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Australian Securities &  
Investments Commission

# ASIC Licensing Liaison Webinar

Warren Day – Chief Operating Officer

4 November 2021



# AGENDA

<b>Acknowledgement of Country and Opening</b>	Warren Day
<b>ASIC's Innovation Hub and Enhanced Regulatory Sandbox</b>	Mark Adams
<b>Financial services licensing and superannuation trustee reforms</b>	Alex Purvis
<b>ASIC Licensing assessment performance</b>	Peng Lee
<b>Legislative and other reforms</b>	Nicholas Vonarx / Gerard Mithen
<b>Q &amp; A</b>	

Please send your questions to us via the Webex Q & A feature.



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# Opening

**Warren Day**  
Chief Operating Officer





# Opening

- New ASIC Chair and Commission
- PricewaterhouseCoopers review
- Financial Regulator Assessment Authority
- Modernising business registers program



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# ASIC's Innovation Hub and Enhanced Regulatory Sandbox

**Mark Adams**  
Senior Executive Leader, Strategic  
Intelligence and Co-Ordinator,  
Innovation Hub  
Regional Commissioner, NSW





## Financial innovation - ASIC's objective

- We see the potential for new products and services to meet the needs of financial consumers and market participants more efficiently and cost effectively

Thus, our objective is:

- To promote the provision of fair and professional financial services and markets in a digital environment

While:

- Balancing the benefits of innovation against the potential risks to consumers and market integrity



# Why an Innovation Hub?

- Help innovative businesses **navigate the regulatory system – through the provision of informal assistance.**
- Help fintechs and regulatory technologies (regtechs) **understand how regulatory framework affects their business.**
- **Help ASIC understand innovative development.**
- **We also work with existing licensees as existing business as usual (BAU) engagement.**

**Email address:**

**[innovationhub@asic.gov.au](mailto:innovationhub@asic.gov.au)**

**Website:**

**[asic.gov.au/for-business/innovation-hub](https://asic.gov.au/for-business/innovation-hub)**

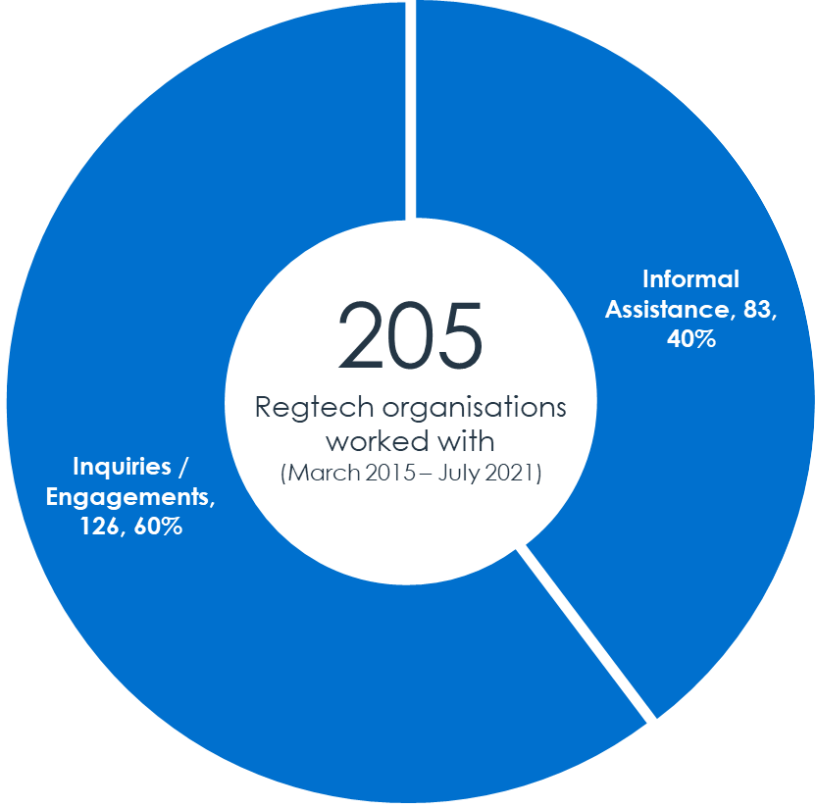
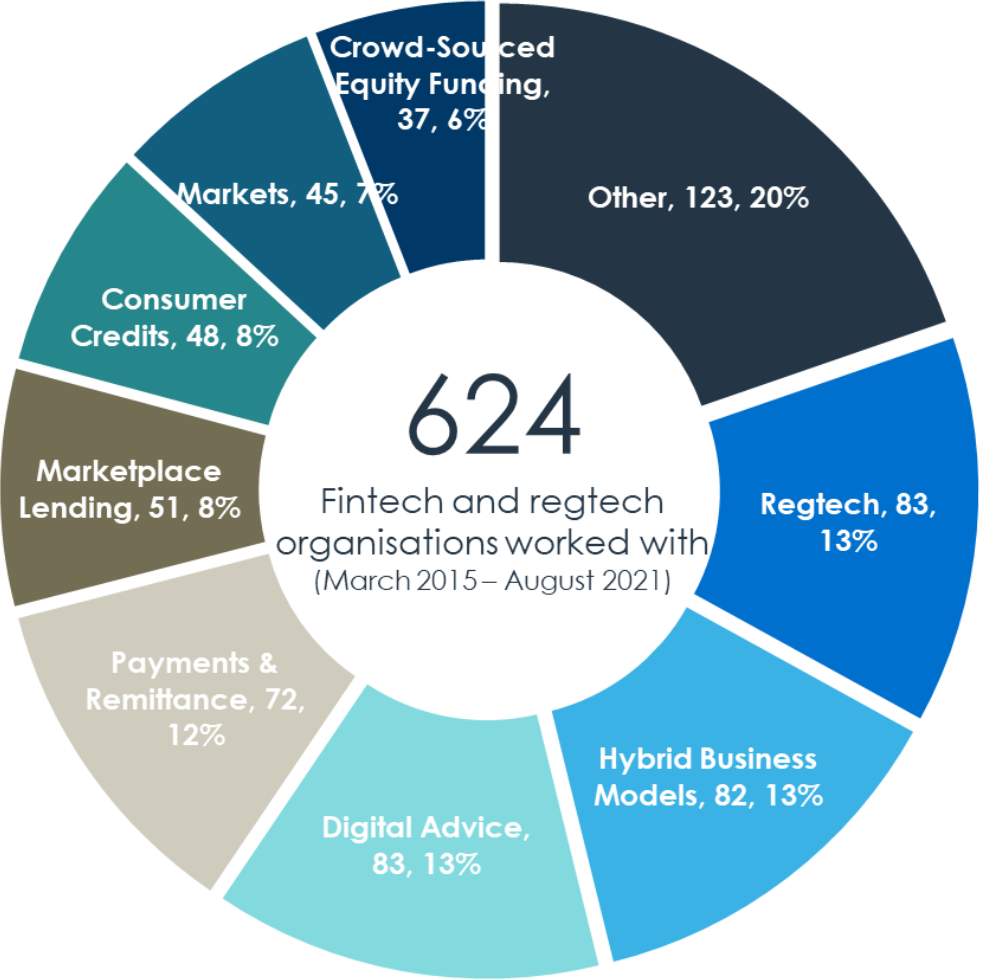


# Seeking information assistance – through the Innovation Hub

1. Please use the form to request assistance - have **clear information** about you and your business prepared – this helps both of us
2. Inform us of your **innovation and its impacts**
3. Meet our eligibility requirements:
  - **Are you a start-up/scale-up?**
  - **What is your innovation and business model?**
  - **What kinds of consumers or businesses are you helping?**
4. What **regulatory issues** do you think you'll be facing?
5. What are the **benefits and risks** of your solution?



