2021 Annual Data Report

April 2023

INSURANCE BROKERS CODE COMPLIANCE COMMITTEE

The Insurance Brokers Code Compliance Committee (the Committee) acknowledges the Traditional Custodians of the different lands across Australia, and pays respects to elders past, present and future.

For they hold the songlines

The stories

The traditions

The culture

And the hopes of First Nations Australia.

This land is, was, and always will be traditional First Nations country.

The Committee also acknowledges and pays respect to the Traditional Custodians of the lands on which our Code team works, the Wurundjeri, Boonwurrung, Wathaurrung, Daungwurrung and Dja Wrung peoples of the Kulin nation and the Gadigal people of the Eora Nation.

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Message from the Chair

I am pleased to present the 2021 Annual Data Report of the Insurance Brokers Code Compliance Committee.

The Annual Data Report is the culmination of the Committee's monitoring activities for the year. Where our Annual Report and Benchmark Report provide a snapshot, the Annual Data Report allows us to analyse the breaches and complaints from Code subscribers more deeply to find patterns and trends, emerging issues, and examples of good practice.

It also provides subscribers with valuable insights into their own compliance – what they are doing well and where they need to improve.

The Committee acknowledges that the report is lengthy. However, every element of this report informs and helps subscribers to identify areas needing attention in their business and improve compliance. I strongly recommend that everyone in your organisation, irrespective of size take the time to read this document in its entirety.

Embrace a culture of self-reporting

It is concerning that 52% of subscribers did not report a single breach of the Code in their 2021 Annual Compliance Statement, and 45% did not report any complaints – including subscribers with more than 100 staff.

This may indicate the prevalence of company cultures that fail to value self-reporting and its power to improve standards.

Simply not reporting breaches and complaints does not necessarily mean Code subscribers are doing well. Nor does it mean that breaches and complaints are not occurring.

It may be that systems for reporting, recording and monitoring breaches and complaints are not sufficiently robust. It could be that staff need better training in Code obligations and reporting processes and procedures.

Reporting zero breaches and complaints is not a shortcut to a completed Annual Compliance Statement and a good reputation. Instead, it may indicate issues with monitoring and, potentially, culture.

Code subscribers will be aware of our emphasis on company culture, and how it encourages compliance and good behaviour within the industry. We seek good outcomes, not merely the appearance of good outcomes.

Once again, we urge brokers to develop cultures that embrace self-reporting of Code breaches and complaints as an important way to learn, improve and shift standards in the industry.

Breach reporting is everyone's responsibility

A subscriber with a good compliance culture is one where staff at all levels and in all areas are encouraged and supported to identify and report breaches and complaints.

Despite this, we often hear of expectations that responsibility for detecting and reporting breaches falls to someone else in the business. One Category A subscriber that did not report a single breach in 2021 told us that, although it regularly checks in with staff to identify issues, all the potential breaches are reviewed and assessed by three members of its Legal and Compliance team.

Leaving breach reporting to a specific team or individual risks breaches being missed. And, importantly, it may send a message to the rest of the business that compliance with Code obligations is not everyone's responsibility.

It is everyone's responsibility and subscribers must be ever mindful of this to maximise the benefit and framework which the Code provides.

Advice for our smallest Code subscribers

We acknowledge that smaller subscribers may be less likely to report breaches and complaints than their larger counterparts.

Subscribers with fewer than 20 staff, and in many cases fewer than five staff, have compliance cultures, detection processes and reporting methods for breaches and complaints that are different to larger subscribers. They have close contact with their clients and can resolve potential breaches and complaints before they escalate.

Nevertheless, we encourage smaller subscribers that typically report no breaches or complaints to review the recommendations and tips in this Annual Data Report. Few or no breaches or complaints may be a sign of inadequate processes, procedures, staff training, or compliance frameworks.

Taking the time to review these aspects of the business is important and this report will offer some valuable recommendations to do so.

Accurate reporting leads to better outcomes for subscribers and their clients

Completing the Annual Compliance Statement and Breach Data Report is not merely an exercise in administrative box-ticking.

It is an opportunity to review, assess and strengthen an organisation's compliance frameworks and build a strong company culture that values and encourages self-reporting.

The industry now has a new and enhanced Code that makes measuring compliance easier. We expect this to result in more accurate reporting and more subscribers self-reporting breaches and complaints.

More reports of breaches and complaints is not necessarily a bad thing if it leads to meaningful improvements and better outcomes for clients through the identification of shortcomings.

Oscar Shub
Independent Chair
Insurance Brokers Code Compliance Committee

About this report

The 2021 Annual Data Report provides analysis of the breaches and complaints reported by subscribers for the 2021 calendar year.

The Annual Data Report is a companion report to our **Annual Report 2021–22** and includes our observations on compliance with the Code, along with guidance and recommendations for subscribers that will help them improve and achieve better practices.

Methodology

As part of the 2021 Annual Compliance Statement (ACS), 441 Code subscribers provided data on their breaches and complaints.

In previous years, we verified the ACS of around 10% of subscribers to validate and understand the context for their reporting.

However, for the 2021 ACS, we contacted all subscribers where we needed to clarify their data or if they had unusual reporting patterns (for example, no reported breaches, a high number of breaches, or breaches that affected high numbers of clients).

Incorporating the 2022 Code

The new Code came into effect on 1 November 2022 after an eight-month transition period. However, subscribers will not have to comply with section 6.1 (Disclosing Remuneration) of the 2022 Code until 1 November 2023.

Although the data in this report covers the period 1 January 2021 to 31 December 2021 when subscribers were self-reporting against the 2014 Code, we have included observations and commentary that references the 2022 Code. This is to help subscribers comply with their obligations under the new Code and to assist with reporting.

As part of the 2022 ACS, any subscriber that reports no breaches or complaints will have to explain their processes and procedures for monitoring and reviewing compliance with the Code.

We encourage subscribers to use the examples in this report alongside our other guidance on the new Code, **Comparing the Codes – how the 2014 and 2022 Codes differ** and **Complying with the 2022 Code**, when reviewing and assessing breaches and complaints.

Tips for subscribers

- **Have a Breach Register.**

  Make sure it is easily accessible for all staff.

- **Model your Breach Register on our Breach Data Report.**

  This will allow you to record Code breaches, identify their root cause and impact, and take remedial action in alignment with our and ASIC's categorisation.

- **Use data from complaints to identify breaches of the Code.**

  For example, if a client complains that they were not provided a service, this may also be a breach of the Code. This is a good way to track specific issues and identify how they can be remedied.

- **Do not limit reporting breaches to a single individual or team.**

  Encourage and support staff of all levels and all areas to identify and report breaches whenever they occur.

- **Review compliance and risk management.**

  This is particularly important for subscribers that report no breaches or complaints. Make sure breaches and complaints are effectively identified and reported and take the time to improve staff awareness and strengthen monitoring oversight.

Findings from breach data

Breach data – a snapshot

A BREACH IS...

A failure to comply with the obligations of the Code in relation to the provision of an insurance broking service (defined with reference to the [ASIC Regulatory Guide 78]() – Breach Reporting by AFS Licensees, [Standards Australia's AS 3806-2006]() – Compliance Programs, [Section 912D]() of the Corporations Act 2001).

BREACHES IN 2021...

3,570 SELF-REPORTED CODE BREACHES (UP FROM 3,328 IN 2020)

48% OF CODE SUBSCRIBERS SELF-REPORTED BREACHES (UP FROM 44% IN 2020)

219 CODE SUBSCRIBERS (52%) SELF-REPORTED NO CODE BREACHES*

**Including 196 Category E subscribers and 1 Category A subscriber*

50% CODE BREACHES RELATED TO SERVICE STANDARD 5 'BUYING INSURANCE'

20% CODE BREACHES OVER THE PAST FIVE YEARS RELATED TO SERVICE STANDARD 1 'LEGAL OBLIGATIONS'

PROPORTION OF BREACHES REGARDING SCOPE OF COVERED SERVICES MORE THAN DOUBLED IN 2021

Top issues in Code breaches

Issuing renewal notices late

Despite our recent emphasis on the issue, in 2021 we found Code subscribers continued to report high numbers of breaches for issuing renewal notices late.

Most occurred because brokers failed to advise clients about their policy renewals before the policy expired.

Our **two inquiry reports on culture and behaviour** in the insurance broking industry, highlighted issues with renewal notices being sent late.

We offered guidance to subscribers on ways to improve and recommended that all subscribers commit to higher standards for policy renewals than the minimum legal requirement of 14 days. Many subscribers have since implemented the recommendations, with more than half (56%) reporting higher standards for policy renewals. However, this reporting period shows that there is still room for improvement.

