



Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

By email only to: corporations.joint@aph.gov.au
seniorclerk.committees.sen@aph.gov.au

Inquiry into wholesale investor and wholesale client tests

[The Insurance Brokers Code Compliance Committee](#) (IBCCC) welcomes the opportunity to contribute to the Parliamentary Joint Committee on Corporations and Financial Services (the Committee) inquiry into the wholesale investor test.

Our submission focuses on the aspect of the wholesale client test for financial products and services (Sections 761G & 761GA of Chapter 7 of the Corporations Act 2001).

The role of the Insurance Brokers Code Compliance Committee

We are an independent body that monitors compliance with [the Insurance Brokers Code of Practice](#) (the Code).

By monitoring compliance with the Code, we aim to improve standards of service in the insurance broking industry and promote best practices to, ultimately, deliver better experiences for clients.

Our work involves:

- collecting and analysing industry data
- examining the practices of brokers
- monitoring compliance with obligations in the Code
- identifying current and emerging industry-wide problems
- recommending improvements to practices
- consulting with stakeholders and the public on issues and keeping them informed.

Although we are industry funded, we operate independently of the industry. Our operations are carried out by an independent secretariat service that sits within [the Australian Financial Complaints Authority](#) (AFCA).

Codes of practice are an important part of a broad consumer protection environment. When implemented well, and supported by the industry, codes of practice are an effective layer of consumer protection beyond the minimum requirements of the law.



Monitoring compliance with the Code

We draw on a wide range of data and information to identify areas of potential non-compliance with the Code.

To effectively identify issues in non-compliance, we collect and analyse information from a variety of sources:

- self-reported breaches from brokers
- allegations of breaches
- complaints data from brokers and AFCA
- inquiries and investigations
- engagement with stakeholders
- public information from organisations in Australia and overseas.

Self-reported breaches from insurance brokers are a critical part of our compliance program and are crucial in helping us identify issues. The data on breaches, along with other information and sources of intelligence, contributes to our Annual Work Program, which targets current or emerging risks.

Wholesale client test

We believe a small business test should continue to be a key element of the wholesale client test.

There will be other organisations better placed to advise on a more contemporary definition of small business. However, we see value in adopting a consistent and clear approach like that of AFCA, which defines a small business as an organisation with less than 100 employees.

The 'wholesale client' test cannot be considered in isolation from the retail client definition. We currently see a conflict between the two, which results in too many small businesses being treated as wholesale clients.

The current definition of 'retail client' includes a narrow list of insurance products and fails to adequately cover the diverse insurance needs of Australian small businesses. As such, the definition can inadvertently leave small businesses with reduced regulatory safeguards.

While the typical small business may share similar insurance needs to its larger counterparts, it does not necessarily share the size, complexity, resources, capability, and business acumen.

Many small businesses operate on small budgets with limited resources and personnel. Generally, they lack the expertise and risk management capabilities of larger corporations. They are often family owned and run operations. They frequently engage insurance brokers to help them navigate the complexities of insurance coverage and risk management and rely on the brokers to provide expert advice and tailored solutions.

We know that a large proportion of consumers serviced by insurance brokers are small businesses. We observe this through the breach data provided by Code subscribers. Breaches of the Insurance Brokers Code of Practice that involved small business or farm insurance products had the highest financial impact in the 2022 calendar year (\$1.4 million).



Furthermore, our data shows 44% of all complaints that insurance brokers reported to us for the 2022 calendar year were about small business or farm insurance products.

All small businesses irrespective of their insurance needs should be treated as retail clients. Consequently, for the wholesale client test to work as intended, the retail client definition needs to be improved to ensure that the two are not in conflict with each other, causing unnecessary complexity and confusion.

Focus on the consumer, not the product

The current focus on a prescribed list of insurance products restricts the effectiveness of the regulatory framework.

The focus should be on the nature of the consumer rather than type of insurance product the consumer needs.

As the business environment changes, a small business' needs change. Many small businesses now require a diverse range of insurance products to sufficiently manage their risks, including products commonly required by larger corporations as wholesale clients. For example, a typical small business may need business interruption insurance, public liability insurance, cyber insurance, and equipment breakdown insurance.

The unique and diverse insurance needs of a small business should not dictate the regulatory protections it is afforded. The protections should be based on the nature of the consumer – its size, capabilities and personnel.

We emphasise the interconnected nature of wholesale and retail client definitions and the impact they have on consumer protection. We advocate for reforms that align with the original intent of protecting consumers, particularly small businesses, and that ensure a fair, reasonable and comprehensive regulatory framework.

Thank you again for the opportunity to make a submission. If you have any questions or would like to discuss this submission, please do not hesitate to contact me c/o Prue Monument, General Manager Code Compliance and Monitoring, by email at

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Yours sincerely

Oscar Shub
Chair
Insurance Brokers Code Compliance Committee

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