# Informal Assistance Statistics



Note: small differences in numbers come about due to timing differences in reporting processes

# The enhanced regulatory sandbox (ERS) is a licensing exemption - available now



ERS available since 1 September 2020 – it supersedes the previous ASIC Sandbox



Provides exemption from the AFSL and ACL licensing regimes for testing certain eligible financial services/products and credit activities for up to 24 months



ERS is a 'class waiver' sandbox – it differs from the bespoke sandboxes available in some comparable overseas jurisdictions (e.g. FCA and MAS)



Purpose is to facilitate innovation by fintechs while also enabling consumer / investor protection, trust and confidence – balanced approach to risk



# How to apply to use the sandbox

- Must notify ASIC of intent to use the sandbox in the prescribed notification form
- Satisfy ASIC of a range of matters including:
  - Fit and proper (probity) requirements
  - ‘net public benefit’ test
  - ‘innovation’ test
  - membership of the Australian Financial Complaints Authority (AFCA)
  - minimum professional indemnity (PI) requirements
- ASIC will adopt a pragmatic approach to assessing the notification – will rely on information provided (ordinarily we will not requisition)
- Assessment by Licensing, Hub and specialist business teams depending on proposed business model
- ASIC has 30 days to assess a notification and provide a decision in writing

## Enhanced regulatory sandbox - status so far



Seven entities currently testing in ERS – recorded on ASIC's ERS Public Register



18 applications not accepted – incomplete or ineligible



One ERS applications currently under assessment



Hub receiving and managing regular stream of ERS enquiries / potential interest

# More information

## Enhanced regulatory sandbox

The Australian Government's enhanced regulatory sandbox is now available to entities that wish to test their innovative financial services or credit activities. Using the sandbox, you can test your service or activity without an Australian financial services (AFS) licence or Australian credit licence for up to 24 months.

Check that you meet the general conditions that apply, and that the financial service and product, or credit activity, you plan to test are eligible.

### You must meet entry requirements

You must:

- › not be licensed for, or have previously tested, the proposed financial service or credit activity
- › satisfy minimum requirements on probity, net public benefit and innovation
- › plan to test for no more than 24 months.

### You must comply with ongoing conditions

You must:

- › provide only eligible financial services and products or engage in only eligible credit activities
- › have total customer exposure of no more than \$5 million
- › limit individual retail client exposure to \$10,000 for certain products
- › have adequate compensation arrangements (such as professional indemnity insurance)
- › be a member of the Australian Financial Complaints Authority
- › meet disclosure and conduct requirements.

### You must only test eligible financial services and credit activities

#### Eligible

- › Providing personal or general advice
- › Dealing in or distributing eligible financial products
- › Issuing non-cash payment facilities
- › Issuing insurance (including as an agent)
- › Providing a crowd-funding service
- › Lending money to consumers

#### Not eligible

- › Issuing other financial products
- › Operating your own managed investment scheme

### The type of client determines what are eligible products

#### Wholesale clients

- › All products except derivatives and margin lending facilities

#### Retail clients and credit consumers

- › Deposit products
- › Non-cash payment facilities
- › General insurance (except consumer credit insurance)
- › Life insurance
- › Superannuation
- › Simple managed investment schemes
- › Commonwealth debentures, stocks or bonds
- › Listed domestic or recognised international securities
- › Company securities under a crowd-sourced funding offer
- › Consumer credit contracts which have certain features including a term of no more than 4 years, and a credit limit of between \$2,001 and \$25,000.

### What to do if you are eligible to use the enhanced regulatory sandbox

Next steps:

You should read Information Sheet 248 Enhanced regulatory sandbox (INFO 248) for more details on exemption conditions and obligations, and how to apply.

### What to do if you are not eligible to use the enhanced regulatory sandbox

Other options:

- › Rely on an existing statutory exemption to test the financial service or credit activity
- › Request individual relief from ASIC
- › Act on behalf of an AFS or credit licensee
- › Apply for an AFS or credit licence from ASIC.

- Innovation Hub ERS webpage ([asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox](https://asic.gov.au/for-business/innovation-hub/enhanced-regulatory-sandbox))
- Information Sheet INFO 248
- ERS Infographic



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# Financial services licensing and superannuation trustee reforms

**Alex Purvis,**  
Senior Manager, Superannuation





# Superannuation trustee reforms

## 1 Why the reforms?

Delivering as conduct regulator in superannuation: significance of the licensing changes

## 2 What has changed?

ASIC's role and responsibilities, licensing changes and co-regulating with APRA

## 3 How are you impacted?

## ASIC as the 'Conduct Regulator'

Limited trustee activities fell within the scope of '**financial services**' regulation.

*Trustees were not required to carry out all activities "efficiently, honestly and fairly"*

### Exemptions for non-public offer trustees

reg 7.6.01(1)(a) – do not need an AFSL to deal in financial products

But now, the scope of conduct covered by ASIC's consumer protection powers is broader because of the creation of a new financial service - '**providing a superannuation trustee service**', that applies to all superannuation trustees.



# Licensing changes

**\$3,303T**

Total assets

**24.4 M**

No. of accts

Type of fund

14

Corporate

33

Industry

35

Public sector

93

Retail

599,394

Funds with less than 5 members



RSE licensees authorised by their AFSL to deal in superannuation

Authorised by law to 'provide a superannuation trustee service' from 1 January 2021.



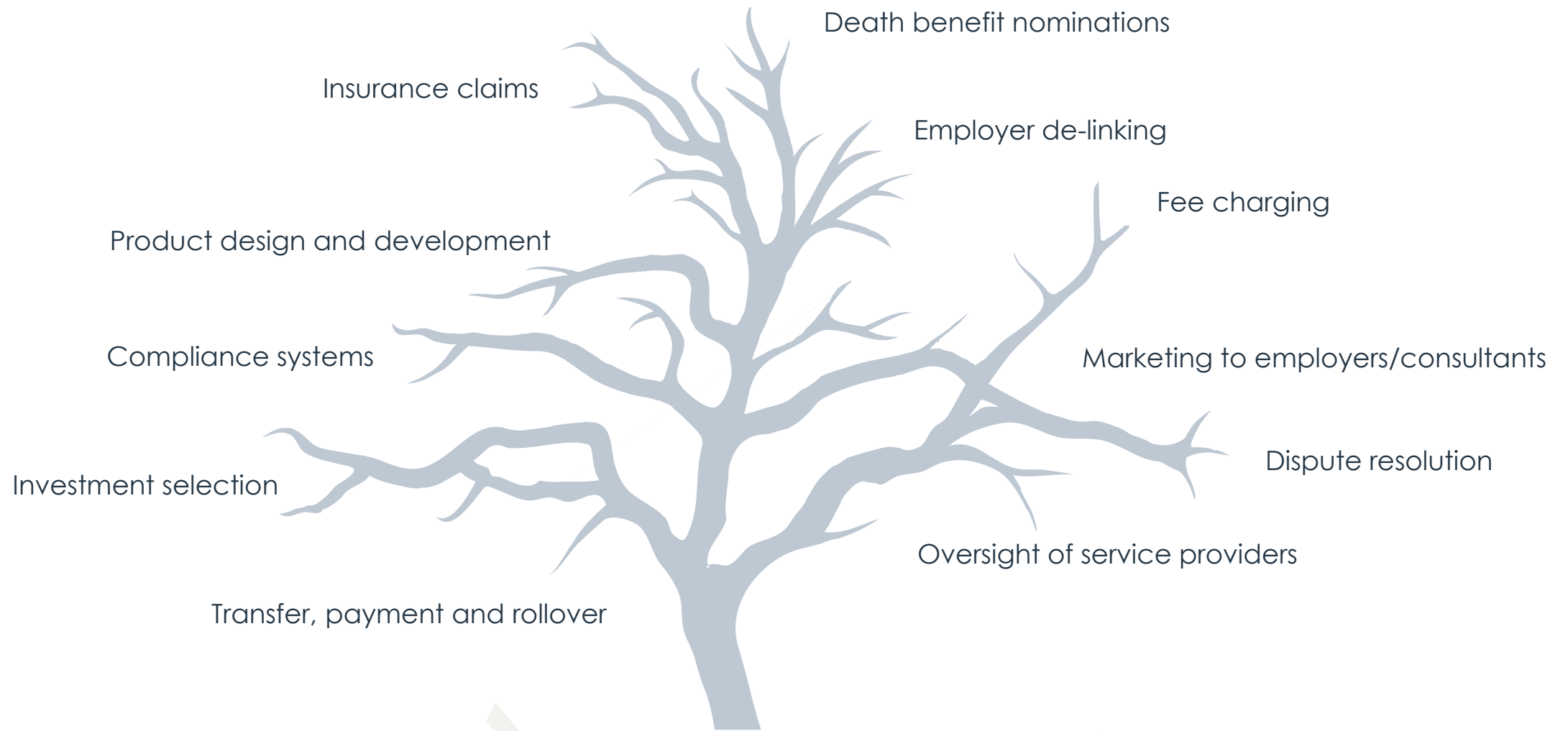
RSE licensees not authorised to deal in superannuation

