Insights from the reportable situations regime: October 2021 to June 2022

Report 740 | October 2022

About this report

This is ASIC's first publication of the information provided under the reportable situations regime.

It provides high-level insights into the trends observed in reports lodged by licensees under the regime between 1 October 2021 and 30 June 2022.

Contents

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Executive summary

The reportable situations regime (formerly known as 'breach reporting') requires Australian financial services (AFS) licensees and Australian credit licensees (credit licensees) to self-report specified matters (reportable situations) to ASIC.

The regime acknowledges that despite an expectation of compliance, breaches of the law will occur. The regime considers that licensees have a clear role in lifting industry standards as a whole, by identifying and reporting their own problems in a timely manner. The reports made, in turn, form a critical source of regulatory intelligence for ASIC.

The regime also requires ASIC to publish information about the reports that we receive. This first publication provides high-level insights into the trends we observed in the reports lodged by licensees between 1 October 2021 to 30 June 2022 (the reporting period).

Key insights from the reporting period

Volume of reports and nature of lodgers

8,829 **initial reports and 2,530 updates** were submitted. This was a significant increase in reporting compared to the previous breach reporting regime. This reflects Parliament's intention, which was to clarify, strengthen and expand the regime.

6% of the licensee population lodged reports. This is **significantly lower than expected**, and we will be undertaking a range of activities to **strengthen compliance with the regime**.

74% of all reports were lodged by **just 23 licensees**. These were generally larger licensees.

Subject of reports and root causes of breaches

38% of reports were about **credit product lines**, followed by **general insurance (19%)** and **deposit taking (10%)**.

34% of reports were about issues of **false or misleading statements about a product, regarding service information or in warning statements**, followed by **lending (21%)**, **general licensee obligations (19%)** and **fees and costs (14%)**.

60% of reports specified a root cause of **staff negligence or error**, followed by **policy or process deficiencies (9%)** and **system deficiencies (6%)**.

Identification and investigation of breaches

79% of reports stated that the **breaches were identified from internal sources**, highlighting the important role that **internal risk management activities** should play in the identification of breaches.

18% of reports indicated it took the licensee **more than one year to identify and commence an investigation** into an issue after it had first occurred. We expect licensees' systems to promptly identify non-compliance. Delays create challenges for the timely investigation and rectification of issues, and can mean that customers wait longer for remediation.

5% of reports indicated it took, or was expected to take, the licensee **more than one year to complete the investigation**. We expect licensees to allocate sufficient resources to ensure that investigations are carried out in a timely manner.

Customer impact, remediation and rectification

82% of reports indicated customers were impacted (financially and non-financially), with **23% indicating financial loss**.

$368.5m in **cumulative customer financial impact** was reported(i.e. last estimates provided in reports as at 30 June 2022).

236 remediation activities involving compensation took, or were expected to take, **more than a year to complete** (out of 1,952 remediations in total) after commencement of an investigation. Licensees should properly resource remediation activities and ensure that remediation activities are conducted in a timely manner without sacrificing customer outcomes.

Data publication under the new regime

Implementation of the new regime

The reportable situations regime is a cornerstone of the financial services regulatory structure. Reports lodged under the regime are a critical source of regulatory intelligence for ASIC. If lodged in a timely manner, they help ASIC detect significant non-compliant behaviours early, take action where appropriate, and identify and address emerging trends of non-compliance in the industry.

The regime came into effect on 1 October 2021 and expanded, strengthened and clarified the previous breach reporting regime (including by extending its application to credit licensees). The regime also introduced a new legislative obligation requiring ASIC to publish information about the reports that it receives. According to the explanatory memorandum for the reportable situations legislation, the goal of publishing this information is to:

› supplement ASIC's existing reporting framework to enhance industry accountability and provide industry with an incentive for improved behaviour

› help licensees and consumers identify areas where substantial numbers of significant breaches are occurring

› allow licensees to target their efforts to improve their compliance outcomes in those areas.

Note: See paragraph 11.129 of the Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020.

Our approach to this data publication

The reportable situations regime is a significant regulatory reform. It redefined what needed to be self-reported to ASIC and required licensees to make substantial changes to their systems and processes. The scale of the changes and the principles-based nature of the regime have led to challenges in the implementation of the new regime. These implementation challenges have, among other things, resulted in some inconsistencies in reporting practices.

We note these inconsistencies and are mindful of the approach we first outlined in the early stages of these reforms: see Media Release (21-213MR) *ASIC's approach to new laws reforming the financial services sector* (12 August 2021). Accordingly, this publication is limited to high-level insights into trends observed across the reports lodged by licensees during the reporting period.

This publication does not name licensees or provide data with a high degree of granularity. We consider that comparisons between licensees are unlikely to provide meaningful insights, given the current inconsistencies in reporting practices outlined above.

Our approach to reporting will evolve over time, as the regime matures, and allow for greater granularity of reporting in the future. We will consider our approach to the 2023 publication early next year, including whether it should include a list of all licensees who have reported to ASIC during the period. We will consult with stakeholders in advance of the commencement of more granular public reporting (likely in 2024).

The insights included in this publication should be read in context, taking into account the number and nature of reports received by (and the nature of licensees who reported to) ASIC in the reporting period.

Further considerations when reading this publication

The data in scope

The data in scope for this publication are the reports licensees lodged with ASIC and the Australian Prudential Regulation Authority (APRA) during the reporting period about:

- significant breaches of core obligations, or
- situations where the licensee is no longer able to comply with a core obligation and the breach, if it occurs, will be significant (likely significant breaches).

Note: See Appendix 1 for the data that is outside the scope of this publication.

The main concept used in this publication is 'reports'. For information on how this concept applies when updates are provided to a report and how this concept is different from 'reportable situations', see Appendix 1.

