TAYLOR FRY

The benefits of professional standards schemes – limitation of liability and consumer protection measures

Final report to the Professional Standards Councils

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Dear Roxane

The benefits of professional standards schemes

The Professional Standards Councils (the Councils) have commissioned Taylor Fry to produce a report that examines and evidences the benefits delivered by professional standards schemes, using quantitative and qualitative measures.

In undertaking this work, we have focused on the effects of schemes on professional indemnity insurance and professional negligence claims/complaints. These effects are relevant to the achievement of the objects of professional standards legislation in limiting the civil liability of professionals and protecting the consumers of services provided by professionals – through appropriate professional indemnity insurance and improved professional standards.

In the course of our work, we have identified several instances of observable reductions in the quantum and volume of notifications, insurance claims and complaints against participants of professional standards schemes, with consequent improvements in the cost and availability of professional indemnity insurance. This report summarises our observations of the benefits delivered by these professional standards schemes.

This is a final version of the report and allows for feedback provided by the Councils on previous versions of this report.

Yours sincerely

K Gomes

Kevin Gomes
Principal

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Executive summary

1 Executive summary

Key message:

- Being part of a professional standards scheme is intended to improve participant risk, which is to the benefit of participants, insurers and consumers

Objectives

The objective of this report is to provide an understanding and assessment of the effects of professional standards schemes on the protection of Australian consumers of the services provided by professionals and the availability, quality, and cost of professional indemnity insurance. In undertaking this work, we have focused on the effects that schemes have in respect of professional indemnity insurance and professional negligence claims/complaints.

We believe that any reduction in the quantum and volume of consumer notifications, claims and complaints and containment or improvement in the availability/quality/cost of professional indemnity insurance will demonstrate, at least in part, the direct or indirect benefits of professional standards schemes over time.

Overall performance of schemes (recent experience)

Analysis of the recent overall performance of schemes using Professional Standards Improvement Program[1] (PSIP) reports shows:

A stable to improving risk environment across most sectors:

- The number of claims reported in 2020 exceeding 50% of the monetary ceiling are very low across all sectors
- Substantial reduction in complaints across all sectors between 2019 and 2020
- Increasing proportion of schemes using 'root cause analysis' to better identify professional risks and implement changes to professional standards and risk management

Although insurers remain concerned with risks within some sectors:

- Average professional indemnity (PI) insurance premiums for schemes within the Accounting, Barristers and Built Environment sectors either remained stable or increased between 2019 and 2020, while average premiums for schemes within the Solicitor sector generally remained stable or showed small decreases

Our analysis of the recent overall performance of schemes provides a cross-check against the longer term analysis of scheme experience shown in our case studies (refer below).

Case studies (longer term experience)

Detailed case studies were undertaken of the following three professional standards schemes, operating in different sectors: The Law Society of NSW (LSNSW), Chartered Accountants Australia & New Zealand (CA ANZ) and the Australian Property Institute Valuers (APIV). For each case study, we undertook quantitative analyses using longer term scheme and industry data and collected qualitative information via scheme interviews.

We summarise key findings below:

[1] "Professional Standards Improvement Program" is to be renamed "Annual Professional Standards Report"

Case Study 1 – LSNSW	
Quantitative analyses	*Qualitative information (scheme interviews)*
▪ Favourable trends in claims and complaints experience suggest an improving risk environment ▪ The monetary limits are observed to be unchanged over the last three schemes, which is also consistent with a stable or improving risk environment. ▪ Favourable premium trends suggest insurers recognise improvements in the risk environment. No concerns with cost or availability of insurance.	▪ LSNSW believes the scheme does have risk benefits ▪ Lawcover (primary insurer) is very active in promoting risk management and member education ▪ LSNSW and Lawcover report that being able to plead the scheme liability cap to a plaintiff facilitates settlement of claims

Case Study 2 – CA ANZ	
Quantitative analyses	*Qualitative information (scheme interviews)*
▪ Claims experience has moderately improved since 2014, suggesting a stable to improving risk environment ▪ The monetary limits increased in 2014 but have been unchanged over the last two schemes, which is also consistent with a stable or improving risk environment ▪ However, premium increases and issues with availability of insurance for some firms suggest insurer concerns with the risk environment.	▪ CA ANZ believe that participation in a professional standard scheme does have benefit in reducing claim cost ▪ Believe in the value of risk management standards and would enforce these regardless of whether they were part of a professional standards scheme ▪ Not clear whether insurers of CA ANZ participants understand the risk benefits of being part of a professional standards scheme.

Case Study 3 – APIV	
Quantitative analyses	*Qualitative information (scheme interviews)*
▪ Favourable trends in claims and complaints experience suggest an improving risk environment ▪ The monetary limits reduced at the last scheme application, which is also consistent with a stable or improving risk environment ▪ However, premium increases and issues with availability of insurance for some firms suggest insurer concerns with the risk environment	▪ APIV believe having a professional standards scheme is very beneficial, seen as a 'unique product' ▪ Being part of a professional standards scheme creates work opportunities. For example, valuers are required to be part of a professional standard scheme in order to gain access to the ValEx platform (used for bulk of valuer jobs) ▪ However, insurers do not appear to be aware of the risk benefits associated with professional standards schemes and do not ask questions around whether insurance applicant is part of a professional scheme

Case Study 3 – APIV	
	There appears to be a 'disconnect' between insurance requirements on particular jobs and the limit of liability e.g. participants may be required to have $5m insurance cover for certain jobs, even though the limit of liability is only $1m.

Overall findings

Our overall findings on the **longer term performance** of schemes for which we did case studies are consistent with our assessment of the overall **recent performance** of all schemes, namely:

- **There is a stable to improving risk environment across most sectors** (particularly evident for LSNSW and APIV). We believe that improvements in the risk environment are attributable in part to participation in professional standard schemes, though we acknowledge the difficulties in establishing a direct link
- However, **insurers remain concerned with risks within some sectors** (particularly evident for APIV and CA ANZ). In some instances, insurers also appear unaware of the risk benefits of being part of a professional standards scheme
- In this regard, the benefits of professional standards schemes are most apparent where **insurers are able play an active role** in the scheme's risk management and have an understanding of the limitation of liability (as evidenced by the role played by Lawcover in the LSNSW scheme)

Limitations

While our report focuses on the effects that schemes have in respect of professional indemnity insurance claims, we acknowledge that professional indemnity claims against scheme participants may be affected by factors outside the professional scheme. This makes it difficult to directly link observed claim trends to scheme participation. These factors include (but are not limited to):

- Delays in reporting / settlement and/or claims volatility
- Changes affecting the risk of particular industries or occupations
- Systemic impacts such as changes in the economic environment or inflation
- Judicial rulings or legislative changes.

Furthermore, there are several factors that may contribute to insurers failing to give full credit to the risk benefits of professional standard schemes within their professional indemnity rating structures, including:

- Insurers may be unaware of the risk benefits associated with scheme participation
- Insurers may dispute the link between favourable claim trends and scheme participation
- Insurer underwriting and rating decisions may be impacted by competitive or strategic considerations as well as changes to their own risk appetite
- Ratings may be impacted by external systemic changes such as insurance cycles.

These factors act as a limitation on our analysis.

2

Background

2 Background

Inside this section

2.1 Overview of professional standards schemes

2.1.1 Professional standards legislation

Professional standards legislation has progressively been enacted in each state and territory over the past 25 years. Its creation by state and territory governments, and recognition by the Australian Government, was in response to the insurance crisis of the 1990s and early 2000s, which saw a sharp increase in the number and size of successful claims against providers of professional services.

In turn, insurance premiums rose to levels that became unaffordable for professionals, resulting in a lack of protection for consumers who were entitled to compensation.

Consumer protection is the fundamental aim of the legislation, achieved through, among other things, the limitation of civil liability for occupational members that participate in schemes, which require them to improve their professional standards and the association to implement risk management strategies. The Professional Standards Councils of each state and territory administer the professional standards legislation in a co-operative and harmonised national regulatory system.

As at 30 June 2021, there were 17 schemes in force nationally, with the number of occupational association participants subject to these schemes totalling 86,089 (2020: 82,193). The current schemes span a variety of sectors, including:

- Solicitors (5 schemes)
- Barristers (5 schemes)
- Accountants (3 schemes)
- Built Environment[2] (3 schemes)
- Information Technology (1 scheme).

Appendix A provides a listing of current professional standards schemes and the relevant sectors in which they operate.

2.1.2 APIV – A case study in how and why schemes commence

In this section, we use the Australian Property Institute Valuers (APIV) as a case study in how a new professional standards scheme commences and what it hopes to achieve.

Background

When property values began declining in the early 2000s, some consumers became dissatisfied with their reduced valuations and took legal action against valuers. The situation was exacerbated by the fact that PI insurance was not readily available to valuers due to major insurers withdrawing from the market and that some valuers did not uphold the standards mandated by the Australian Property Institute Ltd (API).

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[2] "Built Environment" is primarily comprised of surveyors and valuers

As a result, some professional indemnity insurers were reluctant to provide cover, while others raised premiums to unaffordable levels. One APIV member firm noted in 2003 that the PI insurance premium for their firm had increased from $29,700 to $133,905 in just a short period of three years.

There was also no limit to valuers' liability – they could still lose everything regardless of the extent of their insurance cover.

In addition, consumers had no certainty of recovery as the capacity of a valuer to meet a valid claim would vary substantially depending upon the level of indemnity insurance they hold and the professional's personal assets.

APIV Professional Standards Scheme

To address these and other issues, API created a subsidiary, Australian Property Institute Valuers (APIV) to establish and improve the standards of professional practice, education, ethics and conduct for its property valuer participants. It also applied for a professional standards scheme to cap participants liability and the first scheme came into effect in 2010.

In return for capping liability, the scheme requires that all APIV participants hold a PI insurance policy that is compliant with the minimum insurance standards as set by the APIV and approved by the Professional Standards Councils (PSC). The scheme also requires ongoing reporting to the PSC, continued professional development compliance, robust and regularly updated risk management strategies, auditing of participants and confirmation that supervision guidelines are being adhered to.

Impacts

The APIV scheme has had a substantial impact on API's operations, the valuer's PI insurance market and the valuation profession as a whole. Key areas of change include:

- Standardisation of PI insurance limit of indemnity
- Mitigation of personal liability and enhancement of consumer protection
- Improvements in risk management strategies
- Effective self-regulation ending governmental regulation
- Establishment of a continuous improvement cycle.

Section 4.3 provides further detail on our assessment of the benefits of the APIV scheme.

2.2 Professional standards scheme benefits

Key message:

Being part of a professional standards scheme is intended to improve participant risk, which is to the benefit of participants, insurers and consumers

The objectives of professional standards regulation are to provide greater protection to users of services provided by participants of associations by requiring participants to hold appropriate insurance, participate in risk management activities and be subject to a complaints and disciplinary structure.

By operating a professional standards scheme, occupational associations distinguish themselves as being able to ensure consumers who use the services of their participants are receiving advice from professionals who participate in regulatory arrangements that minimise risks of unethical or incompetent practice. If there are failures in professional standards, a professional standards scheme ensures consumers have avenues available for complaint resolution, disciplinary action against participants to prevent recurrence, and assurance that compensation is available for economic losses.

Table 2.1 shows further detail on the key features of professional standards schemes and associated benefits.

Table 2.1 – Features and benefits of professional standards schemes

Features of professional standards schemes	Benefits
Compulsory insurance	
▪ Professional Indemnity (PI) indemnifies a professional against certain liabilities arising out of the practice of their profession and compensates clients for advice failures. ▪ The terms and scope of cover of PI insurance are typically framed having regard to the nature of the profession and the types of liability that typically may emerge from professional advice or other activities. ▪ Compulsory insurance is a feature of professional standards schemes, with each occupational association given responsibility to require their participants to hold insurance which meets a specified standard[3].	▪ Although PI insurance technically protects the insured professional, not their clients or third parties, mandatory insurance creates a degree of protection for plaintiffs by ensuring considerable resources will be available to meet claims in the event of liability being proved. ▪ It is also possible that in consequence of the greater risk sharing associated with universal application of PI insurance within a particular profession, the participants of the profession may obtain suitable cover at more reasonable premiums than would be available under a voluntary insurance system.
Data collection	
▪ A central feature of the professional standards regulatory system is the collection of comprehensive data on a profession-wide basis about emerging issues, claims and complaints.	▪ The collection of comprehensive data promotes an improved understanding of the risk environment, which is critical to the formulation and monitoring of risk management strategies. Providing quality information to insurers regarding the risk environment may also help improve the cost and availability of insurance.

[3] Professional Standards Act 1994 No 81, Part 3

Features of professional standards schemes	Benefits
Risk management strategies	
▪ Professional standards legislation requires each occupational association to submit a detailed list of the risk management strategies intended to be implemented in respect of its participants, and the means by which those strategies are intended to be implemented[4] ▪ Furthermore, each association must report annually on the implementation and monitoring of its risk management strategies, the effect of those strategies and any changes made or proposed to be made to them[5].	▪ The legislation promotes development of risk management strategies to systemically improve their profession and reduce the risk that consumers will suffer loss in future ▪ The requirement to monitor and report annually on risk aims to foster a culture of continuous improvement.
Limit of liability	
▪ Participants who agree to professional regulation by their association benefit from the possibility of a limitation of civil occupational liability.	▪ Limitation of civil liability mitigates the risk of very large damages claims and constrains defence costs ▪ The professional may also benefit by avoiding the need to take out high PI cover limits, thereby improving the cost and availability of insurance.
Complaints	
▪ It is mandatory for schemes to maintain a system whereby consumers may make complaints against participants of the association.	▪ This provides a more efficient and cost-effective system of dealing with consumer concerns rather than resorting to civil litigation ▪ It also allows professional associations to identify poor practices which may not have led to any loss but which may draw into doubt the competence of the practitioner and warrant disciplinary action being taken.

2.3 Report objectives, approach and limitations

2.3.1 Objectives

The objective of this report is to provide an understanding and assessment of the effects of professional standards schemes on the protection of Australian consumers of the services provided by professionals and the availability, quality, and cost of professional indemnity insurance.

[4] Professional Standards Act 1994 No 81, Part 4

[5] Professional Standards Act 1994 No 81, Part 4

2.3.2 Our approach

In undertaking this work, we have focused on the effects that schemes have in respect of professional indemnity insurance and professional negligence claims/complaints. We believe that any reduction in the quantum and volume of consumer notifications, claims and complaints and containment or improvement in the availability/quality/cost of professional indemnity insurance will demonstrate, at least in part, the direct or indirect benefits of professional standards schemes over time.

Figure 2.1 provides an overview of scheme benefits and the indicators we are focused on to provide quantitative support for scheme benefits.

Figure 2.1 – Quantitative support for scheme benefits

Limitations

While our report focuses on the effects that schemes have in respect of professional indemnity insurance claims, we acknowledge that professional indemnity claims against scheme participants may be affected by factors outside the professional scheme. This makes it difficult to directly link observed claim trends to scheme participation. These factors include (but are not limited to):

- Delays in reporting/settlement and/or claims volatility, which may mask underlying claim trends
- Changes affecting the risk of particular industries or occupations. For example, emerging risk issues such as combustible cladding and structural defects may affect the cost and availability of insurance for the built environment – regardless of whether they are participants of a professional scheme
- Systemic impacts such as changes in the economic environment or inflation
- Judicial rulings or legislative changes.

Limitations

Furthermore, several factors may contribute to insurers failing to give full credit to the risk benefits of professional standard schemes within their professional indemnity rating structures, including:

- Insurers may be unaware of the risk benefits associated with scheme participation (notwithstanding that scheme participation promotes improved data collection and analysis for better risk pricing)
- Insurers may dispute the link between favourable claim trends and scheme participation
- Insurer underwriting and rating decisions may be impacted by competitive or strategic considerations as well as changes to their own risk appetite
- Ratings may be impacted by external systemic changes such as insurance cycles.

These factors act as a limitation on our analysis.

3

Overall scheme performance

3 Overall scheme performance

Inside this section

3.1 Our approach

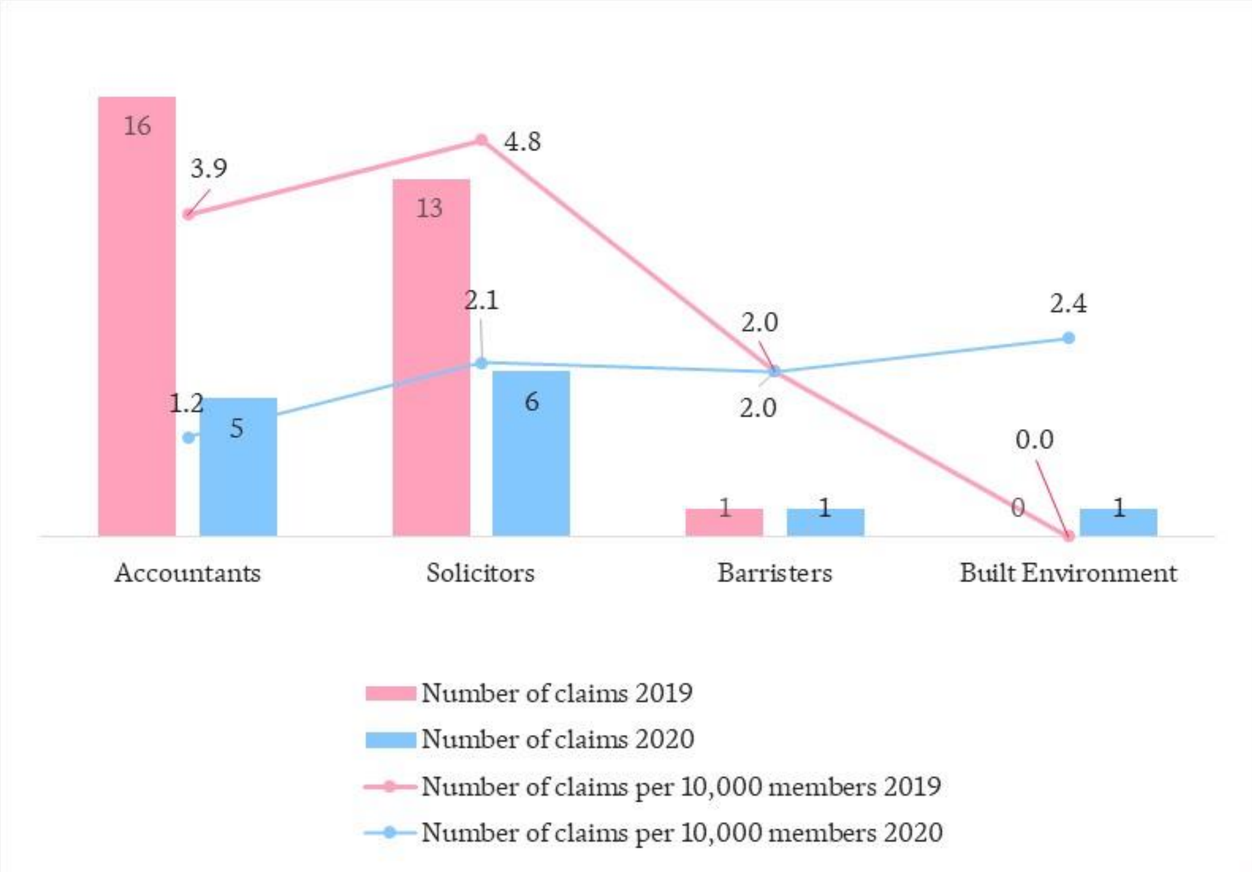
Associations that operate a professional standards scheme are required to submit a Professional Standards Improvement Program (PSIP) report annually to the Councils. The report requires the association to specify the actions taken to improve the professional standards of their scheme participants, plus consumer-directed risk analysis and management, resolving complaints of the consumers of the services provided by their participants, member discipline, occupational liability claims, and the cost, availability, and quality of professional indemnity insurance. This information and data, self-reported by the associations, is analysed and compared over time and across associations.

This section utilises data collected from PSIP reports to highlight the overall performance of schemes on insurance claims, premium change and complaints. All analyses shown in this section have been sourced from the Professional Standards Councils 2020-2021 Annual Report.

3.2 Claims experience

While limitation of liability is a key benefit of scheme participation, it is not desirable for schemes to have a large number of claims close to the monetary ceiling. Figure 3.1 shows the number and frequency per 10,000 participants of claim counts exceeding 50% of the monetary ceiling for the 2019 and 2020 report years.

