

29 March 2019

Manager  
Insurance and Financial Services Unit  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email:  
claimshandling@treasury.com.au

Dear Sir / Madam

**Response to Treasury Consultation Paper: Insurance Claims Handing**  
**Our ref: MHR/DXC001-00002**

**Introduction**

- 1 DXC Technology Australia Pty Ltd (DXC) is part of the international DXC Technology group of companies. The parent company, DXC Technology Company is a Fortune 500 company listed on the NYSE. DXC is a provider of next generation information technology services, solutions and business process outsourcing services. With over 130,000 employees working in over 70 countries, we provide services to nearly 6,000 clients.
- 2 The DXC Technology group's key delivery centres are located around the world, including in Australia, the United States of America, the United Kingdom, India, South Africa and the Philippines. While not an insurance company, DXC is well versed in delivering insurance claims management services in highly regulated environments as it works in the insurance industry across a diverse range of countries and legal jurisdictions.
- 3 Within Australia, DXC employs over 5,000 people and one of its service lines is the provision of claims services to the general and life insurance sector as well as the workers compensation sector especially within Victoria.
- 4 DXC's Australian operations are subject to State Government regulatory oversight such as the State Auditor General in Victoria, Ombudsman and Privacy Commissioner and subject to a range of legislative controls.
- 5 As many of DXC's clients are APRA and ASIC regulated DXC must provide its claims services within the regulatory controls imposed by these regulators as well as within the mandates imposed by its clients.
- 6 DXC's contracts in the insurance sector typically contain requirements relating to:
  - Performance evaluation
  - Codes of conduct
  - Standards of customer service
  - Penalties for failure to meet performance standards.
  - Quality control and audit, including internal controls, director certification and external audit
  - Mandatory service standards and potential remedies for failure to meet performance standards
  - Banking and financial functions

**Response to Consultation Questions**

- 7 Thank you for the opportunity to respond to the *Insurance Claims Handling: Taking action on recommendation 4.8 of the Banking, Superannuation and Financial Services Royal Commission Consultation Paper (Consultation Paper)*.
- 8 The specific questions raised in the Consultation Paper include a proposal for the removal of the insurance claims handling exclusion in Regulation 7.1.33 of the Corporations Regulation 2001 (**Regulations**) and discussion of the issues associated with, and arising from, defining the handling or settlement of an insurance claim as a financial service.
- 9 This response supports in principle the regulation of insurance claims handling subject to clarification of several issues discussed in more detail in the annexed submission. These issues include:
- (a) Introduction of an AFS licence specific authorisation for claims and settlement services;
  - (b) Limitation of the AFS licensing requirement to retail clients only for life risk, life investment and general insurance products limited to personal lines insurance;
  - (c) A level playing field which requires all providers of insurance claims handling services to have the specific authorisation on the basis that insurers, brokers/intermediaries and specialist external providers should all require specific expertise and skills to provide such services;
  - (d) A limited AFS licence with modified AFS licence conditions made available to specialist external claims handling third party providers particularly in relation to training, RG 146 requirements, PI insurance and AFCA membership requirements;
  - (e) Transitional grandfathering provisions for entities requiring an AFS licence for the first time or a variation of an existing AFS licence for existing AFS licenses; and.
  - (f) Clarification of role responsibilities as between insurers (as the entity with primary responsibility for ensuring the consumer rights of insureds are protected) and third party claims providers acting as agents of the insurer but within the constraints of the delegated authority granted to them by the insurer.
- 10 We welcome the opportunity to further discuss the issues raised directly with Treasury particularly in terms of the practical implementation issues and utilising DXC's extensive experience over many years operating in legal jurisdictions where insurance claims are a regulated activity.