Terminology used in this report

This publication refers to a number of specific terms, which should be kept in mind when reading the sections explaining the key insights. The specific terms used and how they should be interpreted are outlined in Table 1.

Table 1: Specific terminology used in this publication

Term	Meaning in this document
investigation	The process that a licensee conducts to understand if there is a breach, determine the root cause of that breach, and identify all customers affected (and the extent of impact to those customers)
licensee	An AFS licensee or a credit licensee
licensee population	All current AFS licensees and credit licensees as at 30 June 2022
mean	The average calculated by adding all values in the range and dividing by the number of values in the range
median	The middle value in a range of values that is sorted in ascending or descending order
reports	Lodgements about breaches and likely breaches that we have received under the reportable situations regime, based on the scope and methodology outlined in Appendix 1
reporting period	1 October 2021 to 30 June 2022, inclusive

Note: For a full list of the terms used in this report, see the key terms.

Key insights: Volume of reports and nature of lodgers

Volume of reports

Significant increase in the volume of reports

Licensees lodged a total of 8,829 reports during the reporting period (which was nine months in length). In addition, licensees lodged 2,530 updates, for a total of 11,070 reports and updates.

This was a significant, but expected, increase from reporting volumes under the previous breach reporting regime. For example, in the last full financial year before the implementation of the regime (1 July 2020 to 30 June 2021), we received 2,435 breach reports (inclusive of updates).

The main drivers for the increased volume of reporting are:

- the extension of reporting requirements to credit licensees – this accounts for approximately 35% of reporting
- changes to the significance test under the reportable situations regime – over 90% of the reports in the reporting period were from 'deemed significant' breaches.

Who is reporting

AFS licensees reporting more than credit licensees

The majority of reports during the reporting period were lodged by AFS licensees, rather than credit licensees. Table 2 shows that 548 AFS licensees lodged a report (on behalf of 566 AFS licensees, as the licensee can elect to submit on behalf of more than one licensee), compared to only 126 credit licensees (on behalf of 139 credit licensees).

Table 2: Number of reports, and number and percentage of licensees who have lodged a report by licence type

Licence type	Number of reports	Number of lodgers	Percentage of licensee population
AFS licence	5,749	548	9%
Credit licence	3,525	126	3%
Total	**9,274**	**674**	**6%**

Note 1: When lodging a report, a dual licence holder could select whether the report relates to their AFS licence, their credit licence or both licences. Therefore, the total number of reports do not add up to 8,829 as the reports lodged relating to 'both licences' have been counted under each licence type.
Note 2: The figure 'Percentage of licensee population' is calculated with reference to the total number of current licensees as per ASIC's AFS licensees register and credit licensees register, as at 30 June 2022: see Appendix 2 for more information.

Low proportion of the licensee population reporting

The proportion of the licensee population that has lodged a report during the reporting period is significantly lower than anticipated, particularly for credit licensees. This is concerning. The reportable situations regime acknowledges that, despite an expectation of compliance, breaches will occur. Licensees have a clear role in lifting industry standards as a whole by identifying and reporting their own problems in a timely manner. Failure to lodge reports is an indicator that those licensees may not have in place the systems and processes required to detect and report non-compliance.

We have so far taken an approach to the licensees' implementation of the regime that recognises that there has been a period of transition as industry implements and embeds the regime. However, we expect all licensees to be aware of and comply with the regime. Given the low level of reporting, we will be undertaking a range of activities to strengthen compliance with the regime.

Larger licensees reporting more than smaller licensees

Larger licensees lodged the majority of reports. Larger licensees were also significantly more likely to have lodged a report during the reporting period than smaller licensees. This is shown in Table 3 (for AFS licensees) and Table 4 (for credit licensees), which provide a breakdown of reporting by licensee size based on size indicators from recent regulatory lodgements by licensees.

We expect all licensees, regardless of size, to have adequate systems in place to detect and report non-compliance.

Table 3: Breakdown of AFS licensee reporting by size, based on Form FS70 lodgements

Total revenue	Number of reports	Percentage of reports	Number of lodgers	Percentage of lodgers	Percentage of licensee population
Less than $50m	514	9%	219	40%	5%
$50m–$249m	1,355	24%	241	44%	21%
$250m–$999m	1,739	30%	38	7%	51%
$1,000m or more	2,098	36%	27	5%	61%
No revenue figure available	43	0.7%	23	4%	3%
Total	**5,749**	**100%**	**548**	**100%**	**9%**

Note 1: AFS licensees must lodge Form FS70 *Australian financial services licensee profit and loss statement and balance sheet* with ASIC each financial year. The licensee size information is based on the revenue, including tax benefit, specified in the latest Form FS70 lodgement by the relevant AFS licensees as at 30 June 2022.
Note 2:'No revenue figure available' means that either ASIC has not received any Form FS70 lodgements from the AFS licensee from 1 July 2019 onwards, or they are exempt from lodging.
Note 3: In this report we round percentages to whole numbers unless below 1%. Percentages in tables may not add up to totals due to rounding.

Table 4: Breakdown of credit licensee reporting by size, based on Form CL50 lodgements

Licensee credit value	Number of reports	Percentage of reports	Number of lodgers	Percentage of lodgers	Percentage of licensee population
Less than $200m	97	3%	44	35%	1%
$200m–$1,799m	111	3%	36	29%	20%
$1,800m or more	3,315	94%	44	35%	68%
No credit value available	2	0.1%	2	2%	0.9%
Total	**3,525**	**100%**	**126**	**100%**	**3%**

Note: Credit licensees must lodge Form CL50 *Australian credit licence annual compliance certificate* with ASIC for every year that they hold the credit licence. The licensee size information is based on the credit value specified in the latest Form CL50 lodgement by the relevant credit licensees as at 30 June 2022.
Note 2: 'No credit value available' means that either ASIC has not received any Form CL50 lodgements from the credit licensee from 1 July 2019 onwards, or they are exempt from lodging.