BREACHES INCLUDED…
One Category C subscriber reported a Grade 2 breach after an employee deleted a client's motor vehicle policy renewal from the system. An employee sent instructions to renew a $44 million strata policy a day after the policy expired. There was no note on the client's file advising of any 'hold covered' terms in place. Early identification of the breach meant the subscriber was able to rectify it by obtaining cover for the client.
One Category A subscriber identified two breaches during an audit of an employee's files. The employee did not obtain alternative quotes until four days before the client's policy expired, despite being advised by the insurer several months earlier that the renewal terms would not be offered to the client. The subscriber identified the breach early and was able to get cover for the client.
One Category E subscriber reported a breach of the 2014 Code's legal standards. It reported the breach as being caused by a manual processing error. Two separate policies for a client with different renewal dates were placed together into a processing tray for manual renewal. The policy with the earlier renewal date was placed under the other policy and was not sent to the client within 14 days of its expiry. The error was picked up by a staff member and the subscriber rectified the breach immediately.

Relevant Code provision

<table>
<tr><td>2014 Code:
Service Standard 1: We will comply with all relevant law.
Service Standard 4: We will clearly tell you about the scope of our covered services.
Service Standard 5: We will discharge our duties diligently, competently, fairly and with honesty and integrity.</td><td>2022 Code:
Section 7.2 Policy Renewal: We will contact our client well before and at least fourteen (14) days prior to the client's insurance cover expiry date to engage them on the next steps to be taken prior to the expiry of the policy, in accordance with the terms of engagement.</td></tr>
<tr><td colspan="2">Section 58 of the <u>Insurance Contract Act 1984</u> requires insurance brokers to notify their clients at least 14 days prior to a policy expiring.

However, the 2014 Code does not specify a timeframe when discussing the provision of renewal notices to clients and there is no specific Service Standard that captures breaches involving these notices being issued late.

Subscribers have generally reported them under Service Standard 1 (compliance with the law), Service Standard 4 (scope of covered services) or Service Standard 5 (buying insurance).

The 2022 Code, at Section 7.2, introduced a specific obligation relating to policy renewals. It matches the legal timeframe and aims to address breaches relating to late renewal notices.

With this development, we expect subscribers to report all instances of renewal notices being sent late as a breach of Section 7.2 of the 2022 Code.</td></tr>
</table>

Subscriber tips

- Send renewal notices to clients earlier than the legal minimum requirement of 14 days before the policy expires. Sending a renewal notice 21, 28 or 30 days before expiry is good practice and demonstrates a commitment to a higher standard.
- Set an explicit internal key performance indicator (KPI) for sending renewal notices 30 days before the policy expiry date. This makes it clear to staff that sending renewals with more than 14 days' notice is a priority and creates a buffer, allowing time to meet the legal and 2022 Code obligations in case the renewal is not sent with 30 days' notice.
- Automate the process for sending renewal notices where possible to avoid breaches caused by staff error or manual processing.

Clear and effective communication

A lack of communication, poor record-keeping and staff inattention were core breaches of the Code regarding clear and effective communication.

Effective communication between insurance brokers and clients allows brokers to tailor services to client needs. It is crucial that brokers provide information to current clients, as well as prospective clients, that is clear and accessible.

Insurance brokers are expected to keep effective notes and document all correspondence. Documenting all client interactions in detail is fundamental to good practice. By maintaining appropriately detailed records, brokers can ensure good services for clients and prevent allegations of negligence.

BREACHES INCLUDED...

One Category A subscriber reported a breach that affected a client who had a policy with the subscriber for many years.

In the time that the client was with the subscriber, the client had not altered the sum insured.

The broker emailed the client in 2020 to seek confirmation that the amount insured remained adequate for their needs but did not receive a response. The broker mistakenly assumed that the client was happy with the status quo.

Soon afterwards, the client made a claim against the policy and discovered that they were insured for $10,000 less than they thought.

While the broker did attempt to seek an update from the client, the broker should not have taken silence as confirmation. The broker had a professional duty of care to follow up with the client and obtain written confirmation of changes to the insured amount.

One Category D subscriber reported a breach of the Code's legal standards for failing to communicate with either the client or the insurer.

The broker did not disclose the client's driving history to the insurer, resulting in the client's claim being declined. The broker also failed to advise the client that the insurer would not cover the insured because of poor driving history and would need to find an alternative policy.

The breach was only discovered after the client lodged a complaint. As part of its remedial action, the subscriber conducted training to help staff improve communication with clients about declined claims and the importance of disclosing material facts.

One Category B subscriber was required to pay a client almost $4,000 after confirming a claims-handling breach.

The broker had not kept a record of the client's instructions and subsequently created an incorrect policy.

The client had notified the broker that the house to be insured was unoccupied, but the broker created a policy for an occupied house.

When the client made a claim on the policy, it was denied, and the subscriber then had to compensate the insured for the claim amount.

One Category B subscriber reported a breach caused by an employee failing to pay attention to the expiry date of a client's policy and insufficient record-keeping.

The policy had been placed with a new underwriter but lapsed. The broker failed to notice and did not notify the client. The policy was re-brokered and transferred to a different insurance provider without the broker or the client realising.

While the client unwittingly made a payment to the original insurance provider, the new provider sent the subscriber a notice of intent to cancel due to non-payment of the premium. This was followed by a cancellation notice and the client was left uninsured. The subscriber was required to pay for the client's policy to be reinstated.

Relevant Code provision

2014 Code:	2022 Code:
• Service Standard 1: We will comply with all relevant law. • Service Standard 4: We will clearly tell you about the scope of our covered services. • Service Standard 6: We will clearly tell you how our covered services are paid for before we provide them and answer any questions you have.	• Section 3.1 (c) (i): Transparency and Accountability – We will communicate with clients and prospective clients in a clear and timely manner. • Section 5.1 (a): We will communicate with clients in a timely manner using clear and concise language and in plain English, subject to regulatory disclosure requirements. • Section 4.2 (c): We recognise that regulatory requirements for the provision and disclosure of information can mean prospective clients and clients receive a lot of information when they engage us and when we provide them with advice. We will take all reasonable steps to ensure that we provide clear information so that a prospective client or client understands the services they will receive.

Breaches that involve unclear and ineffective communication are mostly reported under Service Standards 1 (compliance with law), 4 (scope of covered services) and 6 (remuneration). The 2022 Code contains obligations in Section 3.1(c) and 5.1(a) for communicating in a clear and timely manner.

In April 2022, we published **Broking Resilience: Lessons from 2019-20**, which highlighted the importance of communicating regularly with clients. While its recommendations were specifically about the COVID-19 pandemic and extreme weather events, the main principles apply to all client interactions:

- Engage with clients early and often. This can be through emails, phone calls or in-person visits.
- Help clients with their claims where appropriate and clearly communicate any delays.

Conflict of interest

Among the self-reported breaches in 2021 were personal and third-party conflicts of interest. Many of these breaches were the result of staff not being aware that their actions were an actual or perceived conflict of interest.

Staff must understand conflicts of interest and be aware of their obligations under the new Code. To achieve this, subscribers should review their policies and training programs to ensure there is no confusion and staff are able to identify and prevent a potential conflict of interest before it leads to a breach of the Code.

Conflicts of interest will occur from time to time. And while subscribers should avoid conflicts where possible, at a minimum it is important to manage conflicts appropriately when they arise.

Subscribers must be transparent about conflicts, manage decision-making processes and notify clients so the conflict does not affect outcomes.

BREACHES INCLUDED...

One Category C subscriber reported a breach after a staff member notified management that several brokers were receiving vouchers from an insurer as volume-based incentives.

The subscriber contacted the insurer to advise that its brokers would no longer be participating in the incentive scheme and created a handbook for all staff detailing clearer procedures and consequences for conflicts of interest with insurers.

One Category A subscriber reported a breach after a client discovered that their broker had shared their financial information with an external party.

By failing to report this as a perceived or actual conflict of interest, the broker contravened the subscriber's internal policy.

Investigating the incident, the subscriber found that the broker had not been provided with sufficient training on the policy or on managing conflicts of interest generally. The subscriber subsequently reviewed the policy and conducted training on conflicts of interest for all staff.

A Category B subscriber found that a staff member was managing his own personal insurance as an account manager, even though the subscriber had forbidden such practice in company-wide communication.

The incident was identified by a supervisor. When asked about it, the staff member admitted that they did not understand the internal communication about managing conflicts of interest and had not realised these actions were against company policy.

The subscriber then moved the employee's personal portfolio to a different account manager.