Figure 3.1 – Claims exceeding 50% of the monetary ceiling trend comparison – 2019 – 2020

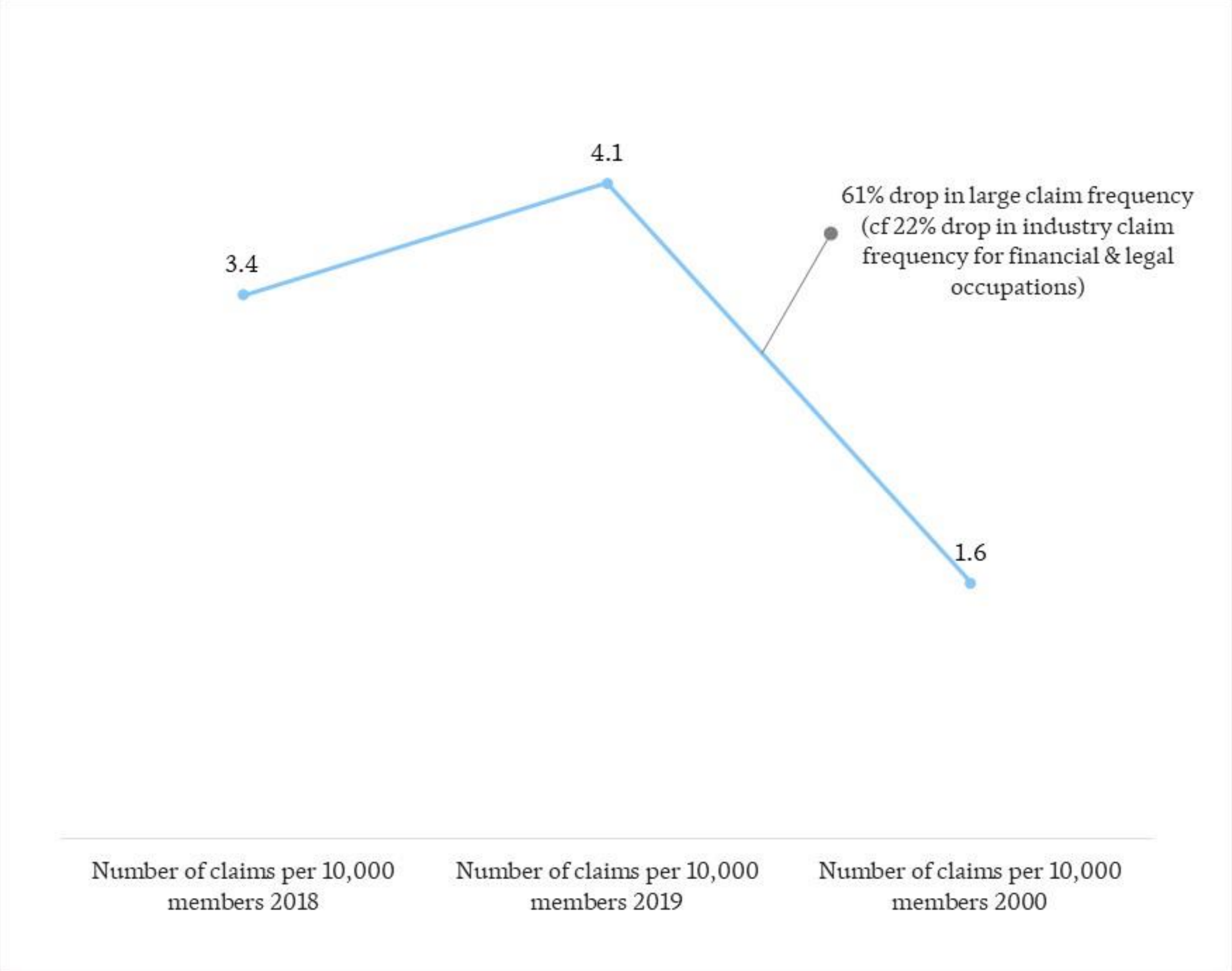


Key insights from Figure 3.1:

- The number of claims reported in 2020 exceeding 50% of the monetary ceiling are very low with only one such claim for Barristers and the Built Environment. The number of claims for Accounting and Solicitor schemes are again very small and broadly comparable to Barristers and the Built Environment when allowing for the difference in size of the schemes.
- The frequency per member is also very low with only 1 to 3 claims per 10,000 participants.
- The number and frequency of claims exceeding 50% of the monetary ceiling substantially reduced for Accountants and Solicitor schemes between 2019 and 2020.
- The number and frequency of claims exceeding 50% of the monetary ceiling for Barristers and the Built Environment have essentially remained stable between 2019 and 2020 with between none and one such claim reported.

Figure 3.2 shows a comparison of claim frequency exceeding 50% of the monetary ceiling between 2018 and 2020 for Accounting and Legal schemes combined.

Figure 3.2 – Claims exceeding 50% of the monetary ceiling trend for Accountants and Legal – 2018–2020



Key insights from Figure 3.2:

- There are only between 2 to 4 claims per 10,000 participants of Accountant and Legal schemes combined for years 2018 to 2020
- The large claim frequency for schemes in the Accounting and Legal sectors dropped significantly between the 2019 and 2020 report years, from 4.1 to 1.6 (claims per 1,000 participants), which equates to a 61% drop in claim frequency for large claims. This compares favourably against industry benchmarks[6], which show a 22% reduction in overall PI claim frequency[7] achieved for the corresponding sectors from the 2019 to 2020 report years.

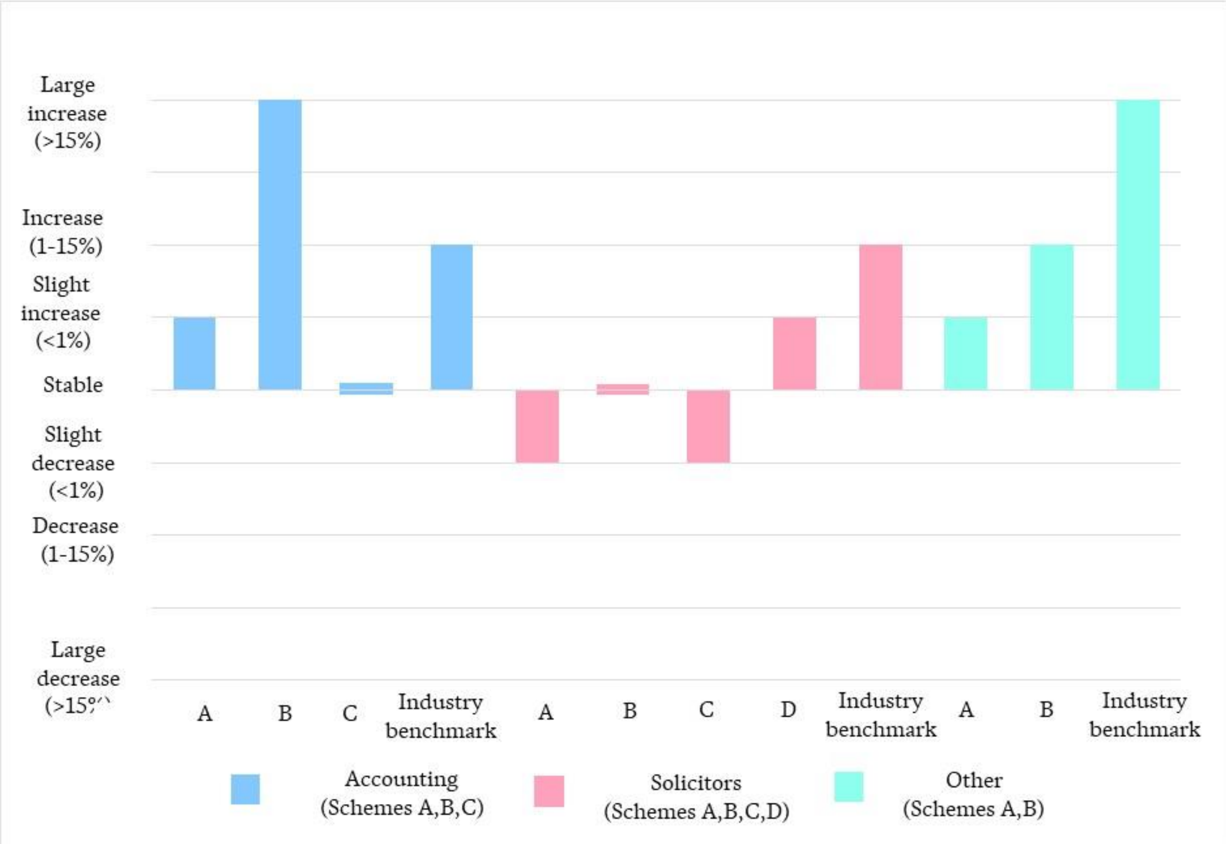
3.3 Insurance costs

Changes in insurance premium can be used as a proxy for the cost and availability of insurance, given that sustained large increases are consistent with high cost and poor availability. Figure 3.3 shows the change in average premium for individual schemes by occupation group over the years 2019 to 2020.

[6] Source: APRA NCPD database

[7] Benchmark claim frequency movement is measured across all claims (not restricted to large claims)

Figure 3.3 – Professional indemnity insurance costs (average premium) comparison 2019–2020



Key insights from Figure 3.3:

- Average premiums for schemes within the Accounting and Other[8] sectors either remained stable or increased between 2019 and 2020.
- Average premiums for schemes within the Solicitors sector generally remained stable with two schemes having slight decreases and one scheme with a slight increase in average premium.
- Industry benchmarks were constructed from APRA NCPD for occupation groups Financial, Legal and Real Estate. The change in premiums for the professional standards schemes are observed to be:
  - In line with the industry benchmark change in premiums for the accounting schemes
  - Lower than the industry benchmark change in premiums for the solicitor schemes
  - Lower than the industry benchmark change in premiums for the other schemes.

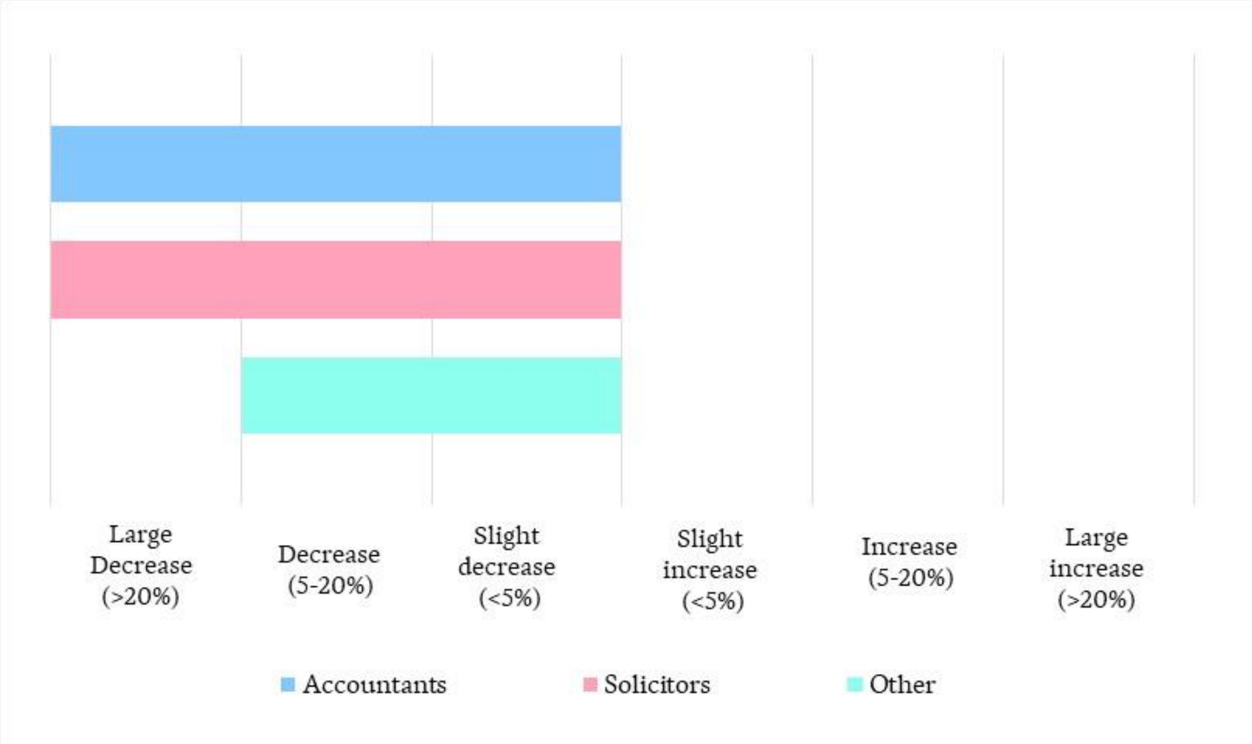
3.4 Complaints data

Having a facility to receive complaints from users of their services is a key requirement for professional standards schemes. However, it is not desirable for complaint numbers to increase significantly over time, as this may indicate a deterioration in the risk environment.

Figure 3.4 shows the percentage change in complaints received by professional standards schemes by sector between 2019 and 2020.

[8] 'Other' comprises Built Environment and Information Technology

Figure 3.4 – Complaints received – Change between 2019 and 2020



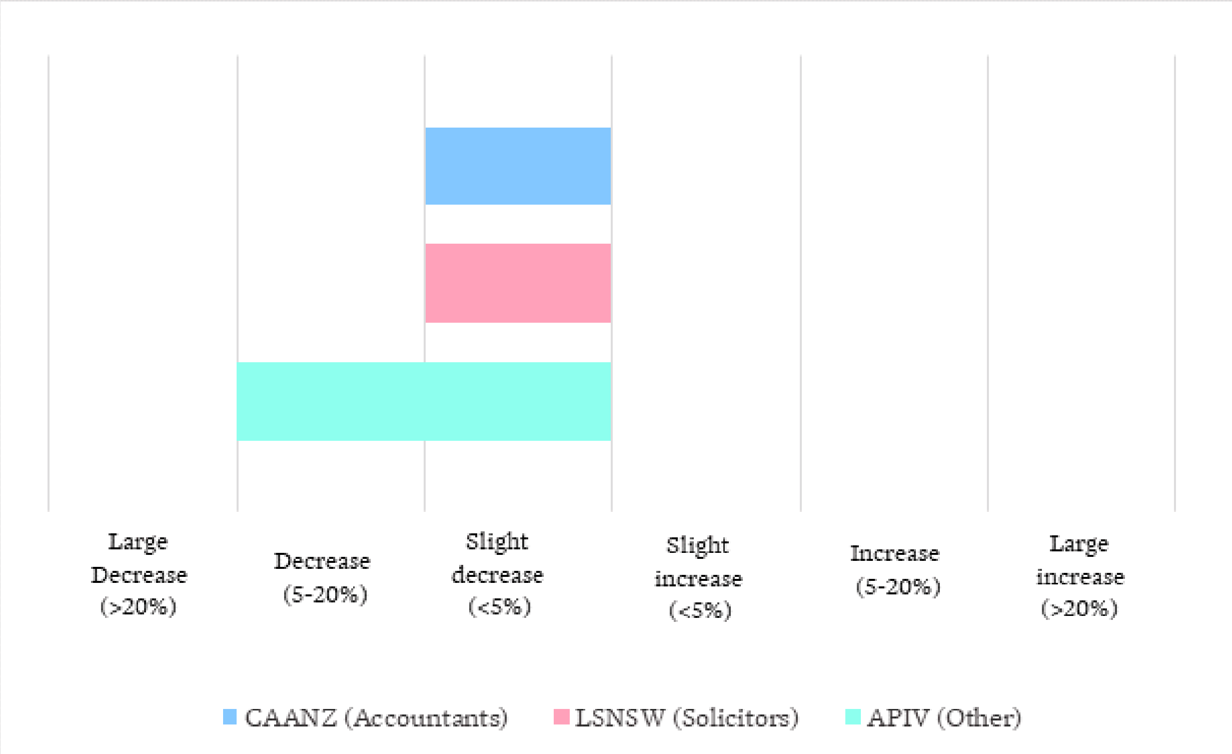
There was a substantial reduction in complaints across all sectors between 2019 and 2020, with over 20% reductions for Accountants and Solicitors. Whilst these decreases may have been impacted in part by the effects of COVID-19 insofar as it affected the demand for the relevant services, we nonetheless regard the reduction in complaints as providing support for an improvement in the risk environment.

We have compared the short-term complaints experience for all schemes shown in Figure 3.4 with the longer-term complaints experience for those schemes for which we have undertaken detailed case studies[9].

Figure 3.5 shows the long-term change (average % change p.a.) in complaints received by the three schemes included within our case studies. Figure 3.4 shows that for each of our three case studies there was a reduction in complaints over the longer term and consistent with the reduction between 2019 and 2020 for all schemes.

[9] Refer Section 4

Figure 3.5 – Change in number of complaints for scheme case studies (average % change p.a.)



Notes to the chart:

The average percentage reductions p.a. shown were calculated over:

(a) 5 years for CA ANZ

(b) 9 years for LSNSW

(c) 4 years for APIV.

To make optimal use of complaints data, schemes are encouraged to use 'root cause analysis' in order to better identify professional risks and implement changes to professional standards and risk management strategies (**Appendix D** provides further detail on root cause analysis). In 2020, **71%** of associations undertook root cause analysis (up from **53%** in 2019) of complaints, of which 83% incorporated elements into risk management strategies.

4

Case studies

4 Case studies

Inside this section

4.1 Our approach

This section provides detailed case studies of the following three professional standards schemes, operating in different sectors:

Table 4.1 – Case study participants

Scheme	Sector
1. Law Society New South Wales (LSNSW)	Solicitors
2. Chartered Accountants Australia and New Zealand (CA ANZ)	Accountants
3. Australian Property Institute Valuers (APIV)	Built environment

Appendix B provides background information on the selected schemes.

For each case study, we undertook **quantitative analyses** using scheme and industry data. **Qualitative information** on scheme benefits for each case study participant was also gathered through interviews with scheme representatives. For a listing of dates and names of interviews undertaken, please refer to **Appendix C.**

Table 4.2 shows further detail on our approach to undertaking the quantitative analyses.

Table 4.2 – Quantitative analyses

Quantitative analyses	Relevance to scheme benefits
Claims Experience: ▪ Claim frequency and claim size ▪ Scheme claims experience compared to industry benchmarks.	▪ Favourable frequency and size trends are indicators of an improving risk environment (benefit to consumers and insurers) and may also lead to reduced cost and improved availability of insurance cover (benefit to scheme participants) ▪ Claim size may also benefit from the application of the limit of liability (benefit to scheme participants and insurers).
Premiums ▪ Trends in the availability, premiums, terms, and conditions of professional indemnity insurance policies.	▪ Favourable trends in availability, premiums, terms and conditions of professional indemnity insurance policies indicate that insurers recognise improvements in the risk

Quantitative analyses	Relevance to scheme benefits
	environment (benefit to consumers, insurers and scheme participants).
Complaints ▪ Scheme complaints data	▪ Favourable trends in complaints data are an indicator of improvements in the risk environment (benefit to consumers, insurers and scheme participants).
Monetary Ceilings ▪ Change in monetary ceilings for the relevant scheme over time	▪ Stable to downward trend in monetary ceilings over time suggests that the risk environment is stable or improving (benefit to consumers, insurers and scheme participants).

We made adjustments to scheme data where appropriate, including:

- Estimate “ultimate” claim experience by allowing for future claims experience development on immature years (noting that professional indemnity is a ‘long tailed’ class of business, with delays in claim reporting and settlement)
- Inflation adjustment of historical claim experience to facilitate comparisons with current monetary values
- Projection of schemes claims experience for years where data was missing or incomplete.

For a description of data adjustments, please refer to **Appendix E**.

We cross-referenced quantitative trends against key scheme initiatives and improvements to help identify potential drivers of scheme experience. Appendix B offers a full listing of recent initiatives and improvements for each of the case study participants.

The following pages explore the key insights from each of our three case studies.

4.2 Case study 1 – LSNSW

4.2.1 Key findings from LSNSW case study

Quantitative analyses	Qualitative information (scheme interviews)
Favourable trends in claims and complaints experience suggest an improving risk environment: ▪ The claim experience has been mixed, with a reduction in claim frequency to 2015, an increase to 2018, followed by a decrease. The latter decrease coincided with risk management initiatives implemented by LSNSW ▪ A flat average claim size after a reduction between 2007 and 2012 ▪ relatively few claims near the standard monetary ceiling of $1.5M and 90% of claims are below $0.5M ▪ A reduction in complaints against participants of the scheme since 2011 against an increasing number of participants. *The monetary limits are observed to be unchanged over the last three schemes, which is also consistent with a stable or improving risk environment* *Favourable premium trends suggest insurers recognise improvements in the risk environment. No concerns with cost or availability of insurance.* ▪ A reduction in the average premium for most participants over the last 7 years noting this is consistent with the broader market (APRA benchmark).	*LSNSW believe the scheme does have risk benefits* *Lawcover (primary insurer) are very active in promoting risk management and member education* ▪ Assist with maintaining risk management standards because it has a positive impact on the claims experience – not because it is a mandatory requirement under professional standards schemes ▪ Actuarial analysis conducted biennially since 2013 show the benefits of risk management in terms of reduction in claims experience *Being able to plead the scheme facilitates settlement of claims* ▪ May also help constrain defence costs insofar as defence costs tend to be lower when claims are able to be settled quickly

The remainder of Section 4.2 details our quantitative analyses of LSNSW.

4.2.2 Claims experience

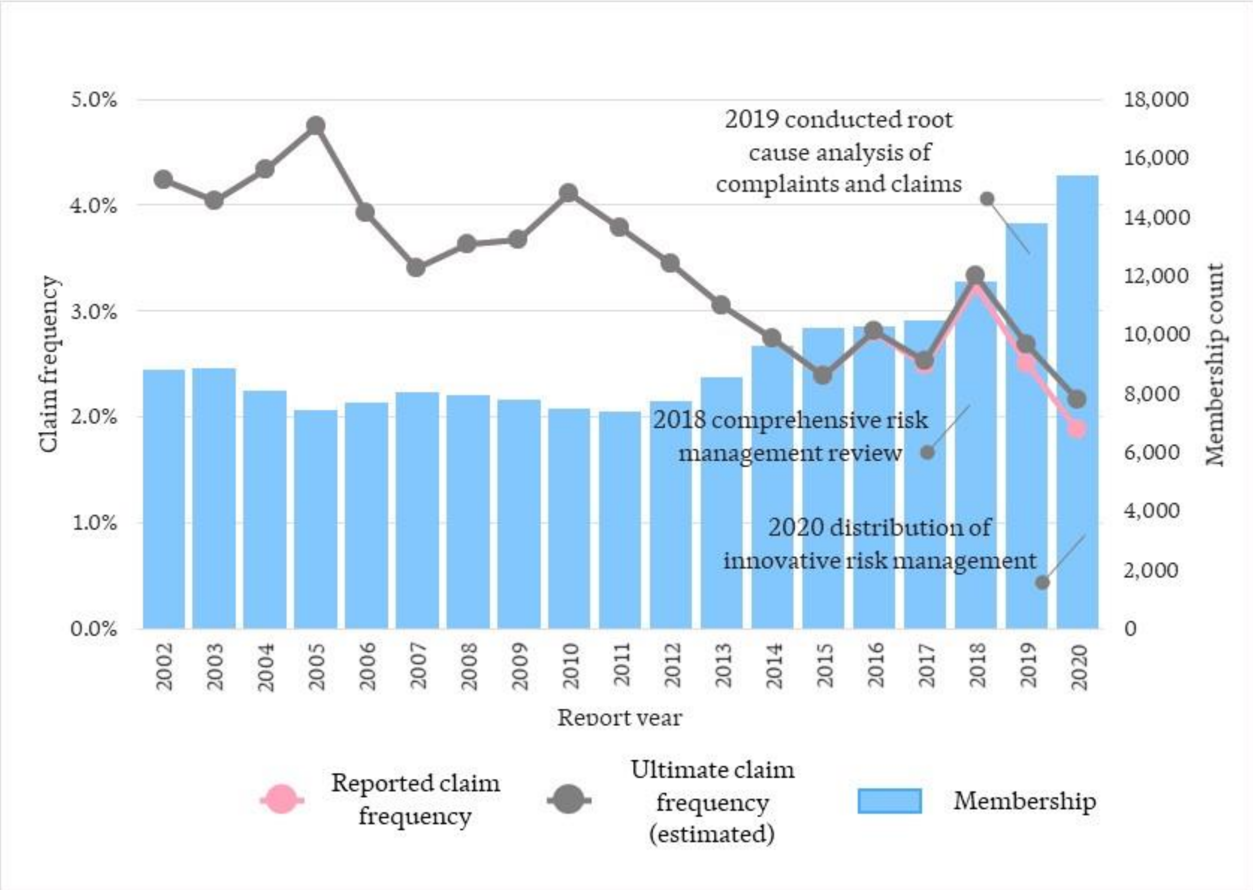
The following sub-sections cover various aspects of the claims experience.