Yours faithfully



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**Question 1**

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

**Responses:**

*Transitional grandfathering provisions required for existing providers requiring an AFS licence or a variation of an existing AFS licence*

1. The Consultation Paper raises the possibility of the regulatory framework being modified to create a new form of financial service namely 'claims and settlement services' and a new form of AFS licence authorisation to reflect these new financial services.
2. In canvassing the potential options available, and in particular the option for AFS licensing, there is no discussion in the Consultation Paper of grandfathering or making transitional provisions to enable existing AFS licensees or newly regulated entities time to prepare and lodge applications with ASIC and to have such applications processed by ASIC.
3. Significant delays are already being experienced by entities lodging applications with ASIC for licences and licence variations. Bringing entirely new industry sectors within the AFS licence regime will significantly increase these delays. Entities now operating lawfully without an AFS licence should not suffer a competitive disadvantage if required to obtain an AFS licence before being permitted to continue providing such services.
4. A precedent was set for this type of transitional process when the accountant's exemption in Regulation 7.1.29A of the *Corporations Regulations 2001* was repealed. Accountants were given from 1 July 2013 to 1 July 2016 to obtain their AFS licences with many of them finding the change of regulatory environment difficult.
5. The transition to an AFS licence regulatory environment will create similar challenges to many currently unregulated entities providing claims and settlement services. In particular, the transition will be challenging for the third party specialist providers whose business operations have traditionally been geared to the very specific and prescriptive terms of the outsourcing contracts provided to them by their own customers rather than being geared to the needs of meeting ASIC requirements.

*Introduction of a limited licence specifically for non- insurers*

6. It is possible to introduce a limited AFS licence for an entity providing only claims and settlement services.
7. The accountant's limited AFS licence referred to above recognises both general and life insurance risk products for the purposes of the relevant financial services.
8. A specific limited AFS licence for specialists in the claims settlement area should also reflect modified requirements given the limited nature of the services being provided. Claims settlement service providers are limited in their interactions with the policyholders by the constraints imposed on them by insurers through their letters of engagement.
9. Third party claims providers do not set interpretation of policy wording nor do they operate autonomously or carry the insurance risk on their balance sheet. Accordingly, while claims settlement service providers should be trained and competent for the specific services they provide, they are not financial advisors and do not require the same training requirements or the same financial solvency requirements as entities providing these services.

*Differentiating between third party administrators, BPO and insurance brokers and intermediaries*

- 10 While insurance companies are primarily responsible for the processing of their insurance claims, there are a number of insurers that have outsourced claims services for many years and so have limited internal resources or expertise to process claims.
- 11 It should not be assumed that merely being an insurer ensures that the AFS licensee has the internal expertise or sufficient resources to process claims honestly, efficiently and fairly. As such, the same specialist AFS licence requirement for claims services should be applied to insurer in-house claims teams as well as to external claims teams.
- 12 The Consultation Paper does not discuss the claims services traditionally provided by insurance brokers and intermediaries.
- 13 If AFS licensing for claims services is introduced, it should apply to all providers to ensure competitive neutrality as between internal insurance claims teams, brokers, intermediaries and external claims providers.

**Question 2**

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

*Disclosure documents*

- 14 The cost of claims and settlement are a cost to insurers which means that ultimately the consumer pays for the increased cost or regulation through the insurance premiums. If claims settlement services are fully regulated, the additional cost of licensing and compliance will be passed back to the consumer.
- 15 A consumer may have no, or limited, direct contact with a claims provider, nor is the choice of the claims provider a decision in which the consumer participates. For this reason the requirement to provide a general advice warning or produce a financial services guide or a statement of Advice would not serve any purpose. It would, however, add to the confusion of consumers as well as the cost.
- 16 The provision of such warnings and disclosure documents would provide no improved consumer outcome.

**Question 3**

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

*Insurer mandates*

- 17 External third party providers operate within the mandates given to them by their clients, i.e. the insurers, and so lack authority to go beyond these contractual mandates.
- 18 While DXC supports the need for a regulated environment, it also believes that such an environment should recognise that, unlike the insurers, the claims settlement service providers are constrained by the terms imposed by their clients.
- 19 In other words as the external providers are putting into operation the instructions of the insurers, the accountability and responsibility for the consumer protection should stay with the insurers.

