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Submission Details

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

Organisation: Rayne Legal

About Rayne Legal

Rayne Legal provides specialised fractional legal and compliance services to small and medium-sized (SME) financial services firms and funds across Australia. Our clients include AFS licensees, boutique advisory firms, fund managers, payments providers, smaller credit providers, and fintech startups, that are subject to the Reportable Situations (RS) regime and Internal Dispute Resolution (IDR) regimes. This positions us to offer unique insights into how ASIC's proposed data publication regime will impact the more vulnerable segments of the financial services sector.

Executive Summary

Rayne Legal thanks ASIC for the opportunity to comment on Consultation Paper 383 (CP383) regarding the publication of reportable situations and internal dispute resolution data.

While we support the principles of transparency and accountability, we have significant concerns about the current proposals from the perspective of our SME financial services clients.

We cannot support CP383 in its current form for the following key reasons:

1. the proposed approach fails to account for the operational realities of SME firms;
2. the data publication methodology creates inequitable competitive impacts;
3. the timing and implementation approach present significant operational risks for all;
4. the scope of data elements raises privacy and commercial confidentiality concerns; and
5. the contextual framework is insufficient to prevent misleading interpretations.

Our detailed responses in Annexure A, outline specific concerns and propose alternative approaches that would better balance transparency objectives with fair treatment of firms of all sizes.

Consultation Submissions

Refer to Annexure A for the following tables, outlining our response to CP383:

- Table 11: RS response table (feedback questions B1Q1 to B4Q1)
- Table 12: RS response table (feedback questions D1Q1 to D1Q3)
- Table 13: RS response table – Additional elements that you think should be published (feedback question D1Q4)
- Table 14: IDR response table (feedback questions E1Q1 to E1Q3)

Implementation Recommendations

The current proposal requires significant modification before it can be supported. We recommend ASIC consider:

1. *Industry Working Group*: Establish a diverse working group with representatives from firms of all sizes to develop appropriate contextual frameworks and implementation approaches.
2. *Phased Implementation*: Begin with aggregate industry data only, followed by size-categorised data, before proceeding to firm-level data only after thorough impact assessment.
3. *Size-Based Approach*: Implement a mandatory size classification system with appropriate metrics and contextual statements for each category.
4. *Proportional Application*: Consider proportionality in the application of requirements to ensure the regulatory burden is appropriate to firm size and resources.
5. *Impact Assessment*: Conduct an assessment of the dashboard's initial implementation, with particular attention to how the publication affects firms of different sizes.
6. *Relative Metrics*: Consider presenting certain metrics in relative terms (e.g., per 100 clients or similar) to provide additional context about scale.
7. *Pilot Testing*: Conduct a limited voluntary pilot with representative firms from each size category before full implementation.

Conclusion

Rayne Legal strongly believes in the principles of transparency and accountability that underpin the proposed data publication regime. However, the current proposals require significant modification to ensure they do not disproportionately harm SME market participants, or create misleading impressions that damage trust in the financial services sector more broadly.

We would welcome the opportunity to participate in further consultation on this important initiative. The perspective of SME financial services firms must be adequately represented in the development of a framework that will significantly impact their operations and competitive position.

With appropriate modifications addressing the concerns outlined in this submission, we believe a fair and balanced data publication regime could be achieved that supports ASIC's regulatory objectives, while treating all market participants equitably regardless of their size or resources.

Annexure A: Consultation Submissions

Table 11: 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 proposed dashboard format disadvantages SME market participants in several critical ways:</p> <ol style="list-style-type: none"> Operational Reality Gap: The dashboard treats all licensees as equivalent regardless of their operational scale. A breach impacting 10 clients represents vastly different proportions of the client base for a firm with 50 clients versus one with 50,000. Resource Disparity: The dashboard fails to recognise that the resources available for compliance monitoring directly impact breach identification rates. Ironically, firms with more sophisticated compliance functions (typically larger firms) may identify and report more breaches, yet appear "worse" than under-resourced firms with less robust detection capabilities. Statistical Validity: For SME firms, the limited sample sizes create statistically invalid comparisons. A single breach or complaint in a SME firm can skew metrics dramatically, whereas the same would be statistically insignificant for large institutions. Missing Indexing: We strongly recommend implementing a relativity metric (e.g., per 100 clients or similar), indexed view as the default display method, rather than raw numbers. Suggested Enhancement: A firm size classification system (micro/small/medium/large/enterprise) should be incorporated, with users required to select comparable firms rather than enabling misleading cross-category comparisons.
B2Q1 Do you have any comments on this proposal?
<p>The proposal to make data available for download presents serious implications that appear not to have been fully considered:</p> <ol style="list-style-type: none"> Data Manipulation Risk: Downloadable datasets may be repackaged by third parties into comparison tools that potentially present the data without the contextual information provided in ASIC's controlled dashboard environment. Contextual Separation: When data is downloaded and repurposed outside ASIC's dashboard environment, there is a risk that important contextual information may be separated from the underlying data, potentially leading to misinterpretation. User Education: If data download functionality proceeds, consideration could be given to providing users with clear information about the limitations of the data and guidance on appropriate interpretation.

