

ASIC to monitor and publish data on the reportable situations regime

In October 2022, ASIC issued its first annual publication on reportable situations for Australian financial services licence holders and credit licence holders. The report set out high-level trends rather than naming licensees. We expect ASIC will take a more granular approach to its reporting in 2023 and beyond to keep licensees accountable.

Since 1 October 2021, Australian Financial Services Licence (**AFSL**) and Australian Credit Licence (**ACL**) holders have been required to submit notifications about 'reportable situations' (formerly 'breach reports') to ASIC.

There is a requirement to report a number of situations to ASIC in writing including:

- Breaches of 'core obligations' (as defined by the Corporations Act) that are considered 'significant';
- Investigations that continue for more than 30 days into whether a reportable situation has occurred; and
- Conduct that constitutes gross negligence or serious fraud.

The ASIC report provides general insights into the high-level trends observed in lodgments between 1 October 2021 and 30 June 2022, allaying initial concerns amongst the industry that licensees would be 'named and shamed'.

Notably, 18% of the reports lodged with ASIC in the period between 1 October 2021 to 30 June 2022 indicate that the AFSL or ACL holder took more than one year to identify and commence an investigation into an issue after it had first occurred. We expect to see a continued push by the regulator for greater speed by AFSL and ACL holders in assessing and investigating breaches of licensee obligations.

ASIC has already indicated that its approach to reporting will evolve over time as the regime matures and allows for greater granularity of reporting. We expect that this may see AFSL and ACL holders named in future reports, along with increased detail in the categories and frequency of such reports.

Recommendations

Insurers and insurance intermediaries who have an AFSL or ACL should ensure that they have appropriate procedures in place to identify possible breaches which may constitute reportable situations that are notifiable to ASIC under the enhanced regime. In particular, licensees should ensure that their breach reporting frameworks are streamlined and sufficiently resourced to meet the 30-day turnaround for notification of investigations.