Application required



New entrants

Source: ASFA statistics September 2021



## What activities constitute 'provision of a superannuation trustee service'?

# General obligations

Do all things necessary to ensure that the superannuation trustee service is provided **efficiently, honestly and fairly**

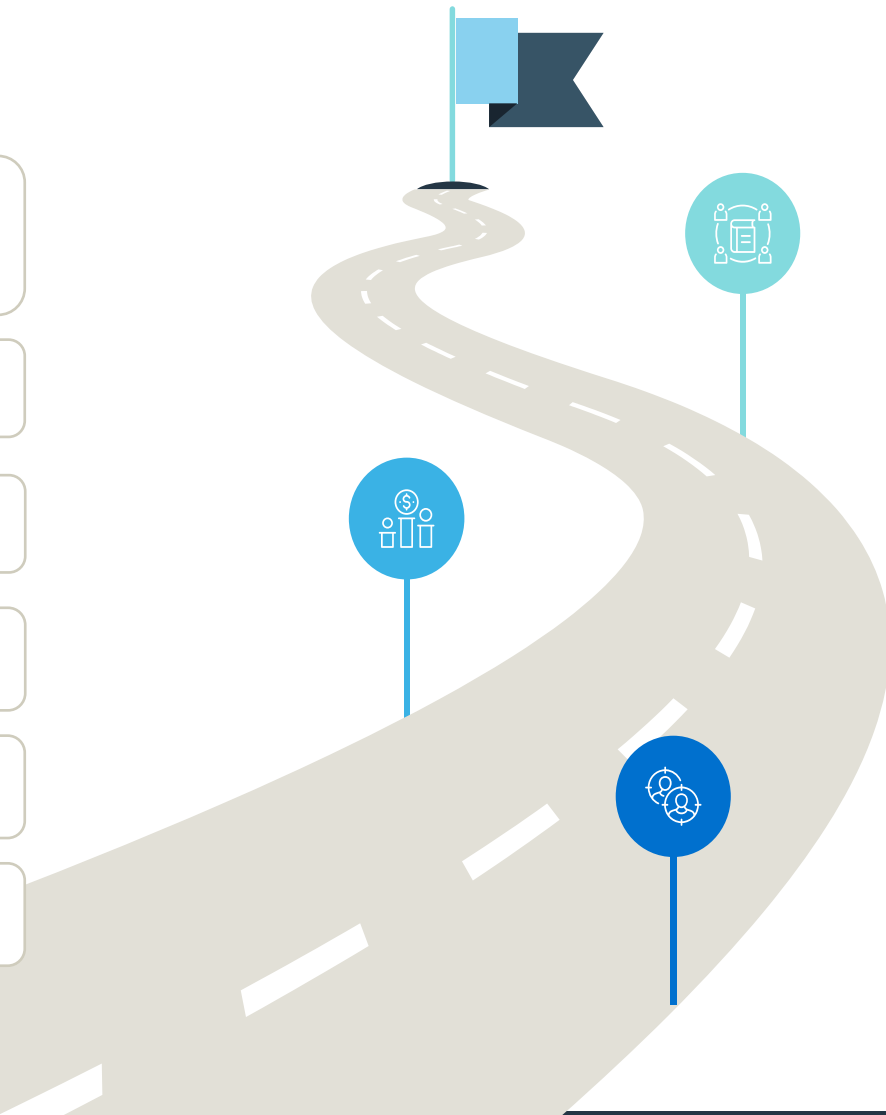
Have in place adequate arrangements for the management of **conflicts of interest**

Comply with the **conditions of the licence** and **financial services laws**

Maintain **competence** to provide financial services

Ensure that **representatives are adequately trained and competent** to provide the relevant financial services

Have **dispute resolution systems** in place





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# ASIC Licensing - performance

**Peng Lee**  
Senior Executive Leader, Licensing





# Key points

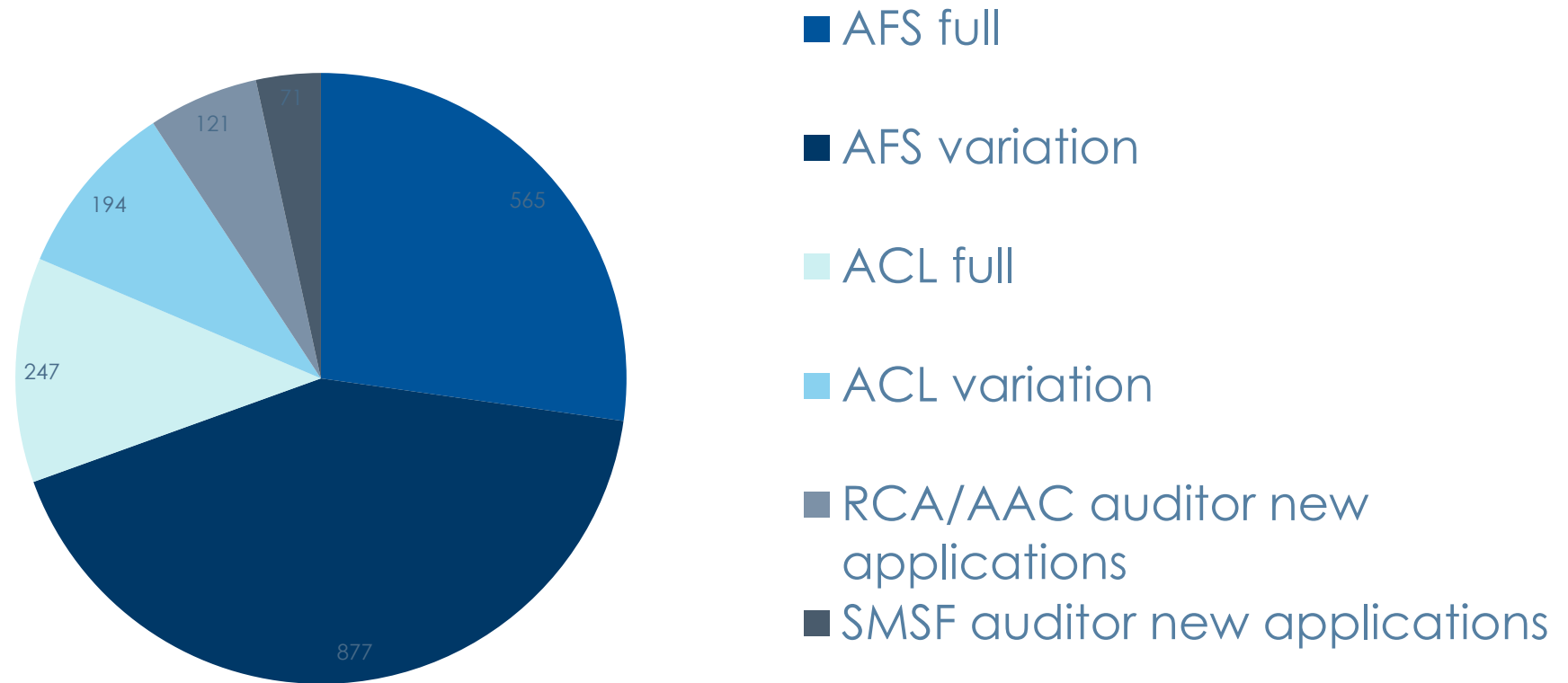
- Significantly more licence applications lodged in FY20-21 (up 40%).
- Licensing staff losses (senior (4) and junior (5)).
- Met FY20-21 service charter timeframes
- Still tracking well this YTD but some challenges.