4. **Tiered Implementation:** We recommend a tiered approach where initially only aggregated industry-level data is downloadable, with firm-level downloads introduced only after conducting a formal impact assessment of the dashboard's first year of operation.

5. **Terms of Use:** Clear terms of use could help establish expectations regarding the appropriate use and representation of downloaded data.

B3Q1 Do you have any comments about ASIC using explanatory notes and contextual statements to assist in the interpretation of the data elements?

While explanatory notes are necessary, they are insufficient as currently proposed:

1. **Research-Based Context:** Studies on data visualisation and user experience suggest that contextual information is most effective when integrated directly with the data it describes. Consideration should be given to embedding context within visualisations rather than in separate sections.
2. **Mandatory Context Display:** Context must be integrated directly into visualisations, not provided as optional overlays or footnotes. For example, firm size indicators should appear directly alongside breach numbers in the same visual field.
3. **Simplistic Statements:** The proposed generic statements that "higher numbers may indicate better detection" are too simplistic. Specific operational contexts relevant to different business models must be acknowledged.
4. **Industry Consultation:** ASIC should establish a working group with representatives from firms of varying sizes to develop appropriate contextual statements that reflect operational realities across the industry spectrum.
5. **Pre-Publication Review Right:** Firms should have the right to review and provide limited supplementary context specific to their circumstances before publication.

B3Q2 Are there any other types of explanatory statements we should also publish, or particular issues they should cover? If so, what are they?

Additional contextual elements required for fair interpretation:

1. **Financial Impact Indexing:** Contextual statements should explain how financial impacts differ proportionally across firm sizes, with reference to average remediation as a percentage of revenue or similar relative metrics.
2. **Maturity Context:** Newer firms and those experiencing rapid growth typically experience higher breach rates as systems scale. Context about operational maturity and growth phase should be included.
3. **Operational Complexity:** Firms offering multiple product lines or serving diverse client segments face greater operational complexity than specialists. This complexity impacts breach likelihood independent of compliance quality.

4. Reporting Incentive Consideration: A balanced reporting framework should aim to encourage thorough breach identification and reporting. Clear explanatory statements should acknowledge that variations in reported breaches may reflect differences in detection capabilities rather than necessarily indicating differences in compliance quality.

5. Detection Method Context: Contextual information should distinguish between breaches identified through proactive compliance monitoring versus reactive discovery through complaints or regulatory action.

6. Remediation Status: Context about whether issues have been fully remediated and controls implemented should be prominently displayed to distinguish between historical and current risk.

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.

Future enhancements that would significantly improve the dashboard's fairness and utility:

1. Peer Comparison Only: The system should default to showing comparisons only between firms of similar size and business model, preventing misleading cross-category comparisons.

2. Remediation Effectiveness Metrics: Include metrics showing remediation effectiveness (percentage of affected clients successfully remediated, average time to remediation) to balance the current focus on breach identification.

3. Progress Recognition: Implement visual indicators showing year-on-year improvement or deterioration in key metrics to recognise firms that are making progress.

4. Harm-Based Weighting: Develop a weighted view that emphasises consumer harm over technical breaches, providing a more meaningful measure of compliance effectiveness.

5. Compliance Investment Indicator: Allow firms to report standardised metrics about their compliance resourcing relative to revenue or client numbers, providing context about their compliance investment.

6. Customer Outcome Focus: Future iterations should include positive metrics (customer satisfaction, successful outcomes) rather than focusing exclusively on negative events.

7. Regulatory Engagement Information: Including information about firms' participation in regulatory initiatives or programs could provide additional helpful context about their broader approach to compliance and regulatory engagement.

Table 12: RS response table (feedback questions D1Q1 to D1Q3)