A small number of generally larger licensees submitted the majority of reports. Nearly three-quarters of all reports (74%) were submitted by just 23 licensees: see Table 5. Consequently, the results of this publication are driven, in large part, by reporting from a relatively small number of licensees.

Table 5: Breakdown of reporting volumes by number of reports and number of licensees

Licensee reporting volume	Number of reports	Percentage of reports	Number of licensees	Percentage of licensees
1 report	329	4%	329	51%
2–9 reports	825	9%	230	36%
10–25 reports	658	7%	46	7%
26–50 reports	468	5%	13	2%
51 reports or more	6,549	74%	23	4%
Total	**8,829**	**100%**	**641**	**100%**

Note: An example of how this table should be read is that licensees who had made only one report in the reporting period accounted for 329 reports in total (4% of all reports) and came from 329 licensees (51% of all licensees).

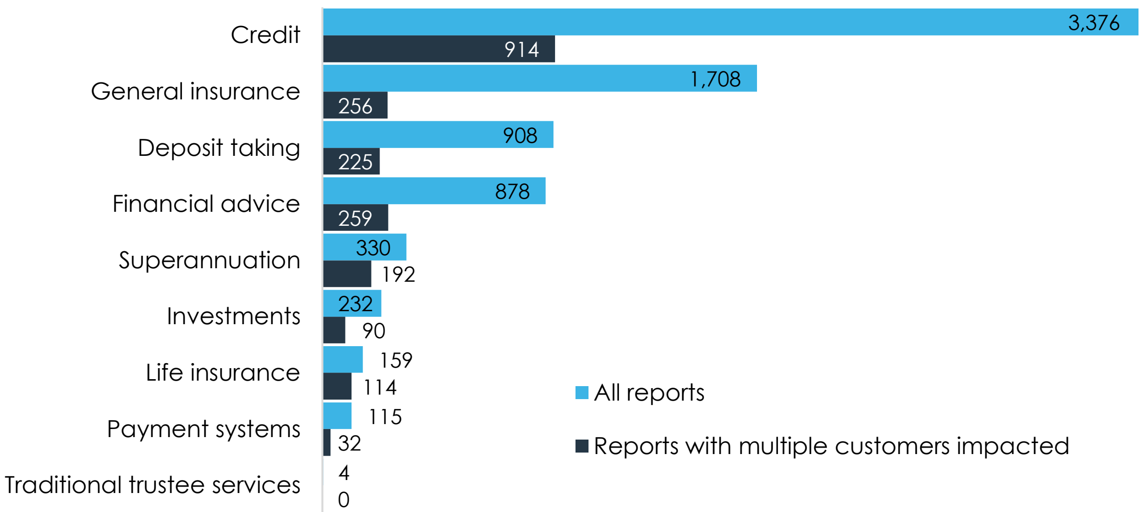
Key insights: Subject of reports and root causes of breaches

What is being reported

Most reports involved a financial service, credit activity or product line

Approximately 86% of the reports lodged involved reportable situations affecting at least one financial service, credit activity or product line. Most reports related to credit (38%), followed by general insurance (19%) and deposit taking (10%): see Figure 1. The main driver for the significant volume of reports by credit providers was the lodgement of separate reports about one-off breaches of specific responsible lending obligations, where those breaches were reported as the result of staff negligence or error.

Figure 1: Breakdown of reports relating to a financial service, credit activity or product line



Note: For the data shown in this figure, see Table 19 (accessible version).

The reports that did not relate to a financial service, credit activity or product line related to a breach of general licensee level obligations (entered in the report as an 'issue'), rather than a specific product or service.

The products most commonly the subject of a report were home loans (25%) and motor vehicle insurance (13%), which were the primary drivers of credit and general insurance reports respectively. We have set out the top 10 products specified in reports in Table 6.

Table 6: Top 10 most reported products

Product	Number of reports	Percentage of total reports
Home loans	2,185	25%
Motor vehicle insurance	1,112	13%
Personal transaction accounts	460	5%

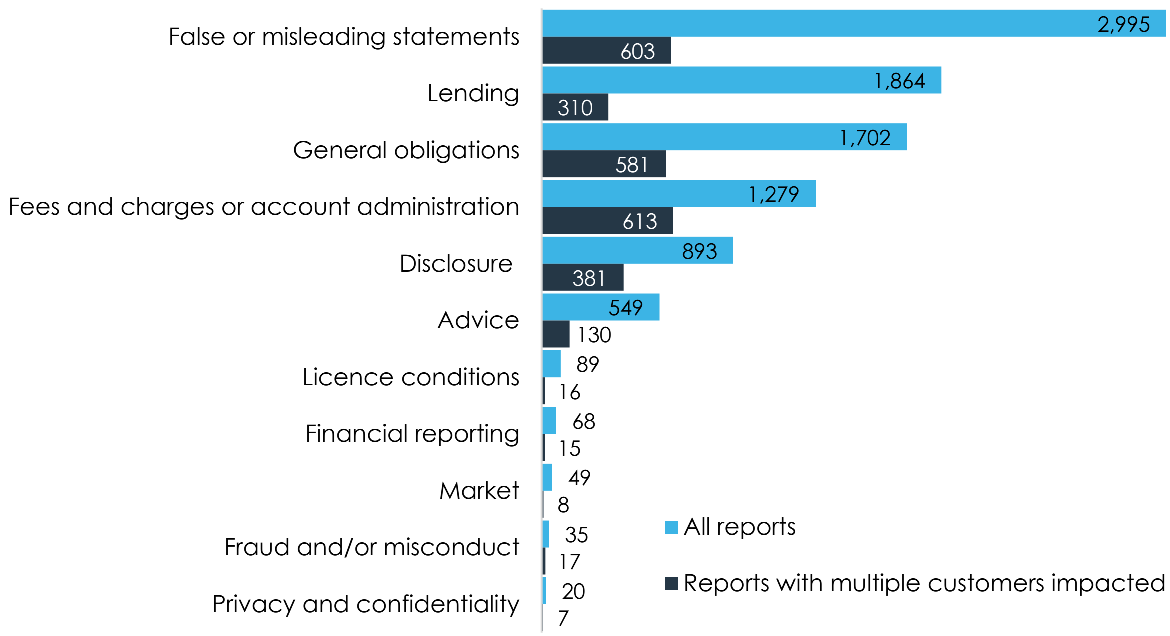
Product	Number of reports	Percentage of total reports
Credit cards	445	5%
Home building insurance	389	4%
Home contents insurance	285	3%
Personal loan (other than motor vehicle)	282	3%
Superannuation account	274	3%
Business loans	262	3%
Investment property loans	149	2%