Pandemic impacts: modified fit and proper checks, approved delays in commencing business

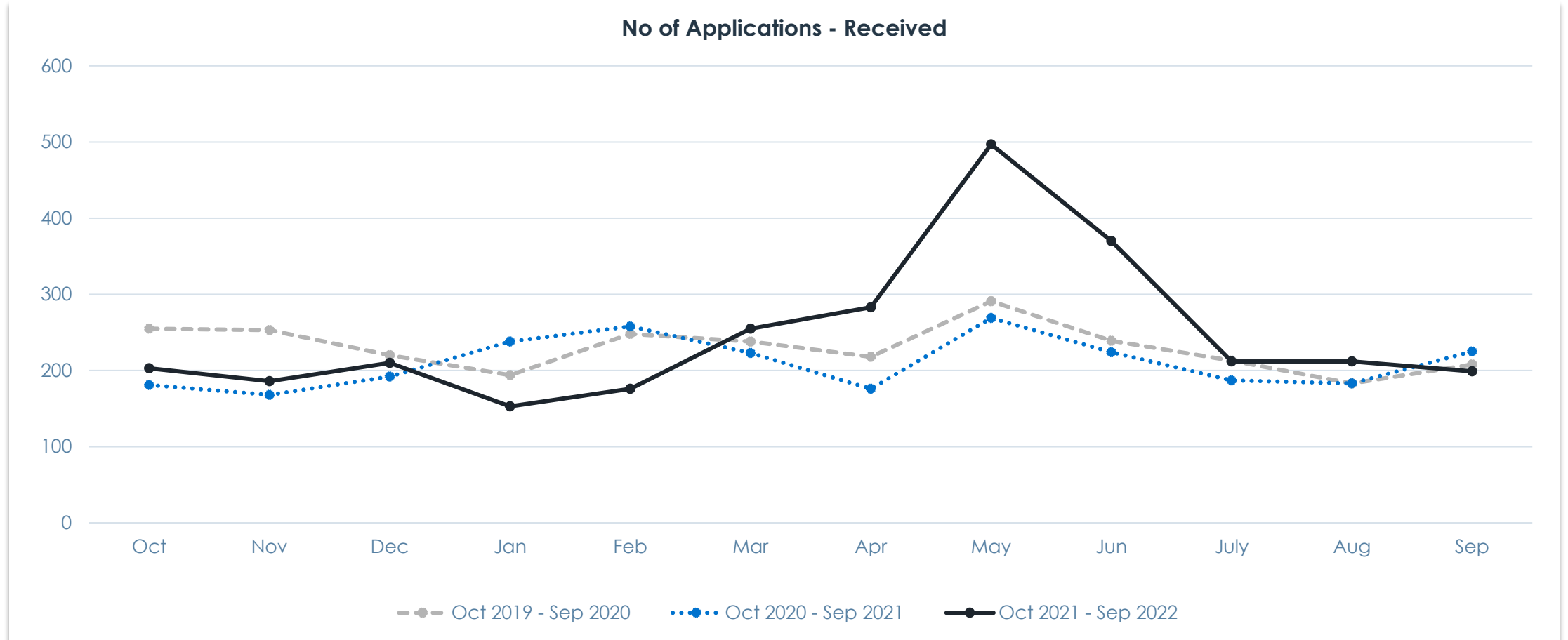
- Invite your feedback:
  - What do you want to hear about?
  - What do you want to talk about?

# Snap shot: 2020-21 volumes

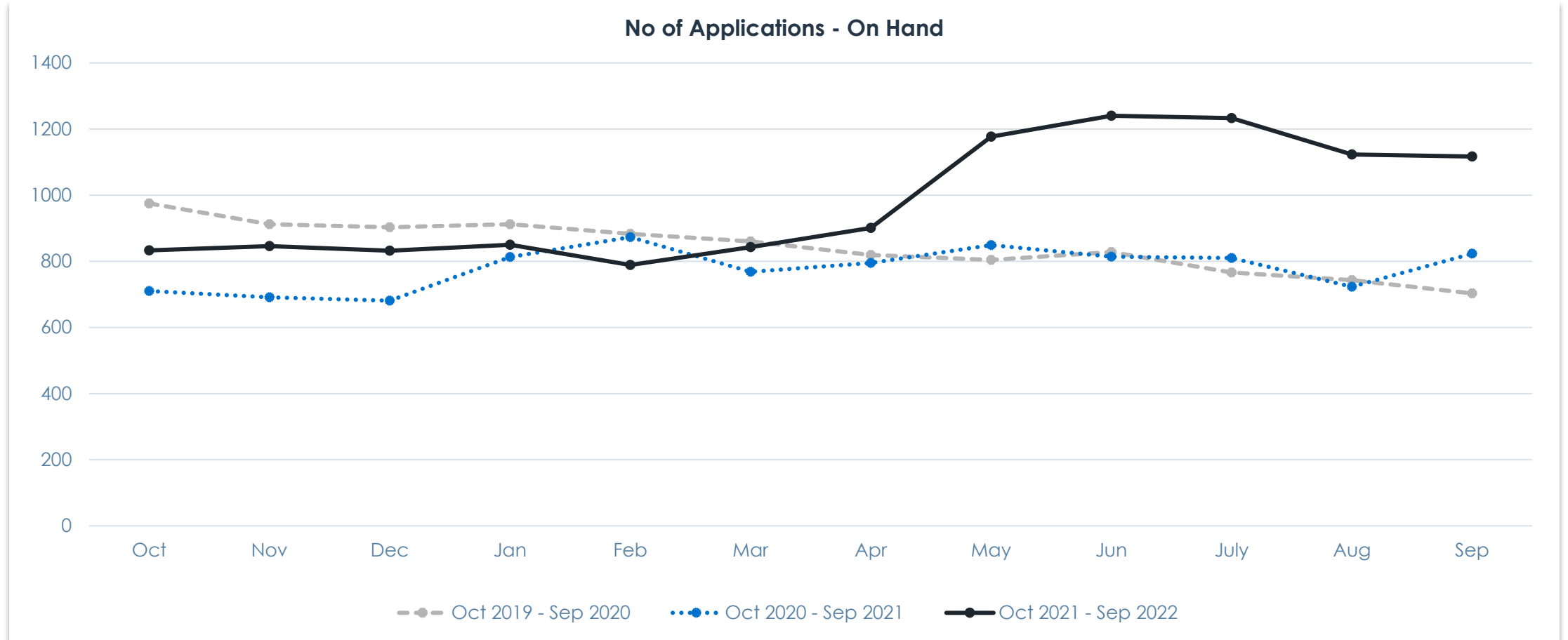
Volume received in period by category - 20-21