- 20 The claims settlement service provider's client will always be a wholesale client i.e. the insurer which engages it.
- 21 The insurer should at all times remain accountable for the interactions taking place with the insurer's customer even if this has been delegated to the third party service provider. This is because the provider is only ever acting within the constraints of its delegated authority and is not an autonomous decision maker. For example a claims settlement provider may recommend to an insurer that a claim be accepted and paid or rejected but the actual decision to pay or decline the claim is a decision made by the insurer itself.
- 22 As a consequence, the internal and external dispute resolution process and the AFCA membership should be maintained by the insurer and not by the claims service provider as it is not free to interpret the policies or make the final decisions on the merits of a claim.

*Differences between life and general insurance claims services*

- 23 The RC Report states on page 50 of Volume 3 Appendices that 430 submissions were received specific to insurance claims handling and that the key themes raised included:
- (a) Substantial delays in processing and payment of claims under life policies;
  - (b) Delays in arranging critical repairs under home and contents insurance policies;
  - (c) Reliance by insurers on unfavourable independent expert evidence; and
  - (d) Failure by insurers to provide adequate explanations of why a claim was rejected or to explain to consumers in a way that was not intimidating.
- 24 On page 309 of the RC Report the following statement is found:
- 'There can be no basis in principle or in practice to say that obliging an insurer to handle claims efficiently, honestly or fairly is to impose on the individual insurer, or the industry more generally, a burden it should not bear. If it were to be said that it would place an extra burden on cost on one or more insurers or on the industry generally, the argument would itself be the most powerful demonstration on the need to impose the obligation. The argument can be made only if claims handling is not now conducted efficiently, honestly and fairly'.*
- 25 The Consultation Paper does not distinguish between issues unique to life insurance or to general insurance, but it is clear from the case studies in the RC Report and in the recommendations made in the RC Report that there are different issues relevant to the claims handling for the different types of insurance policies.
- 26 Policy interpretation and out of date medical terms appear to be most relevant to the life insurance sector and claims delays and disputes over policy wording arising for natural disasters are the main concerns for the general insurance sector. The introduction of AFS licensing for claims services providers will not remove these issues.
- 27 The changes in relation to life insurance contracts and updated medical terminology are an issue more relevant to the introduction of standard contract terms. The issue of delays in relation to claims arising from natural disasters is not always an issue which can be controlled by the insurers or their claims services providers. The increased number of extreme weather events has placed a significant burden on the tradesman available to provide repairs or to rebuild.
- 28 Many of the issues raised in relation to general insurance were also raised by Treasury in Paper 20 Request for information-Natural disaster insurance. This paper was prepared by Treasury in response to a request made by the RC. The introduction of AFS licensing for

claims services providers was not canvassed as recommendation for resolving these issues. The recommendations related to the changes to the Insurance Contracts Acts (1984) Cth and increasing consumer awareness of insurance policy wording and coverage.

- 29 In the light of the above it appears that the main motivation for the RC Report recommending claims services becoming a financial service is not so much directly improving consumer outcomes but rather giving ASIC power to impose fines for breaches of S912A and the failure to act 'efficiently, honestly and fairly' in relation to claims. The maximum civil penalties for corporations are about to increase to the greater of \$10.5 million or three times the benefit or 10% of the annual turnover capped at \$525 million.
- 30 The Consultation Paper as well as the RC Report mix claims processing issues and claims interpretation issues in together without recognition that aspects of claims processing, such as the availability of tradesman, are not always issues under the control of either the insurer or its service providers.