Claims count experience

Figure 4.1 shows the claim frequency (claims divided by participant count) experience for LSNSW since 2002. There was a strong decrease in claim frequency since the early 2000s to 2015. The claim frequency increased thereafter until 2018, after which it decreased. Our projection of ultimate claim frequency for years 2018 to 2020 also shows a decreasing trend.

Appendix F.1 contains a similar chart with APRA benchmark.

Figure 4.1 – LSNSW claim count experience



Notes to the chart:

(a) Actual reported claim frequency for LSNSW participants – solid pink line (axis on left hand side), this line is equivalent to the ultimate claim frequency for years 2011 and prior and is hidden by that line

(b) Our estimate of ultimate claim frequency (reported claims including allowance for late reported claims) – dark grey line

(c) Count of scheme participants – blue bars (axis on right hand side)

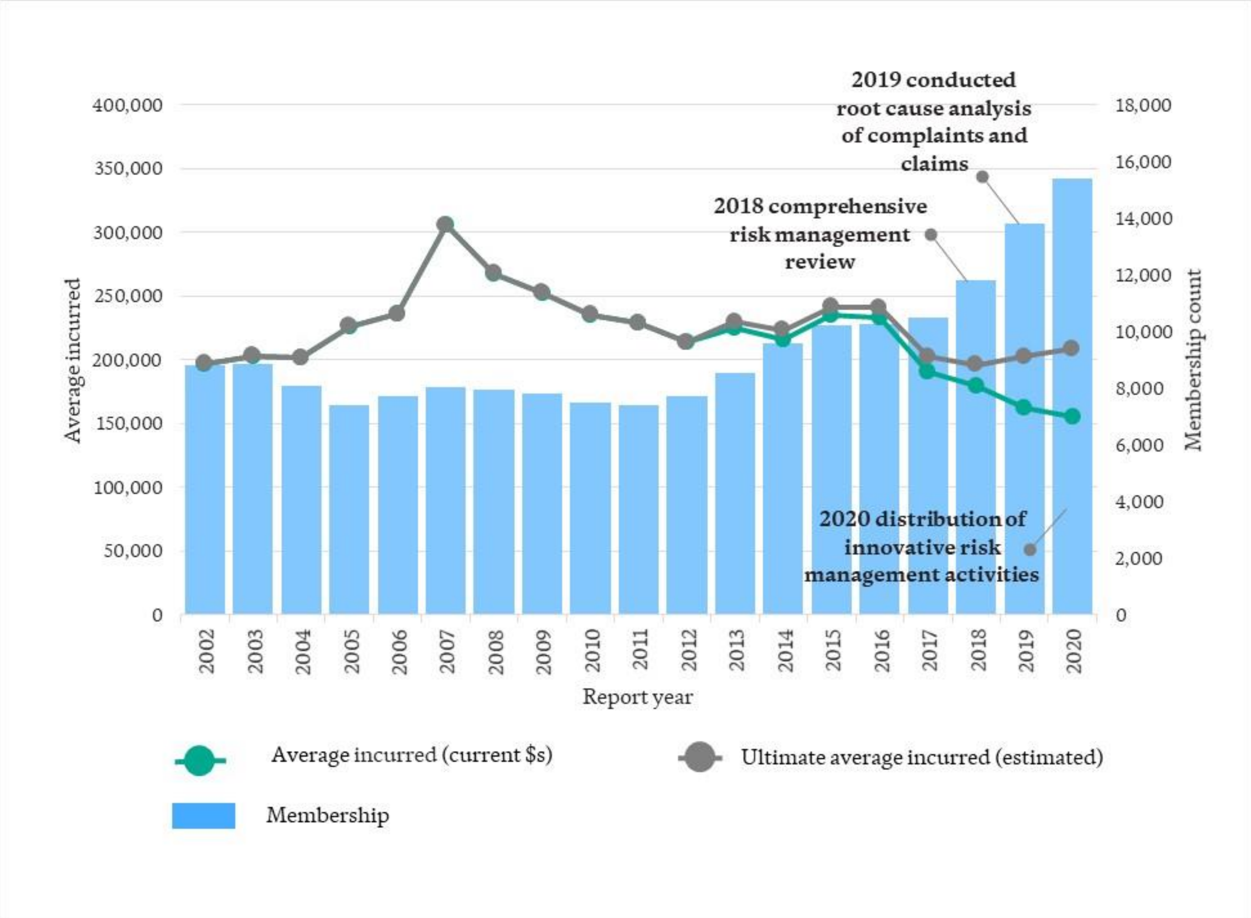
(d) Callout boxes with initiatives implemented by LSNSW (further detail in **Appendix B.1**).

Claim size experience

The claim size experience for LSNSW since 2002 is shown in Figure 4.2. The average incurred size since 2010 has remained flat, indicative of little or no superimposed inflation. Our projection of ultimate average claim size for years 2018 to 2020 also shows a slightly decreasing trend.

A similar chart with APRA benchmark is shown in **Appendix F.1**.

Figure 4.2 – LSNSW claim size experience



Notes to the chart:

(a) The actual average incurred size in current dollars (historical amounts adjusted to current values) - solid green line (axis on left hand side), this line is equivalent to the ultimate average incurred size claims for years 2012 and prior and is hidden by that line

(b) Our estimate of ultimate average claim size (allowing for future development of claim size and late reporting of claims) – dark grey line

(c) Count of scheme participants – blue bars (axis on right hand side)

(d) Callout boxes with initiatives implemented by LSNSW (further detail in **Appendix B.1**).

The distribution of claim sizes over time in current dollars is shown in Figure 4.3[10]. The bulk of claims are observed to be well below the monetary ceilings, with 90% of claims having an incurred size of $0.5M or less, and 56% of claims having an incurred size of $0.1M or less. Whilst there does not appear to be any strong trends in proportions of claim sizes over time, we acknowledge that the claim size distributions shown for the more recent years may change due to the tendency for larger claims to take longer to report and settle.

[10] Claim size distribution data only available to 2017

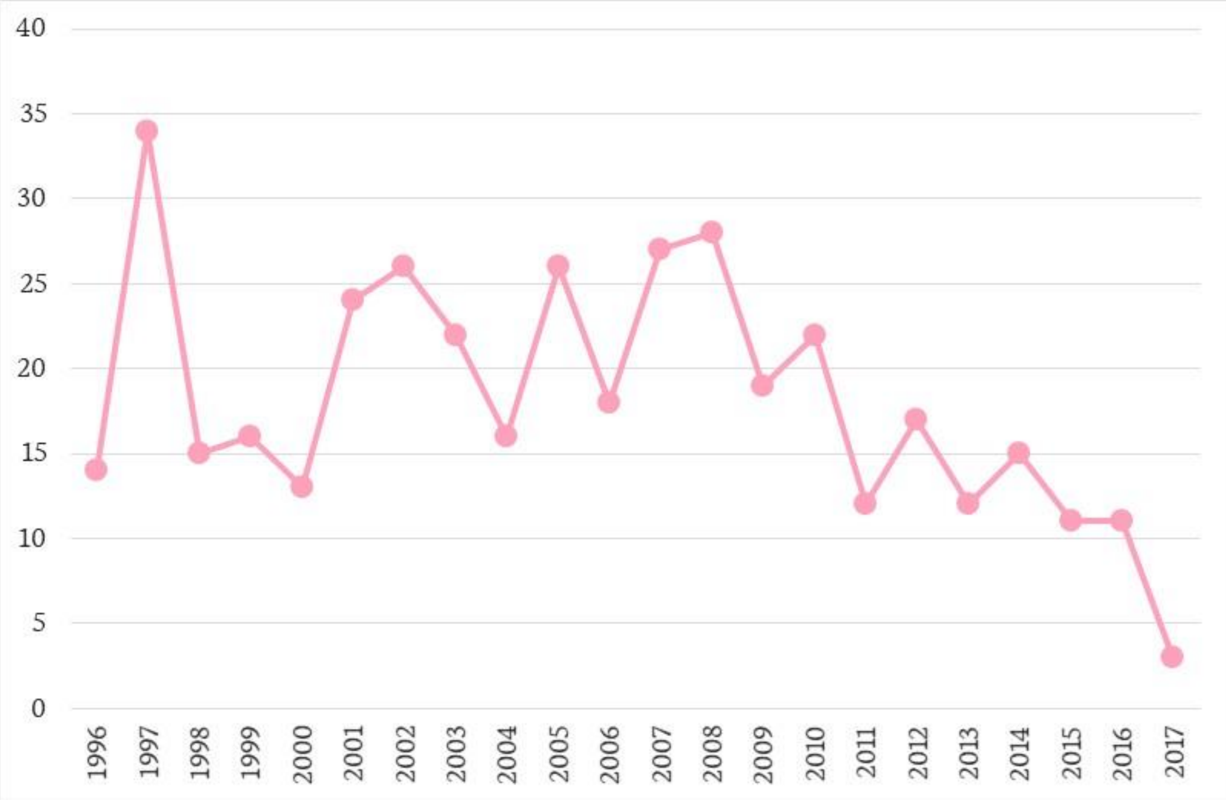
Figure 4.3 – LSNSW proportion of incurred claim sizes (in current dollars)

Notes to the chart:

(a) The chart shows the proportion of total claims by various size bands. Each coloured bar represents a different claim size band.

Figure 4.4 shows the number of scheme claims above $750k (being 50% of the minimum monetary ceiling). The count of scheme claims above $750,000 (50% of minimum monetary ceiling) has reduced since the mid-2000s. This is consistent with the claim size distribution in Figure 4.3.

Figure 4.4 – LSNSW count of scheme claims above $750,000

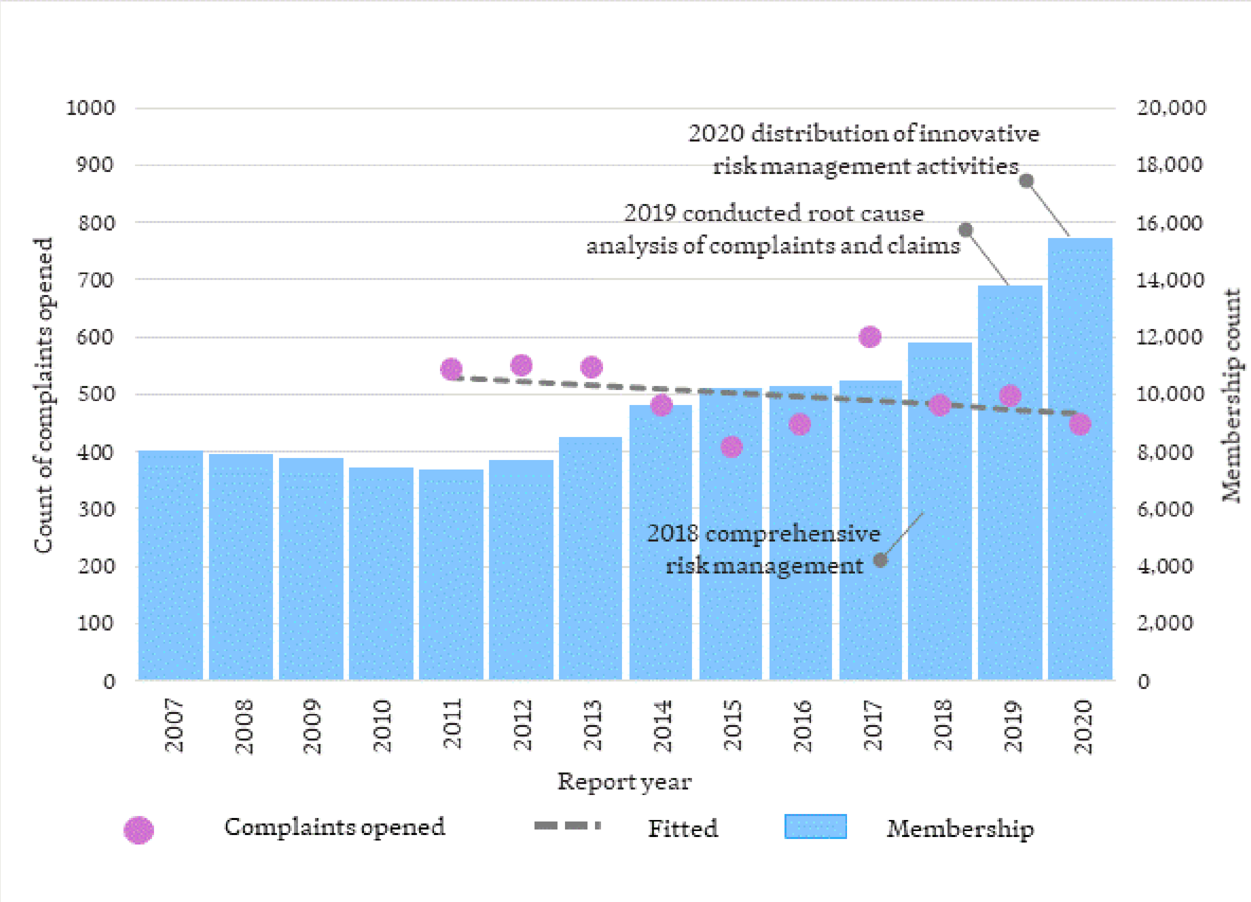


4.2.3 Complaints data

The complaints opened since 2007 are shown in Figure 4.5[11]. The number of complaints received is observed to reduce over the years 2011 to 2020 against an increase in scheme participants. In particular, there was an accelerated rate of reduction in complaints since 2017. This reduction coincides with various risk management initiatives introduced by LSNSW as identified in the chart, whilst acknowledging that other factors may also influence the frequency of complaints.

[11] Source: LSNSW PSIP reports

Figure 4.5 – LSNSW complaints data



Notes to the chart:

(a) The actual number of complaints opened - purple discs

(b) The fitted trendline for number of complaints opened – dashed grey line

(c) Count of scheme participants – blue bars (axis on right hand side)

(d) The difference schemes represented by the varying colours of blue background

(e) Callout boxes with initiatives implemented by LSNSW (further detail in **Appendix B.1**).

4.2.4 Trends in premiums, terms and conditions

Comments made in LSNSW PSIP submissions suggest that premiums for LSNSW participants have been reducing in recent years. For example:

- Lawcover (scheme's professional indemnity insurance provider) reported that annual insurance premiums have been reducing for six consecutive years for the vast majority of insured law practices[12]
- Affordability improved in 2020 on a per solicitor basis[13].

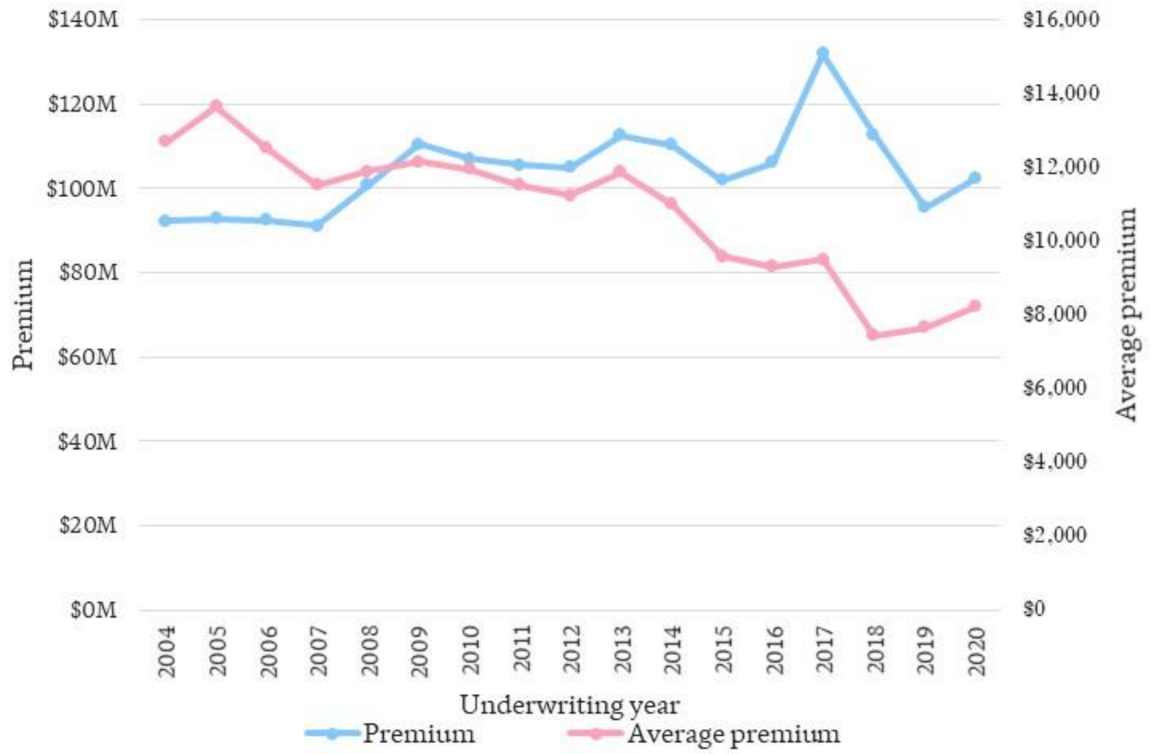
Figure 4.6 shows an analysis of industry premium trends[14]. While total premium has remained generally flat since underwriting year 2009, the average premium shows a decreasing trend since underwriting year 2013. This decreasing trend is broadly consistent with commentary from Lawcover contained in the 2019 and 2020 LSNSW PSIP reports noted above.

[12] Source: LSNSW 2019 PSIP

[13] Source: LSNSW 2020 PSIP

[14] Includes solicitors and barristers on a national basis

Figure 4.6 – Industry premium for legal occupations

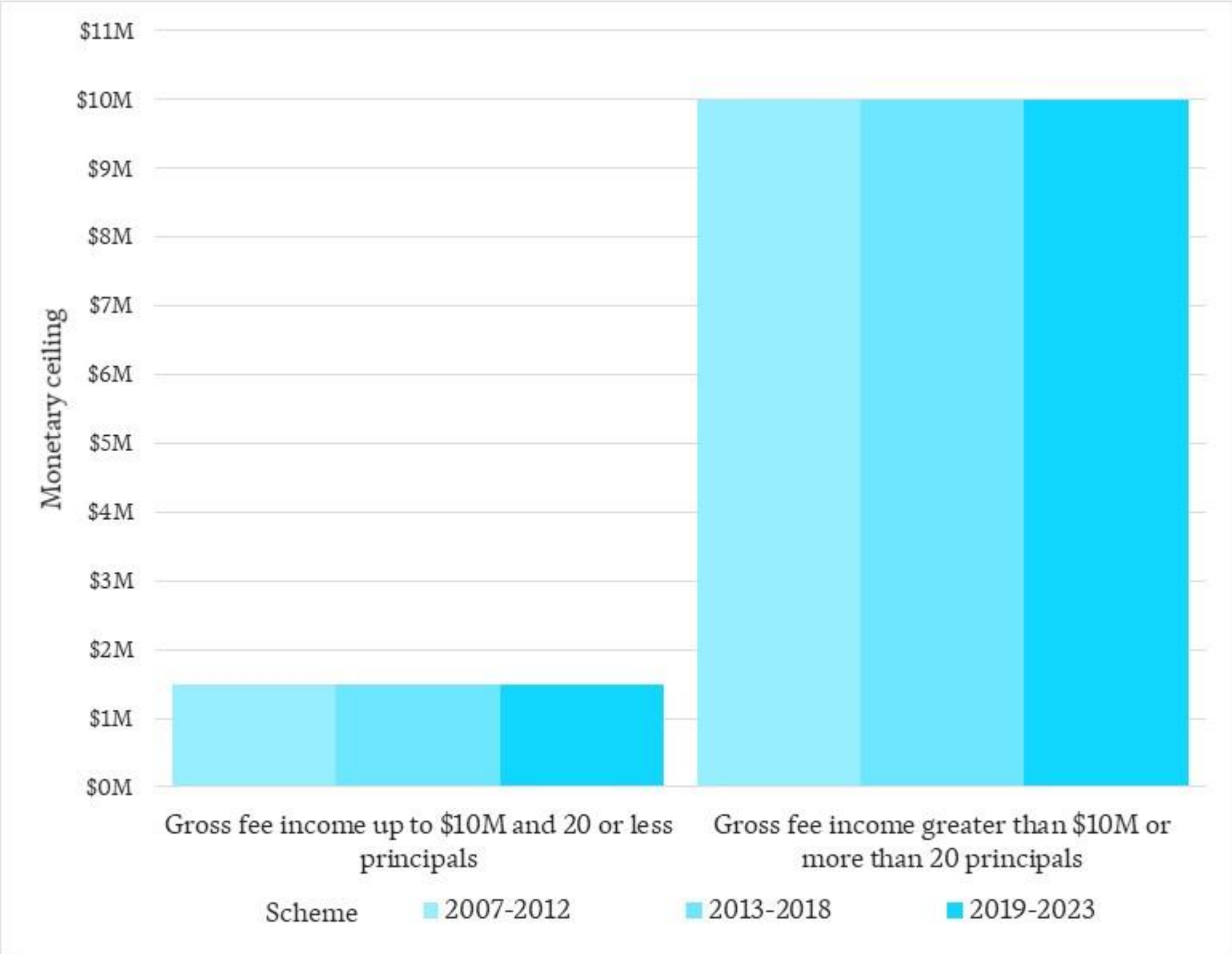


Source: APRA NCPD database

4.2.5 Scheme monetary ceilings

Figure 4.7 shows the monetary ceilings for the past three schemes. The monetary limits are unchanged over the past three schemes, which represents a decrease in the monetary ceiling in real terms. This suggests the risk environment has been stable or improving.