Note: More than one product can be listed in a report.

Most common issue category was 'false or misleading statements'

The most common category of issues to which the reports related was 'false or misleading statements' (34%). Other categories of issues about which there were significant volumes of reports included lending (21%), general licensee obligations (19%), and fees and charges or account administration (14%): see Figure 2.

Figure 2: Breakdown of reports relating to particular categories



Note: For the data shown in this figure, see Table 20 (accessible version).

The main driver for the 'false or misleading statements' issue category were statements about products, regarding service information or in warning statements (30%). We have set out the top three drivers for the top five issue categories in Table 7.

Table 7: Drivers of the top five issue categories

Issue category	Top three drivers (percent of all reports)
False or misleading statements	› Statements about products, regarding service information or in warning statements (30%) › Statements about fees (3%) › Advertising and related conduct (1%)
Lending	› Responsible lending (15%) › Hardship (4%) › Debt collection (1%)
General licensee obligations	› Providing services efficiently, honestly and fairly (7%) › Other (5%) › Competence and/or training (4%)
Fees and charges or account administration	› Fees and/or costs (9%) › Interest (4%) › Premiums (1%)
Disclosure	› Disclosure about products, regarding service information or in warning statements (7%) › Disclosure about fees (1%) › Disclosure about commissions (1%).

Root causes of breaches reported

Staff negligence or error was most commonly reported as the root causes of breaches

Approximately 83% of reports specified at least one root cause for the breach(es). The most common category of root cause selected was staff negligence or error (60%), followed by policy or process deficiencies (9%) and system deficiencies (6%). Table 8 provides more details about the top five categories of root causes selected.

As at 30 June 2022, the root cause was still under investigation in 14% of reports. In the remaining 3% of reports, licensees had not determined the root cause at all.

Table 8: Top five root cause categories

Root cause category	Number of reports	Percentage of total reports
Staff negligence or error	5,333	60%
Policy or process deficiency	791	9%
System deficiency	503	6%
Other	393	4%
Inadequate supervision or lack of training of staff	342	4%

Staff negligence or error was selected as the sole root cause category in 55% of reports where the licensee had reported that there had been previous similar breaches and/or there were multiple breaches grouped into the relevant report. This raises some concerns as to whether licensees are consistently identifying and addressing the underlying root causes for breaches (e.g. by determining the underlying reasons, such as systems or process issues, for repeated staff negligence or error).

In response to this, we intend to provide guidance to licensees on the circumstances in which it is appropriate for licensees to select 'staff negligence or error' as the root cause (e.g. only when it has determined there are no other underlying root causes). This is intended to signal to licensees the importance of undertaking appropriate root cause analysis when breaches are identified.

Key insights: Identification and investigation of breaches

Identification triggers

Most breaches were identified from internal sources

Licensees categorised around 79% of breaches reported as having been identified by the licensee from internal sources (such as internal compliance activities). This highlights the important role internal risk management activities play in the identification of breaches. Despite this, there was variation between the licensees: see Table 9.

Table 9: Variation in the portion of breaches identified internally across high-lodging licensees (i.e. licensees lodging 50 reports or more)

Percentage of breaches identified internally	Number of licensees	Percentage of licensees
Less than 50%	2	9%
50%–74%	6	26%
75%–89%	6	26%
90% or more	9	39%

Note: Investigation triggers in the 'Other' category and licensees who have lodged less than 50 reports have been excluded from the above calculation.

Some of the variation in Table 9 (and in Table 10 below) could be explained by different approaches being adopted by licensees when selecting the category of trigger. For example, when a staff member identified an issue as a result of a customer complaint, some licensees recorded this as the internal trigger of 'staff or business unit report', whereas other licensees recorded it as the external trigger of 'customer complaint'. We intend to provide further guidance to support more consistent reporting of identification triggers in the future.

The most common triggers selected by licensees for identifying a breach were staff report or business unit reports (56%), followed by the compliance function (14%) and customer complaint via internal dispute resolution (10%): see Table 10.

Table 10: Top 10 identification triggers

Identification trigger	Source	Number of reports	Percentage of reports
Staff report or business unit report	Internal	4,959	56%
Compliance function	Internal	1,242	14%
Customer complaint via internal dispute resolution	External	925	10%
Adviser assurance	Internal	429	5%
Internal audit function	Internal	328	4%

Identification trigger	Source	Number of reports	Percentage of reports
ASIC	Regulator	79	0.9%
External audit	External	59	0.7%
Customer complaint via external dispute resolution	External	59	0.7%
Australian Financial Complaints Authority (AFCA) systemic issue	External	13	0.1%
Whistleblower	Internal	13	0.1%

Note: This table does not include reports where the investigation trigger was reported as 'other'.

These results appear consistent with the larger licensees' 'three lines of defence and/or accountability' risk management model. Under this model:

- staff and business units have primary responsibility for identifying and managing risk (first line)
- challenge and oversight is provided by a compliance function (second line)
- assurance about the effectiveness of the first and second line is provided by internal audit (third line).