Relevant Code provision

2014 Code:	2022 Code:
• Service Standard 1: We will comply with all relevant law. • Service Standard 2: We will transparently manage any conflicts of interests that may arise.	• Section 4.1 (a) (v): Understanding our role – if we cannot advise a prospective client or act on their behalf due to a conflict of interest which cannot be managed, we will immediately notify the client upon identifying such a conflict. • Section 5.3 (d): Who we act for – Where there may be a conflict of interest, we will contact the client in a timely manner and clearly inform them that there may be a conflict of interest. Where there is or is likely to be a conflict of interest, we will engage with the client regarding steps to manage the conflict of interest in their best interests and we may only continue to act on behalf of the client with their consent.
Under the 2014 Code, subscribers reported breaches involving conflicts of interest against Service Standard 1 (compliance with law) and Service Standard 2 (conflict of interest). These types of breaches can now be reported under Section 4.1 (a) and 5.3 (d) of the 2022 Code.	

Subscriber tips

- Review policies, processes, and procedures on avoiding and managing conflicts of interest to ensure they are clear and easily understood.
- Run regular training sessions on conflicts of interest, with real examples, to ensure staff understand their obligations and the company's policies.
- Conduct regular, structured internal audits as well as external compliance audits to identify potential conflicts of interest.

Root causes and impact of Code breaches

Human error

People-related issues caused more than three-quarters of all Code breaches in 2021. Manual error was cited as the root cause of 41% (1,458 breaches) while 32% (1,133 breaches) were caused by staff not following processes and procedures (Appendix B, Table 5).

Staff using incorrect processes and procedures accounted for 5% (185 breaches).

BREACHES INCLUDED…
A staff member at one Category C subscriber caused a breach when they included the wrong excess to a policy schedule and sent it to a client. The subscriber compensated the client for their loss when a claim arose with a payment of $5,000.
One Category E subscriber reported a breach that was caused by a staff member incorrectly entering the details for an underwriter into the broking system. This led to client invoices containing the wrong information, including the name and AFSL of the underwriter. The subscriber has since introduced a process whereby all underwriter details are reviewed within the first 30 days of being entered into the system.

Identifying breaches

The most common method of identifying breaches in 2021 was through staff. Internal processes or reports also identified many breaches reported in 2021.

One in three breaches was identified by a member of staff, while one in four was identified via an internal process or report.

Subscriber tip

- Identify the root cause of Code breaches so you can work to prevent them happening again.

Impact of breaches

In 2021, subscribers reported breaches that affected 20,503 clients.

This is a marginal decrease on the previous year – 237 fewer than in 2020 (Appendix B, Table 2).

The breaches that affected the most clients were:

- failure to comply with legal obligations (Service Standard 1) – 10,394 clients
- scope of covered services (Service Standard 4) – 3,913 clients
- buying insurance (Service Standard 5.1) – 2,369 clients
- claims handling (Service Standard 5.2) – 1,973 clients.

BREACHES INCLUDED…

One Category A subscriber reported a breach of the Code's legal standards that impacted 6,197 clients – the highest number of clients affected by any breach in 2021.

For around eight months, the subscriber failed to provide clients with the general advice warning, which is required under the Corporations Act and informs clients that the policy advice is general in nature and does not consider their personal circumstances.

The breach was identified through an internal audit which found that the subscriber's templates had been altered. The subscriber subsequently updated its system and corrected the issue.

One Category B subscriber breached the Code's legal standards when it sent 2,773 clients an incorrect version of the Financial Services Guide (FSG) over a two-month period.

The breach was identified via an external compliance audit and reported to ASIC due to the large number of clients affected.

Good practice

Rectifying a breach that affected many clients

Following changes to its broker management system, a Category E subscriber discovered a system error had caused around 2,000 clients to receive a copy of the subscriber's FSG with several pages missing.

The subscriber rectified the breach by correcting the FSG and making it available online. It also reissued the FSG to any clients that had received a hard copy of the incorrect version. The subscriber updated its broking system to address the system error.

The total financial impact of Code breaches increased significantly in 2021 – from just over $650,000 in 2020 to $3.2 million in 2021 (Appendix B, Table 2).

Breaches of the Code's obligations concerning buying insurance (Service Standard 5.1) caused the greatest financial impact to clients with a total of $2,517,760.

Breaches of the Code's money handling requirements (Service Standard 7) had the next highest financial impact at $551,749.

Subscribers in the largest size category reported breaches with the greatest financial impact. These were all breaches of the Code's buying insurance obligations.

Additional breach reporting

In 2021, subscribers reported 51 breaches to ASIC and 16 to AFCA.

BREACHES INCLUDED...

One Category A subscriber reported a breach of the obligations for buying insurance that accounted for around a third of the total financial impact for the year.

One of the subscriber's clients, a financial planning business, thought it had a certain level of cover and only discovered it did not when claims were denied.

The client had six claims denied by the insurer, resulting in a financial impact of $1,083,321.

The subscriber had not taken steps to ensure the client was appropriately insured for their business needs.

The same subscriber reported another breach after it failed to follow the correct processes and procedures when setting up a client's policy, which lead to inadequate cover.

The client's house was damaged by a fire and the claim was denied. This resulted in a financial impact of $276,658. The client reported the matter to AFCA for resolution.

Another Category A subscriber reported four breaches of the Code's standards for buying insurance that resulted in financial impacts of more than $500,000.

All four breaches were caused by one of the subscriber's authorised representatives. The representative:

- failed to disclose the client's criminal history, which led to the insurer declining a fire-related claim
- failed to create policy coverage for a client despite the client's instructions
- failed to provide suitable recommendations to a client about their insurance options and the variance between premiums
- provided advice to a client that resulted in financial loss.

The subscriber subsequently terminated its contract with the authorised representative.

One Category E subscriber reported a total financial impact of $3,000 from two separate breaches – one for sending the client late renewal terms, and the other for failing to provide the Statement of Advice.

The subscriber clarified during its ACS verification that $3,000 was the amount affected in the clients' policies, not the financial impact on the clients. The breaches had no financial impact on the clients.

Another Category E subscriber was responsible for a money-handling breach caused by an administrative error that resulted in duplicate payments to two underwriters from a trust account. The client suffered a financial impact of $230,000.

The error was picked up by a staff member and within a week of the breach occurring, the subscriber had implemented procedural changes to the way payments are made from trust accounts. Within a month, staff were trained in the correct processes and procedures.

Good practice

High financial impact

A Category E subscriber reported two separate breaches relating to the same client and policy.

The first was a breach of the Code's buying insurance obligations (Service Standard 5), the second was a breach of the scope of covered service requirements (Service Standard 4). Together, the breaches had a financial impact of $50,678.

Two years before the breaches occurred, the broker consulted with the client to create a farm insurance policy that would meet the client's specific needs. However, the broker mistakenly placed a policy for the client that did not have adequate cover for bushfires.

The client made a claim on the policy after their farm was damaged in a bushfire, and the claim was denied due to lack of policy cover.

Using professional indemnity insurance, the subscriber paid the client the amount they were unable to claim because of the broker's error.

Subscriber tips

Client impact

- Use the Breach Data Report to help you identify and measure the client impact of each breach.
- Look closely at breaches caused by system errors – these are generally likely to impact multiple clients and could be systemic.

Financial impact

- When recording the total financial impact of each breach, provide the amount based on the financial impact to clients before any remediation (e.g., the loss suffered by the client as a result of a denied claim).

Grading breaches

In 2021, for the first time, subscribers were asked to grade breaches according to their severity and the action taken to manage them. Subscribers also had to identify whether any of the breaches were systemic.

Most self-reported breaches were identified as Grade 1 breaches (60%), while just under one in five were identified as Grade 2 breaches (18%).

Grade of breaches

Grade 1 – An action or incident that requires management attention but does not impose a serious risk to business operations or the Australian Financial Service (AFS) licence.

Grade 2 – An action or incident that requires immediate management attention. It can be an accumulation of three Grade 1 actions or incidents.

Grade 3 – An action or incident that poses a significant risk to business operations or the AFS licence or has resulted in direct financial loss by a client. It can be one action or incident or an accumulation of four or more Grade 1 or two or more Grade 2 actions or incidents.

Grade 4 – An action or incident that requires urgent management attention and poses a serious risk to business operations or the AFS licence (includes major compliance failures, training inadequacies and overall poor performance).

Grade 5 – An action or incident that poses a catastrophic risk to business operations or the AFS licence and cannot be rectified.

BREACHES INCLUDED...

One Category E subscriber self-reported 13 Grade 1 breaches that occurred when refunds were not forwarded to clients.

The subscriber remediated the breaches by:

- forwarding the refunds to the affected clients immediately
- reviewing the refund process
- issuing management reports fortnightly to keep track of refunds
- providing staff with additional training.

Because the breaches were caused by staff oversight and the clients received their refunds within 30 days, the subscriber classified them as Grade 1. Given the ongoing nature of the breaches, they were also determined as systemic.

One Category A subscriber identified a breach of the *Corporations Act* which it classified as a Grade 4 breach because it required urgent management attention and posed a serious risk to business operations.

The breach occurred when 50 small business clients did not receive Statements of Advice for their Personal Accident and Illness policies.