# AFS, ACL & Auditor applications received: 3 years

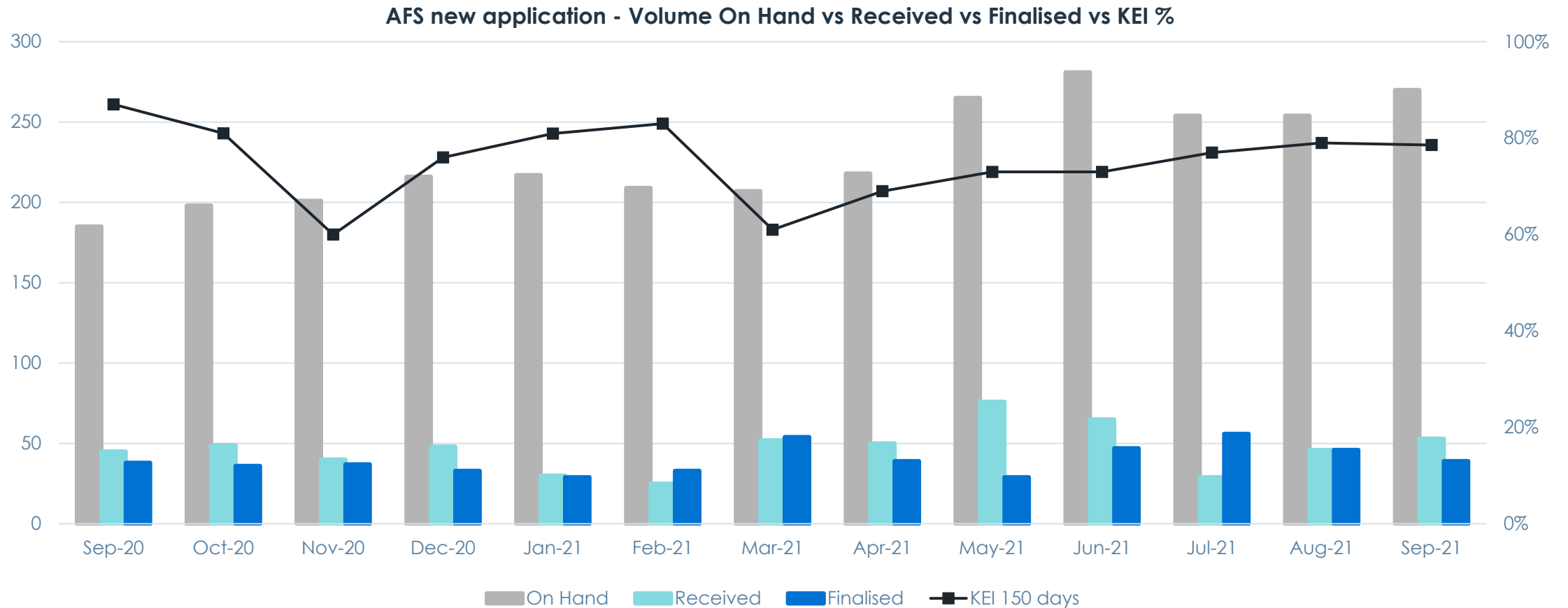


# AFS, ACL & Auditor applications on-hand: 3 years

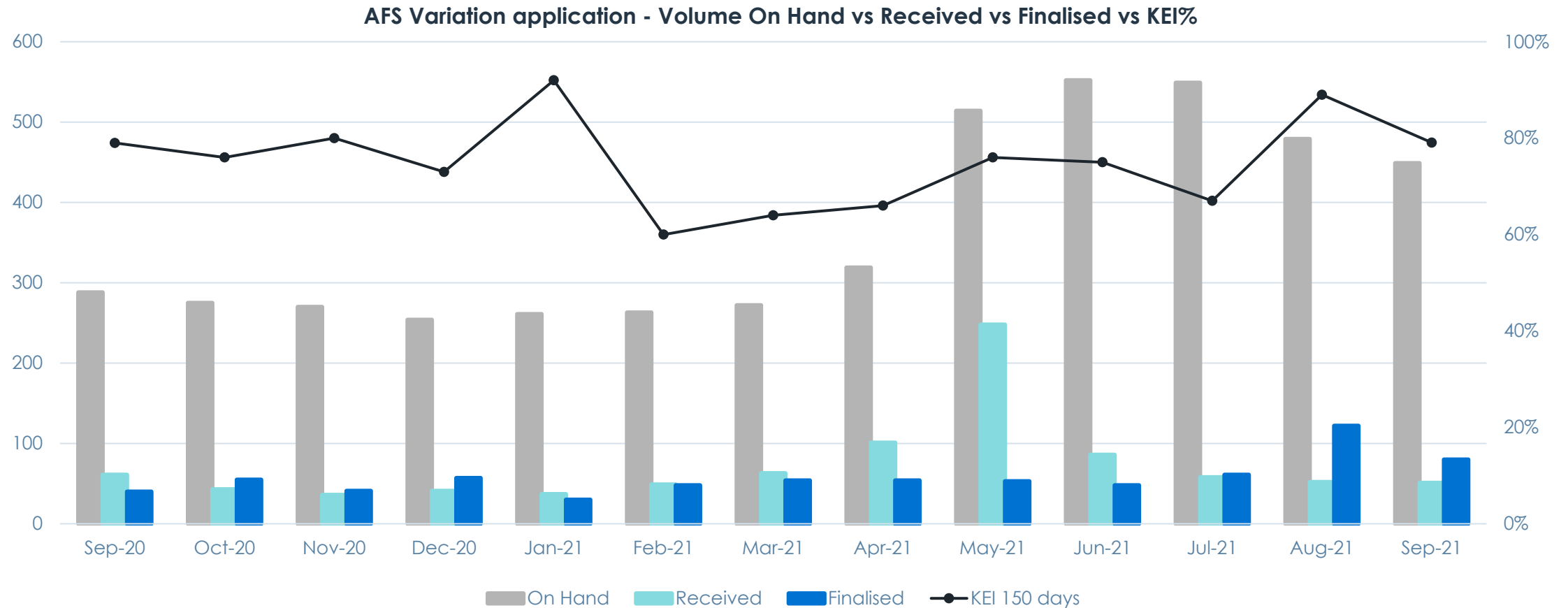




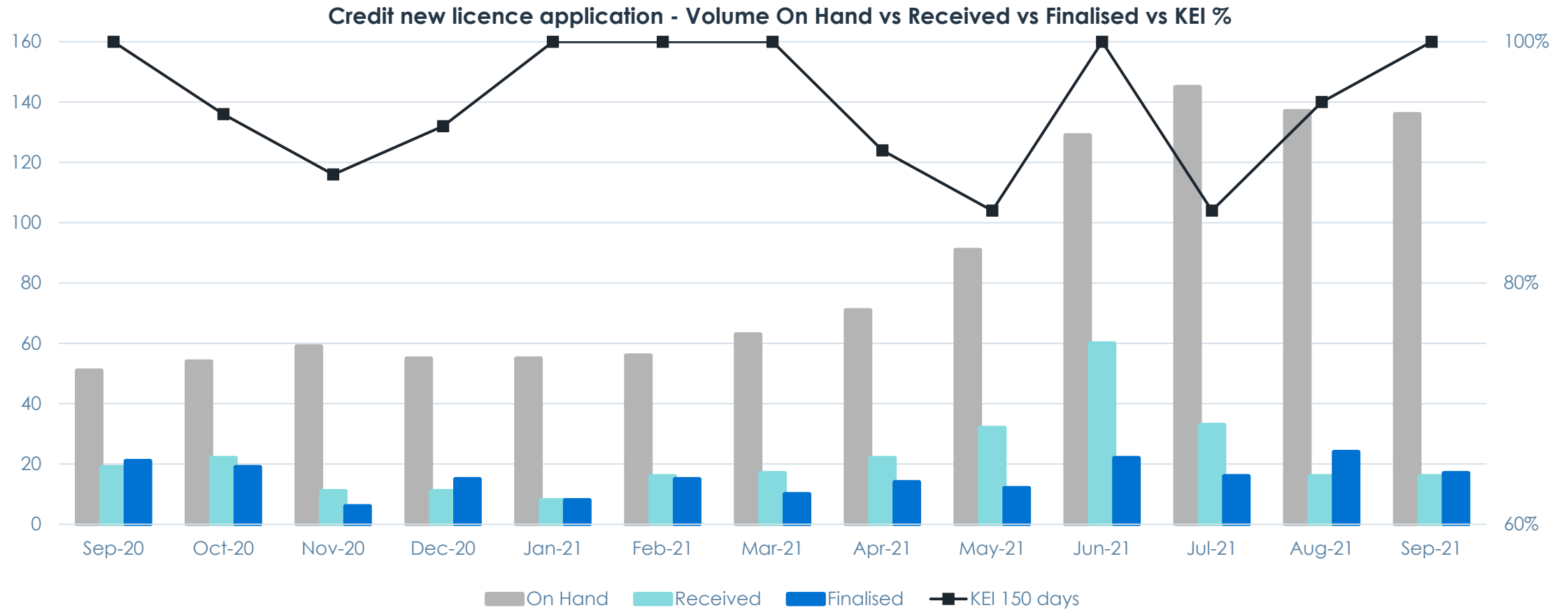
# AFSL: New licence applications – Sep 20 to Sep 21 trend



# AFSL: Variation