#### *Limiting application to retail clients*

- 31 The Consultation Paper poses the question of whether the definition of claims handling services should be confirmed to the definition of retail client linked to the term 'general insurance' as defined in s761G (5) of the Corporations Act, 2001 (Cth) (**Corporations Act**) or be extended to include additional general insurance products sold to individual or small businesses.
- 32 The definition in s761G (5) confines the reference of retail clients to general insurance products historically referred to as personal lines insurance. These policies are increasingly sold on the bases of premium with standardised policy wording. If other recommendations from the report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**RC Report**) are adopted, such insurance contracts will, in the future, also include standard definitions and increased regulation of unfair contract terms.
- 33 Outside of Chapter 7 of the Corporations Act, the term "general insurance" refers to any form of insurance regulated by the Insurance Act, 1973 (Cth). This form of insurance ranges from policy for commercial risks covering everything from mining to aviation, clinical trials and satellites to commercial property insurance, fire and all risks, terrorism professional indemnity and public liability insurance. In many instances the sums insured are very significant, as are the risks, and bear no relationship to the number of employees engaged by the insured. For example entities conducting experimental medical work may establish a small company with less than 20 employees for a one-off trial but may purchase tailored general insurance for that trial for significant premiums and significant insurance coverage. Any extension of the general insurance definition to extend the retail client protections to a small business could capture this type of insurance.
- 34 The majority of non personal lines general insurance policies are entered with the assistance of insurance brokers and are placed not only within Australia but with major international insurers. Policy wording is often customised and wording dictated by international insurance markets. APRA regulated insurers with only wholesale clients are excluded from AFS licencing by s911A.2(g) as are brokers placing this insurance business exclusively on behalf of wholesale clients ( S911B.1(e))
- 35 The size of the Australian general insurance market is significant. An indicator of the value of wholesale insurance placed with unlicensed foreign insurers by AFS licensees is

demonstrated in the APRA table below for intermediated general insurance statistics for December 2018.

- 36 The amount placed by intermediaries who are exempt from AFS licenses is not included in the APRA Report but is likely to be significantly greater than the amount reported by the AFS licensees. It is highly unlikely that any of the reported general insurance placements with UFI and the bulk of the Lloyd's placed business are for personal lines general insurance. To extend the definition of retail clients such that even a small proportion of this business was reclassified as retail, general insurance would have the potential to significantly disrupt the placement of these already difficult to place insurance covers and have no positive impact on consumer outcomes as contemplated by the recommendations in the RC Report.

Key statistics from this publication are:

	Year to December 2017	Year to December 2018	Change
Premium placed with APRA-authorized general insurers	\$16,917 million	\$18,288 million	+8.1%
Premium placed with Lloyd's underwriters	\$2,000 million	\$2,447 million	+22.4%
Premium placed with UFIs	\$1,068 million	\$1,205 million	+12.8%
Of which: Fire and industrial special risks	\$601 million	\$682 million	+13.5%

#### Question 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?**

- 37 The footnote to Regulation 7.1.33 adequately discloses the claims settlement services which should be defined as a finance service.
- Direct negotiations of settlement amounts carried out in the name of the insurer
  - Interpretation of relevant policy provisions
  - Estimates of loss or damage
  - Estimate of value or appropriate repair
  - Recommendations on mitigation of loss
  - Recommendations, in the course of handling or settling a claim, made on increases in limits or different cover options to protect against the same loss in the future, and
  - Claims strategy, such as the making of claims under alternate policies.
- 38 However, activities which fall within the existing clerks and cashiers exemption in s766A (3) of the Corporations Act should remain outside the definition of a financial service as it does for all other forms of financial services.

**Question 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?**

- 39 Any penalty for a breach of S912A for a limited AFS licence should recognise the limited nature of the financial services being provided and distinguish between a breach arising from a failure by an insurer to provide appropriate instruction to a service provider and a breach of conduct for a failure that is within the control and discretion of the limited AFS licensee. For example, a failure to comply with its own AFS licence conditions is a matter for the licensee and not dictated to by the mandate for claims handling given by the insurer.