The root cause was insufficient training. The subscriber implemented a remediation plan with the following steps:

- identify all transactions potentially affected by the error
- engage a team to assist coordinating the remediation
- review the client files relevant to each transaction potentially affected to check for a compliant Statement of Advice
- require the broker responsible for service delivery to prepare a compliant Statement of Advice for all errors
- implement a broker education training program addressing the error.

Another Category A subscriber reported a breach that it classified as Grade 3 because it posed a significant risk to business operations and resulted in direct financial loss by a client.

The breach was identified through a compliance audit and reported to ASIC. It involved funding submitted outside of credit terms, with the incorrect dates disclosed to the funder.

The additional amount was refunded to the insurance broker, who accidentally refunded it to an unrelated client. The client suffered a financial impact of just under $4,000.

The subscriber remediated the breach by refunding the premium to the client, reviewing the full account, and rectifying all covers. The breach also prompted a complete review of the broker's portfolio.

Subscriber tip

A reporting framework should identify the severity of a breach to inform the appropriate action. The severity should consider the financial impact of the breach as well as the number of clients affected.

Systemic breaches

Subscribers identified a total of 94 systemic breaches in 2021.

ASIC's **Regulatory Guide 271** defines a systemic breach as non-compliance that has implications beyond immediate actions and affected parties. Systemic breaches have affected, or are likely to affect, more than one person.

In **Good Practice and Company Culture**, we noted that systemic breaches are likely to have one of these five root causes:

- a process within the business
- an issue with a specific staff member
- a particular product or insurer
- a specific client
- an issue that was specific to a particular point in time.

Subscribers should also consider factors such as other events, files or clients associated with the relevant staff member to see whether the breach occurred multiple times.

BREACHES INCLUDED…

One Category A subscriber identified a breach of the Code's buying insurance standards that ended up being systemic after it was discovered that multiple clients were affected.

The breach was initially identified when a client lodged a claim for a fence that was damaged in a storm. The excess for storm damage under the policy was $50,000, but because of an error by the broker, the client's policy showed an excess of only $5,000.

The broker failed to advise the client of storm damage excess on the policy when it was renewed, and the full amount was left out of the renewal documents.

To remediate the matter, the subscriber agreed to take on the $45,000 risk for the six months left on the policy.

Within three months of identifying the breach, the subscriber conducted an audit which found similar errors in other renewals. This made the breach systemic. All policies were corrected, and the breach was reported to ASIC.

An authorised representative for one Category C subscriber caused a systemic breach when they delayed the premium refunds of six clients.

The breach was identified following a consumer complaint. The principal member rectified the breach by contacting insurers and premium funders to obtain a refund for the clients as quickly as possible, and by terminating the contract with the authorised representative.

Findings from complaints data

Complaints data – a snapshot

A COMPLAINT IS…

An expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required (as per AS/NZS 10002:2014).

1,742 SELF-REPORTED COMPLAINTS (DOWN FROM 1,778 IN 2020)

189 CODE SUBSCRIBERS (45%) SELF-REPORTED NO COMPLAINTS *

** Including 178 Category E subscribers*

45% OF COMPLAINTS RELATED TO A DOMESTIC INSURANCE PRODUCT (UP FROM 34% IN 2020)

41% OF COMPLAINTS RELATED TO A SMALL BUSINESS OR FARM INSURANCE PRODUCT

1 IN 3 COMPLAINTS INCLUDED SERVICE-RELATED ISSUES

ON RESOLVING COMPLAINTS...

25% BY APOLOGY OR EXPLANATION ONLY

69% WITHIN 21 DAYS

Change to complaint categories for 2021

In response to feedback from subscribers, we asked subscribers to report complaints using the categories for product or service, issue and outcome as defined in the ASIC IDR data dictionary (pilot version), published in July 2021.

The options for complaint resolution timeframes were also amended in the ACS Breach Data Detail Report to reflect ASIC's Regulatory Guide 271: Internal dispute resolution (RG 271), published in September 2021.

These changes were designed to make it easier for subscribers to update their reporting systems to reflect ASIC's IDR categories and provide detailed information about Code breaches and complaints for their ACS.

Complaint numbers

Complaint numbers dipped 2% despite new ASIC reporting obligations

Given the requirement for all Code subscribers to comply with ASIC's IDR data reporting obligations, including RG 271 which requires subscribers to report all complaints they receive, we were surprised to see reported complaints fall in 2021.

In future years, as subscribers improve their complaints processes to reflect RG 271 and ASIC's IDR data reporting handbook, we would expect to see reported complaints increase.

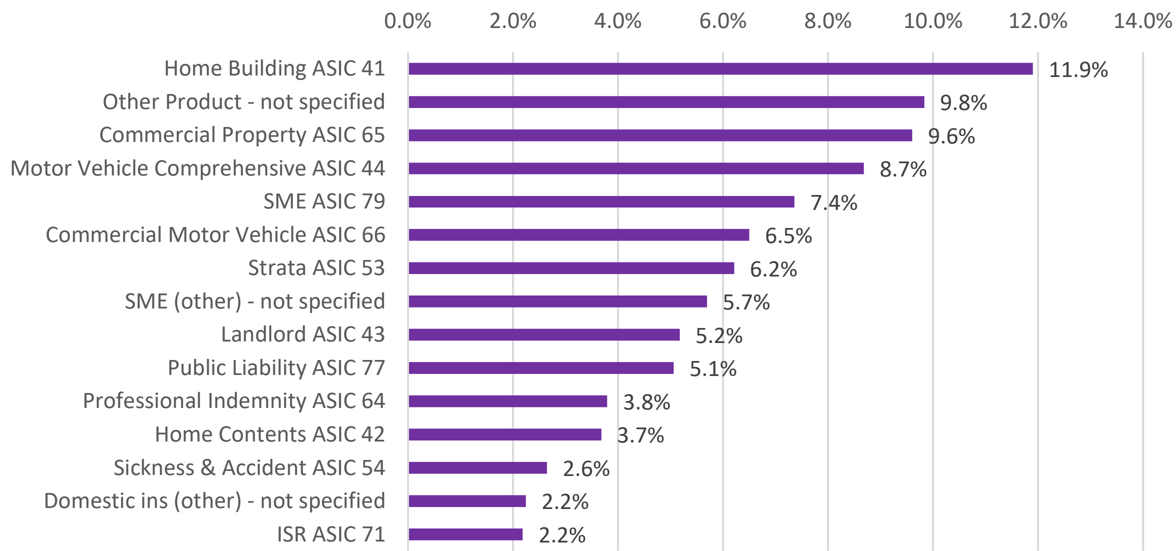
In 2021, 55% of subscribers reported at least one complaint, a slight rise on the 52% in 2020.

The remaining 45% of subscribers – 189 in all – reported no complaints. Of these, five were Category C subscribers, six were Category D subscribers and 178 were Category E subscribers, which is almost half (43%) of all Category E subscribers.

Subscriber tip

Align your complaints register with the product/service, issue and outcomes of ASIC's IDR data reporting handbook. This will allow you to analyse and report your complaints data to help identify and address any areas of concern.

Top product categories involved in reported complaints in 2021



Domestic insurance products

Almost half of all complaints in 2021 (45%) were about domestic insurance products (up from 34% in 2020). Most of these were about home building insurance.

Comprehensive motor vehicle insurance was the subject of 151 complaints (9% of the total) reported by 78 subscribers.

Strata insurance accounted for 108 domestic insurance product complaints (6% of the total). These were self-reported by 37 subscribers, including one Category B subscriber and one Category A subscriber that together accounted for a quarter of all reported complaints about strata insurance.

Small business products

Subscribers reported 708 complaints about small business or farm insurance products in 2021, accounting for 41% of the total. Most of these complaints involved:

- commercial property insurance (167 complaints reported by 75 subscribers)
- commercial motor vehicle insurance (113 complaints reported by 49 subscribers)
- 'other' small business/farm insurance (99 complaints reported by 15 subscribers)
- public liability insurance (88 complaints reported by 42 subscribers)
- industrial special risk (38 complaints reported by 19 subscribers).

Fifteen subscribers identified that some small business complaints related to workers compensation. This is neither surprising nor concerning given most insurance broker clients are small businesses.

No specific product

About 10% of reported complaints (171 in total) were classified under 'Other product – not specified', rather than classified according to ASIC'S IDR data reporting handbook.

This is likely due to some subscribers not having updated reporting systems to reflect ASIC's product categories.

Insurance products listed under 'other' included workers compensation, commercial rental property, marine transit, motor composite, contract works, management liability, corporate travel, repair warranty, entertainment, flood cover, COVID business interruption, excavator, aviation and financial risk.

COMPLAINTS INCLUDED…

One subscriber reported a complaint made by a client that is a member of a body corporate.