applications - Sep 20 to Sep 21 trend

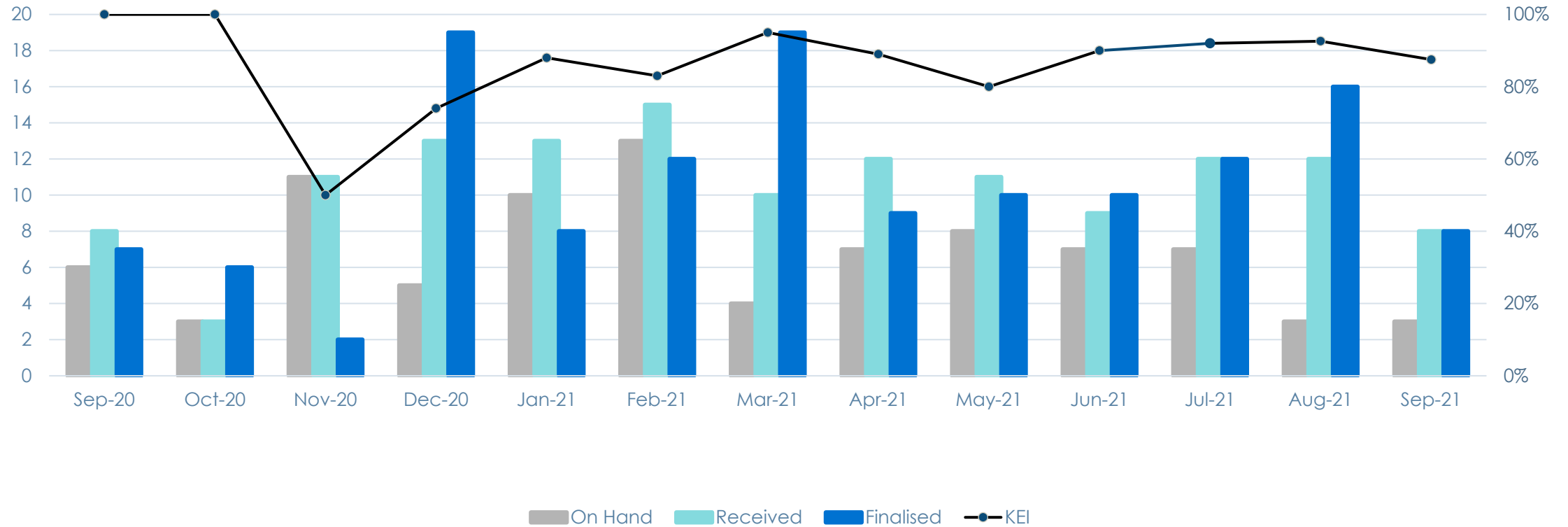


# ACL: Sep 20 to Sep 21 trend

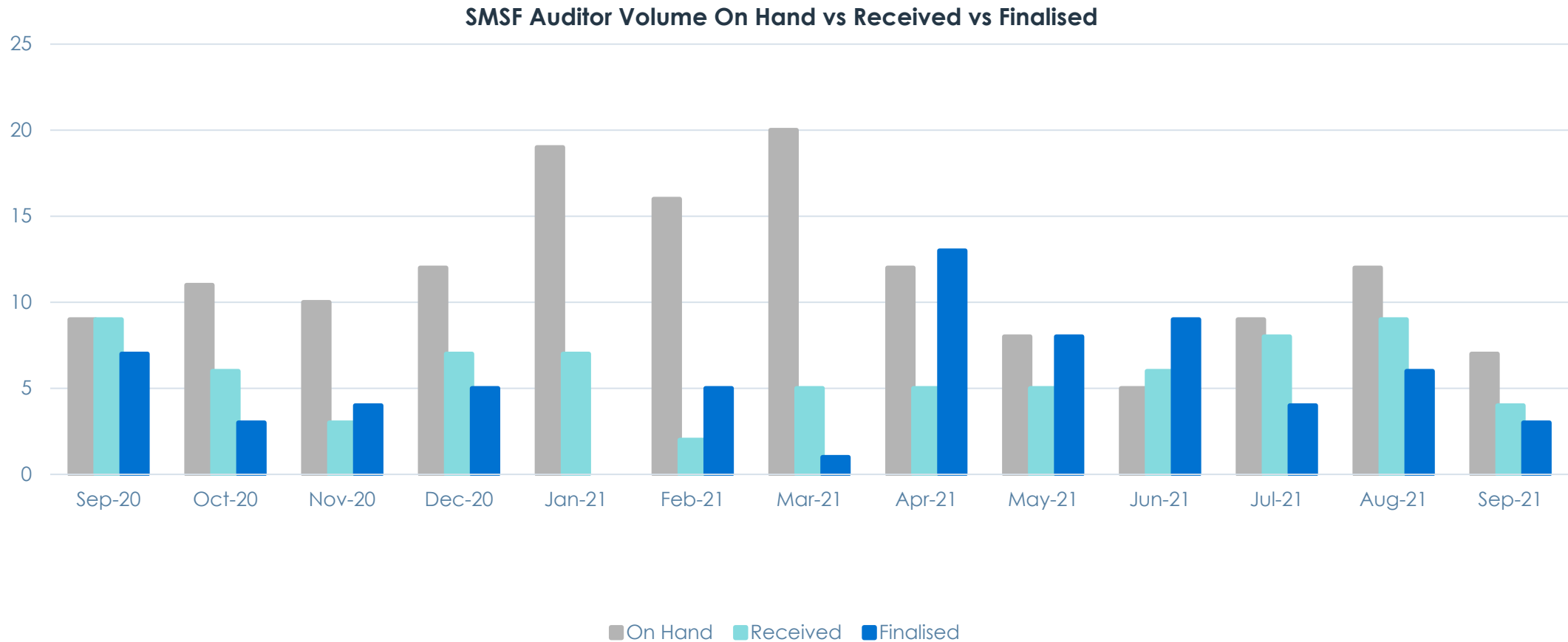


# Company Auditors: Sep 20 to Sep 21 trend

Auditor (Authorised Audit Company & Registered Company Auditor)  
On Hand vs Received vs Finalised vs KEI %



