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### **Submission in response to Consultation Paper 383**

The Property Fund Association ('PFA') established in 1998 is the peak body representing the Australian unlisted property funds sector. Our membership includes Australian financial services licensees ('Licensees'), property and financial industry participants, consultants and other stakeholders.

The property funds sector needs an industry association to promote the industry, build networks, educate and advocate – PFA aims to achieve this while providing the unlisted property funds industry with a voice.

Unlisted commercial real estate investment plays a big role in the Australian economy, is highly influential over the places we live, work, and play, and fosters innovation and sustainability in property. Over the medium to long-term, unlisted property funds are proven as a positive contributor to retail and institutional investment portfolios.

PFA is committed to the improvement of relevant industry legislation and governance to facilitate industry growth and best-practice outcomes. To achieve these aims, we provide industry leading sector research and education to our members, and represent their interests to the Australian Securities and Investment Commission ('ASIC'), Treasury and other government and regulatory bodies.

The PFA welcomes the opportunity to comment on ASIC's Consultation Paper 383: *Reportable situations and internal dispute resolution data publication* ('CP 383'). We appreciate ASIC's commitment to improving transparency, accountability, and consumer outcomes in the financial services sector. However, we have concerns regarding ASIC's plan to publish two dashboards of firm-level Reportable Situations ('RS') and Internal Dispute Resolution ('IDR') data, which will put breach and complaints data into the public domain, on the basis that the proposed approach may undermine the very policy objective ASIC seeks to achieve.

## **1. Risk of Perverse Incentives and Underreporting**

In ASIC's findings of its December 2024 review of how Licensees can improve compliance with the RS regime it was identified that most Licensees in the review "identified and recorded very few incidents" which ASIC considered to be "very low". Additionally, ASIC stated that in "many cases, there was a limited reporting of incidents and breaches to senior management."

Considering this, while the intention behind public disclosure is to enhance accountability and encourage improved compliance, we are concerned that the proposed dashboards for publicly reporting RS and IDR data may inadvertently create a perverse incentive for Licensees to underreport breaches and complaints both internally to senior management and to ASIC.

The risk of reputational damage from public disclosure may lead some Licensees to avoid full and frank reporting to ASIC, or cause employees of Licensees to refrain from reporting incidents, breaches and complaints internally to senior management, undermining the integrity and effectiveness of the RS and IDR regimes. This could result in less transparency overall, as Licensees may become more risk-averse in their reporting practices. Such an outcome would be directly counter to ASIC's clear policy intention of encouraging reporting more and on an 'in in doubt, report' rationale.

## **2. Risk of Quiet Exit Strategies**

We note that under section 26 of ASIC's IDR data reporting handbook which sets out the data reporting processes for financial firms that must report their IDR data, it states that "some complaints that are closed at IDR will be escalated by a complainant to AFCA for external dispute resolution ('EDR')."

In the case of a Licensee escalating a complaint to the Australian Financial Complaints Authority ('AFCA') for EDR, "the EDR escalation, timeframes and outcomes are not included within an IDR report and the information is instead reflected in AFCA data."

We note that if the IDR data of Licensees is made publicly available, it may create a perverse incentive for Licensees to escalate complaints to AFCA as quickly as possible to reduce the amount of IDR data that is captured and then published by ASIC. This may create a culture of Licensees pushing consumer complaints away so that they are handled by AFCA instead of providing internal IDR assistance which could undermine the IDR regime as a tool for facilitating early resolutions of complaints.

### **3. Importance of Contextualisation and Data Interpretation**

We note ASIC's intention to provide explanatory notes and contextual statements alongside the published data. However, we remain concerned that raw data—such as the number of breaches or complaints—will be misinterpreted by the public, media, investors or other stakeholders, such as rating agencies or insurers. High numbers may reflect a strong compliance culture and robust systems, not poor conduct. Conversely, low numbers may indicate underreporting rather than exemplary behaviour.

For example, consider the following scenario:

There are two Licensees acting as the trustee of two property funds:

- **Fund A** has a strong compliance culture and the Licensee tracks every investor complaint, even minor ones, and reports 5,000 IDR cases.
- **Fund B** has a weak compliance culture and the Licensee classifies many 'complaints' as 'queries' and reports only 800 IDR cases.

ASIC would publish the above firm-level IDR data, and the resulting media portrayal of Fund A would be that it is worse for handling complaints as compared to Fund B. The same would also occur in the case of Fund A having few complaints one reporting period which then rise in the next reporting period due to an improvement in their IDR and RS reporting systems allowing them to identify more breaches and complaints.

We urge ASIC to ensure that any published data is accompanied by clear, prominent, and repeated contextual statements explaining that higher numbers of reported breaches or complaints may reflect a positive compliance culture and effective systems, rather than misconduct. Without such context, there is a significant risk that the data will be misinterpreted, leading to unfair reputational harm and distorting the intended benchmarking and transparency objectives.

### **4. Impact on Innovation and New Market Entrants**

Public disclosure of firm-level RS and IDR data may have a chilling effect on innovation and new market entrants. Licensees developing new products or services, or entering new markets, may be more likely to encounter RS as part of responsible risk management. The threat of public 'naming and shaming' could discourage such innovation, to the detriment of consumers and the broader financial services sector. We have seen many highly regarded, reputable Licensees report their share of breaches, which have then led positively to improvements.

The vast majority of Licensees act in good faith and with good intentions in bringing product to market and maintaining product – publicly naming all may not dissuade the few who have little regard for the law, but it may deter those who are striving to do the right thing.

Further, noting ASIC’s recently published priority to focus on “unscrupulous property fund managers”, introducing public reporting of RS and IDR data may create a perceived linkage between reporting numbers and a lack of integrity.

We understand that getting the right balance between the ‘carrot’ and ‘stick’ can be a challenge. But we are concerned that naming and shaming Licensees for breaches and complaints will not act as an enticement to more reporting. We feel strongly that ASIC would be better served by finding ways to actively encourage reporting, rather than creating potential disincentives.

We also think it’s possible for ASIC to encourage improved behaviour and enable firms to target improvements in their compliance and consumer outcomes, and firm performance, via engagement and guidance with Licensees under the existing RS and IDR regimes. Areas of concentration of significant breaches and complaints may also be highlighted via other means, without introducing a dashboard for naming and shaming.