Time taken to identify and commence investigation into breaches

The median time taken to identify and commence an investigation into a breach was 39 calendar days, with a mean of 380 calendar days. However, this varied significantly across the reports.

Note: The time taken is calculated as the number of days between the reported first instance of a breach and the date on which the licensee reported that they commenced an investigation into whether there was a breach.

Timeliness for identifying and investigating breaches is a concern

There were an excessive number of reports where it took more than a year to identify and commence an investigation into a breach: see Table 11. We are particularly concerned about the 582 reports in this category where it took the licensee five or more years to identify and commence an investigation into a breach. We expect licensees to have systems in place for significantly swifter identification and investigation of non-compliance.

Table 11: Time taken to identify and commence an investigation into a breach

Time taken	Number of reports	Percentage of reports
7 days or fewer	1,690	19%
8–30 days	2,226	25%
31–90 days	1,863	21%
91–180 days	822	9%

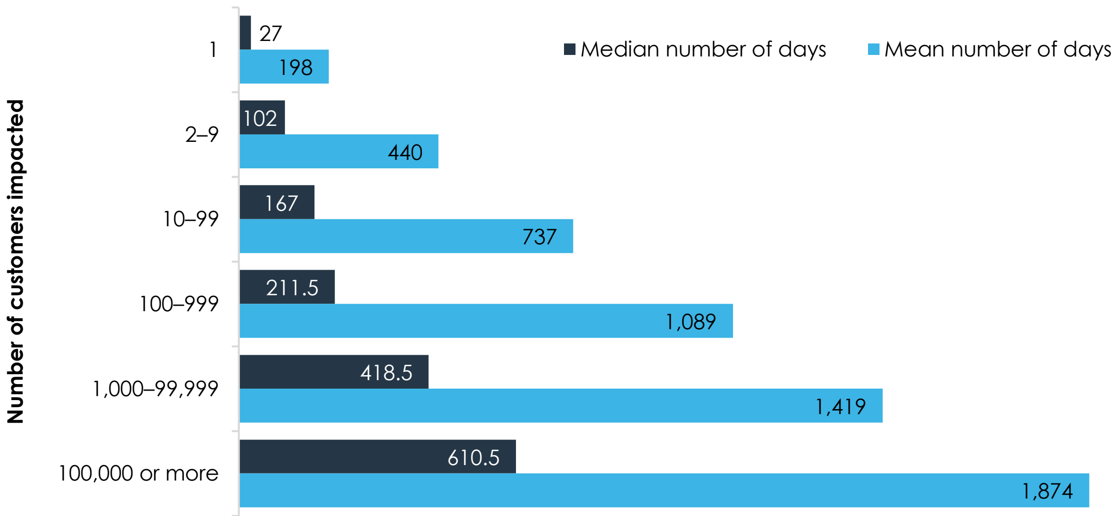
Time taken	Number of reports	Percentage of reports
181–365 days	647	7%
A year or more	1,567	18%

Note: This table does not include reports relating to likely significant breaches.

The longer the investigation took to commence, the more customers were impacted

In general, reports containing breaches that licensees took longer to identify and commence an investigation into reported a greater number of impacted customers: see Figure 3. This reinforces the importance of early identification of breaches. The earlier a licensee identifies and understands a breach, the earlier it can put in place rectification methods. This, in turn, results in fewer impacted customers, less time that customers may be affected, and a lower cost and impact of remediation.

Figure 3: Time taken to identify and commence an investigation into a breach, by customers impacted



Note: For the data shown in this figure, see Table 21 (accessible version).

Time taken to investigate breaches

Overall, licensees completed investigations (or expected to complete, where the investigation was still ongoing) in a median of 18 calendar days, and a mean of 70 calendar days. The time taken to complete an investigation includes the time taken to determine that there has been a breach, as well as the time taken to determine the breach's nature, extent and impact (such as identifying the root cause and impact to customers).

Significant range in time taken to investigate a breach

As shown in Table 12, there was a significant range in the time taken to investigate a breach. Notably, there were 464 reports where the investigation took, or was expected to take, more than one year to complete. Licensees must ensure they allocate sufficient resources to ensure that investigations are carried out in a timely manner.

Table 12: Time taken to complete an investigation into a breach

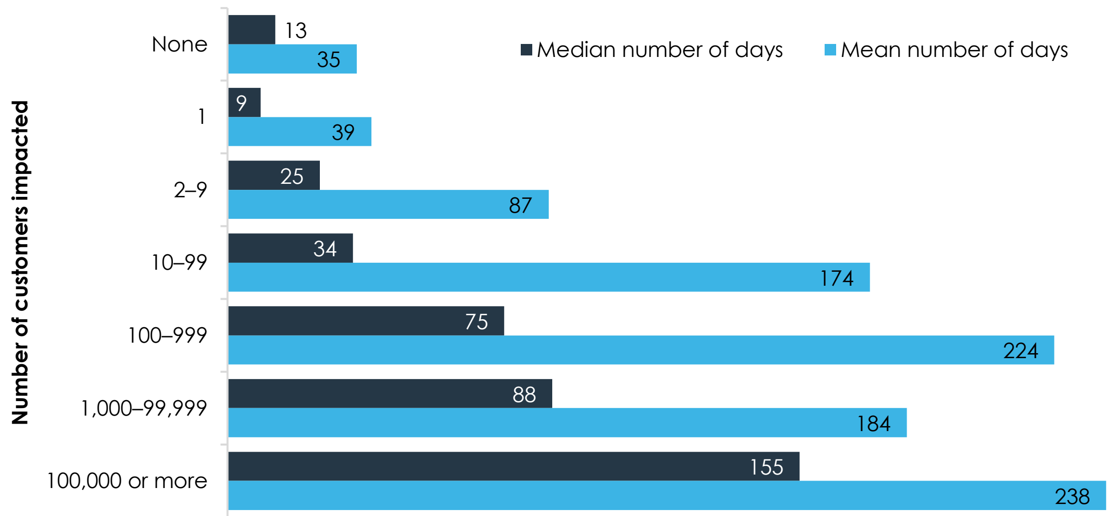
Time taken	Number of reports	Percentage of reports
7 days or fewer	3,280	37%
8–30 days	2,942	33%
31–90 days	1,102	12%
91–180 days	521	6%
181–365 days	520	6%
A year or more	464	5%

Note: This table uses the actual investigation completion date (where the investigation is complete) or the reported expected investigation completion date (where the investigation is incomplete).