# SMSF Auditors: Sep 20 to Sep 21 trend

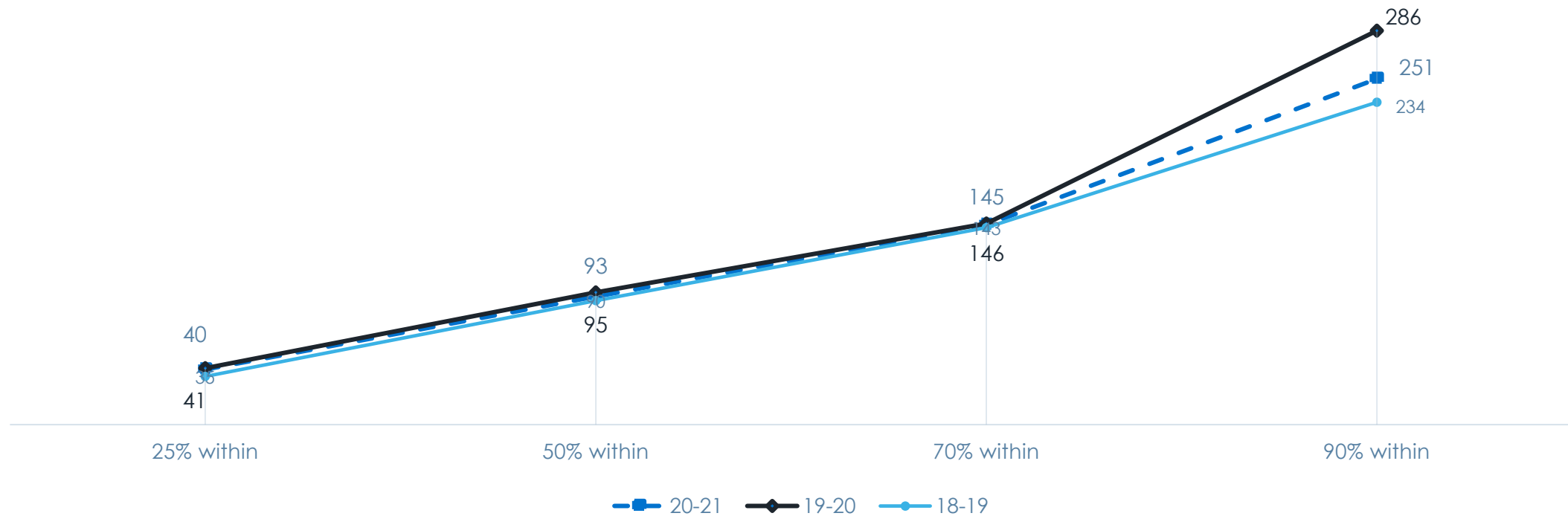


## Performance: % of AFSL and ACL within KEI

Key indicator	2018-19 150 days	2018-19 240 days	2019-20 150 days	2019-20 240 days	2020-21 150 days	2020-21 240 days
Applying for a new AFS licence	73%	86%	76%	89%	74%	91%
Applying for a varied AFS licence	80%	90%	76%	88%	75%	88%
Applying for a new credit licence	92%	96%	96%	94%	95%	98%
Applying for a varied credit licence	96%	98%	96%	97%	95%	97%

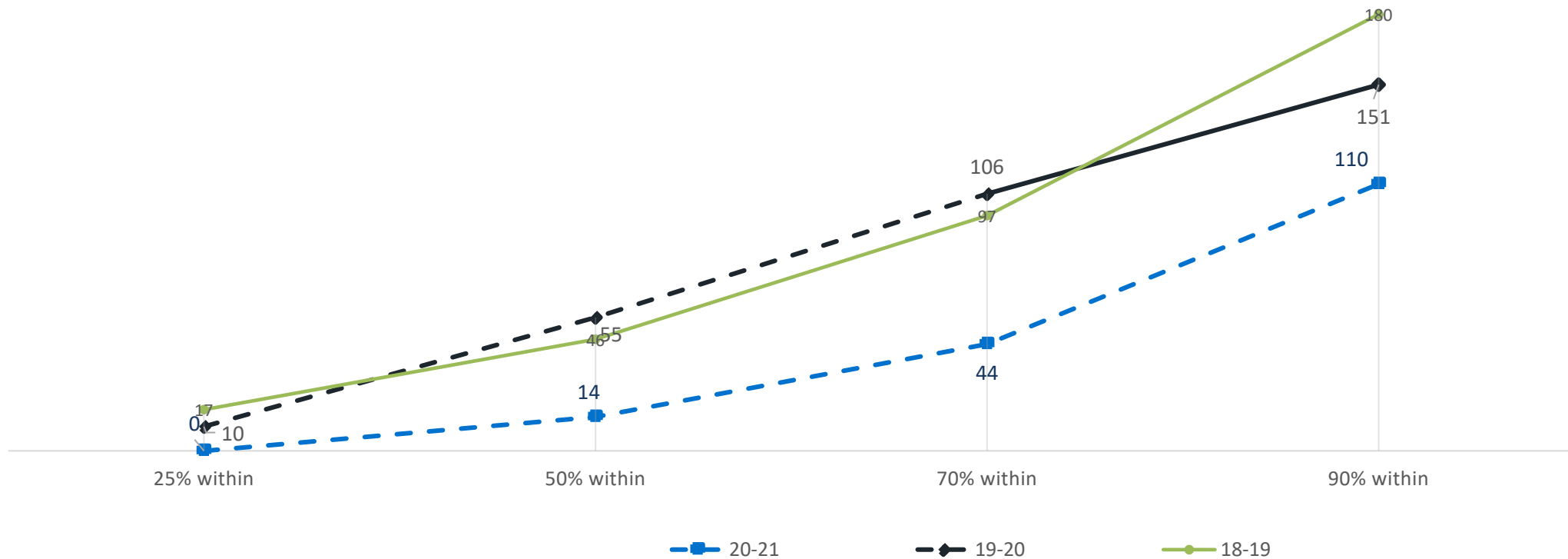
# AFSL performance: days taken to reach % decisions

