansion of the definition of "closed" complaint and the inclusion of a streamlined definition of "IDR response" directly in the remade instrument. The Committee recommends that:

   (a) ASIC confirm, in either the Explanatory Statement or the IDR data reporting handbook, the reporting treatment of (i) complaints referred to another licensee, and (ii) complaints withdrawn or discontinued after an IDR response has been given, to avoid double-counting across reporting periods or inconsistent classification between the IDR response outcome code and the "closed" outcome code; and

   (b) the "IDR response" definition in the remade instrument be fully self-contained (that is, not require cross-reference to specified paragraphs of Regulatory Guide 271 *Internal dispute resolution* (**RG 271**)) and drafted so as to be substantively consistent with the corresponding guidance in RG 271.

### *D. Transitional and drafting matters*

8. The Committee recommends that the remade instrument (or, where appropriate, its Explanatory Statement) address:

   (a) the timing of commencement, aligned with the start of a reporting cycle, and the first reporting period for small banks (and, if the extension in Section B is adopted, other firms transitioning from six-monthly to annual reporting);

   (b) the mechanism by which a firm elects to adopt annual reporting (and whether an election is revocable), and the treatment of entities that cease to be, or become, eligible for the annual option during a reporting period;

   (c) the position of entities that hold both an AFS licence and a credit licence, confirming that the annual reporting option extends to all IDR data reporting required of the entity, whether sourced in the Corporations Act or the NCCP Act; and

(d) the interaction between the No-Action Letter and the commencement of the remade instrument, including any residual operation of the No-Action Letter for transitional periods.

### *E. Observation—sunset periods and legislative architecture*

9. The Current Instrument has been in place since 30 March 2022 and, other than the small-bank reporting-frequency change, is proposed to be remade in substantively the same terms. Where legislative instruments of this kind are being perpetually remade without substantive policy change, the Committee invites ASIC to consider:

   (a) adopting, on this remake and on future remakes of instruments of this kind, a longer sunset period (for example, the default 10-year sunset under section 50 of the Legislation Act rather than a shorter period chosen by ASIC. ASIC itself observes that "all legislative instruments are repealed automatically, or 'sunset', after 10 years, unless we take action to preserve their effect by remaking them". The default position would reduce regulatory churn, administrative cost (for ASIC and reporting firms) and the risk of transitional gaps, where in substance the regime is settled; and

   (b) in the alternative, whether the core mechanics of the IDR data reporting regime, which have operated with broad stability since 2022 and are a core component of the post-RG 271 framework, are better placed in primary legislation (for example, in or by cross-reference to the IDR provisions in Part 7.6 of the Corporations Act*)* or in regulations made by the Minister. Embedding the mechanics in primary or subordinate legislation would improve accessibility of the obligation by consolidating a framework currently spread across instrument, handbook and RG 271, provide greater legal permanence and reduce reliance on periodic ASIC remakes.

10. The Committee acknowledges that these are structural matters that go beyond the immediate scope of CS 65. However, the Committee considers them pertinent to ASIC's stewardship of the framework and welcomes the opportunity to engage with ASIC on them, whether in relation to this remake or any subsequent review.

## *Conclusion and further contact*

11. The Committee would be pleased to discuss any aspect of this submission. Please contact Celeste Norman (Funds and Wealth Management and Investor Protection Lead) [redacted] if you would like to do so.

Yours sincerely



**Adrian Varrasso**
**Chair, Business Law Section**