Figure 4.7 – LSNSW monetary ceilings by gross fee income



4.3 Case study 2 – CA ANZ

4.3.1 Key findings from CA ANZ case study

Quantitative analyses

Claims experience has moderately improved since 2014, suggesting a stable to improving risk environment:

- The trend in ultimate claim frequency shows a moderate reduction since 2014.
- Slightly decreasing trend in average claim size, albeit volatile
- relatively few claims near the standard monetary ceiling and 85% of claims are below $0.5M
- A reduction in complaints against participants of the scheme since 2015 against an increasing number of participants.

The monetary limits increased in 2014 but have been unchanged over the last two schemes, which is also consistent with a stable or improving risk environment.

However, premium increases and issues with availability of insurance for some firms suggest insurer concerns with the risk environment:

- An increase in average premium since 2016 for all PI limit bands bar $2M to $5M although noting across all PI limit bands this is consistent with the broader market (APRA benchmark)
- Insurance less readily available for PI limit bands $20M to $50M and greater than $50M.

Qualitative information (scheme interviews)

CA ANZ believe that participation in a professional standard scheme does have benefit in reducing claim cost, including:

- Ability to plead the scheme on larger damages claims helps facilitate settlement at or below the limit of liability
- Benefit for smaller firms may be improved if a lower limit of liability (<$2M) applied (issue for consideration at future scheme applications).

Believe in the value of risk management standards and would enforce these regardless of whether they were part of a professional standards scheme.

Not clear whether insurers of CA ANZ participants understand the risk benefits of being part of a professional standards scheme.

The remainder of Section 4.3 details our quantitative analyses of CA ANZ.

4.3.2 Claims experience

The following sub-sections cover various aspects of the claims experience.

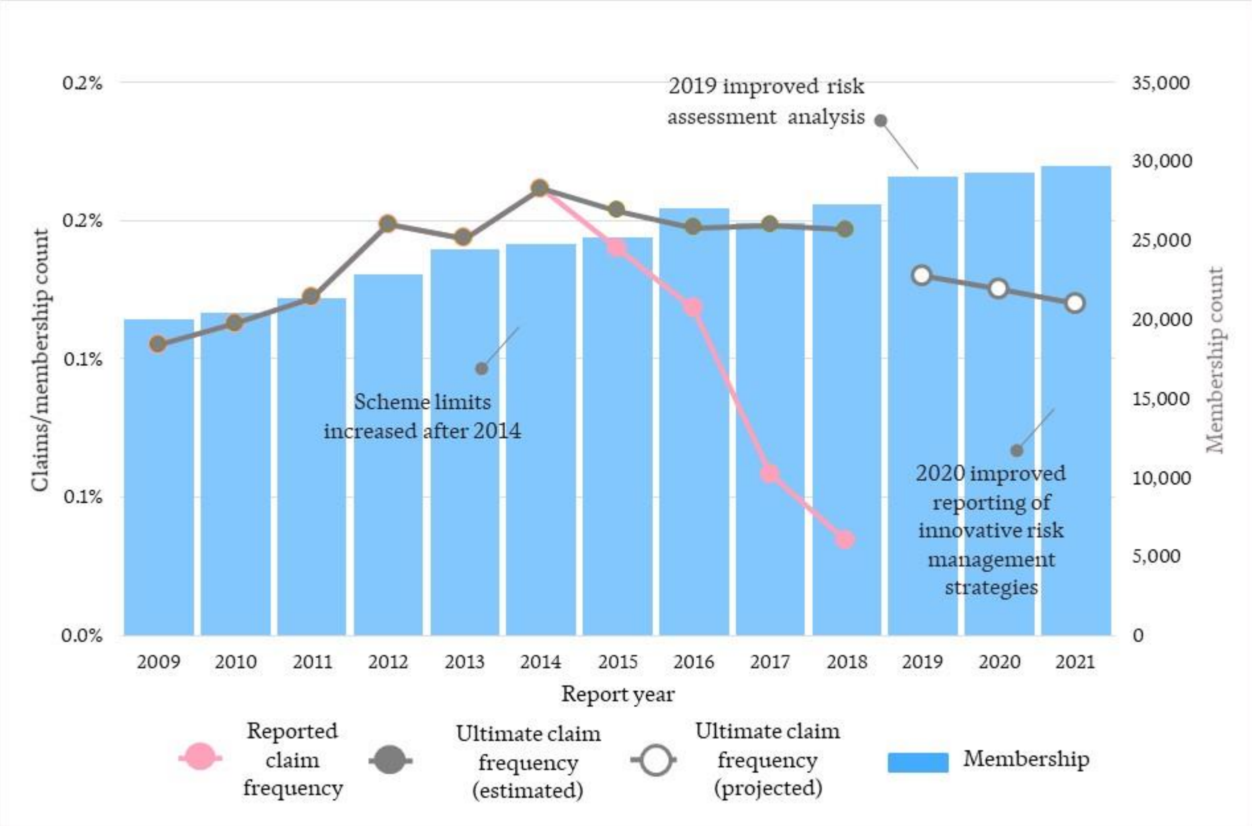
Number of claims settled experience

Figure 4.8 shows the settled claims frequency (settled claims/participants) experience for CA ANZ since 2009. The claim frequency increased between 2009 and 2014 and decreased thereafter. After allowing for estimated future settlements, the trend in ultimate claim frequency is flat from 2014.

Our projection of ultimate claim frequency for years 2019 to 2021 shows a decreasing trend.

Appendix F.2 contains a similar chart with APRA benchmark.

Figure 4.8 – CA ANZ notification and claim counts



Notes to the chart:

(a) Actual reported claim frequency for CA ANZ participants – solid pink line (axis on left hand side), this line is equivalent to the ultimate claim frequency for years 2014 and prior and is hidden by that line

(b) Our estimate of ultimate claim frequency (settled claims including allowance for settling of open or late reported claims) – dark grey line and projection of these for years 2019 to 2021 – white circles with grey borders

(c) Count of scheme participants – blue bars (axis on right hand side)

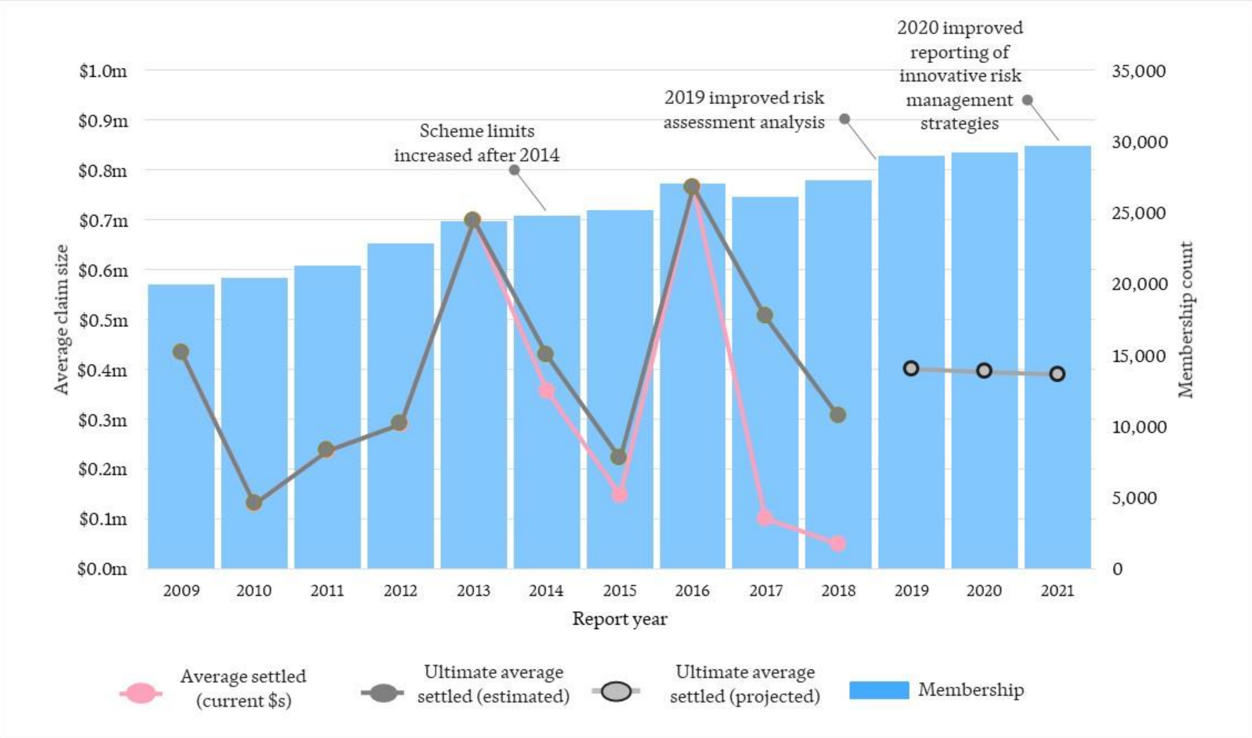
(d) Callout boxes with initiatives implemented by CA ANZ (further detail in **Appendix B.2**).

Claim size experience

Figure 4.9 shows the claim size experience for CA ANZ since 2009. The majority of settled claims are relatively small although some years, such as 2013 and 2016 contain very large claims that push up the overall average settlement size. Our projection of ultimate average settlement size for years 2019 to 2021 shows a slightly decreasing trend.

Appendix F.2 shows a similar chart with APRA benchmark.

Figure 4.9 – CA ANZ average settled claims



Notes to the chart:

(a) The actual average incurred size in current dollars (historical amounts adjusted to current values) – solid pink line (axis on left hand side), this line is equivalent to the ultimate average settled size claims for years 2013 and prior and is hidden by that line

(b) Our estimate of ultimate average settled size (allowing for finalising of open claims and late reporting of claims) – dark grey line and projection of these for years 2019 to 2021 – grey circles with black borders

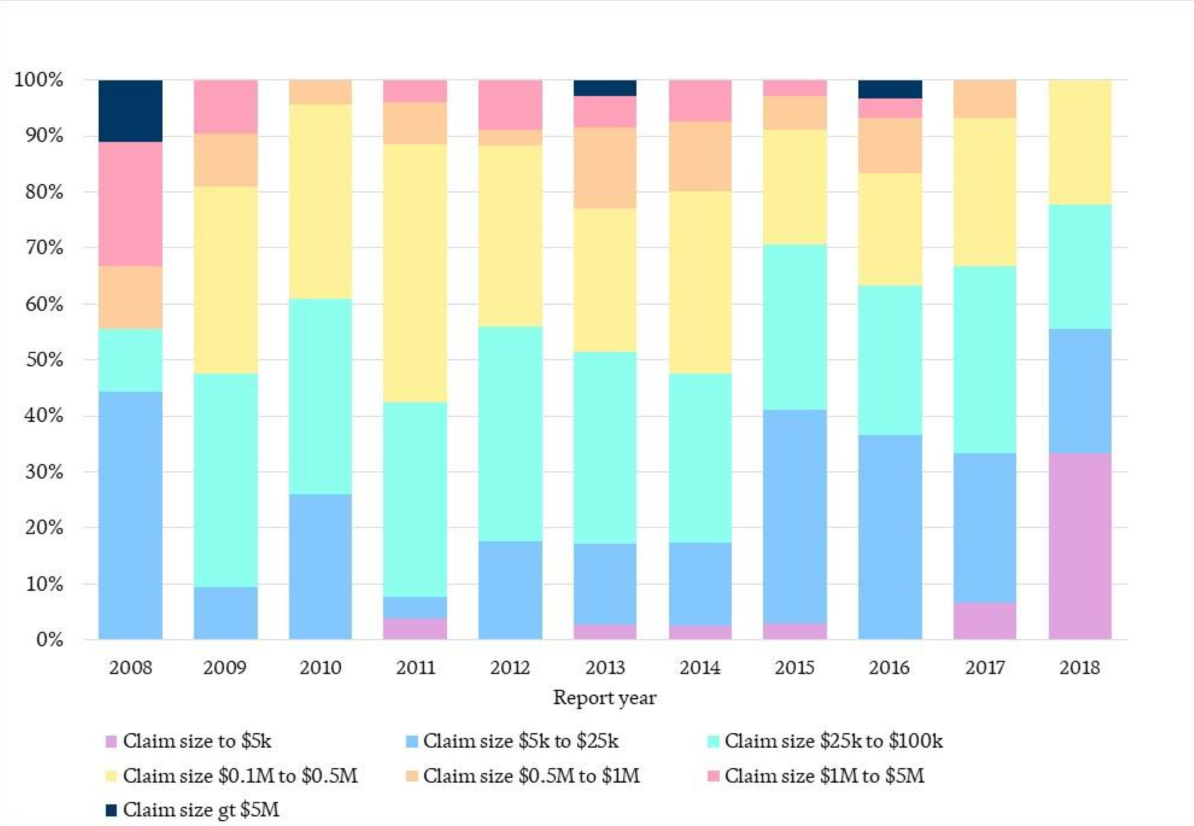
(c) Count of scheme participants – blue bars (axis on right hand side)

(d) Callout boxes with initiatives implemented by CA ANZ and scheme changes (further detail in **Appendix B.2**).

Figure 4.10 shows the distribution of claim sizes over time in current dollars. The bulk of claims are well below the monetary ceilings, with 85% of claims having an incurred size of $0.5M or less, and 57% of claims having an incurred size of $0.1M or less.

There do not appear to be any strong trends in proportions of claim sizes over time, and the more recent years may change due to future development of claim size. However, there can be very large settled claims as displayed by the black bars for years 2008, 2013 and 2016.

Figure 4.10 – CA ANZ proportion of incurred claim sizes (in current dollars)



Notes to the chart:

(a) The chart shows the proportion of settled claims by various size bands. Each coloured bar represents a different claim size band.

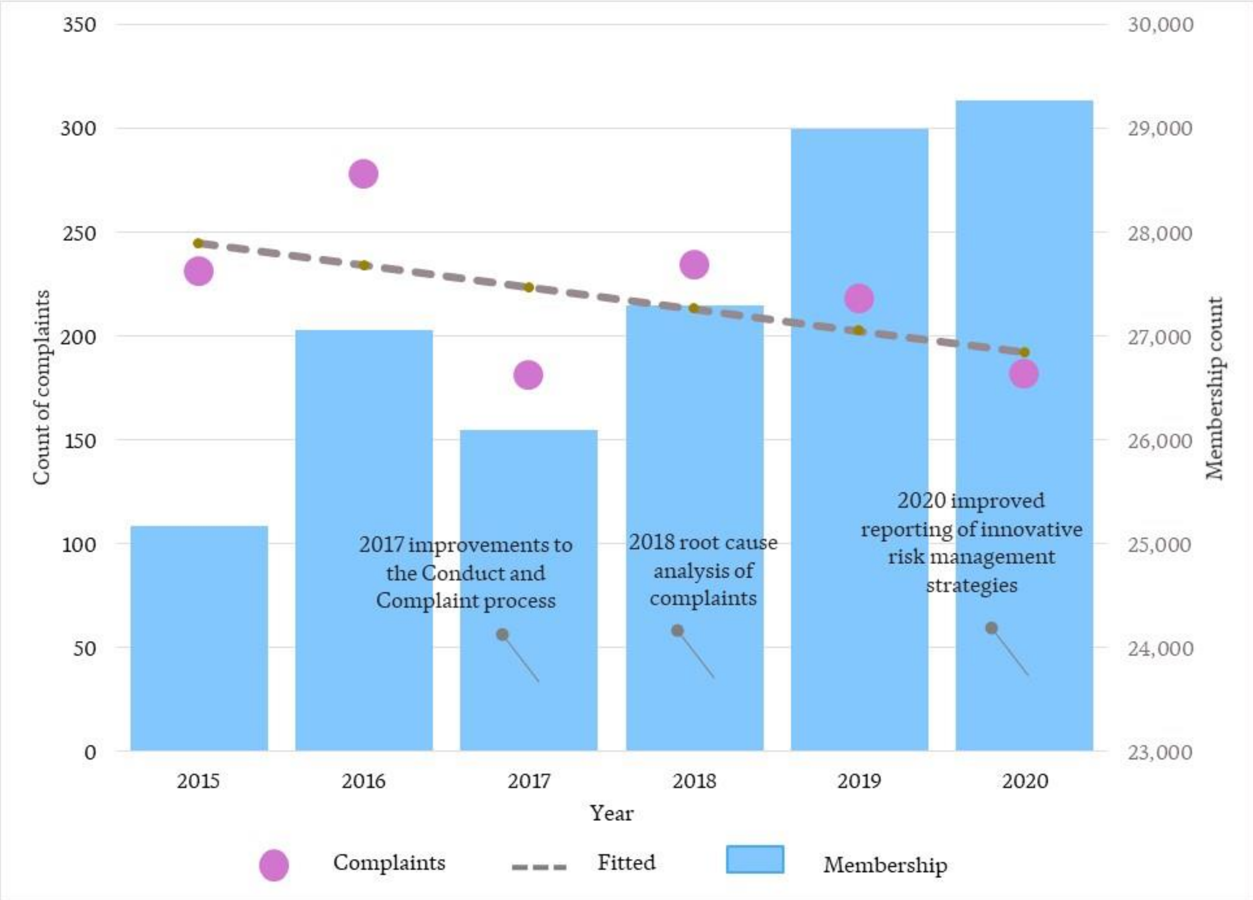
Figure 4.11 shows the number of scheme claims above $1M (being 50% of the minimum monetary ceiling). The number of scheme claims above the $1M are relatively low, with between 0 and 3 claims for all years. The number of claims in the more recent years may increase due to future settlement of open claims and late report of claims.

Figure 4.11 – CA ANZ count of claims above $1M

4.3.3 Complaints data

Figure 4.12 shows the complaints received since 2015. The number of complaints have reduced over the years 2015 to 2020 against an increase in scheme participants. Various risk management initiatives have been implemented since 2017, which may also have assisted.

Figure 4.12 – CA ANZ complaints data



Notes to the chart:

(a) The actual number of complaints - purple discs

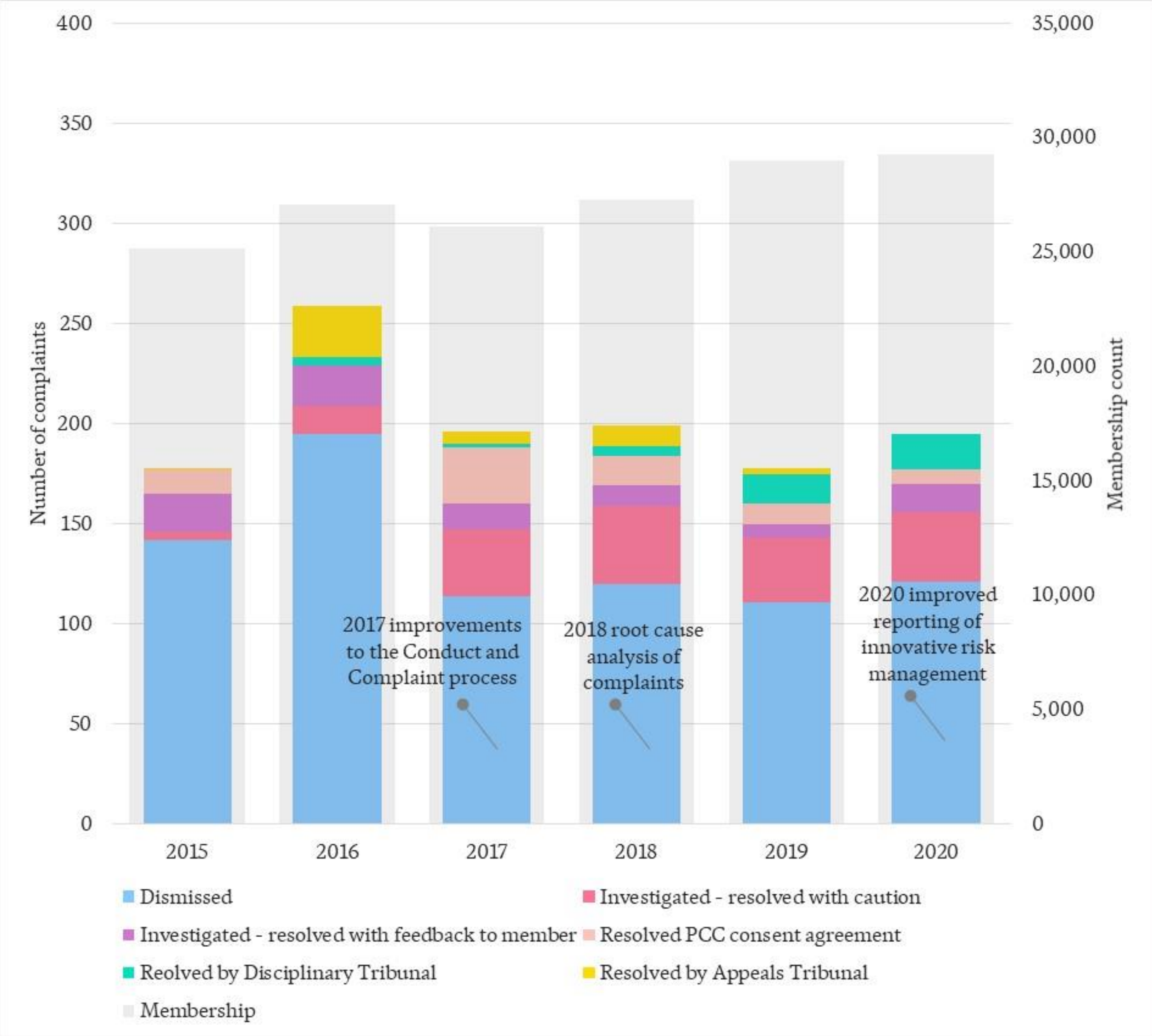
(b) The fitted trendline for number of complaints– dashed grey line

(c) Count of scheme participants – blue bars (axis on right hand side)

(d) Callout boxes with initiatives implemented by CA ANZ (further detail in **Appendix B.2**).

Figure 4.13 shows a breakdown of resolved complaints. The majority (73%) of complaints have either been dismissed or resolved with caution.

