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Dear Manager

Consultation Paper: Insurance Claims Handling

Consumer Action Law Centre welcomes the opportunity to comment on Treasury's Consultation Paper on *Insurance Claims Handling: Taking Action on Recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission, March 2019 (Consultation Paper)*.¹

For many people, claims handling is the most critical part of the insurance process, and one of the most problematic.

Consumer Action strongly supports closing the insurance claims handling loophole in our financial services laws, consistent with Recommendation 4.8 the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Financial Services Royal Commission**).² This will ensure that claims handling is provided efficiently, honestly, and fairly – a cornerstone of our financial services laws, and the bare minimum that people should be able to expect from their insurers.

While we strongly support this reform, it is essential that the model for implementation is robust and does not create further exemptions and qualifications, which would be expressly against Recommendation 7.3 of the Final Report that:

As far as possible, exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated.

The Australian Securities and Investments Commission (**ASIC**) or an appropriate regulator should be empowered to monitor insurance pricing to ensure that insurers are not passing on to consumers the costs (if any) of adjusting systems to provide fair, efficient and honest claims handling. Any such costs should be borne by insurance executives and shareholders, who have benefitted over many years

¹ Available at <https://treasury.gov.au/consultation/c2019-t364638>.

² Financial Services Royal Commission, *Final Report*, 1 February 2019, Volume 1 (**Final Report**), Recommendation 4.8, available at: <https://financialservices.royalcommission.gov.au/Pages/reports.aspx>.

from unjustified profits at the expense of consumers suffering poor claims handling and unfair claim denials.

This submission details our comments on:

- The need for reform of claims handling, including a recent case study
- consultation questions 2-5.

About Consumer Action

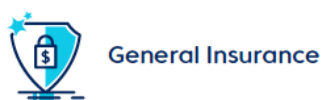
Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

The need for reform

From a consumer perspective, claims handling is the most critical part of the insurance process, and one of the most problematic. Placing such an obligation on insurers will ensure that consumers can expect the same standard from insurers handling claims as they can expect from other financial service providers. We agree that 'the intrinsic value of an insurance product lies in the ability to make a successful claim when an insured event occurs.'³

Despite its importance to customers, currently claims handling is largely self-regulated due to a carve-out negotiated by the insurance industry. This means that insurers do not have to handle or settle claims efficiently, honestly, and fairly under section 912A of the Corporations Act.

Self-regulation has failed. This is clearly evidenced by the gruelling and damaging experiences of consumers in the case studies of AAI, Youi, CommInsure and TAL at the Financial Services Royal Commission. These case studies were not isolated instances. In 2017-18, there were over 8,603 General Insurance disputes at the Financial Ombudsman Service (FOS).⁴ Claims handling disputes continue to be high at the new Australian Financial Complaints Authority (AFCA). This excerpt from AFCA's recent statistics reveals that 4,194 claims-related disputes were lodged in AFCA's first five months of operation:⁵



Issue	Total
Delay in claim handling	1,198
Claim amount	1,092
Denial of claim - exclusion/condition	1,056
Denial of claim	846
Service quality	366

³ Financial Services Royal Commission, Final Report, Volume 1, p 309.

⁴ FOS, *Annual Review 2017-18* <<https://www.fos.org.au/public/file/FOSAnnualreview2017-18.pdf>>.

⁵ Australian Financial Complaints Authority, *Snapshot of AFCA's first five months*, 31 March 2019, page 2, available at: <https://www.afca.org.au/public/download.jsp?id=9899>.

Consumer Action continues to see problems with the fair, honest and efficient handling and settling of claims in our insurance casework, which can cause significant detriment.

Case study: Robert's story

Robert (name changed) is on a Disability Support Pension due to a stroke that has affected his brain function and mobility. Since suffering the stroke, he has been out of work and is experiencing financial hardship. His wife is his carer and also cares for two of their children who live with them.

Robert and his wife have a number of debts as a result of his inability to work and they intend to pay their creditors by selling their house. He entered into an agreement with a Real Estate Agent to list the property for sale. Soon after, he noticed that there was a water leak in the bathroom. He decided to make a claim on his home and contents insurance policy in relation to the leak, which had affected the walls and floor of a bathroom and bedroom.

The insurer subcontracted a building company to carry out the repairs to Robert's house. During the time it took for the repairs to commence, the insurer sent four assessors who made the same findings and did not advise Robert on the progress of his claim. Robert understood from the building company that it should have taken 20 days to complete the repairs. However, despite this, it took 10 months for the insurer and their builder to coordinate and carry out the repairs.

As a result of the delays, Robert has suffered substantial loss including the depreciation in the value of his home and the escalation of his debts which were the reason the repairs were sought.

For further evidence on the need to remove the claims handling exemption, please see our submission to the Financial Services Royal Commission on the policy questions arising out of Module 6 on insurance.⁶

Consultation Questions

Q1. Are there additional issues that have not been identified? If so, are there potential options for addressing them within the proposal?

No comment.

Q2. Are there other approaches that can be taken in designing the legislative amendments that would further improve consumer outcomes (including by reducing compliance costs)?

In implementing Recommendation 4.8, the focus of Treasury's work should be on improving customer outcomes, not compliance costs for industry.

Indeed, in most cases "reducing compliance costs" does not improve consumer outcomes. Consumer outcomes will be improved by requiring insurers to change the systems and incentives to align with good customer outcomes – not profit.

Following the Royal Commission, Treasury should be extremely sceptical of any argument advanced by the insurance industry that consumers benefit from exemptions, loopholes, or simplification, and

⁶ Consumer Action Law Centre, Submission to Financial Services Royal Commission, *Policy questions arising from Module 6—Insurance*, 25 October 2018, available at <https://policy.consumeraction.org.au/2019/01/30/royal-commission-module6-submission>.

of known scare tactics on “rising premiums”. Customers do not benefit from “affordable” premiums on insurance products that don’t pay out according to their needs and expectations of the policy.

