

29 March 2019

Manager
Insurance and Financial Services Unit
The Treasury
By email: claimshandling@treasury.gov.au

Dear Sir or Madam

Insurance Claims Handling

This submission is in response to the consultation document on the above topic. More information about Finity and our purpose in making the submission is provided at the end of this letter.

The submission relates only to general insurance products. While we understand the Royal Commission's desire for simplification and reducing exemptions, the industry is complex and regulation needs to be fit for purpose.

1 Are there additional issues?

There are two additional issues that we wish to draw to your attention:

- (a) Statutory insurance classes: in some states and territories insurance classes such as workers compensation and motor injury insurance (CTP) are written by private insurers but regulated by state regulators with a remit that includes claims handling. If not already covered by relevant definitions these activities should not be under ASIC supervision.
- (b) Similarly, it is assumed that state government insurance entities will not fall within ASIC's regulatory remit.

2 Are there other legislative approaches?

The approach of removing regulation 7.1.33 and making relatively minor amendments to the Corporations Act would seem to be a suitable approach. The amendment in the Corporations Act to make the provisions fit for purpose will be key.

3 Are there further obligations that would be useful?

The obligations imposed by the Corporations Act are more than sufficient, and in fact some will need to be limited. It must also be kept in mind that this reform is in the context of many others including the mandatory and enforceable Code of Practice, the sanctions powers residing with AFCA and the Code Governance Committee and also the application of the Unfair Contract Terms legislation.

4 How could claims handling be defined?

In defining claims handling in the Act, the words that are currently used in the consultation paper seem to be suitable – "handling or settlement of a claim or potential claim".

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Within general insurance, coverage of claims handling as a financial service should be extended to personal and small business policies but not further, using the current coverage definitions in the Act. Commercial and corporate insurance have well established claims resolution procedures and there is no structural imbalance of power, in part because the insured is invariably represented by a professional insurance broker whose role extends to supporting the client with claims.

The scope of the requirements should extend to those with claims management authority. This coverage will extend to insurance companies, third party claim managers and underwriting agencies with claim authority. It is preferable that the provisions do not extend to others involved such as loss adjusters, investigators, medical examiners, builders or car repairers. In this context it is important to note that the obligations of the insurer extend to the manner in which they contract, manage and oversight such providers.

The scope would not need to extend to imposing training requirements on claims handlers. The 'efficient, fair and honest' provisions are quite adequate to make the insurer responsible for competence without having specific requirements such as in RG146.

The thrust of this consultation input is to apply effective consumer protections and give ASIC the appropriate regulatory authority without creating obligations that impose undue compliance costs, reduce efficiency and achieve little or nothing for consumers.

The appropriate place to establish more specific obligations is in the Code of Practice, which is monitored and administered by AFCA and the Code Governance Committee. The provisions proposed give clear powers for escalation to ASIC and/or for ASIC to take its own initiatives to improve practices and enforce the relevant laws.

5 What penalties should apply?

We have no specific views on the nature or extent of penalties. There should be an escalating penalty regime in the Code of Practice with escalation to ASIC.

About Finity

Finity is an independent consulting firm of actuaries, data analysts and management consultants with deep domain knowledge in the general insurance industry. We maintain a stance independent of any of our clients and contribute to industry development in a number of ways including making submissions on relevant consultations.

If there any questions arising from this submission please contact Raj Kanhai on 02 8252 3332 or at raj.kanhai@finity.com.au. You can find more details of our analysis at www.finity.com.au/rcr/.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Raj Kanhai', with a stylized flourish at the end.

Raj Kanhai

A handwritten signature in black ink, appearing to read 'Geoff Atkins', with a long horizontal flourish extending to the right.

Geoff Atkins