Figure 4.13 – CA ANZ breakdown of complaints resolved



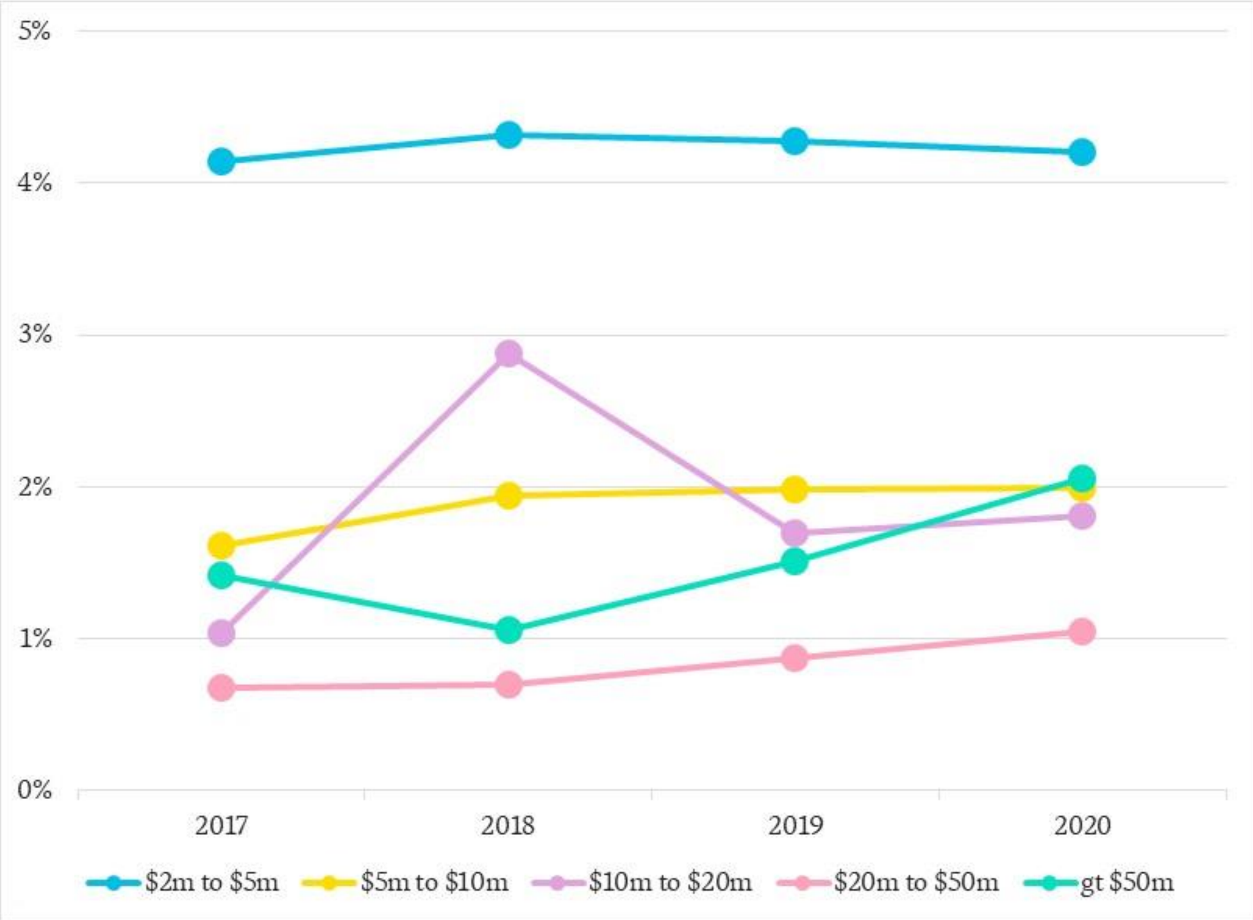
4.3.4 Trends in premiums, terms and conditions

Premium trends

Figure 4.14[15] illustrates the premium cost as a percentage of gross fees between 2017 and 2020 for various professional indemnity insurance indemnity limits.

[15] Source: CA ANZ PSIP reports

Figure 4.14 – CA ANZ premium cost as a percentage of gross fees

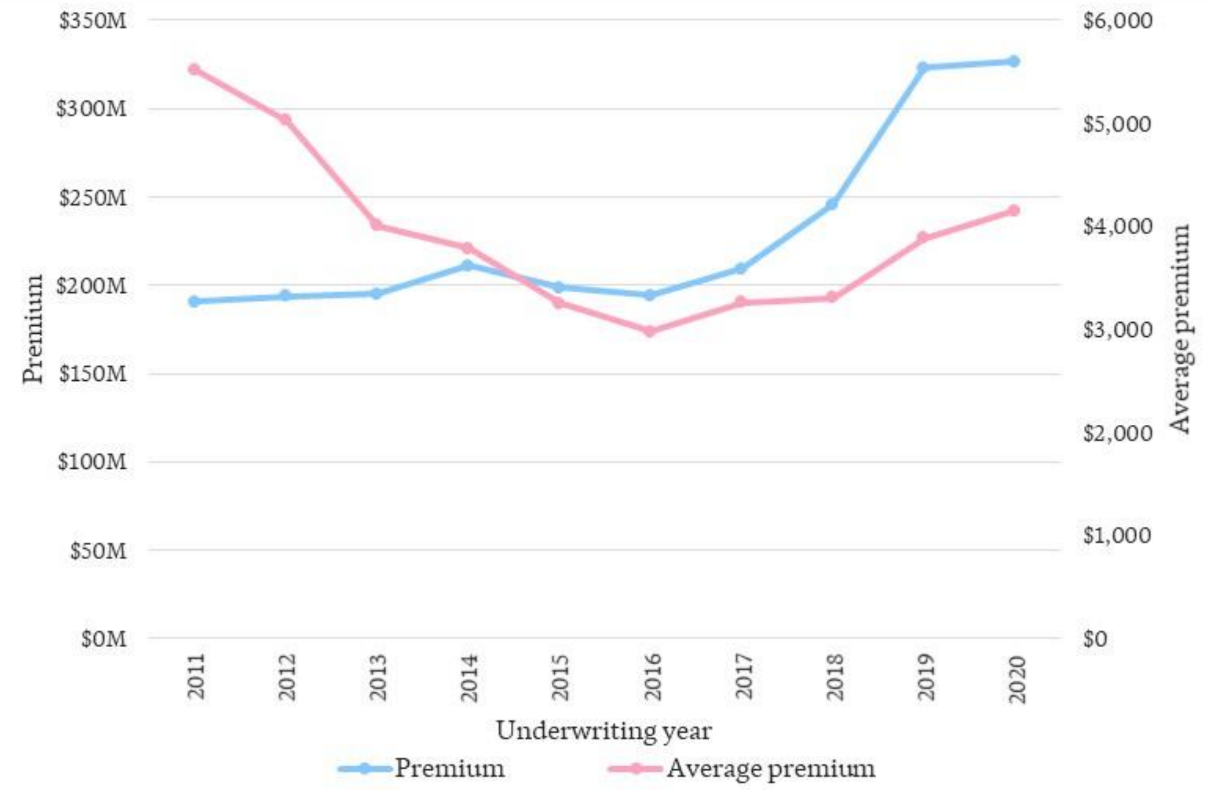


The premium cost as a percentage of gross fees for PI limit $2M to $5M has remained relatively flat. However, the premium cost as a percentage of gross fees for all PI band limits greater than $5M have shown substantial annual increases of between 7% to 20% between 2017 and 2020, although we note these are off relatively low bases of (premium/gross fees) of between 0.7% (PI band limit $20M to $50M) and 1.6% (PI band limit $5M to $10).

Figure 4.15 shows an analysis of industry premium trends[17].

[17] Includes all Group A - financial occupations

Figure 4.15 – Industry average premium for Financial occupations



Source: APRA NCPD database

While total premium has increased significantly since underwriting year 2017, the average premium shows an increasing trend since underwriting year 2016. This is broadly consistent with the trends in CA ANZ premium costs as a percentage of gross fees between 2017 and 2020 noted above.

Trends in availability of insurance

The availability of insurance[18] has been consistent over years 2017 to 2020 with it being:

- Readily available for PI limit bands $2M to $5M, $5M to $10M and $10M to $20M
- Less readily available for PI limit bands $20M to $50M and greater than $50M.

4.3.5 Scheme monetary ceilings

Figure 4.16 and Figure 4.17 show the monetary ceilings for Audit and for Insolvency respectively, for the past three schemes.

[18] Source: CA ANZ PSIP reports 2017 to 2020

Figure 4.16 – CA ANZ monetary ceilings by gross fee income – Audit

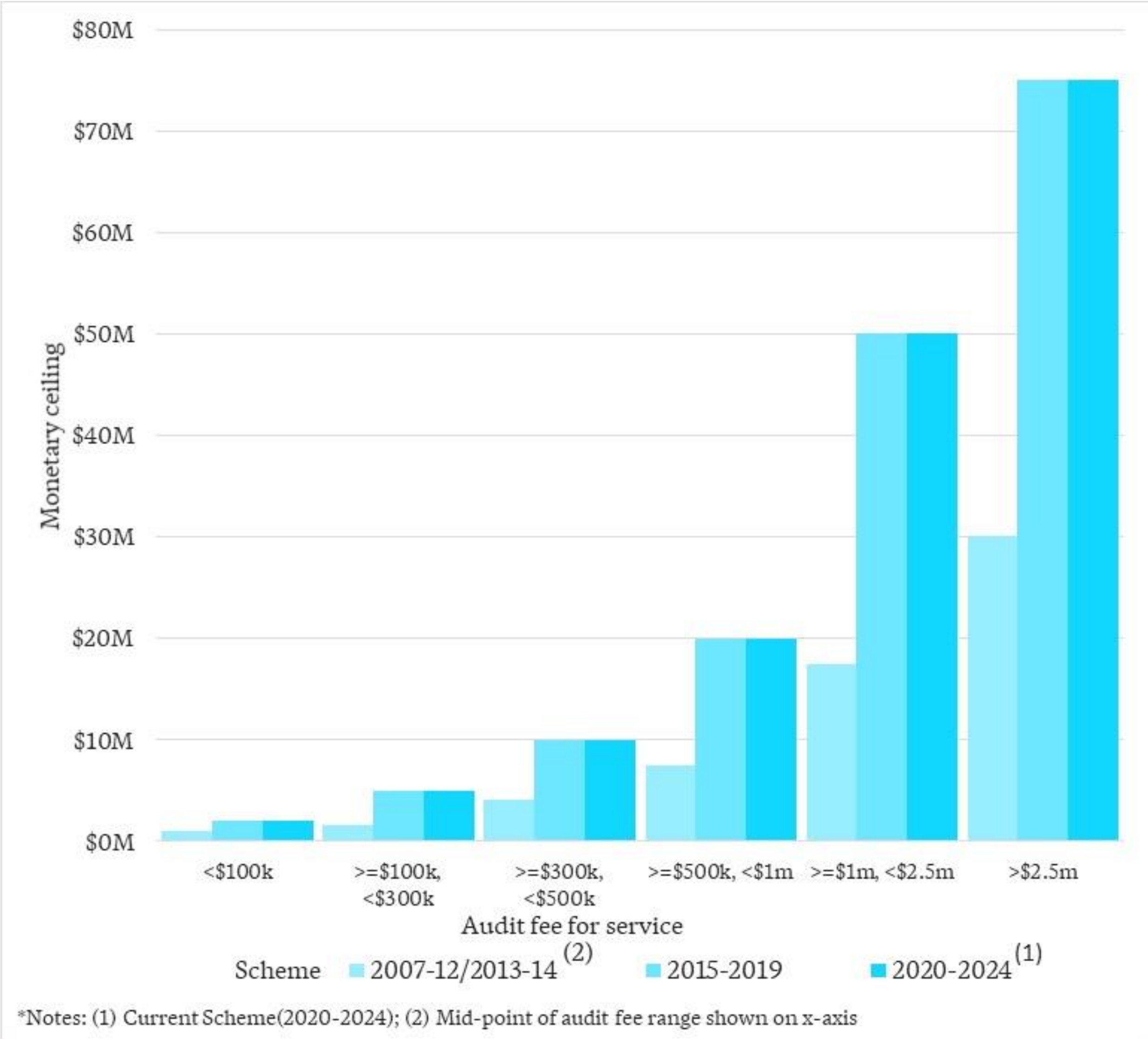
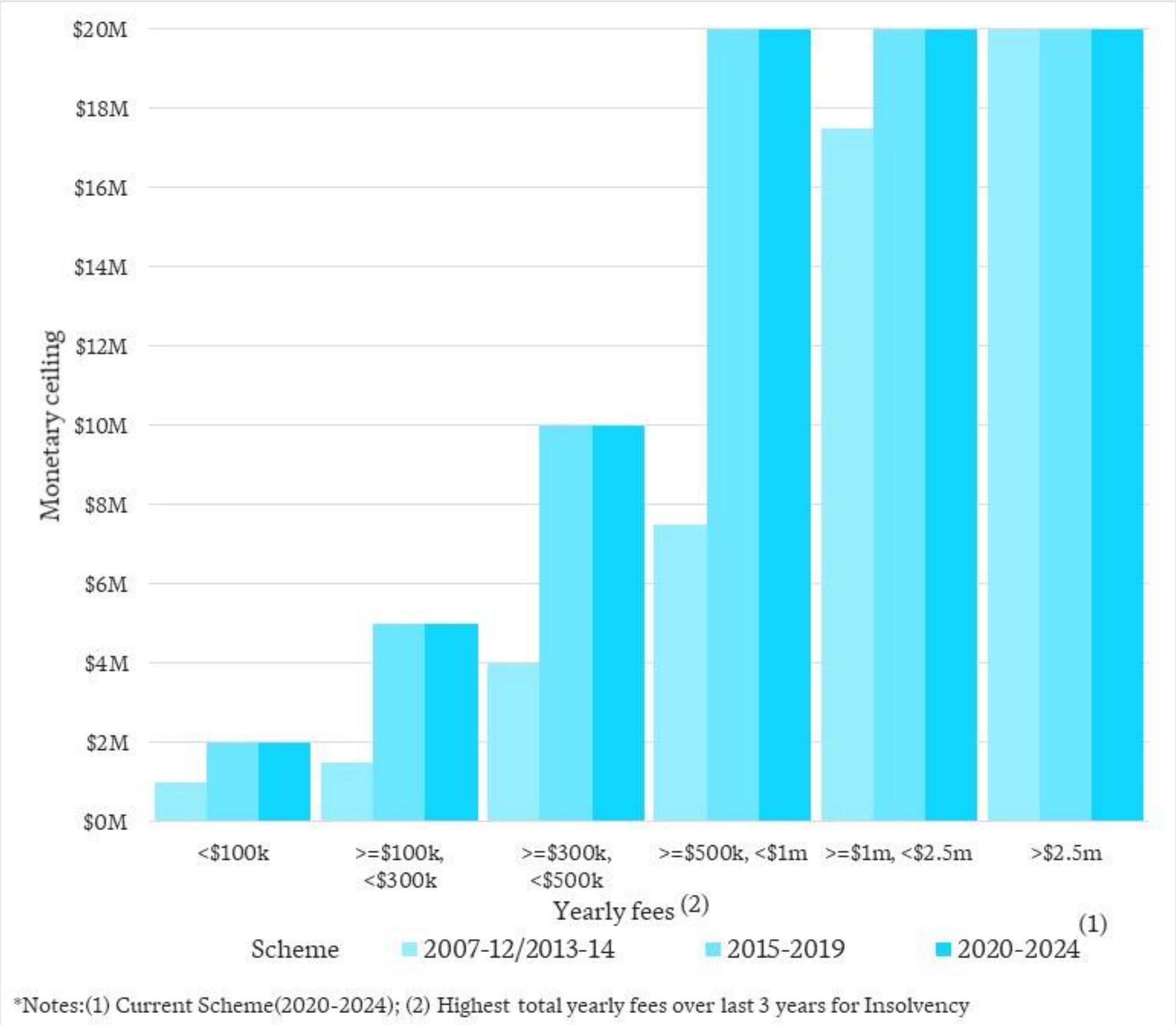


Figure 4.17 – CA ANZ monetary ceilings by gross fee income – Insolvency and other



The monetary ceilings are observed to have substantially increased between 2014 and 2015 for both Audit and Insolvency, albeit remaining steady at the most recent scheme review. The monetary ceiling increase at 2014 coincided with an increase in claims in preceding years (refer Figure 4.8). However, the stable monetary ceilings since represents a decrease in the monetary ceiling in real terms and suggests that the risk environment has been stable or improving since 2014 (also consistent with Figure 4.8).

4.4 Case study 3 – APIV

4.4.1 Key findings from APIV case study

Quantitative analyses	Qualitative information (scheme interviews)
Favourable trends in claims and complaints experience suggest an improving risk environment: ▪ The claims experience has been positive since 2010 with a reducing claim frequency trend until 2016 and thereafter flat ▪ A reduction in average claims size between 2010 and 2017 ▪ No claims near the monetary ceilings ▪ A reduction in complaints against participants of the scheme since 2017. *The monetary limits reduced at the last scheme application, which is also consistent with a stable or improving risk environment* *However, premium increases and issues with availability of insurance for some firms suggest insurer concerns with the risk environment:* ▪ An increase in average premium and deterioration in availability of insurance since 2016 appear incongruous with the generally favourable claims experience.	*APIV believes having a professional standards scheme is very beneficial, seen as a "unique product":* ▪ Limit of liability assists in managing legal risk ▪ Helps facilitate appropriate risk management standards. *Being part of a professional standards scheme creates work opportunities:* ▪ Valuers are required to be part of a professional standard scheme in order to gain access to the ValEx platform (used for bulk of valuer jobs) *However, insurers do not appear to be aware of the risk benefits associated with professional standards schemes and do not ask questions around whether insurance applicant is part of a professional scheme* *There appears to be a 'disconnect' between insurance requirements on particular jobs and the limit of liability e.g. participants may be required to have $5m insurance cover for certain jobs, even though the limit of liability is only $1m.* ▪ This suggests there is a poor understanding of scheme implications from clients of APIV participants, including government clients.

The remainder of section 4.4 details our quantitative analyses of APIV.

4.4.2 Claims experience

The following sub-sections cover various aspects of claims experience.

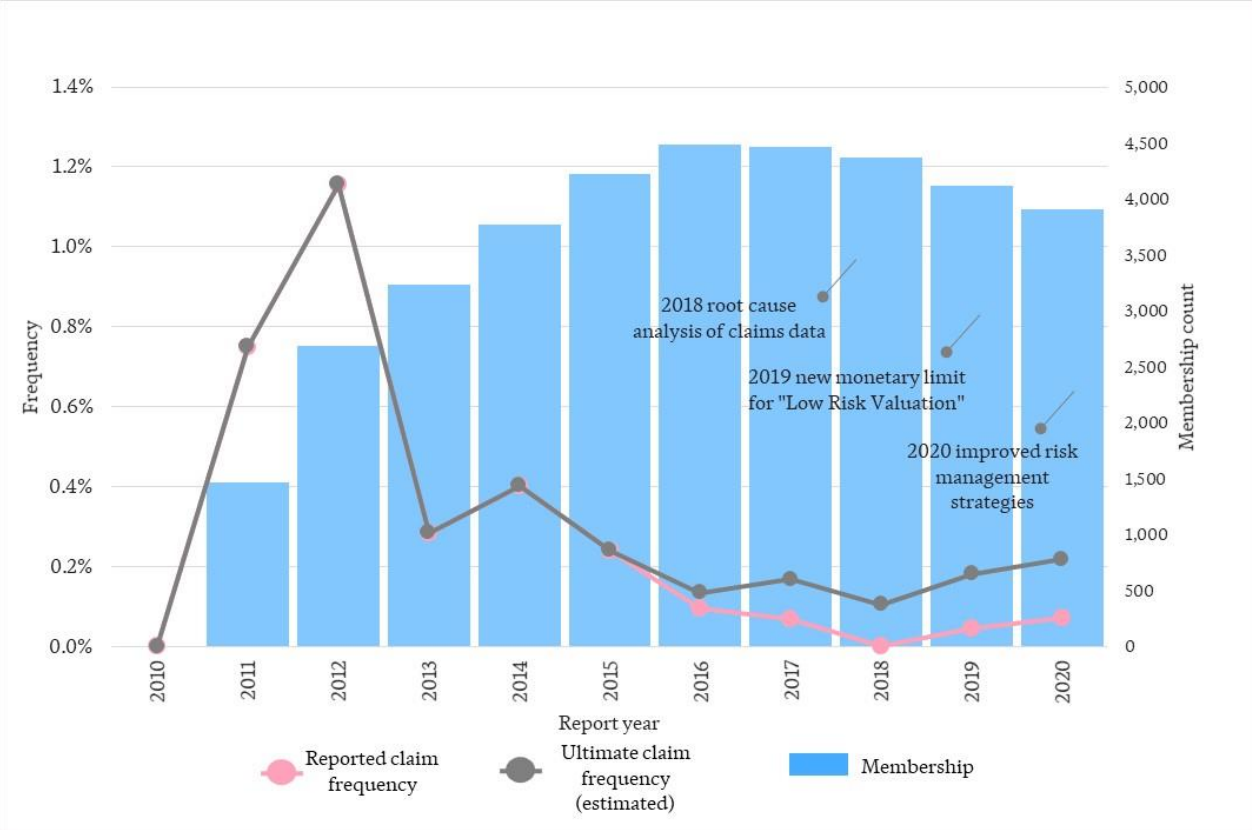
Claim frequency experience

Figure 4.18 shows the claim frequency (claims/participants) for APIV since 2011. The claim frequency as a percentage of participants is low with approximately 1 claim per 200 participants.

The estimated ultimate claim frequency (reported claims plus an estimate of late reported claims) shows a strongly reducing trend since 2011/2012 to 2016 and thereafter flat.

Appendix F.3 contains a similar chart with the APRA benchmark.