The more customers impacted, the longer the investigation took to complete

There was also a strong relationship between the number of customers impacted by an issue and the time taken to complete the investigation. Investigations involving a greater number of customers impacted took longer to complete: see Figure 4.

Figure 4:Time taken to complete an investigation into a breach, by customers impacted



Note: For the data shown in this figure, see Table 22 (accessible version).

This reinforces the importance of early identification of issues. The earlier that issues are identified, the fewer customers that are likely to be impacted, and the less time and cost that is likely to be associated with investigating the issue.

Key insights: Customer impact, remediation and rectification

Customer impact

Most reports were about breaches that impacted customers

Customers were impacted (financially or non-financially) in 82% of the reports we received during the reporting period. The types of non-financial impact in reports varied widely, and included customer confusion, inconvenience and distress. Across the reports, there were a total of approximately 43.7 million customers impacted (noting that a customer may be impacted across multiple reports). The majority (56%) of the reports impacted a single customer; however, around 15% of reports impacted 10 customers or more: see Table 13.

As at 30 June 2022, 14% of reports still had investigations underway. Following completion of these investigations, the number of customers impacted by the reports made is likely to be higher than has been reported by licensees so far.

Table 13: Breakdown of number of customers impacted

Number of customers impacted	Number of reports	Percentage of reports
No customers	1,507	17%
1 customer	4,928	56%
2–9 customers	931	11%
10–99 customers	485	5%
100–999 customers	422	5%
1,000–99,999 customers	399	5%
100,000–999,999 customers	34	0.4%
1 million customers or more	4	Less than 0.1%
Not known – still under investigation	119	1%
Total	**8,829**	**100%**

Approximately a quarter of reports involved financial loss for customers

While the majority of reports involved some customer impact, a much smaller proportion (23%) reported financial loss to customers. The total customer financial loss identified across the reports received as at 30 June 2022 was approximately $368.5 million. Of the reports where a customer financial loss was recorded, 68% involved a total customer financial loss of less than $10,000. Table 14 provides more details below on the range of customer financial loss reported.

Table 14: Breakdown of customer financial loss

Total customer financial loss amount	Number of reports	Percentage of reports
No customer financial loss	6,430	73%
$99 or less	290	3%
$100–$999	411	5%
$1,000–$9,999	686	8%
$10,000–$99,999	424	5%
$100,000–$999,999	169	2%
$1 million or more	53	0.6%
Not known – still under investigation	366	4%
Total	**8,829**	**100%**

The reported total customer financial loss could increase as licensees continue to investigate the relevant reportable situations and update their reports for the loss incurred. Additionally, there would be cases where the financial loss may not be obvious to the licensee (e.g. where incorrect comprehensive credit reporting information is provided to a credit bureau, leading to customers receiving future credit on less favourable terms). Given this, these numbers are likely to understate the actual level of financial impact.

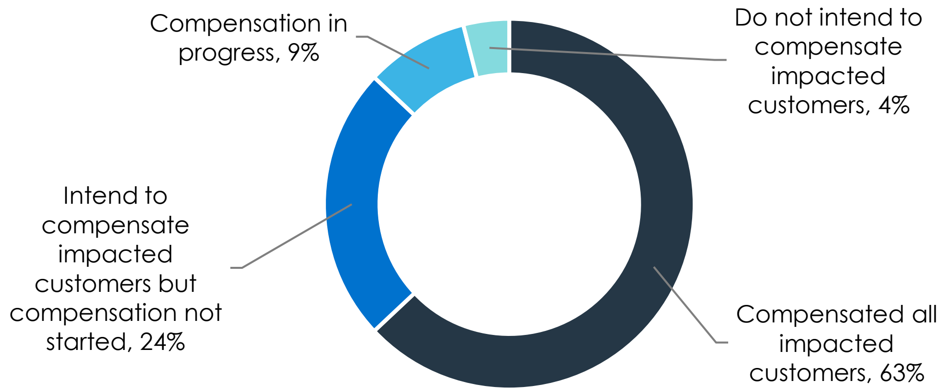
Remediation for affected customers

Licensees had or intended to compensate customers in most cases

Licensees reported that they had paid a total of approximately $51.6 million in compensation to 455,210 impacted customers. From the reports that quoted a customer financial loss, licensees either had or intended to financially compensate all impacted customers in 96% of cases. Licensees reported that they did not intend to compensate impacted customers in the remaining 4% of reports: see Figure 5.

Note: The above figure represents the amount of customer remediation that licensees have reported to ASIC in their most recent lodgement or update prior to 1 July 2022. It is possible that the actual amount of remediation that has been paid as at 30 June 2022 is higher.

Figure 5: Proportion of reports that incurred a customer financial loss, by compensation progress



Note: For the data shown in this figure, see Table 23 (accessible version).

Some of the 4% of reports where the licensee reported that they did not intend to compensate customers appeared to be reported in error (e.g. because the description indicated that there was no financial loss, or they had in fact compensated customers). However, we are concerned about the remaining reports, and we are considering our regulatory response. Our view is that remediation must be initiated if a licensee, or one of its representatives, has engaged in misconduct or other failure and the misconduct or other failure has caused, or may have caused, customer loss: see Regulatory Guide 277 *Consumer remediation* (RG 277) at RG 277.22.