Further, the costs of adjusting systems to provide fair, efficient and honest claims handling must not be passed onto insurance customers. To the extent there are costs, these should be borne by insurance executives and shareholders, who have benefitted over many years from unjustified profits at the expense of poor claims handling and unfair claims denials.

RECOMMENDATION 1: Empower ASIC to monitor insurance pricing to ensure that costs of rectifying insurers’ misconduct, and implementing Royal Commission recommendations, are not passed on to insurance customers.

Q3. Are there any obligations, besides the existing AFS licencing obligations, that would provide further useful consumer protections in respect claims handling activities and so should also apply to them?

ASIC Directions Power

The proposed general directions power for ASIC, as recommended by the ASIC Enforcement Review Taskforce, would enable ASIC to address or prevent harm for consumers in respect of insurance claims handling (and many other issues). We recommend that this reform be progressed by the Government as a matter of priority.

Fishing expeditions

Life insurers should only be able to obtain information relevant to the claimed condition. This is a significant aspect of insurance claims handling which the industry inappropriately self-regulates. Clause 8.5 of the Life Insurance Code of Practice states that, in relation to claims, that: ‘We will only ask for and rely on information and assessments that are relevant to your claim and policy, and we will explain why we are requesting these.’ This provides insurers with a broad remit to request any information relevant to the ‘policy’, not just the claimed condition. This does not guarantee protection or privacy for claimants during the claim.

RECOMMENDATION 2: The law should require life insurers to only request information relevant to the claimed condition when assessing a claim.

4. How could the activity of handling or settling an insurance claim (in relation to both life and general insurance products) be defined as a financial service for the purposes of the Corporations Act?

We support Treasury’s proposed approach of removing Regulation 7.1.33, together with using existing legislative powers to define the activity of handling or settling an insurance claim as a ‘financial service’ for the purposes of the Corporations Act.

Consistency with Recommendation 7.3

We accept that implementation of this reform may require some tailoring of existing requirements for licensees under the Corporations Act once Regulation 7.1.33 is removed. However, there should only be a minimum tailoring to ensure that the current reform process is also consistent with Recommendation 7.3 of the Final Report that:

As far as possible, exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated.

We have concerns about some of the exceptions that have been flagged but not specified in the Consultation. For example, the Consultation Paper suggests at page 9 that imposing training requirements relating to the provision of financial advice could be 'onerous' for claims managers, and at page 11, that:

One option which could provide certainty in relation to the provision of financial advice in insurance claims handling processes, is that the Corporations Regulations specify that documents that are given to a consumer as part of the new financial service, in certain circumstances, do not constitute financial product advice.

'Financial product advice' is intended to influence a person in making decisions about a particular financial product or class of financial products. As we understand it, this could include decisions about whether to make a claim under an insurance policy. As such, there is no reason to suggest there shouldn't be a consistent framework for advice in relation to claims handling. Insurance customers will not benefit from the advice of poorly-trained claims handlers. This could also put people working in claims handling in a difficult position if unsupported by appropriate training and systems.

We have had the opportunity to read the submission to this consultation by Financial Rights Legal Centre and endorse its views that:

If there are any requirements that are fundamentally irrelevant to claims managers in the training standards set by ASIC or other regulators, these can and should be adjusted to ensure that claims managers are trained appropriately with respect to the extent that their roles involves any personal or general advice. This is not an insurmountable challenge and the threat of "regulatory burden" should not be used as a red herring to prevent reform and improved standards.⁷

Given the short timeframes for the current consultation and past history of industry successfully watering down effective reforms, we strongly recommend that further consultation occur before the precise model is settled by The Treasury, particularly if further tailoring is adopted following this consultation. As Commissioner Hayne stated on the problem of our overly complex financial services laws:

Lobbying for prescription, detail and tailoring has been a significant contributor to the current state of the law.⁸

RECOMMENDATION 3: Ensure that the implementation of Recommendation 4.8 of the Financial Services Royal Commission Final Report is consistent with Recommendation 7.3.

RECOMMENDATION 4: Any further tailoring of the model for implementation of Recommendation 4.8 be subject to consultation.

⁷ Financial Rights Legal Centre, Submission to The Treasury, *Insurance Claims Handling Consultation Paper*, March 2019, page 3, available at https://financialrights.org.au/wp-content/uploads/2019/04/190329_InsuranceClaimsHandlingConsultation_Submission_FINAL.pdf.

⁸ Financial Services Royal Commission, *Final Report*, Vol 1, page 495.

Coverage

We strongly support Treasury's proposal that ASIC be given powers to declare any other person be covered by the new financial service of 'handling or settling insurance claims.' This is essential to future-proof the reform and ensure emerging problematic entities can be brought within the regulatory framework for claims handling.

On the issue of whether superannuation trustees should be covered, our general position is that any trustee involved in claims handling should be subject to the same requirements as other entity involved in claims handling. This would be consistent with Recommendation 7.3 of the Final Report. It also recognises that the trustee's best interest duty is not a sufficient consumer protection mechanism.

5. What penalties should apply to insurers breaching the general obligations of s912A in the specific instance of insurance claims handling? Should the penalties attaching to insurance claims handling, be the same that attach to other financial services?

The penalties attaching to insurance claims handling should be the same as other financial services, consistent with Recommendation 7.3 of the Final Report.

Contact details

If you have any questions about this submission, please contact Cat Newton, Senior Policy Officer, at cat@consumeraction.org.au or on 03 9670 5088.

Yours sincerely

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