Figure 4.18 – APIV notification and claim counts



Notes to the chart:

(a) Actual reported claim frequency for APIV participants – solid pink line (axis on left hand side), this line is equivalent to the ultimate claims for years 2015 and prior and is hidden by that line

(b) Our estimate of ultimate claim frequency (reported claims including allowance for late reported claims) – dark grey line

(c) Count of scheme participants – blue bars (axis on right-hand side)

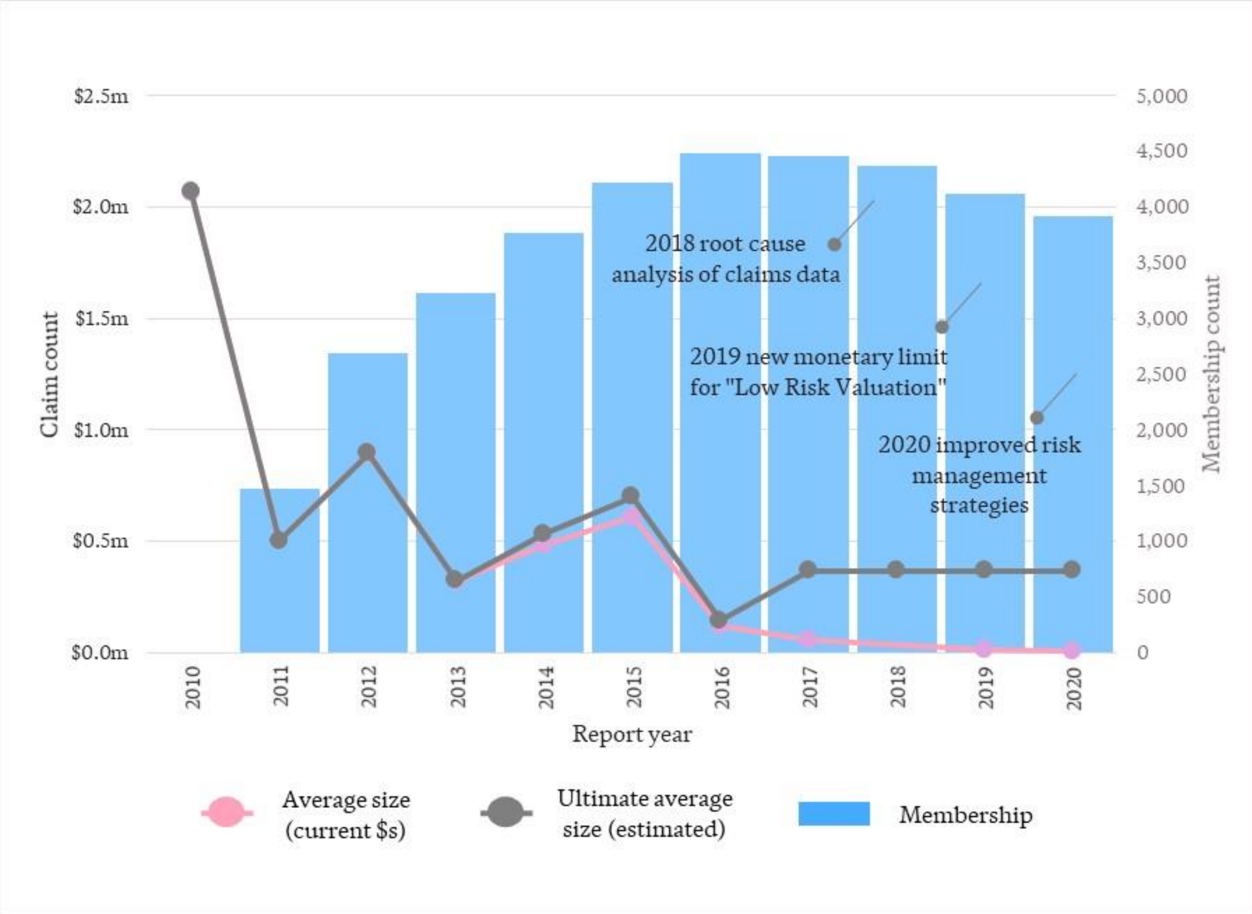
(d) Callout boxes with initiatives implemented by APIV (further detail in **Appendix 0**).

Claim size experience

The claim size experience for APIV since 2009 is shown in Figure 4.19 The average claim size in actual dollars and the average claim size in current dollars both show a strong downward trend since 2010. Our estimated ultimate average claims size also shows a strong downward trend since 2010.

Appendix F.3 contains a similar chart with APRA benchmark.

Figure 4.19 – APIV average claim size



Notes to the chart:

(a) The actual average incurred size in current dollars (historical amounts adjusted to current values) - solid pink line (axis on left hand side), this line is equivalent to the ultimate average settled size claims for years 2013 and prior and is hidden by that line

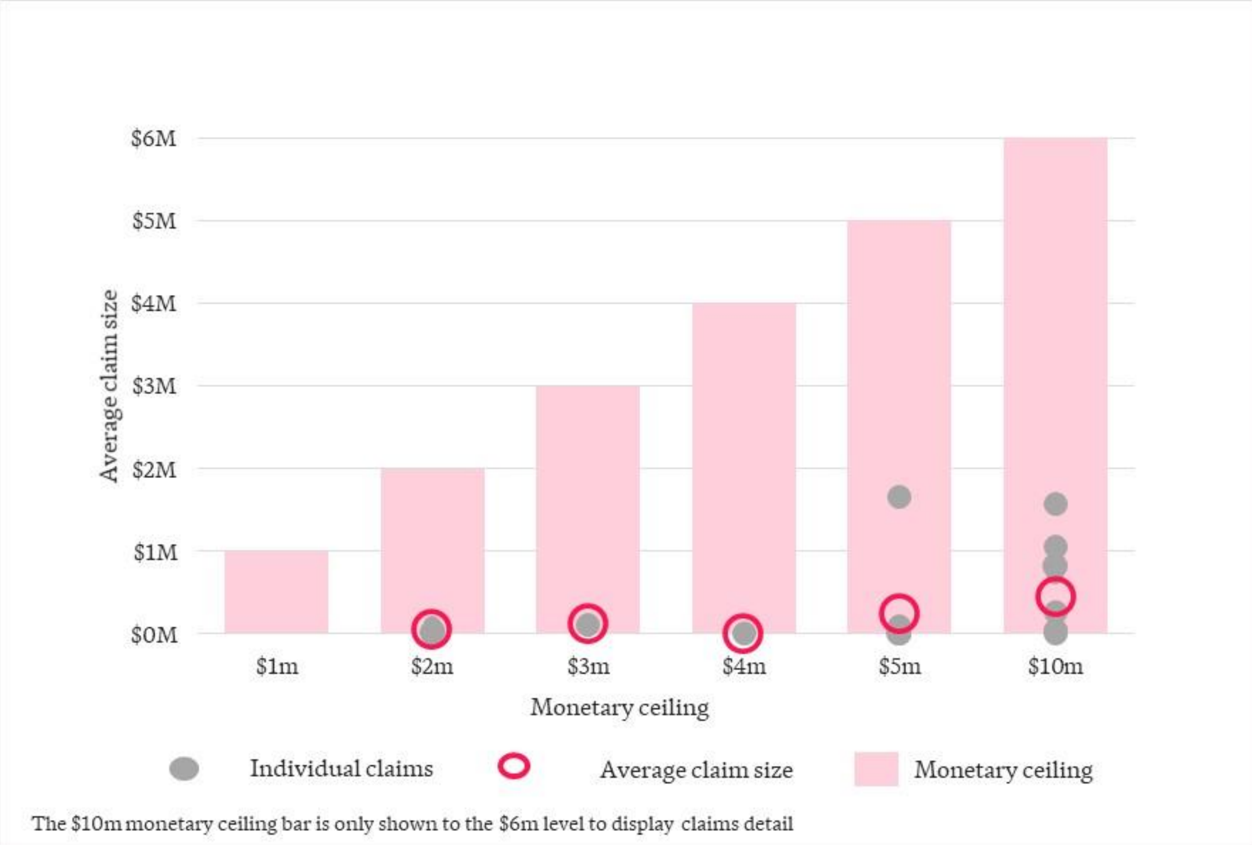
(b) Our estimate of ultimate average claim size (allowing for future development of claim size and late reporting of claims) – dark grey line

(c) Count of scheme participants – blue bars (axis on right hand side)

(d) Callout boxes with initiatives implemented by APIV and scheme changes (further detail in **Appendix B.3**).

Figure 4.20 shows the distribution of claim sizes by the applicable monetary ceiling. None of the claims to date have an average claims size close to the applicable monetary ceiling. While the estimated size of some of the claims shown may change (increase) due to changes in reserves for open claims and late reported claims, this is unlikely to threaten the monetary ceilings.

Figure 4.20 – APIV claim sizes against monetary ceilings



Notes to the chart:

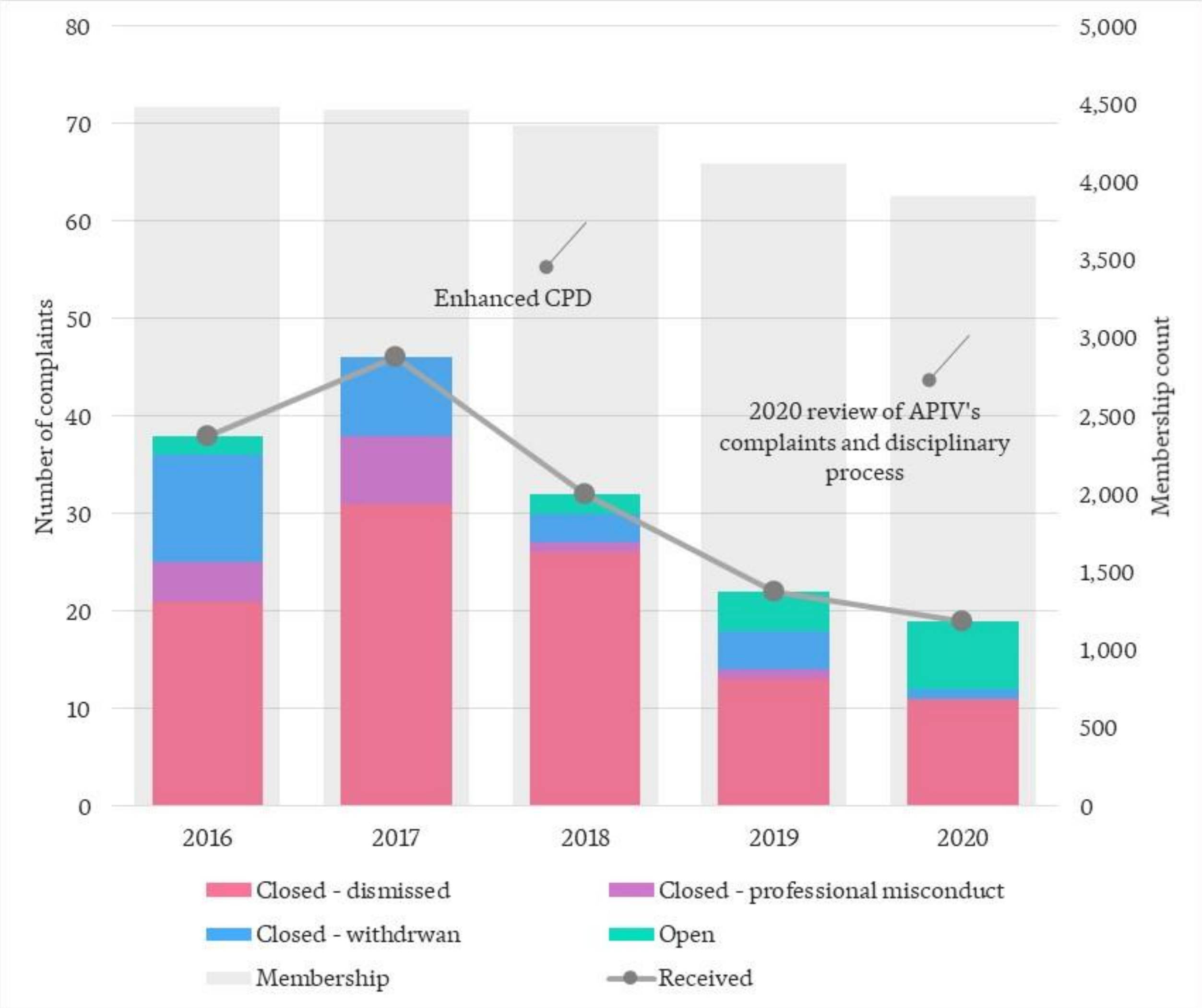
(a) Individual claims size (grey discs) for the claims on the database that had a monetary ceiling (these claims comprised around 30% of the total claims on the database). The monetary ceiling is represented by the pink columns.

(b) The average size of all claims (red circles) for the applicable monetary ceiling band depicted by the pink columns.

4.4.3 Complaints data

Figure 4.21 shows the complaints received since 2016.

Figure 4.21 – APIV complaints received



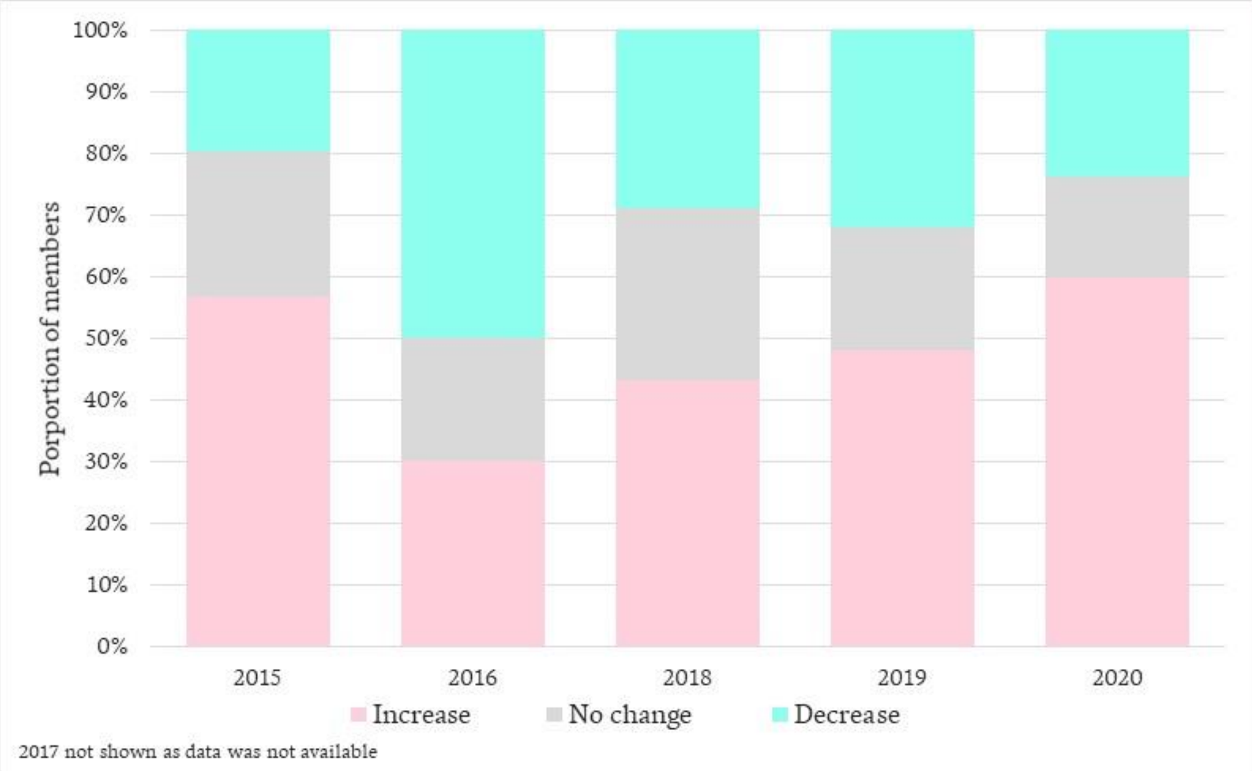
The number of complaints has reduced over the years 2017 to 2020 while most complaints are either dismissed or withdrawn. Reductions in complaints since 2017 may have also been assisted by various risk management initiatives introduced by APIV.

4.4.4 Trends in premiums, terms and conditions

Figure 4.22 shows the change in premium by proportion of participants[19] .

[19] Source: from APIV PSIP reports

Figure 4.22 – APIV change in premium by proportion of participants

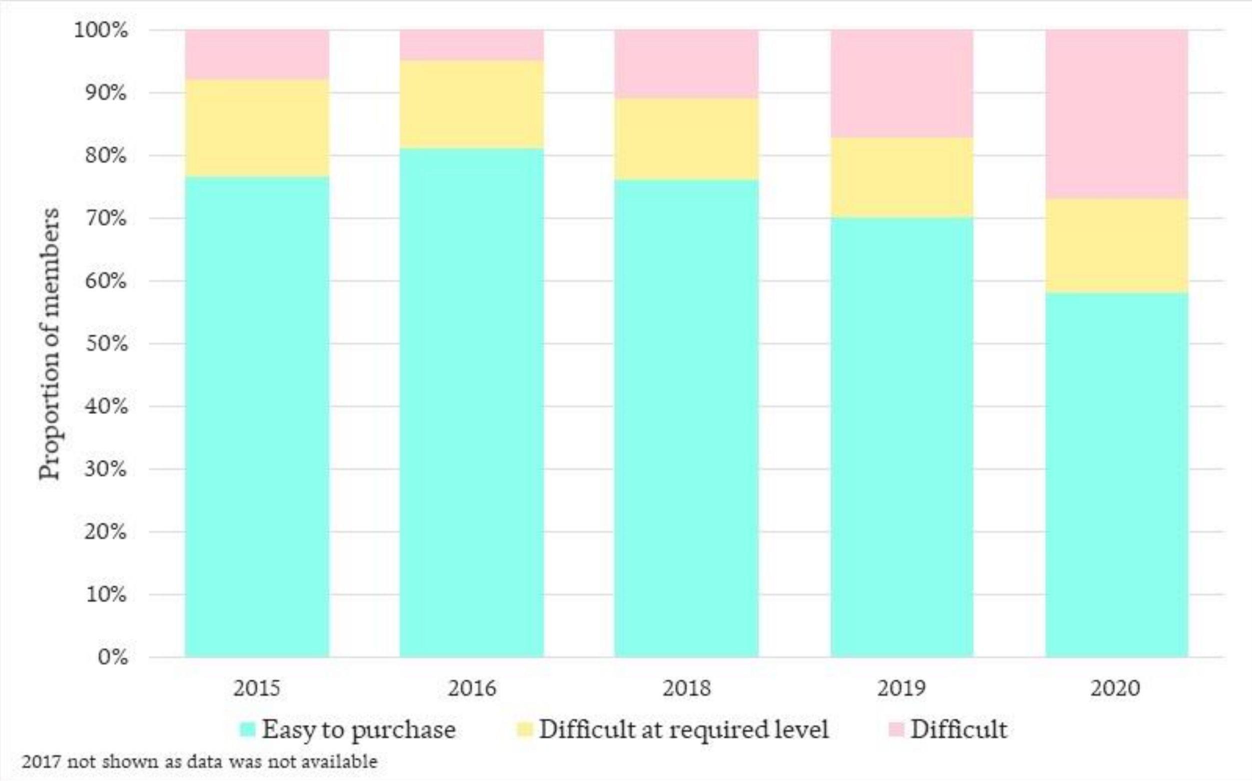


There was a decrease in premium for most participants between 2015 and 2016, after which the premium for most participants increased.

Figure 4.23 shows the availability of premium by proportion of participants[20].

[20] Source: APIV PSIP reports

Figure 4.23 – APIV availability of insurance

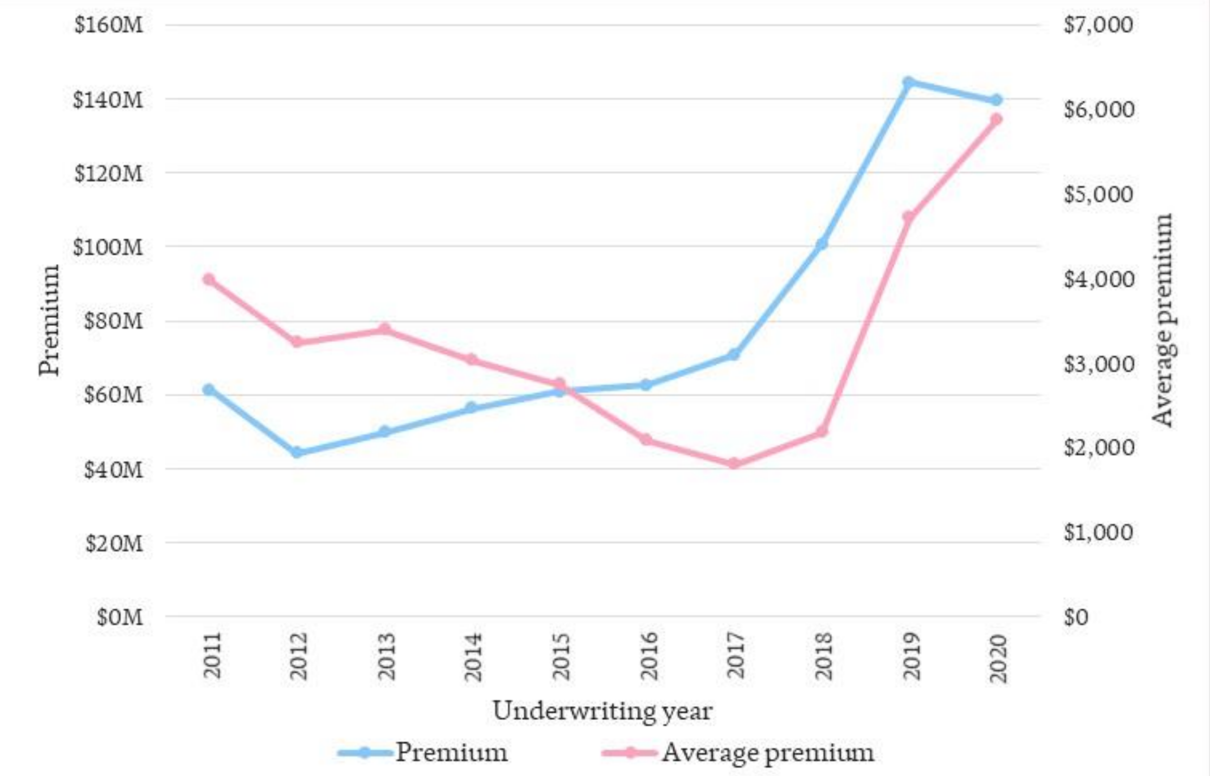


There has been an increase in the proportion of participants finding it difficult to obtain insurance since 2016. The general increase in premium and general increase in difficulty of obtaining insurance over recent years appears incongruous with the favourable trends in claim frequency and average claim size (refer Figure 4.18, Figure 4.19 and Figure 4.20).