A significant number of remediations take more than a year to complete

The median time taken (or expected to be taken) to finalise compensation after commencement of an investigation was 37 days, and the mean was 120 days. Table 15 shows that a significant number of remediations took, or were expected to take, more than a year to complete. It is important that licensees properly resource remediation activities and ensure that remediation activities are conducted in a timely manner without sacrificing customer outcomes. Further details about ASIC's expectations are outlined in RG 277.

Table 15: Time taken to finalise compensation after commencement of investigation

Time taken	Number of reports	Percentage of reports	Total compensation paid
Finalised compensation before commencing investigation	436	22%	$7,608,197
30 days or fewer (including same day)	483	25%	$8,158,227
31–90 days	387	20%	$7,758,639
91–180 days	219	11%	$9,041,500
181–365 days	191	10%	$6,011,188
366 days or more	236	12%	$13,036,961

Note: This table uses the actual compensation completion date (where the compensation has been finalised) or the reported expected compensation completion date (where the compensation has not yet been finalised).

Rectification of breaches

As at 30 June 2022, licensees had rectified the breaches in 78% of reports and were intending to rectify the breach in a further 6% of reports. Licensees were still investigating the root cause and solutions for the remaining reports (14%) or expressed no intention to rectify the breach (2%).

In some of the 2% of reports where licensees indicated they had no intent to rectify, this appeared to be in error (e.g. because the description outlined some rectification steps). In other cases, this response was provided because the licensee is no longer offering the product or service or, for staff-caused issues, employing the person. We are considering our regulatory response to the remaining reports. We expect licensees to take timely action to fix and prevent the recurrence of issues.

Staff training was the most common rectification method

The most common rectification methods that licensees had taken or planned to take are outlined in Table 16.

Table 16: Top five rectification methods

Rectification method	Number of reports	Percentage of total reports
Staff training on internal policy and procedures	3,635	41%
Other rectification methods	2,274	26%
Communication to customers	2,055	23%
Staff consequence management	1,127	13%
Financial compensation to customers	1,027	12%

The rectification approach differed significantly depending on the issue and underlying root cause involved. For example, where staff negligence or error was a root cause, the most common rectification method was staff training on internal policy and procedures (57%), followed by communication to customers (28%), and staff consequence management (20%). Where system deficiency was a root cause, the most common rectification method was a system change (62%), followed by communication to customers (30%), and a process change (27%).

Significant range in the time taken to rectify a breach

The median time taken (or expected to be taken) from the commencement of an investigation to the rectification completion date was 1 calendar day, and a mean of 12 calendar days. However, there was a significant range (see Table 17), and in many cases breaches were rectified before an investigation commenced (e.g. because they were rectified immediately on the breach occurring).

Table 17: Time taken to rectify a breach after commencement of investigation

Time taken	Number of reports	Percentage of reports
Rectified before commencing investigation	1,917	22%
7 days or fewer (including same day)	2,777	31%
8–30 days	1,278	14%
31–90 days	848	10%
91–180 days	364	4%
181–365 days	161	2%
A year or more	54	0.6%

Note: This table uses the actual rectification completion date (where the rectification is complete) or the reported expected rectification completion date (where the rectification is not yet complete).

Appendix 1: Scope and methodology

Scope of this publication

The reportable situations legislation requires ASIC to publish information from reports lodged by licensees about breaches and likely breaches of core obligations during the financial year. This includes reports lodged with APRA by dual-regulated licensees or their auditors and actuaries.

As a result, the data in scope for this publication are the reports lodged between 1 October 2021 and 30 June 2022 with ASIC and APRA about:

- significant breaches of core obligations, or
- situations where the licensee is no longer able to comply with a core obligation and the breach, if it occurs, will be significant (likely significant breaches).

Note: These reports are lodged with ASIC by licensees, and with APRA by licensees and their auditors and/or actuaries.

The following data is outside the scope of ASIC's legislative reporting obligation, and therefore has not been included in this publication:

- reports that are only about additional reportable situations (gross negligence and serious fraud)
- reports about investigations that have not yet concluded that a significant breach of a core obligation has occurred or will occur

Note: During the reporting period, there were 289 reports where the initial lodgements were out of scope as the investigation had not concluded that a significant breach of a core obligation has occurred or would occur. However, later updates in relation to these 289 reports confirmed that a significant breach or likely significant breach had occurred. Therefore these 289 reports were brought into scope and have been included in both the number of reports figure and the number of updates figure on page 7.

- reports about investigations that have concluded that a significant breach of a core obligation did not or will not occur
- reports made to ASIC about another licensee
- reports made under the previous breach reporting obligation (as in force immediately before 1 October 2021) using the previous ASIC Regulatory Portal form

Note: Licensees can report under the previous breach reporting obligation using the previous form because the obligation was breached or was likely to have been breached before 1 October 2021.

- reports made to APRA with a first awareness and instance date before 1 October 2021 and not involving a continuing breach.

Note: Where the breach had occurred before 1 October 2021, but the report was made using the new ASIC Regulatory Portal form, this has been included in the data.

In addition, the report excludes a small number of reports that were made in error (e.g. duplicates, where the wrong form was used, or where the report was submitted under the wrong licensee).

Methodology and reporting concepts

This publication has been prepared based on analysis of the reports within scope (as set out above), supported by relevant extrinsic data (e.g. other licensee lodgements, as appropriate).

The main concept used in this publication is 'reports'. This section outlines how this concept applies when updates are provided to a report. It also outlines how this concept is different from 'reportable situations'.

Definition of 'updates'

ASIC's systems allow a licensee to provide updates to a report after it has initially been submitted. Where there have been one or more updates to a report, our approach is to take data from only the latest lodgement (as at 30 June 2022).