The client complained that the insurance broker did not provide them with documents regarding a strata insurance claim and failed to disclose information in an Annual General Meeting.

A Category C subscriber reported a complaint made by a client whose business involved transporting shipping containers.

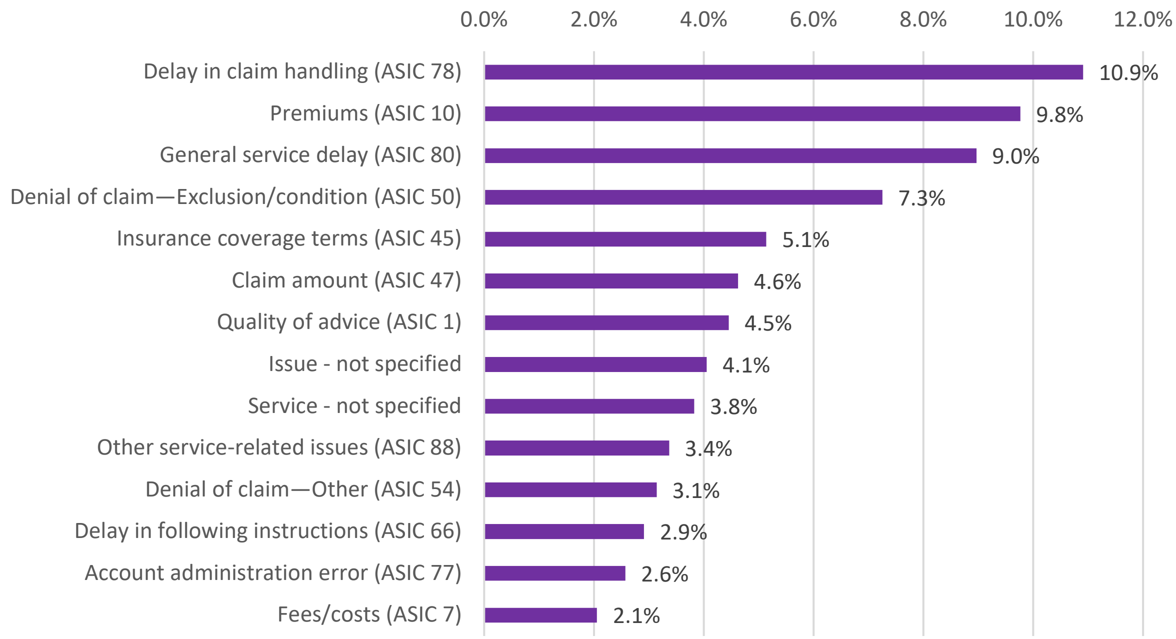
The subscriber had changed the description of the client's business in 2019 without their consent, resulting in the policy no longer including cover for transporting shipping containers.

AFCA found that the subscriber did not take reasonable steps to check that the client's policy was appropriately set up and remained suitable for their business needs.

One Category E subscriber listed 'other' as the main product for 23 complaints related to a binder/agreement scheme with an insurer.

The complaints were about premium increases and timeframes for claims settlement with the insurer.

Top issue categories involved in reported complaints in 2021



Service-related issues

Continuing a six-year trend, issues with service once again attracted the most complaints in 2021.

Almost one in every three complaints were related to service levels, including claim handling delays (11%) and general service delays (9%).

Of the 157 complaints about general service delays, 21 were self-reported by a Category C subscriber and 23 were reported by two Category A subscribers.

Claim handling issues

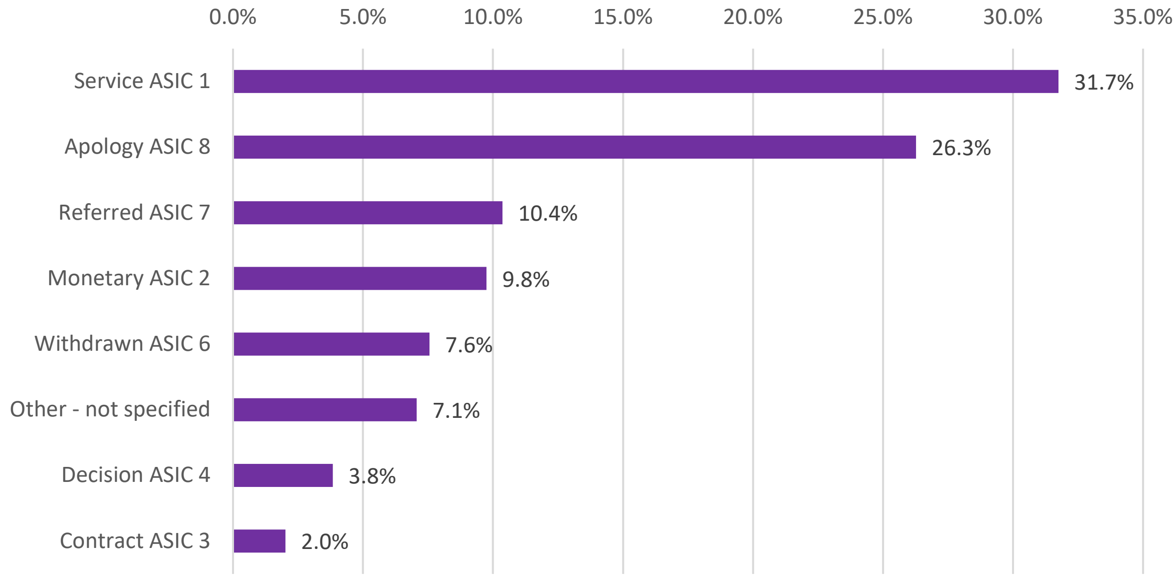
Claim handling was one of the key areas, accounting for just over a quarter of complaints (26%).

Delays to claim handling drew the highest volume of complaints overall (191 complaints reported by 76 subscribers). Other claim-related complaint issues included:

- 'Denial of claim – exclusion/condition' (127 complaints self-reported by 45 subscribers)
- 'Claim amount' (81 complaints self-reported by 39 subscribers)
- 'Denial of claim – other' (55 complaints self-reported by 23 subscribers, with a single subscriber accounting for 25 complaints).

COMPLAINTS INCLUDED...
A client lodged a claim for water damage at their property. The client complained that the broker failed to help or advocate for them during the claims process.
One client failed to receive a response within the stated timeframe after lodging a complaint on the subscriber's website.
One Category A subscriber reported that a client lodged a complaint after the insurer took two years to review a claim for flood damage, only to deny it.
A Category E subscriber reported a complaint lodged by a client against a warranty-approved repairer. The client had wanted to use their own repairer, and although the use of another repairer fell outside the scope of the policy, the insurer agreed to the client's request, with fixed labour costs. When the client's chosen repairer invoiced an amount higher than the fixed labour costs, the subscriber paid the difference in the interests of keeping the client happy.

Top outcome categories involved in reported complaints in 2021



Service-based remedies

Almost a third of all complaints were resolved via a service-based remedy (32%).

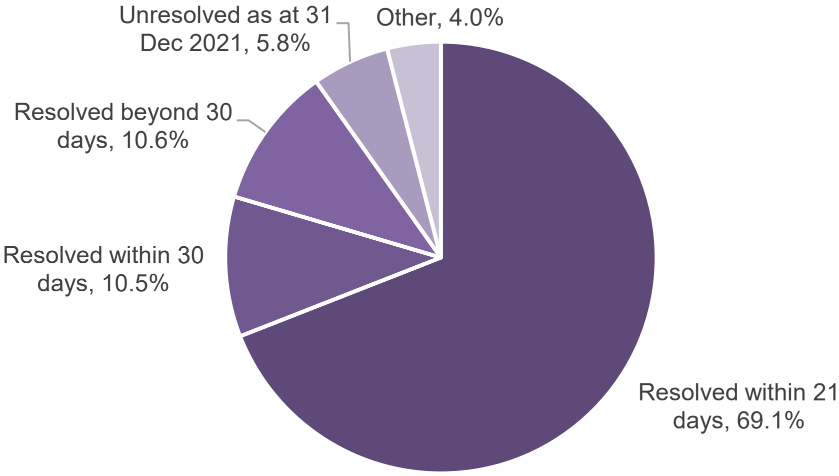
In some cases, this meant providing the complainant with help or support, or with the service they requested. In other cases, it meant fixing incorrect contact details or resolving the issue of the complaint by improving systems, procedures or staff training.

Apologies and explanations

Just over a quarter of complaints were resolved by apologising to the complainant or explaining the circumstances that led to the complaint (26%).

REMEDIATION INCLUDED...
Following a data leak that resulted in a client's information being published online, one Category E subscriber issued an apology to the client and resolved the data breach by contacting the website developer.
One Category E subscriber resolved several claim-related complaints by providing clients with more regular updates about their claims and following up more frequently with the insurer or assessor.