Figure 4.24 shows an analysis of industry premium trends[21].

[21] Includes all Group E –Real Estate occupations

Figure 4.24 – Industry premium for real estate occupations



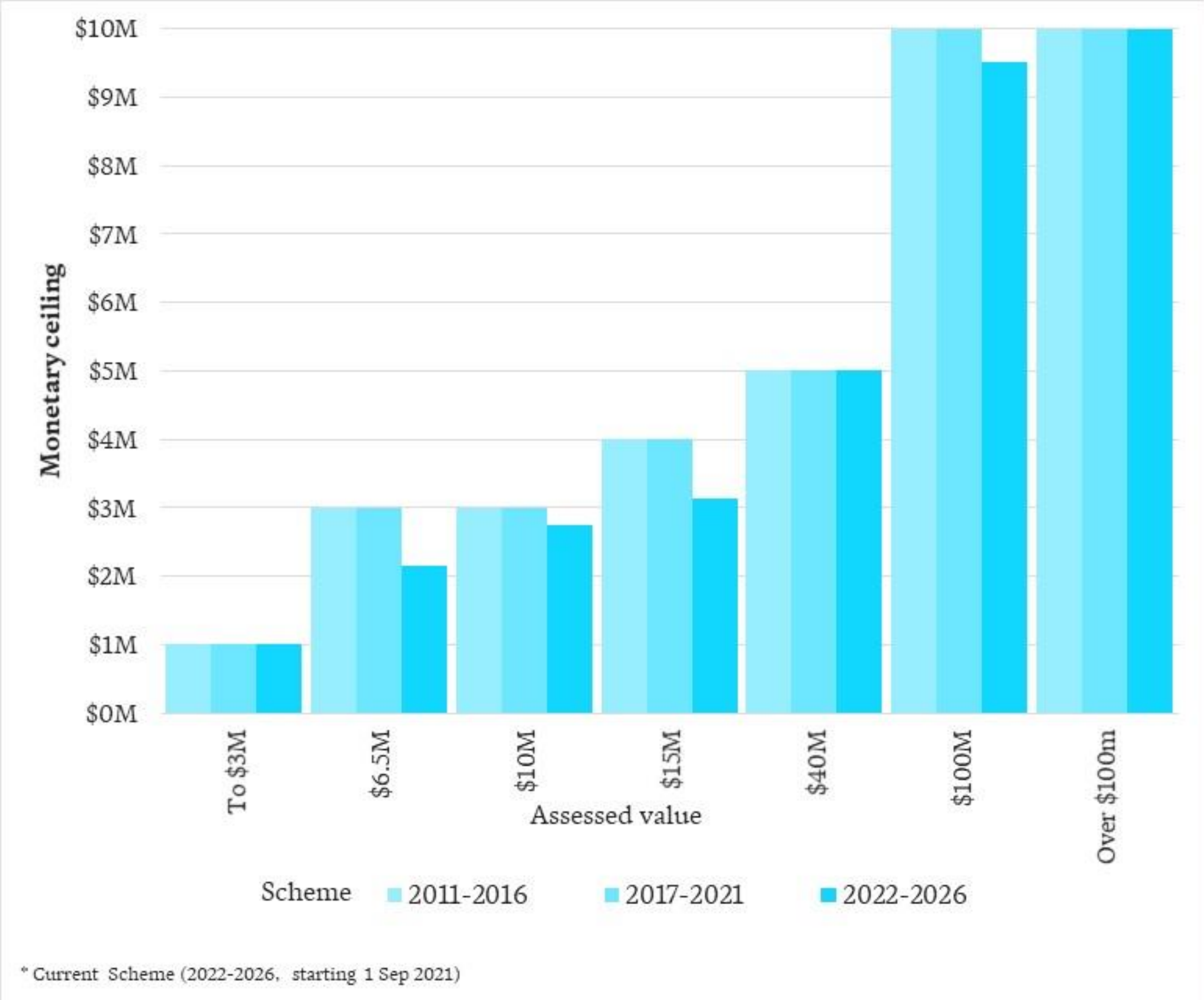
Source: APRA NCPD database

The total premium has increased significantly since underwriting year 2017, while the average premium shows a strongly increasing trend since underwriting year 2017. This is broadly consistent with the trends in APIV premium costs as a percentage of gross fees between 2017 and 2020, outlined in Figure 4.22.

4.4.5 Scheme monetary ceilings

Figure 4.25 shows the monetary ceilings by assessed value for the past three schemes.

Figure 4.25 – APIV monetary ceilings by assessed value



The monetary ceilings reduced after 2021. This provides strong evidence of improvements in the risk environment.

A

Appendices

Appendix A Scheme listing

As at 30 June 2021, there were 17 schemes in force nationally, with the number of occupational association participants subject to these schemes totalling 86,089 (2020: 82,193).

Table A.1 offers a listing of professional standards schemes and the relevant sector.

Table A.1 – Listing of professional standards schemes as at 30 June 2021

Scheme	Sector
Association of Consulting Surveyors National Ltd	Built Environment[22]
Australian Computer Society Inc	Information Technology
Australian Property Institute Valuers Ltd	Built Environment
Bar Association of Queensland Ltd	Barristers
Chartered Accountants Australia and New Zealand Inc	Accountants
Chartered Surveyors Ltd (formerly RICS Valuers Ltd)	Built Environment
CPA Australia Ltd	Accountants
Institute of Public Accountants Ltd	Accountants
Law Institute of Victoria Ltd	Solicitors
Law Society of New South Wales Ltd	Solicitors
Law Society of South Australia	Solicitors
Law Society of Western Australia Inc	Solicitors
New South Wales Bar Association Ltd	Barristers
Queensland Law Society Ltd	Solicitors
South Australian Bar Association Inc	Barristers
Victorian Bar Association Inc	Barristers
Western Australian Bar Association Inc	Barristers

[22] "Built Environment" includes Surveyors and Valuers

Appendix B Case study participants

This section provides background information on the case study participants. We have included the recent initiatives in Section B.1.2 by way of example only, drawn from self-reporting by the case study participants in their annual Professional Standards Improvement Program reports to the Professional Standards Councils.

B.1 LSNSW – Case study 1

B.1.1 Background

Law Society NSW (LSNSW) is an occupational association for solicitors practicing in NSW (expanded to other states and to Incorporated Legal Practices in 2018). Participants can obtain primary PI cover through a single insurer (Lawcover) and top-up cover through Lawcover or the commercial market. The current scheme commenced in November 2018 and allows for a limitation of liability, ranging from $1.5m to $10m.

B.1.2 Recent intiatives

Reporting year	LSNSW Key initiatives/improvements
2017	**Updated participant renewal and application forms relating to scheme obligations** including a declaration, undertaking and acknowledgement of the requirement to comply with Professional Standards Legislation. **Undertook internal scheme monitoring reviews.** Reported outcomes with improved departmental application processes.
2018	**Conducted a comprehensive risk management review to provide an updated risk management framework.** Considered information from a wider variety of sources to inform risk management strategies, with clear links to risk management controls. Sources included: Lawcover, statutory regulator, the Legal Services Commissioner and internal departments, including Professional Standards Department. **Identified top six causes of loss using notifications of claims data**, with some identifiable root causes**.** Linked new risk management initiatives to the data findings, including new CPD on client management, health and wellbeing, and risk management.
2019	**Developed and delivered a new scheme platform** to automate scheme and association participant applications. This established robust scheme monitoring processes. The new platform: ▪ Moves away from older, less reliable technology ▪ Improves security by integrating the scheme application with LawID (LawID is a new identity verification system) ▪ Increases the data/fields captured in the scheme database ▪ Introduces systems and processes to ensure that all scheme data must be recorded when processing applications ▪ Improves the audit trail of the scheme data

Reporting year	LSNSW Key initiatives/improvements
	▪ Allows for new functionality for applicants, including participant applications, Discretionary Higher Cap applications, and Online uploading of practice stationery. **Conducted root cause analysis** by gathering and analysing data from a range of internal and external sources, including: ▪ Regulatory complaints data and trends ▪ Insurance claims data and trends from the approved insurer ▪ Practice, compliance and regulatory data from the Law Society departments and committees. Identified seven realms of risk, which represent those areas with the greatest potential to be detrimental to the ability of participants to provide legal services that meet required professional standards, and improve those standards. Took new measures to address the detected root causes during the reporting period such as through CPD sessions and launching initiatives.
2020	**Audited all law practices for their annual scheme disclosure audits.** Despite the unprecedented implications of the pandemic, the Society reduced the rate of participants' non-compliance with disclosure requirements from 14% in 2019 to 2% in 2020. Non-compliant law practices were contacted by phone and email to inform them of the issue and educate them about the professional standards legislation requirements. **Responding to emerging risks in the legal profession**: The Law Society released the Future of Law and Innovation of the Profession Report (the FLIP Report) in March 2017. The outcome of the FLIP Report was set out in its 19 recommendations for the Law Society to implement. In 2020, the Law Society launched a number of successful FLIP Program initiatives, including: ▪ Evolving the FLIP online portal, which is part of the Law Society's website. The portal facilitates information across all sectors of the profession about developments in legal technology, work process improvements and client focused services including via podcasts and the FLIP events. ▪ The ground-breaking FLIP Stream research partnership between the Law Society and the University of New South Wales. The Law Society funds the University's research and innovation projects for five years, with a new topic to be focused on each year. Topic in 2020: The sustainability of law and lawyers. The research is hosted on the FLIP online portal and further disseminated to the participants through the FLIP Program. **Generating regular reports from databases to inform and assist with monitoring scheme participation requirements**. Reports include: ▪ Monthly data reports to identify participating incorporated legal practices with legal practitioners that are not Solicitor participants and scheme participants. Participation of all legal practitioners is a prerequisite of ILP entity scheme participation. ▪ Quarterly data reports to identify participating law practices that have legal practitioners who are not registered as scheme participants.

Reporting year	LSNSW Key initiatives/improvements
	▪ Data reports are run post 1 July to identify those law practices recorded as participating in the scheme that have legal practitioners who have not renewed their Solicitor participants (Law Society participation year commences 1 July). Scheme participating law practices with legal practitioners who are not registered as scheme participants are contacted by phone and email and notified of their non-compliance. Where non-compliance is not rectified, follow-up contact will be made with the law practice.

B.2 CA ANZ – Case study 2

B.2.1 Background

Chartered Accountants Australia & New Zealand (CA ANZ) is an occupational association of professional accountants in Australia and New Zealand, which has had a professional scheme in place in NSW since 1997. Participants obtain PI cover primarily through two brokers (Aon, Marsh) who deal with several insurers. The current scheme commenced in October 2019 and allows for a limitation of liability ranging from $2m to $75m.

B.2.2 Recent intiatives

Reporting year	CA ANZ Key initiatives/improvements
2017	*Scheme monitoring review* ▪ Reported actions taken from f**indings identified within scheme monitoring reviews** provided improvements to scheme monitoring processes by either **bridging knowledge gaps or enhancing documents**. *Complaints and discipline review* ▪ Changes made to the Conduct and Complaint process fully implemented by August 2016 with a **substantial reduction in the backlog of unresolved complaints**.
2018	*Risk management review* ▪ **Conducted a full risk management review consistent with ISO21000:2018** ▪ Integrated risk management strategies relating to scheme management into broader risk management plan. Analysis of complaints and discipline data focused on root cause analysis and informing risk management strategies. *Initiatives introduced in 2018* ▪ **Internal data governance working group** formed representing relevant functions across the whole organisation – will establish and implement the rules for data controls (to increase the accuracy of member database) ▪ Where participants have confirmed they have non-compliant policies via the annual Scheme questionnaire, CA ANZ enhanced the required info for them to return to compliance

Reporting year	CA ANZ Key initiatives/improvements
	▪ Audit of PSL Compliance plan ▪ Amended scheme questionnaire to obtain details of notification events and claims ▪ Updated Regulation CR2 to increase member's awareness and compliance w the need to have the disclosure statement on their website and to provide a copy of the scheme to clients on request.
2019	Improved questionnaire template to participants on their obligations to disclosure their limited liability status in all documents given to a client or prospective client. *Risk management activities* ▪ Reviewed scheme risk analysis to ensure risks identified by Crowe Horwath (engaged by CA ANZ) included in the risk assessment table ▪ **Organisation-wide Risk Management Framework developed** and the appointment of a new CA ANZ General Manager- Risk, Compliance and Operational Excellence ▪ Internal reporting and approval process formalized**.**
2019/20 Professional Standards Councils' Annual Report	CA ANZ launch a benefit of a professional standards scheme video ▪ Provided information for what a professional standards scheme means for the accountancy profession, and what is expected of CA ANZ participants of public practice. ▪ Communicates to the associations' participants on consumer protection in the delivery of professional services in Australia and that participants are held to account, which is to the benefit of every one of their consumers and the professional itself.
2020	*Scheme monitoring improvements* ▪ **Significant improvements to the member questionnaire**, including adding further parameters to collect targeted information on AFSL participants and confirm professional indemnity insurance for all member services provided ▪ **Development of an online portal** for quality reviewers to communicate audit findings with the association, which anticipates an increase in speed and effectiveness. *Risk analysis* ▪ **Reporting innovative risk mitigation activities** in response to emerging professional and consumer risks identified from reviewing your Professional Standards Scheme Risk Management Strategy and Plan for Managing Risk, including: – Changes to regulations for member CPD including a minimum level of ethics training – Quality reviewer access to an online portal – Continuing quality reviews of participants throughout COVID-19 via remote access – Digitising exams

Reporting year	CA ANZ Key initiatives/improvements
	– Free member access to counselling services. *Financial services additional risk reporting* ▪ Providing wide-ranging and granular additional risk reporting on financial services provision ▪ Extensive risk mitigation strategies in relation to risks reported in the 2019 report and further risks identified during reporting year ▪ Engagements with external consultants, including insurance brokers, to discuss emerging consumer risks identified by the Professional Standards Councils.

B.3 APIV – Case study 3

B.3.1 Background

Australian Property Institute Valuers Limited (APIV) is an occupational association for property valuers practising in Australia. APIV participants obtain PI cover through a number of different brokers/insurers. The current scheme commenced in September 2021 and allows for a limitation of liability ranging from $1m to $20m.

B.3.2 Recent intiatives

Reporting year	APIV Key initiatives/improvements
2017	**Developed a new member application which includes clear declaration agreement** requiring a member to confirm compliance with the items outlined within the Professional Standards Improvement Program, further reinforced within the confirmation letter from the association reaffirming their scheme compliance obligations.
2018	**Maintained** effective continuing professional development monitoring requirements and compliance using the annual compliance questionnaire and annual compliance audit. ▪ Required participants to upload details of their development annually to their online system. *Insurance standards (Section 2.4)* ▪ Working with participants to achieve compliance in sufficiency of cover and excess higher than the standard. This section was well monitored using the annual compliance questionnaire. Also monitored via Annual Compliance Audit (from PSIP) Used annual compliance questionnaire to monitor professional indemnity insurance data from both participants and brokers effectively. *Notification and claims data* ▪ Maintained detailed notifications and claims data, as well as comprehensive root cause analysis, trend analysis and links to risk management strategies. ▪ All claims and notifications data recorded on a comprehensive database.

Reporting year	APIV Key initiatives/improvements
	Conducted an organisational and operational capability review throughout 2018 to align strategy with organisational functions and structure and address evident capability skills gaps. *Improved initiatives* ▪ All APIV Registers updated and enhanced; all forms, letters and email templates updated and enhanced ▪ Improvements made to questionnaire (requiring participants to provide info regarding the monetary ceiling of each company where there is a group of companies) ▪ Smooth transition into and commencement of the APIV scheme in Tasmania ▪ Conversion of APIV by-laws to participant policy ▪ Website reviewed and updated with additional resources.
2018/19 Professional Standards Councils' Annual Report	The Councils approved one amendment to a scheme during the reporting period, for the Australian Property Institute Valuers Ltd. The amendment demonstrated the association's recognition of a changing risk environment. ▪ Amendment created a new monetary limit based on a type of lower risk work 'low risk valuation' monetary limit. ▪ Applied a risk-based methodology to determine the applicable monetary limit for those participants who undertake valuations that have a low incidence of claims or have claims of a lower value. ▪ The amendment encourages participants of APIV to consider the risks inherent in their valuation work and use this to inform their PI requirements.
2019	*Monitoring* ▪ **Monitoring of scheme requirements**, including member insurance standards, through the Compulsory Compliance Questionnaire at renewal, in applications and in the Annual Compliance Audit. ▪ 100% review rate of participant applications and renewals for scheme compliance *Risk management* ▪ **Identification of emerging threats** in industry of technology and cyber risk through reviews and improvements made to APIV's Risk Register and Risk Management Framework ▪ Developed a new cyber risk management solution 'cyber solution' for participants comprising a suite of cyber risk identification and mitigation tools, including a tailor-made cyber insurance policy. *Root cause analysis* ▪ **Implementation of root cause analysis** to risk management systems and professional indemnity claims data.

Reporting year	APIV Key initiatives/improvements
	▪ Bolstered by APIV's Compulsory Compliance Questionnaire and scheme governance, root cause analysis was incorporated coherently to notifications and claims data received from scheme participants. ▪ APIV responded to this analysis through risk management actions including **member education and enforcement of continuing professional development requirements.**
2019/20 Professional Standards Councils' Annual Report	The Councils worked with the Australian Property Institute Valuers Limited (Valuers) to incorporate the Councils' guidance on Model Code of Ethics Principles into a training module as part of the Valuers participants' continuing professional development (CPD) program. The Councils commended the Valuers' efforts in advancing their self-regulatory initiatives and invited an ongoing dialogue with the association to consult on developments in professional ethics.
2020	Reviewed many forms, processes and templates that communicated member scheme obligations as part of their continuous improvement approach. Some included: ▪ 2020 Compulsory Compliance Questionnaire implemented as of 1 January 2020 – Various improvements have been made to this year's Questionnaire (e.g. question requiring participants to provide information regarding the Monetary Ceiling of each company where there is a group of companies). ▪ Claims Information Form – This Form is to be used by a member reporting the details or a notification or claim relating to valuation of real property to the APIV. Improvements have been made to this form to capture more in-depth information such as the purpose of valuation work and, where relevant, hold harmless/release/ indemnity provisions were incorporated into the retainer agreement. APIV consistently reports comprehensive professional indemnity insurance claims data informed by a detailed claims notification system for their participants. The Valuers fully utilised the benefits of obtaining the data by undertaking in-depth analysis and using insights to inform risk management strategies, including: ▪ The various member alerts and weekly member news items regarding trends identified and risk management strategies ▪ The ongoing enforcement and review of CPD requirements, including the annual completion of an online module on the Standing Instructions annually and the RMM, which must be completed by all valuers every three year ▪ Collection of valuation data from APIV member firms as of 2020 to enable a deeper understanding and analysis of claims and notifications data. **Currently reviewing their complaints and discipline process** as part of their scheme compliance plan.

Appendix C Data

C.1 Data listing

The main sources of data for this report are shown in the following sections.

C.1.1 LSNSW – Case study 1

We referenced the following data for our Law Society of NSW case study:

- *Professional Standards Improvement Program Reports 2015 to 2020* – These annual reports provide extensive detail on the approach and resources invested by the Law Society in meeting its scheme administration requirements under the Professional Standards Act.
- *APIV and LSNSW scheme participation.xlsx* – Number of participants for Law Society NSW between financial years 2001/02 to 2020/21 provided by PSA.
- *L060418 LSNSW.pdf* – Our 2018 report on *Proposed Limitations of Liability for Law Society of New South Wales* and associated data
- *L261011 NSW Law Society_final.pdf* – Our 2011 report on *Proposed Limitations of Liability for Law Society of New South Wales*
- *L070909 PSC Limitations of Liability.pdf* – Our 2009 report on Our 2010 report on Australian Property Institute Valuers *Law Society of NSW, Law Institute of Victoria and Queensland Law Society*.

C.1.2 CA ANZ – Case study 2

The following data was referenced for our Chartered Accountants Australia & New Zealand case study:

- *Professional Standards Improvement Program Reports 2015, 2016, 2018 and 2020* – these annual reports provide extensive detail on the approach and resources invested by CA ANZ in meeting its scheme administration requirements under the Professional Standards Act.
- CA ANZ_draft_230119.docx - Our 2019 report on *Proposed Limitation of Liability for Chartered Accountants Australia and New Zealand*
- *L060913 ICAA revised.pdf* - Our 2013 report on *Revised Proposal from the Institute of Chartered Accountants*
- PSA Data Request_20211110.xlsx and 20211104_RPA_Age_count_report.xlsb - Tax Practioners Board complaints data

C.1.3 APIV – Case study 3

The following data was referenced for our Australian Property Institute Valuers case study:

- *Professional Standards Improvement Program Reports 2015, 2016 and 2020* – These annual reports provide extensive detail on the approach and resources invested by APIV in meeting its scheme administration requirements under the Professional Standards Act.
- *APIV_final 150321.pdf* - Our 2021 report on *Proposed Limitations of Liability for Australian Property Institute Valuers*
- *L310715 APIV final.pdf* – Our 2015 report on *Proposed Limitations of Liability for Australian Property Institute Valuers*
- *L300311 Property valuers extension_v2.pdf* – Our 2011 report on *Extension of Proposed Limitations of Liability for Australian Property Institute Valuers*

- *L140710 Property valuers review.pdf* - Our 2010 report on *Proposed Limitations of Liability for Australian Property Institute Valuers*
- *APIV and LSNSW scheme participation.xlsx* – Number of participants for Law Society NSW between financial years 2001/02 to 2020/21 provided by PSA.

C.1.4 Australian Prudential Regulatory Authority (APRA)

- *APRA 2021 National Claims & Policies Database* for occupation groups Legal, Financial and Real Estate
- APRA policy and claims data for more granular occupation codes than Legal, Financial and Real Estate noting these were only used to confirm trends in the broader occupation groups, The more granular data are not shown in this report.