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 2.1	Number of reports	For SME firms with limited client numbers, even a single breach report can create a misleading impression when viewed as a raw number.	This element should not be published as a raw number, but rather as an indexed figure (e.g., per 100 clients) or within a comparison band showing the firm's position relative to similar-sized peers.	"Breach reporting volumes are strongly correlated with the sophistication of a firm's compliance monitoring systems. Firms with more robust detection capabilities typically report more breaches than those with minimal monitoring."
RS-DE 3.1	Customers impacted	This metric is highly problematic for SME firms where client numbers are limited and a single multi-client breach can appear to affect a significant portion of their client base.	This element should only be published as a percentage of total clients, never as an absolute number, and with appropriate statistical warnings when sample sizes are too small to be meaningful.	"Impact numbers should be viewed relative to a firm's total client base. For SME firms, a single breach affecting multiple clients can represent a larger percentage of clients than would be statistically significant for larger institutions."
RS-DE 4.1	Time taken to identify and commence investigation into breaches	This metric disadvantages SME firms that often have less formal, but potentially equally effective, investigation processes.	This element should only be published with size-appropriate benchmarks that recognise the different operational constraints and processes of firms of different scales.	"Investigation timeframes reflect a firm's processes and resources. SME firms may have less formal but potentially more direct investigation approaches than large institutions with multiple governance layers."
RS-DE 5.1	Time taken to complete compensation	This metric fails to account for the different operational challenges in remediation between large institutionalised processes and boutique firm approaches.	This element should be published with clear acknowledgment of the differing remediation complexities across firm sizes and business models.	"Compensation timeframes vary significantly based on a firm's operational scale, client engagement model, and available resources. Direct client relationships often present in SME firms may facilitate more personalised but potentially longer remediation processes."
RS-DE 6.2-6.3	Rectification method and status	These fields reveal commercially sensitive information about internal processes that could disadvantage responsive firms.	These elements should be published only at an aggregated industry level, not at firm level, as they reveal details about internal operations that could create competitive disadvantage.	"Rectification approaches vary based on a firm's structure, available resources, and the nature of the issue. The same underlying issue may be addressed through different but equally effective

				methods depending on the firm's operational model."
RS-DE 7.1-7.2	Reporting practices data	These metrics potentially penalise firms that provide frequent updates to ensure transparency with ASIC.	These elements should be carefully contextualised to avoid creating disincentives for thorough and transparent reporting.	"Higher volumes of updates and submissions may reflect a firm's approach to ongoing case management. The frequency of updates should be considered in the context of the firm's overall reporting practices."

Table 13: RS response table - Additional elements that you think should be published (feedback question D1Q4)

Data element	Please provide detailed reasons why the data element should be published
Firm Size Category	A standardised classification of firms into size categories based on client numbers, FUM, or revenue brackets would provide important context for interpreting other metrics. This would enable users to consider data in the context of similarly-sized firms and understand the operational scale at which a firm operates.
Compliance Resources Ratio	A standardised metric showing compliance resources relative to firm size (e.g., compliance FTE per 100 clients or compliance spend as percentage of revenue) would provide context about a firm's allocation of resources to compliance functions. This would help users understand the relationship between firm size and compliance resourcing.
Proactive Detection Percentage	Information about the percentage of breaches identified through proactive compliance monitoring versus those identified through other means (such as complaints or regulatory actions) would provide insight into a firm's compliance monitoring approach. This metric could help distinguish between firms with different detection methodologies.
Breach Significance Weighting	A classification system that distinguishes between different types of breaches based on their significance or impact would provide more nuanced information than raw breach numbers alone. This would help users understand not just the quantity but also the nature of reported breaches.
Remediation Success Rate	Information about the percentage of affected clients who have been successfully remediated would complement the focus on breach identification with information about resolution outcomes. This outcomes-focused metric would provide insight into how effectively identified issues are being addressed.

Table 14: 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 3.1	Number of complaints	This raw metric creates fundamentally misleading comparisons between firms of different sizes and client engagement models.	This element should not be published as a raw number but only as a ratio to client numbers or transaction volume, with appropriate statistical confidence indicators.	"Complaint volumes correlate strongly with business size, client numbers, and transaction volumes. Firms with more accessible and responsive complaint channels typically record higher numbers of complaints regardless of service quality."
IDR-DE 3.3-3.4	Complaint status and channel	These elements reveal commercially sensitive information about a firm's client engagement approaches.	These elements should be aggregated at industry level rather than firm level to protect legitimate commercial interests in client service approaches.	"Complaint channels reflect a firm's client engagement model and communication strategy. The distribution of channels used may indicate a firm's digital maturity or client demographic rather than accessibility."
IDR-DE 3.7	Number of days taken to resolve the complaint	This metric disadvantages firms dealing with more complex complaints or those taking a more thorough approach to resolution.	This element should be segmented by complaint complexity tier rather than presented as a single figure that obscures important nuance.	"Resolution timeframes vary significantly based on complaint complexity, client engagement, and the nature of the resolution required. Longer timeframes may reflect more complex issues or more thorough resolution approaches rather than process inefficiency."
IDR-DE 3.9-3.10	Product/service and complaint issue	For specialised firms with limited service offerings, these elements effectively disclose their entire business model and client base.	For firms with limited product/service ranges, these elements should be aggregated to a higher level to protect commercially sensitive information.	"The distribution of complaints across products and issues reflects a firm's business model and offering range. Specialised firms naturally show concentrations in their areas of focus, while diversified firms show broader distributions."
IDR-DE 3.11-3.12	Complaint outcome and monetary remedy	These elements create misleading impressions when comparing SME firms with limited revenue to large institutions.	These elements should be contextualised relative to firm size, client numbers, or average transaction values rather than presented as absolute figures.	"Resolution approaches and remedy amounts reflect the specific circumstances of each complaint and the firm's service model. Different business models may appropriately use different resolution approaches for similar issues."