Resolution timeframe categories of reported complaints in 2021



Complaint resolution timeframes improved slightly in 2021, with almost 70% of complaints resolved within 21 days compared to 68% in 2020.

In all, 186 subscribers reported having resolved complaints within this timeframe, successfully meeting the obligation set out in Service Standard 10 of the **2014 Code**.

We were pleased with this outcome because it demonstrates a commitment to resolving complaints more quickly than the 30 calendar days legally required by ASIC's **RG 271.56**.

While Section 9.4(b) of the **2022 Code** aligns with the RG 271 timeframe, we encourage all subscribers to continue to resolve complaints as early as possible.

Conclusion

We saw good compliance with the Code in 2021.

More subscribers reported breaches than in 2020 and there was a general improvement in the number of complaints resolved within 21 days.

We remain concerned that multiple subscribers of all sizes reported no breaches or complaints for the reporting period. The systems and processes these subscribers use to monitor compliance with the Code may not be adequate to identify breaches or complaints.

However, as the new Code has more specific provisions, it will be easier for subscribers to better understand their obligations and measure their compliance. We anticipate the number of breaches and complaints will increase in the 2022 ACS.

An increase is not something subscribers should fear as it is evidence of systems or processes that are working. Complaints and breaches present valuable opportunities to learn, improve and provide better outcomes for clients. They should be promoted as such throughout the business to ensure everyone feels empowered to report them when they occur. The identification of breaches or complaints also provides a framework to better manage client related risk within the organisation.

We encourage subscribers to view their annual reporting requirements as integral to achieving a positive compliance and client centric culture.

By using the ACS and the Breach Data Report to help identify and capture all Code breaches, and by recording any complaints against the categories in ASIC'S IDR data reporting handbook, subscribers will be well placed to assess the effectiveness of their compliance frameworks and support staff to provide better services for clients.

Appendix A: Code subscribers

Table 1: Code subscribers by state (head office) and size of operation

As at 31 Dec 2021	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total	%	2020
Category A (over 100 FTE)	-	13	-	2	1	-	17	2	35	8%	37
Category B (51-100 FTE)	-	6	-	2	-	1	4	7	20	5%	22
Category C (31-50 FTE)	-	15	-	8	3	1	9	8	44	10%	34
Category D (21-30 FTE)	-	10	-	5	1	-	10	2	28	6%	32
Category E (up to 20 FTE)	3	99	1	54	21	9	91	36	314	71%	331
Total	3	143	1	71	26	11	131	55	441		456
%	<1%	32%	<1%	16%	6%	3%	30%	12%			
2020	2	148	1	75	27	11	137	55	456		

Note: Code subscribers are counted by their AFSL. Some Code subscribers provide one Annual Compliance Statement (ACS) for all their AFSLs. We considered this in analysing the percentage ratio of returns for specific categories. We also granted several exemptions for the 2021 ACS due to circumstances specific to the individual businesses.

Appendix B: Breaches

Note: Data contained in the tables and charts related to self-reported breaches are only indicative because not all Code subscribers provided conclusive information for each category.

Chart 1: Top self-reported Code breaches in 2021 (with comparison from 2020)

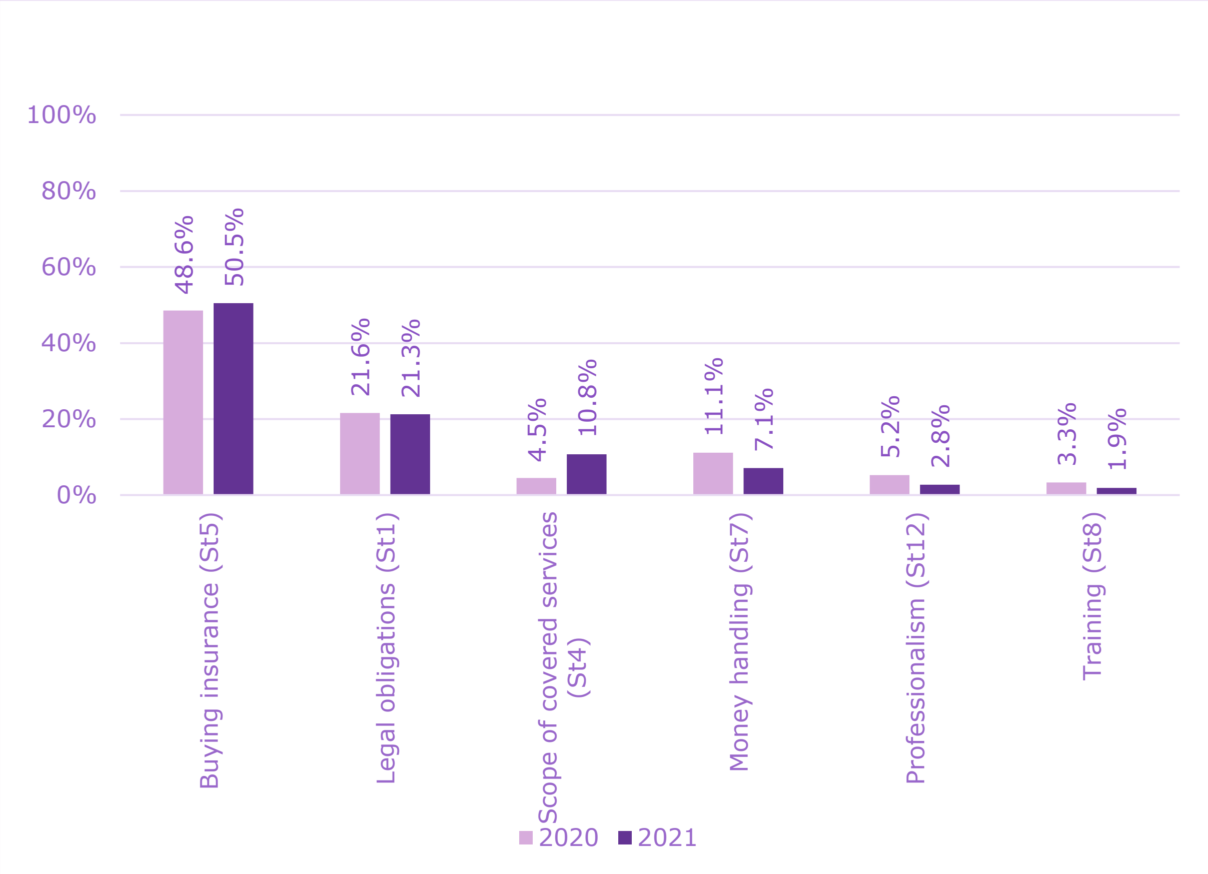


Table 2: Impact of self-reported breaches by Code Service Standard

Service Standard	Clients affected	Financial impact to clients
St1 Legal standards	10,394	$3,050
St2 Conflict of interest	3	$0
St3 Who we act for	962	$0
St4 Scope of covered services	3,913	$34,649
St5 Buying insurance	2,369	$2,517,760
St5 Claims handling	1,973	$66,348
St5 Acting for insurer	69	$0
St6 Remuneration	50	$42,580
St7 Money handling	397	$551,749
St8 Training	70	$358
St9 Disasters	0	$0
St10 Dispute resolution	4	$0
St11 Promotion of Code	31	$0
St12 Professionalism	268	$17,355
Grand Total	20,503	$3,233,849
Comparison 2020	20,740	$651,592

Chart 2: Grading of self-reported breaches

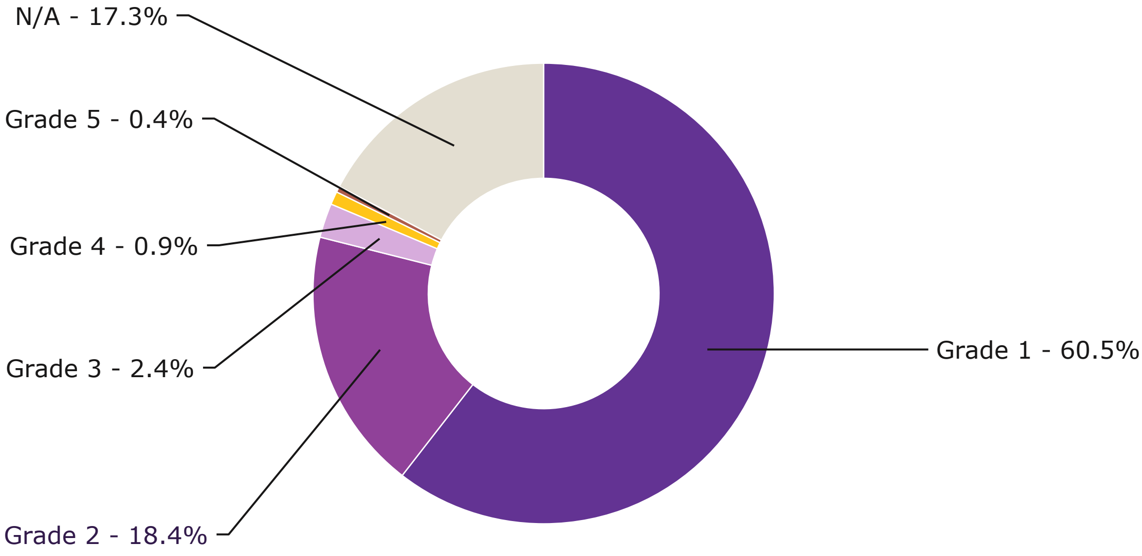


Table 3: Number of systemic self-reported breaches per Code Service Standard

Service Standard	Systemic breaches
St5 Buying ins	38
St1 Law	25
St7 Money handling	19
St4 Covered services	6
St8 Training	4
St5 Buying ins - claims	1
St6 Remuneration	1