C.1.5 Interviews

- *LSNSW*
  - Interview with Terrie Gibson, LSNSW registrations 10/11/21
  - Interview with Elissa Baxter (General Counsel & Head of Legal & Compliance, Lawcover), Jessica Jameson (Acting Director, Licensing and Registry, LSNSW) 10/03/22
- *CA ANZ*
  - Interview with Kristen Wydell (GM Prof Standards, CA ANZ) 10/11/21
  - Interview with Kristen Wydell (GM Prof Standards, CA ANZ) 01/03/22
- *APIV*
  - Interview with Sheila Kushe (GM of standards and compliance, APIV Risk & Compliance 10/11/21
  - Interview with Sheila Kushe (GM of standards and compliance, APIV Risk & Compliance 01/03/22

C.1.6 General reference data

- *Professional Standards Council Annual Report 2020-2021*
- *Public liability insurance fifth monitoring report July 2005.pdf* – ACCC's 2005 monitoring report on public liability insurance covering claim frequency and costs, premium terms and conditions, underwriting performance and personal injury writs amongst other claims.

C.2 Data quality and limitations

C.2.1 Law Society of NSW

For data sourced from our 2018 Scheme Review of Limitations of Liability we reviewed the data for internal consistency. Overall, we considered that the data is complete and of good quality. The various spreadsheets were internally consistent, consistent with one another and consistent with the summaries in the LSNSW application. We considered that the data provides a reliable basis for analysing the claim experience.

C.2.2 Chartered Accountants Australia and New Zealand

For data sourced from our 2019 Scheme Review of Limitations of Liability, we determined that the data was sufficiently reliable for analysis, noting:

- The data was sourced from an online survey with 86% of participants responding

- The scheme does not apply to fraudulent and dishonest behaviour, so it is possible that some notifications in the data are not covered by the caps
- The survey captured past claims only for participants currently in practice
- There were relatively minor issues with incomplete information.

C.2.3 Australian Property Institute Valuers

For data sourced from our 2021 Scheme Review of Limitations of Liability, we primarily used the data provided by APIV without audit, although checked for internal consistency, and that the data provided adequately reflects the claims experience against property valuers in Australia.

The data for that review was taken from an APIV survey that collected claims and policy data from potential participants of the proposed scheme. It was sent to Firm Participants of the scheme currently in force and Individual Participants holding a Certified Practising Valuer (Plant and Machinery) certification.

The claims and policy experience reported in the APIV survey appeared to be largely representative of the cohort subject to the proposed scheme due to its high completion rate: 443 of 483 recipients provided full responses to the survey (or were accounted for by another recipient in the same firm), which APIV informed us accounted for over 97% of the entire APIV participant.

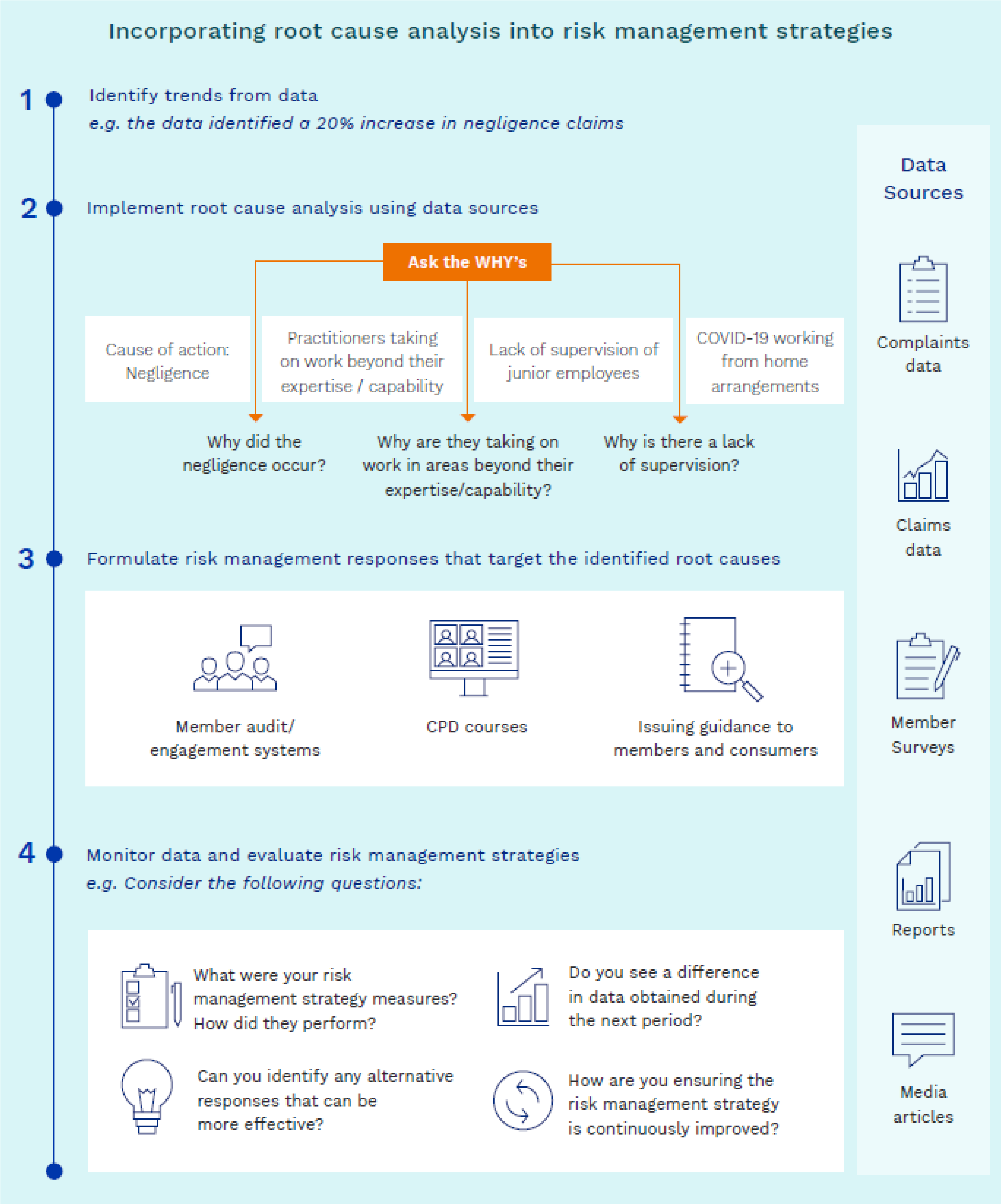
There were relatively few non-zero (damages plus defence legal, noting some claims only have defence legal costs) claims for APIV comprising 71 in total.

Appendix D Root cause analysis

D.1 Root cause analysis

The PSC approach to root cause analysis is shown in Figure D.1 (taken from PSC 2020-2021 Annual Report).

Figure D.1 – PSC approach to root cause analysis



Appendix E Details of our anlaysis

We performed the following analyses in preparing the data used in our three case studies.

E.1 Development of schemes claims experience to ultimate

We used the following methods to estimate the ultimate claims experience for the case studies:

Ultimate number of claims

For LSNSW, CA ANZ and APIV we developed reported or settled claims to ultimate by referencing historical (older years expected to be fully developed) proportions of claims/notifications and applied to notifications for the more recent years.

Ultimate claim size

For LSNSW, we developed reported incurred losses to ultimate by referencing LSNSW historical development which allowed ultimate average claim size to be calculated.

For CA ANZ, we derived factors to develop average claim size to ultimate using industry data (APRA NCPD data for occupation groups Legal and Financial) by developing claim numbers and claims costs to ultimate and then calculating factors to develop reported average size to ultimate average size.

For APIV, ultimate average claim sizes we referenced historical APIV average claim sizes from older years expected to be fully developed.

E.2 Projection of schemes claims experience for recent years

Where we did not have recent data for LSNSW and APIV we applied industry trends (from APRA NCPD data for occupation groups Legal and Financial) to the respective schemes.

E.3 Comparisons against APRA NCPD benchmarks

Industry benchmarks were constructed from APRA NCPD data for the three occupation groups Legal (for LSNSW), Financial (for CA ANZ) and Real Estate (for APIV). Scheme comparisons against industry benchmarks are shown in Appendix F.

Appendix F Comparisons against APRA NCPD benchmarks

F.1 LSNSW

Figure F.1 shows reported claims with APRA benchmark (APRA benchmark has been rescaled to compare trends with scheme experience rather than absolute level).

Figure F.1 – LSNSW claim count

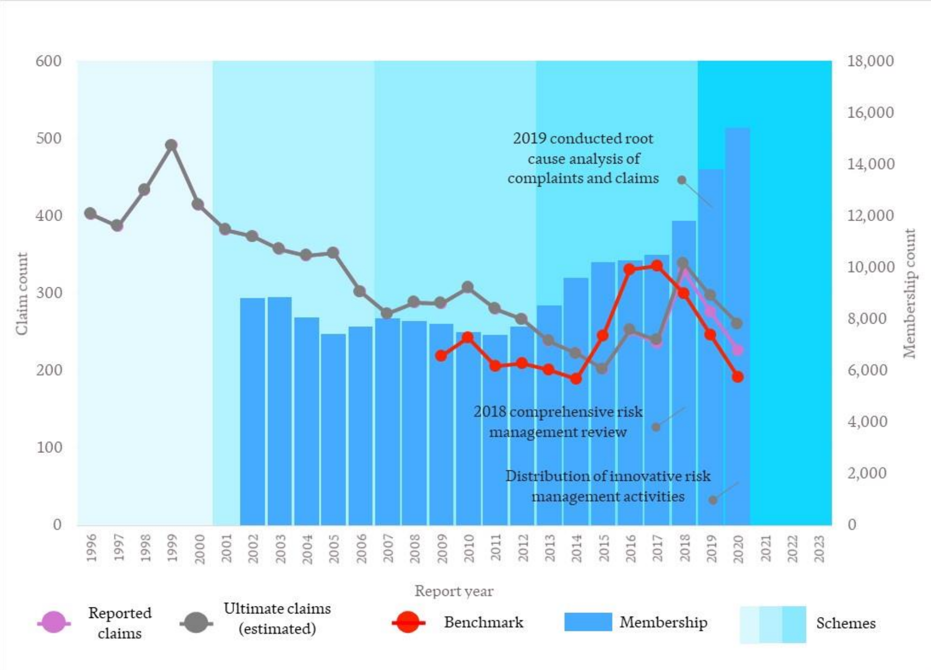
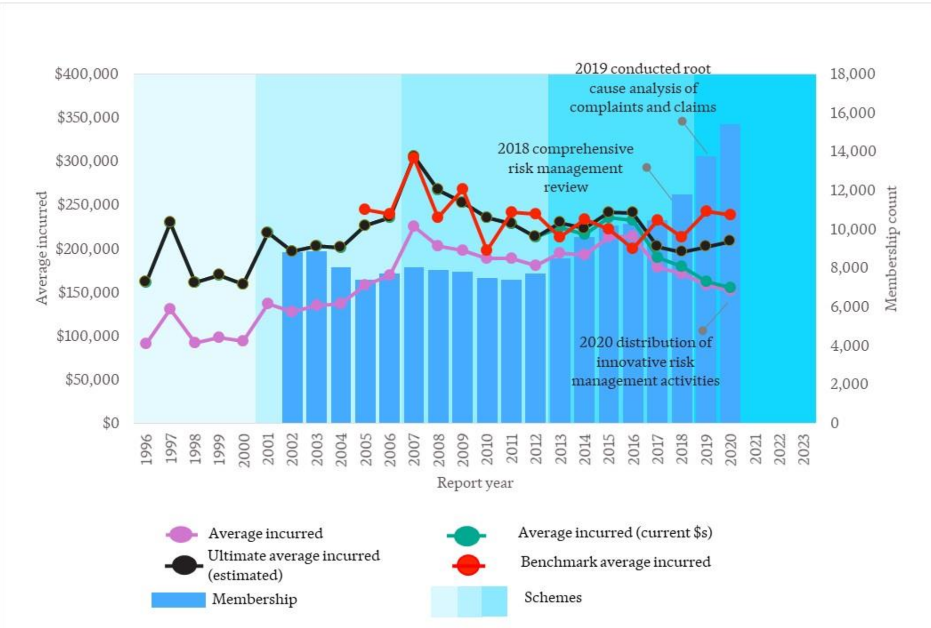


Figure F.2 shows average reported incurred size with APRA benchmark (APRA benchmark has been rescaled to compare trends with scheme experience rather than absolute level).

Figure F.2 – LSNSW average reported claim size



F.2 CA ANZ

Figure F.3 shows count of settled claims with APRA benchmark (APRA benchmark has been rescaled to compare trends with scheme experience rather than absolute level).

Figure F.3 – CA ANZ notification and claim counts

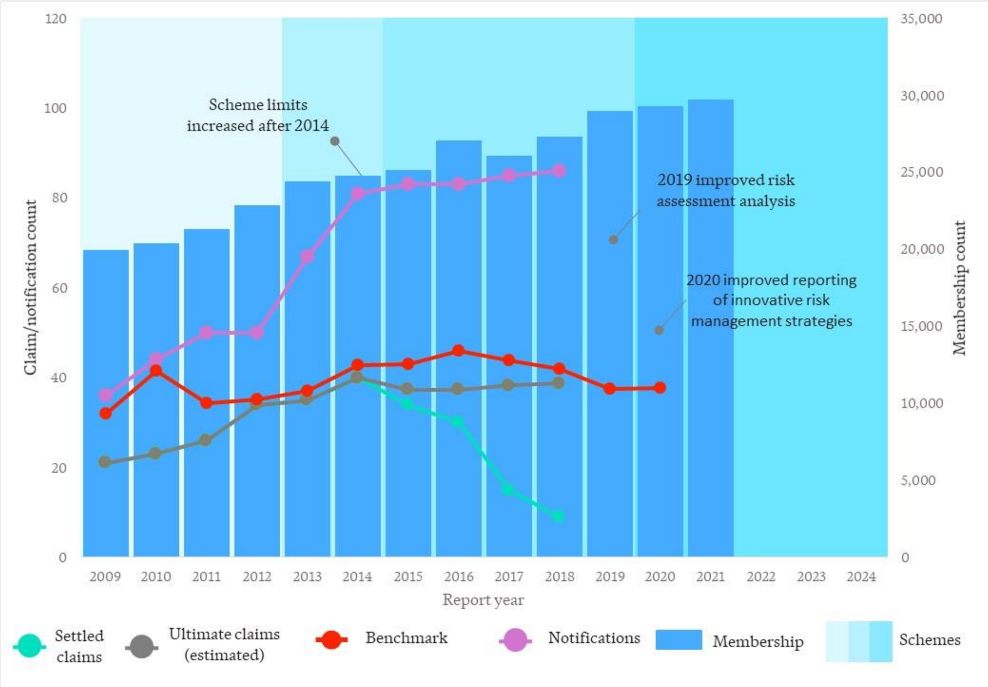
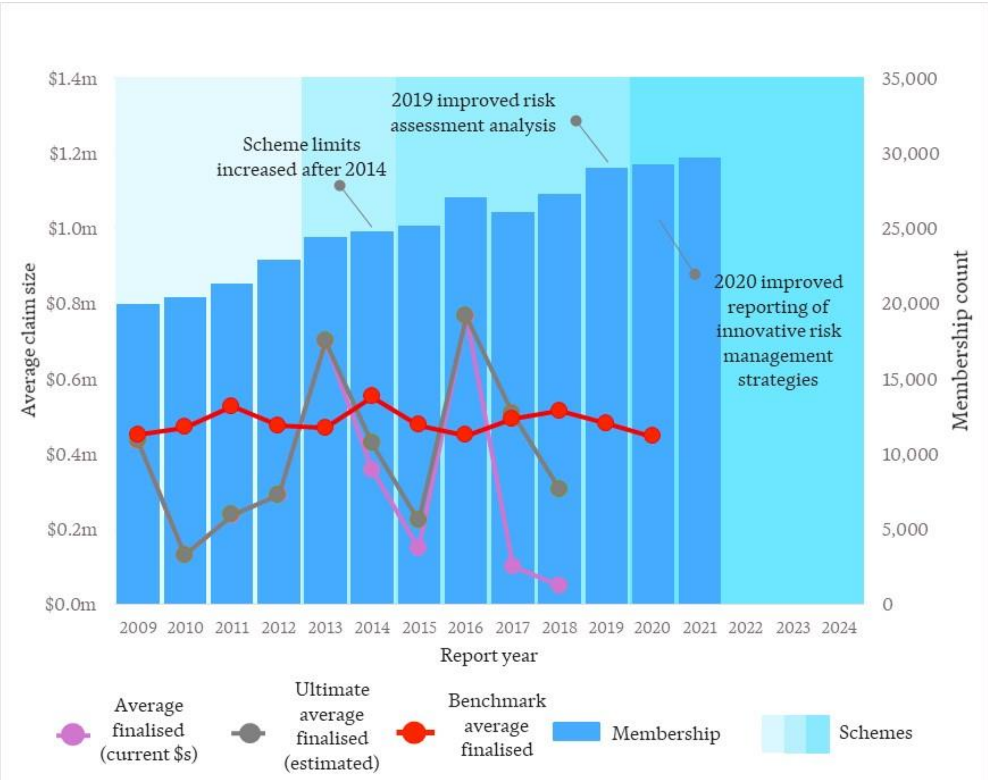


Figure F.4 shows average settled claim size with APRA benchmark (APRA benchmark has been rescaled to compare trends with scheme experience rather than absolute level).

Figure F.4 – CA ANZ average finalised claims



F.3 APIV

Figure F.5 shows number of claims reported with APRA benchmark (APRA benchmark has been rescaled to compare trends with scheme experience rather than absolute level).

Figure F.5 – APIV claim counts (non-zero claims)

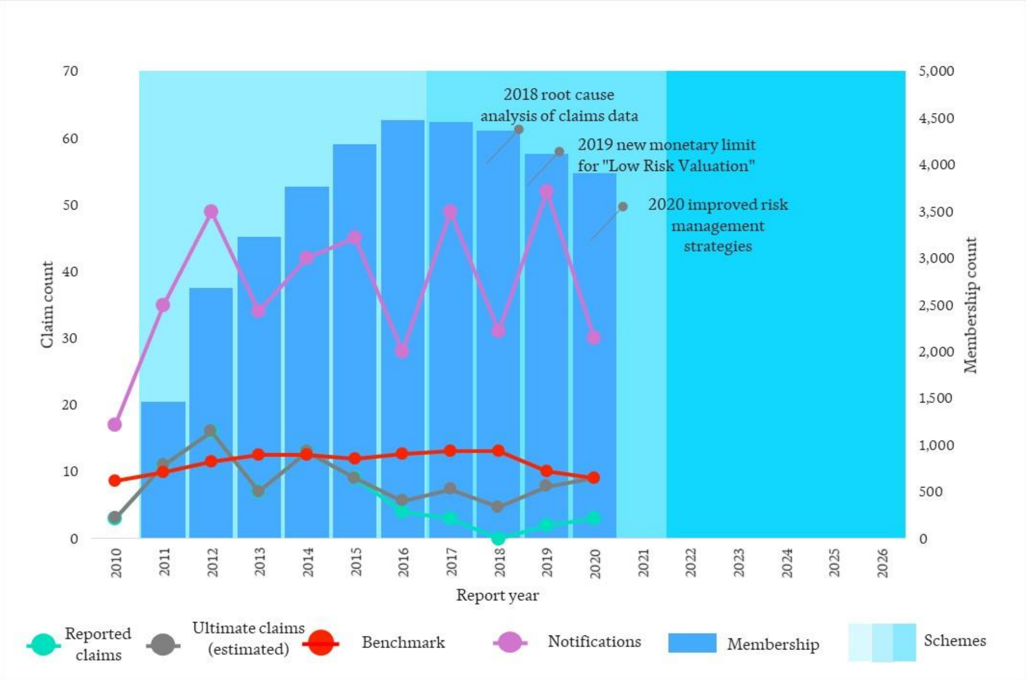
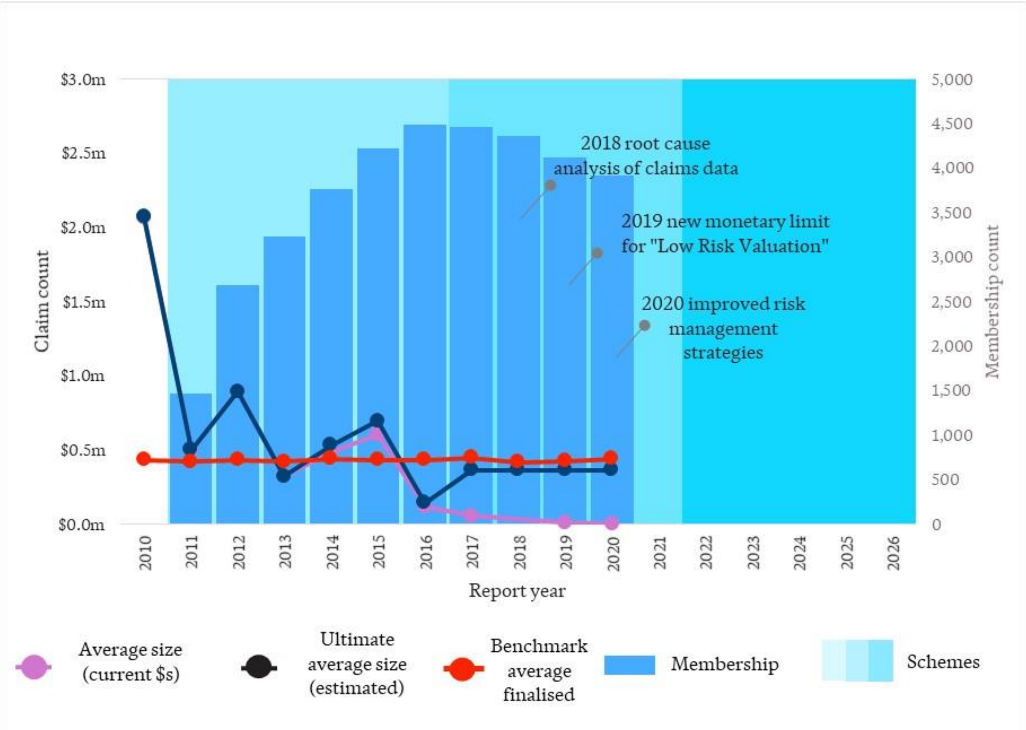


Figure F.6 shows average settled claim size with APRA benchmark (APRA benchmark has been rescaled to compare trends with scheme experience rather than absolute level).

Figure F.6 – APIV average settled claim size



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