Example: Dealing with multiple updates

On 1 December 2021, a licensee lodges a report about an investigation of a possible significant breach. Subsequently:

- on 20 February 2022, they lodge a further report (by way of update) confirming that there is a significant breach and that, among other things, customers suffered a financial loss of $900 as a result of the breach
- on 30 March 2022, they lodge a further report (by way of update) that revises the total customer financial loss to $1,000
- on 8 July 2022, they lodge a further report (by way of update) that revises the total customer financial loss to $1,200

For the purposes of this publication, our approach is to treat these lodgements as one report and use the data from the latest lodgement at 30 June 2022. In this case, it would mean only using the data from the 30 March 2022 lodgement.

Definition of 'reportable situations'

The number of reports is different to the number of reportable situations.

We allow licensees to notify ASIC of multiple reportable situations (i.e. breaches) by lodging a single report. Due to this, a single report could involve:

- one reportable situation (e.g. a single occasion where a licensee's employee provided incorrect information to a customer), or
- many thousands of reportable situations (e.g. a system error causing thousands of customers to be overcharged, which might involve multiple breaches of multiple legal provisions).

To date, licensees have adopted differing approaches to calculating and reporting the number of reportable situations. This has informed our decision not to publish the number of reportable situations this year. We are considering how to respond to the inconsistency in reporting practices we have observed, and are consulting with industry on this.

Appendix 2: Number of licensees during the reporting period

Licensees must maintain their details on ASIC's registers. Information contained on these licensee registers are made available to the public to search via the ASIC Connect website. The number of licensees varied during the reporting period due to approvals for new licences, cancellations and suspensions. The number of licensees as at 1 October 2021 and as at 30 June 2022 are set out in Table 18.

Table 18: Current licensees during the reporting period

Licensee status	AFS licensees	Credit licensees	Total licensees
Licensees at 1 October 2021	6,224	4,753	10,977
Licensees as at 30 June 2022	6,288	4,720	11,008

Appendix 3: Accessible versions of figures

Table 19: Breakdown of reports relating to a financial service, credit activity or product line

Financial service, credit activity or product line	All reports	Reports with multiple customers impacted
Credit	3,376	914
General insurance	1,708	256
Deposit taking	908	225
Financial advice	878	259
Superannuation	330	192
Investments	232	90
Life insurance	159	114
Payment systems	115	32
Traditional trustee services	4	0

Note: This is the data shown in Figure 1.

Table 20: Breakdown of reports relating to particular categories

Category	All reports	Reports with multiple customers impacted
False or misleading statements	2,995	603
Lending	1,864	310
General obligations	1,702	581
Fees and charges or account administration	1,279	613
Disclosure	893	381
Advice	549	130
Licence conditions	89	16
Financial reporting	68	15
Market	49	8
Fraud/misconduct	35	17
Privacy and confidentiality	20	7

Note: This is the data shown in Figure 2.

Table 21: Time taken to identify and commence an investigation into a breach, by customers impacted

Number of customers impacted	Median number of days	Mean number of days
1 customer	27	198
2–9 customers	102	440
10–99 customers	167	737
100–999 customers	211.5	1,089
1,000–99,999 customers	418.5	1,419
100,000 customers and over	610.5	1,874

Note: This is the data shown in Figure 3.

Table 22: Time taken to complete an investigation into a breach, by customers impacted

Number of customers impacted	Median number of days	Mean number of days
No customers impacted	13	35
1 customer	9	39
2–9 customers	25	87
10–99 customers	34	174
100–999 customers	75	224
1,000–99,999 customers	88	184
100,000 customers and over	155	238

Note: This is the data shown in Figure 4.

Table 23: Proportion of reports that incurred a customer financial loss, by compensation progress

Compensation progress	Percentage of reports
Compensated all impacted customers	63%
Intend to compensate impacted customers but compensation not started	24%
Compensation in progress	9%
Do not intend to compensate impacted customers	4%

Note: This is the data shown in Figure 5.

Key terms and related information

Key terms

AFS licence	An Australian financial services licence under s913B of the *Corporations Act 2001* that authorises a person who carries on a financial services business to provide financial services **Note:** This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the *Corporations Act 2001*
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Regulatory Portal	The internet channel that allows authenticated regulated entities to interact securely with ASIC, which can be accessed at the ASIC Regulatory Portal landing page
credit licence	An Australian credit licence under s35 of the *National Consumer Credit Protection Act 2009* that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds an Australian credit licence under s35 of the *National Consumer Credit Protection Act 2009*
investigation	The process that a licensee conducts to understand if there is a breach, determine the root cause of that breach, and identify all customers affected (and the extent of impact to those customers)
licensee	An AFS licensee or a credit licensee
licensee population	All current AFS licensees and credit licensees as at 30 June 2022
mean	The average calculated by adding all values in the range and dividing by the number of values in the range
median	The middle value in a range of values that is sorted in ascending or descending order
reports	Lodgements about breaches and likely breaches that we have received under the reportable situations regime, based on the scope and methodology outlined in Appendix 1
reportable situation	Has the meaning given by s912D of the Corporations Act 2001 or s50A of the *National Consumer Credit Protection Act 2009*
reporting period	1 October 2021 to 30 June 2022, inclusive
RG 277 (for example)	An ASIC regulatory guide (in this example numbered 277)

Related information

Headnotes

AFS licence, Australian credit licence, Australian financial services licensees, breaches, credit licensees, reportable situations

Legislation

Explanatory Memorandum to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020, paragraph 11.129

ASIC documents

21-213MR *ASIC's approach to new laws reform the financial services sector*

Form CL50 *Australian credit licence annual compliance certificate*

Form FS70 *Australian financial services licensee profit and loss statement and balance sheet*

RG 78 *Breach reporting by AFS licensees and credit licensees*

RG 277 *Consumer remediation*