Table 4: Areas of identification of self-reported breaches by category of Code subscribers

Area of identification	Cat A	Cat B	Cat C	Cat D	Cat E	Total
Staff self-identification	48.9%	22.1%	36.6%	14.2%	30.9%	35.1%
Internal process or report	22.8%	43.6%	16.3%	22.1%	28.5%	25.9%
Client query or complaint	11.9%	16.2%	13.0%	6.8%	9.2%	11.3%
Random internal audit	5.2%	4.9%	11.4%	31.3%	12.8%	10.8%
External compliance audit	0.7%	2.7%	8.3%	0.4%	5.3%	3.7%
Other	10.4%	10.5%	14.4%	25.3%	13.3%	13.2%

Table 5: Root cause of self-reported breaches by category of Code subscribers

Root cause	Cat A	Cat B	Cat C	Cat D	Cat E	Total
Manual error	40.3%	53.7%	36.6%	15.7%	45.0%	40.8%
Process & procedure not followed	25.1%	29.2%	34.0%	67.6%	29.1%	31.7%
Incorrect process & procedure	4.8%	5.1%	4.1%	2.1%	6.8%	5.2%
Insufficient training	4.2%	0.5%	2.0%	4.6%	6.2%	4.1%
System error or failure	1.7%	3.2%	3.0%	5.0%	2.4%	2.6%
Staff misconduct	3.3%	0.7%	4.5%	1.1%	0.8%	2.2%
Staffing/resourcing issues	1.9%	1.0%	0.7%	0.7%	3.1%	1.9%
Mail house error	0.2%	1.5%	0.8%	0.0%	1.2%	0.8%
Other	18.4%	5.1%	14.4%	3.2%	5.5%	10.7%

Table 6: Actions and timelines for short-term remediation

Short term remediation	Immediate	Within 48 hours	Within 1 week	Within 2 weeks	Within 1 month	1 to 3 months	3 to 6 months	6 to 12 months	Over 1 year	Other	TOTAL
Apology	8.2%	2.8%	3.4%	1.8%	2.1%	0.9%	0.1%	0.1%	0.0%	0.8%	20.2%
Training	4.1%	1.7%	1.1%	0.2%	0.7%	8.2%	0.4%	0.1%	0.0%	2.3%	18.9%
Undertaking	5.4%	0.8%	3.5%	0.6%	0.5%	0.3%	0.1%	0.0%	0.0%	0.5%	11.7%
Review of and changes to process	1.4%	1.5%	0.4%	0.2%	1.8%	0.2%	0.0%	0.0%	0.0%	0.1%	5.7%
Review of and changes to procedure	1.5%	1.3%	0.8%	0.1%	0.1%	0.2%	0.0%	0.0%	0.0%	1.6%	5.6%
Refund of premium	0.6%	0.1%	0.4%	0.3%	0.2%	0.2%	0.0%	0.0%	0.1%	0.0%	1.8%
Review of and changes to terms and conditions	0.6%	0.2%	0.3%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.3%	1.7%
Ex-gratia payment	0.2%	0.1%	0.1%	0.2%	0.3%	0.1%	0.1%	0.0%	0.0%	0.0%	1.2%
Premium adjustment	0.4%	0.3%	0.1%	0.1%	0.1%	0.0%	0.1%	0.0%	0.0%	0.0%	1.2%
Refund of fees/charges	0.2%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%
Other	12.7%	5.7%	5.2%	1.6%	1.5%	0.9%	0.1%	0.3%	0.0%	3.8%	31.7%
TOTAL	35.2%	14.6%	15.4%	5.3%	7.4%	11.1%	1.0%	0.5%	0.1%	9.5%	100%

Table 7: Actions and timelines for long-term remediation

Long term remediation	Within 1 month	1 to 3 months	3 to 6 months	6 to 12 months	1 to 2 years	Over 5 years	Other	TOTAL
Training	12.6%	2.3%	1.0%	5.4%	0.1%	0.0%	5.3%	26.7%
Review of and changes to process	3.1%	6.0%	3.6%	0.1%	0.0%	0.0%	1.4%	14.2%
Apology	2.8%	0.0%	0.0%	0.0%	0.0%	0.0%	3.2%	6.0%
Review of and changes to procedure	2.9%	0.7%	0.8%	0.0%	0.0%	0.4%	0.9%	5.7%
Undertaking	0.5%	0.5%	0.0%	0.1%	0.0%	0.0%	0.4%	1.5%
Ex-gratia payment	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.3%
Refund of premium	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%
Premium adjustment	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%
Review of and changes to terms and conditions	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
Refund of fees/charges	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%
Other	2.8%	0.8%	0.2%	0.6%	0.1%	0.1%	40.4%	45.0%
TOTAL	25.2%	10.4%	5.6%	6.3%	0.1%	0.6%	51.8%	100%