AFSL - FY 2021 vs FY 1920 vs FY 1819



# ACL performance: days taken to reach % decisions

ACL - FY 2021 vs FY 1920 vs FY 1819



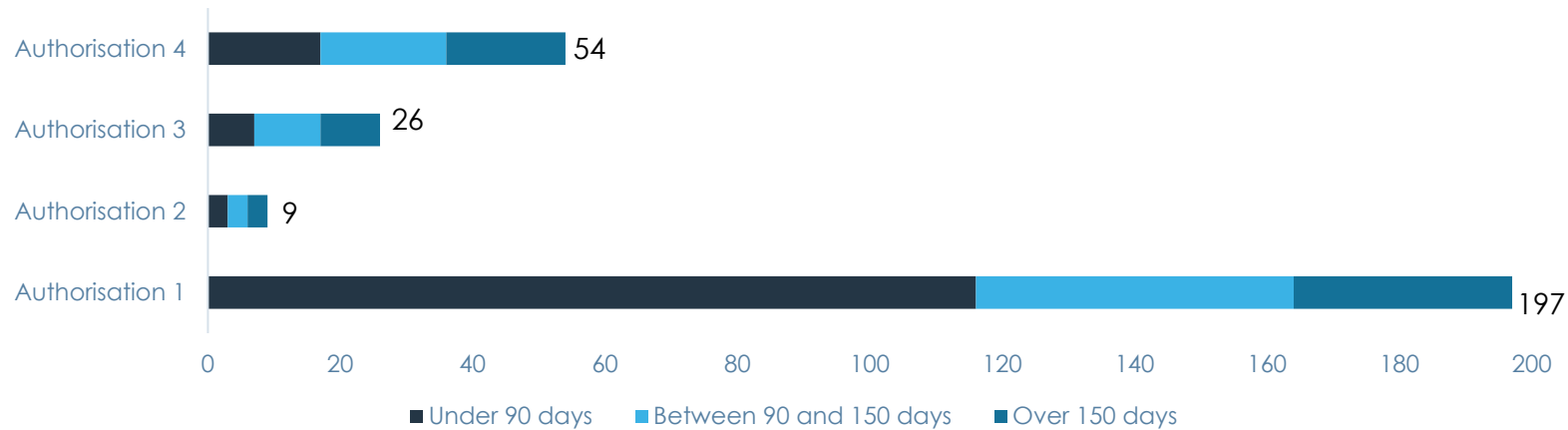


# New AFSL applications – number of applications approved

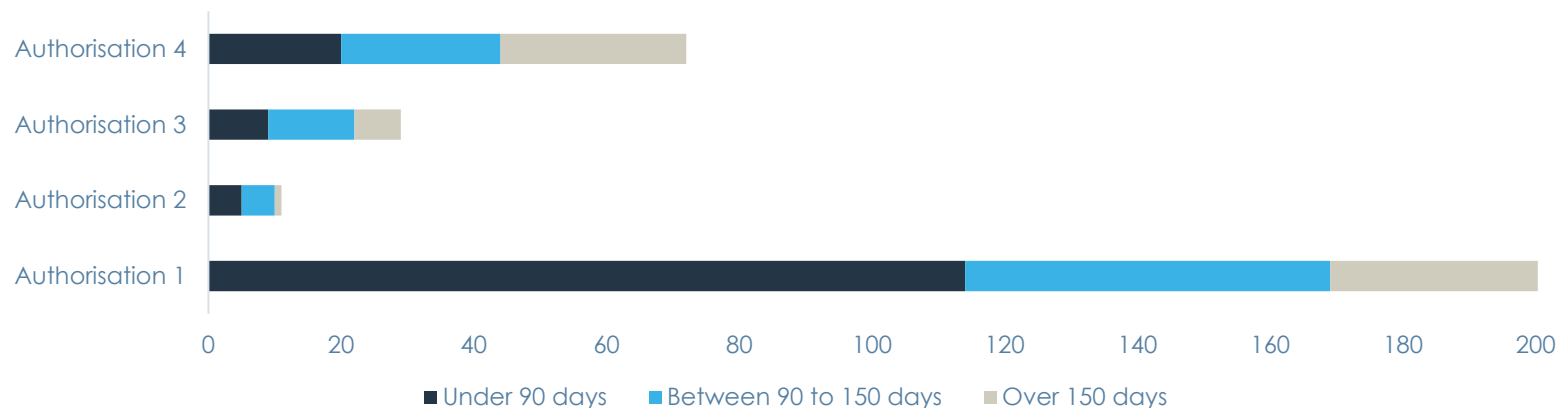
Authorisation type	Business model	FY19-20	FY20-21
Authorisation 1	Financial advisers	197	211
Authorisation 2	Intermediaries in super and insurance	9	11
Authorisation 3	MDA providers, remittance providers, margin lending providers	26	29
Authorisation 4	Market makers, responsible entities, traditional trustee companies, custodians, crowd sourced equity funders	54	72

# New AFSL applications per authorisation categories: days to approval

FY 1920



FY 2021



## Decisions on applications 20-21

Outcome	AFS new and variation	Credit new and variation
Approved	778 (79%)	219 (66%)
Rejected for lodgement	116 (12%)	36 (11%)
Withdrawn	92 (9%)	78 (23%)
Refused	1 (<1%)	0

# Additional regulatory outcomes achieved 20-21

Type of additional regulatory outcome	AFS licence	Credit licence
Key person condition imposed	57% (374)	91% (133)
Authorisations changed – authorisations granted that were different from those sought by applicant, or authorisations refused	20% (136)	4% (6)
Authorisations changed – authorisations granted that were specific to that applicant (tailored authorisations)	13% (85)	1
Additional responsible manager appointed	5% (35)	4
Additional conditions imposed	18	2
Responsible manager rejected	3	0



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# Overview of reforms

**Nicholas Vonarx**  
Senior Manager, Licensing

**Gerard Mithen**  
Senior Manager, Licensing





# Fit and proper person test

- ASIC Licensing experience with fit and proper person tests.
- Known difficulty in obtaining criminal history and bankruptcy checks.
- Flexibility relating to overseas criminal history/bankruptcy checks in light of COVID-19 impacts.



# Foreign financial services providers

- Foreign financial services providers (RG 176)
  - 15 applications for FFSP licences were granted
  - Another 16 currently with ASIC – most assessments paused pending consultation outcomes.
  - In May 2021, Government announcement on consultation on reforms to regulatory regime for FFSPs.



# Litigation funding

- Litigation funding scheme operators and intermediaries.
- As at 30 June 2021, we had licensed 7 scheme operators and three intermediaries.
- ASIC consultation: [CP 345 Litigation funding schemes: Guidance and relief | ASIC - Australian Securities and Investments Commission](#)
- Government consultation: [Treasury Laws Amendment \(Measures for Consultation\) Bill 2021: Litigation funders | Treasury.gov.au](#)





# Insurance claims handling

- New financial service since 1 July 2021.
- Information available at: [Information Sheet INFO 253: Claims handling and settling: How to comply with your AFS licence obligations \(asic.gov.au\)](#)
- Applicants that applied by 30 June 2021 have until 31 December 2021 to obtain a claims handling authorisation.
- We received a total of 65 applications for a new AFS licence and 236 variation applications for claims handling authorisations by 30 June 2021.



# Debt management services

- New credit activity from 1 July 2021.
- Information available at: [Information Sheet INFO 254 Debt management services: Applying for a credit licence or variation \(asic.gov.au\)](#)
- Applicants that applied by 30 June 2021 can continue to provide debt management services while their application remains under assessment.
- We received a total of 82 applications covering debt management services by 30 June 2021.

# Recent or upcoming licensee related reforms

Reform	Where to find more information?	Expected date of commencement
Financial Accountability Regime	<a href="#">Financial Accountability Regime – July 2021   Treasury.gov.au</a>	Subject to legislative amendment
Internal dispute resolution obligations	<a href="#">RG 271 Internal dispute resolution   ASIC - Australian Securities and Investments Commission</a>	5 October 2021
Design and distribution obligations	<a href="#">RG 274 Product design and distribution obligations   ASIC - Australian Securities and Investments Commission</a>	5 October 2021
Reference checking and information sharing protocol	<a href="#">ASIC reference checking and information sharing protocol   ASIC - Australian Securities and Investments Commission</a>	1 October 2021
Single Disciplinary Body for Financial Advisers	<a href="#">Single Disciplinary Body for Financial Advisers   Treasury.gov.au</a>	1 January 2022
New breach reporting requirements	<a href="#">21-235MR ASIC publishes guidance on breach reporting   ASIC - Australian Securities and Investments Commission</a>	1 October 2021



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# Questions & Answers

**Peng Lee**  
Senior Executive Leader, Licensing

**Nicholas Vonarx**  
Senior Manager, Licensing

**Gerard Mithen**  
Senior Manager, Licensing





# Reminder

- If we do not get to your question during this session, please feel free to email us at [ASICLicensingLiasion@asic.gov.au](mailto:ASICLicensingLiasion@asic.gov.au) and we will respond to you directly.