Appendix C: Complaints

Chart 3: Top product categories involved in self-reported complaints in 2021

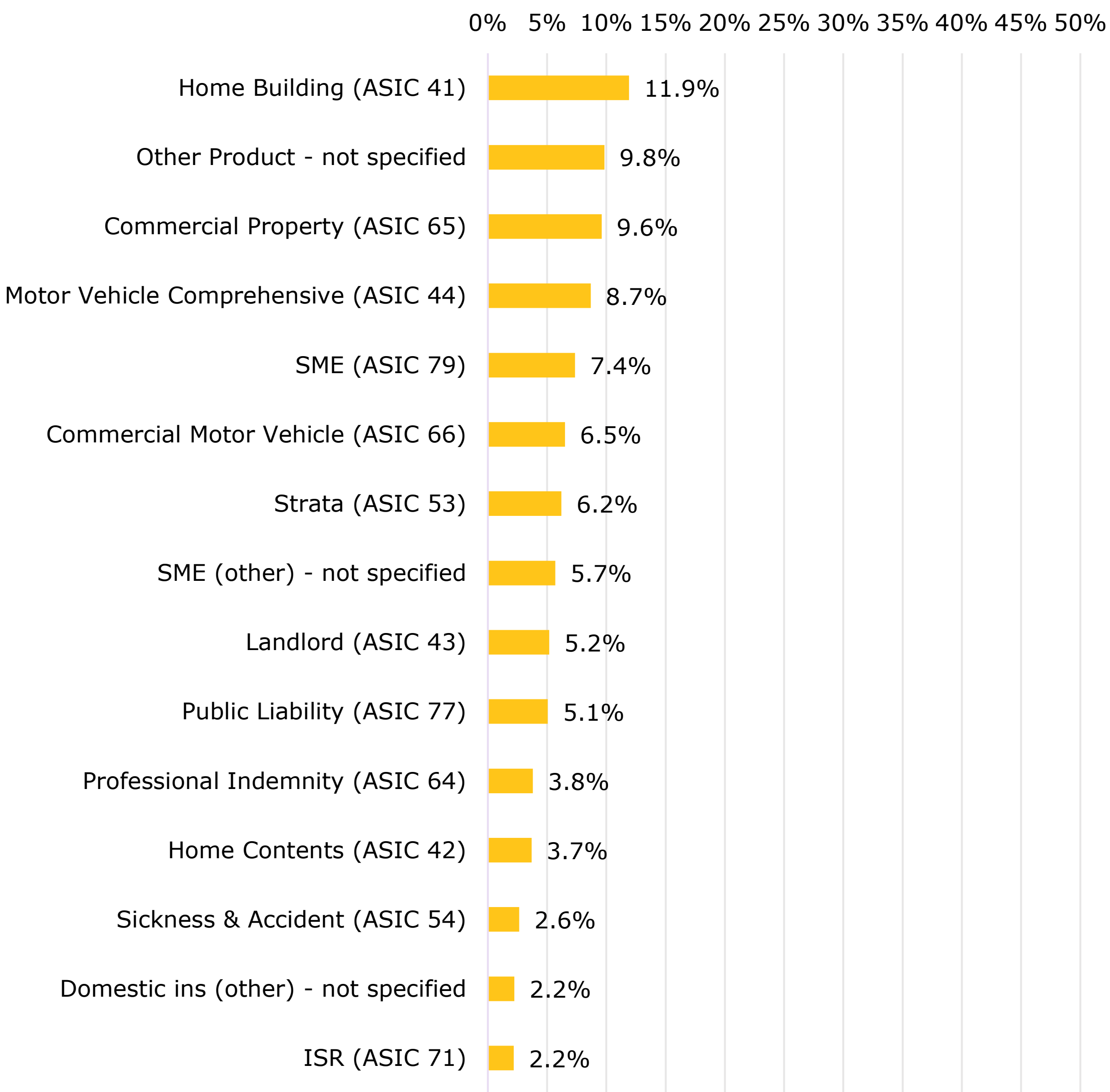


Chart 4: Top issue categories involved in self-reported complaints in 2021

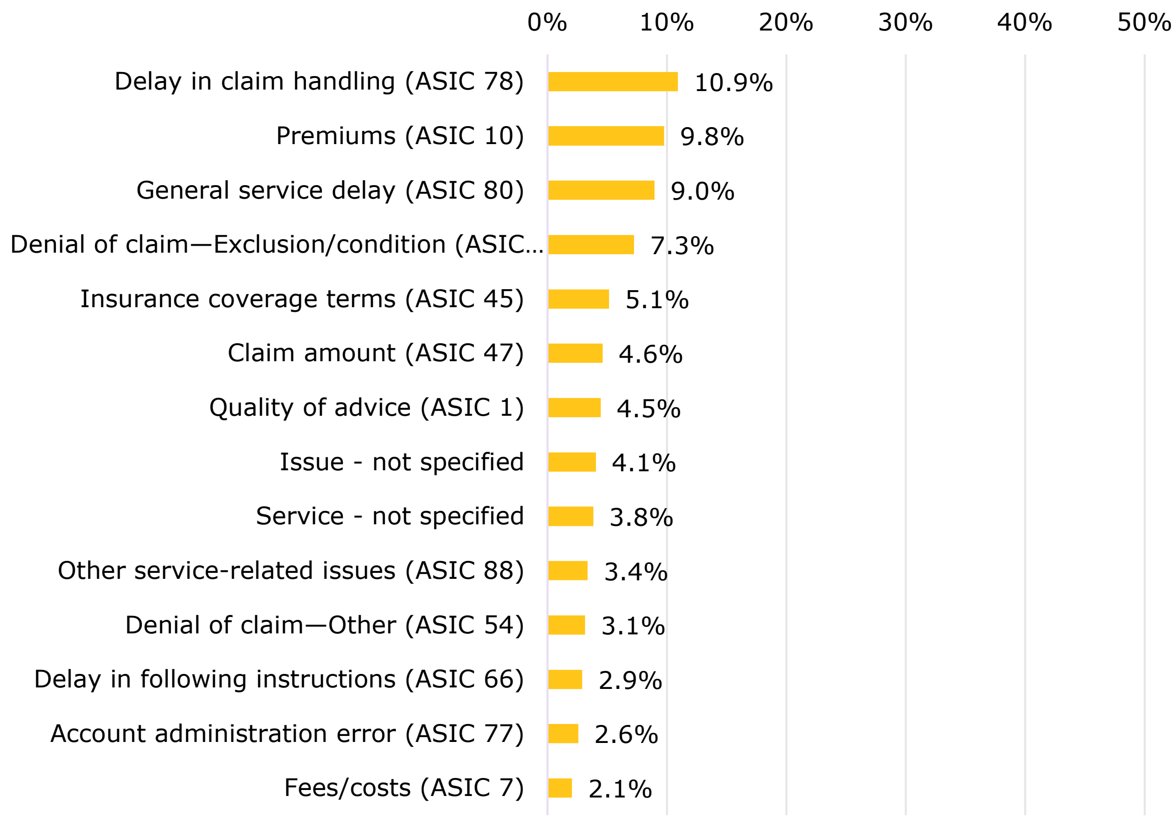
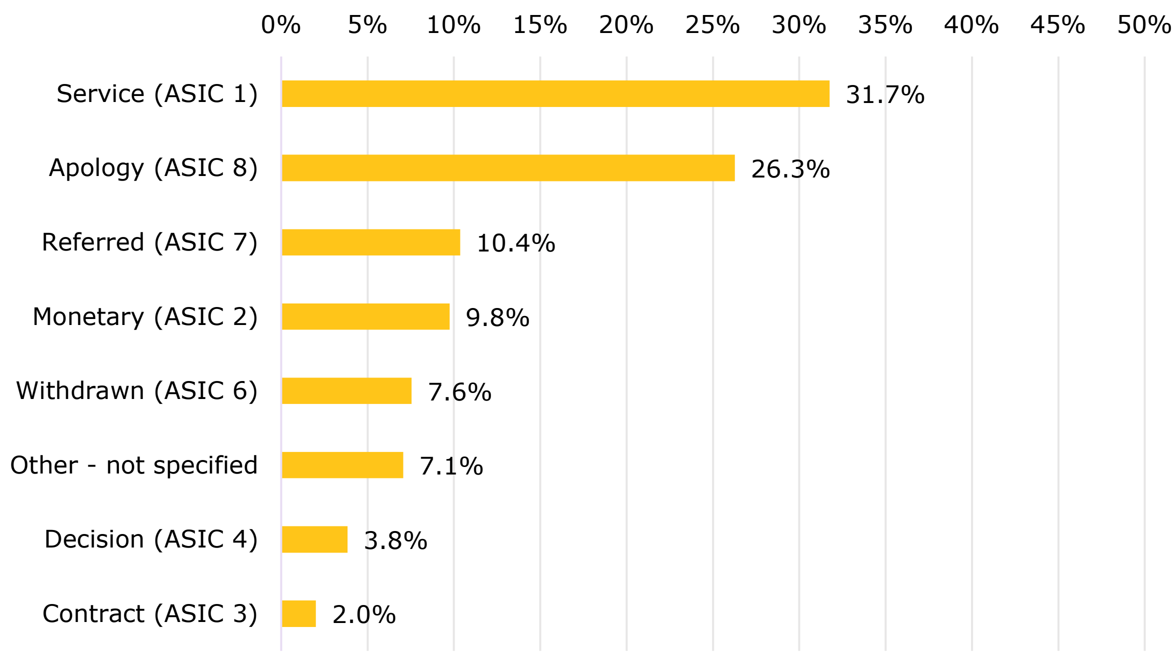


Chart 5: Top outcome categories involved in self-reported complaints in 2021



Appendix D: Data trends

Table 8: Industry summary (all Code subscribers)

	2017	2018	2019	2020	2021
Number of Code subscribers	300	293	284	457	441
Number of branches (including head office)	n/a	1,550	1,471	1,998	1,804
Total of self-reported Code breaches	1,376	1,821	2,006	3,328	3,570
Mean of self-reported Code breaches	4.7	6.2	7.1	7.8	8.6
% of Code subscribers self-reporting Code breaches	41%	43%	51%	44.3%	47.7%
Total of self-reported complaints	1,047	1,049	1,292	1,778	1,742
Mean of self-reported complaints	3.6	3.6	4.5	4.1	4.2
% of Code subscribers self-reporting complaints	57%	61%	60%	52.1%	54.5%

***Note:** Code subscribers are counted by AFSL. Steadfast members that became Code subscribers effective 1 December 2019 were not involved in the 2019 ACS Program and are not included in the figures for 2017-2019. Some Code subscribers are represented by more than one AFSL.*

Appendix E: About the Code and the Committee

About the Code

The 2014 Insurance Brokers Code of Practice (the Code) sets good standards of practice for the insurance brokers that have agreed to follow it. It is owned and published by the National Insurance Brokers Association (NIBA) and forms an important part of the broader national consumer protection framework and financial services regulatory system.

The new 2022 Code came into effect on 1 November 2022.

The Code contains key Service Standards that apply to all insurance broking services that Code subscribers deliver to individuals and small businesses across Australia.

By subscribing to the Code, insurance brokers commit to:

- improving standards of practice and service in their sector
- promoting informed decision-making about their services, and
- acting fairly and reasonably in delivering those services.

About the Committee

The Code is monitored and enforced by the independent Insurance Brokers Code Compliance Committee (the Committee). The Committee works with stakeholders to improve compliance with the Code and promote good industry practice.

The Committee offers regular guidance to help Code subscribers understand and meet obligations to the Code.

The Australian Financial Complaints Authority (AFCA) provides the Committee with Code monitoring and administration services by agreement. AFCA has appointed a dedicated staff within its office (the Code team) to undertake these duties.

For more information about the Code, the Committee or the Code Team, please visit **insurancebrokerscode.com.au.**