



29 March 2019

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

Email: [claimshandling@treasury.gov.au](mailto:claimshandling@treasury.gov.au)

Dear Sir / Madam

### Insurance Claims Handling – in response to Royal Commission recommendation 4.8

The Financial Planning Association of Australia<sup>1</sup> (FPA) welcomes the opportunity to provide feedback in response to Treasury's proposed changes to insurance claims handling.

The FPA supports the Royal Commission's recommendation 4.8, that "*the handling and settling of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial service'*". We welcome the implementation of this recommendation, and provide in principle support for Treasury's proposed two-pronged approach.

The FPA commends Treasury on its proposed approach to implementing Recommendation 4.8, as detailed in the consultation paper, and supports the implementation of this recommendation to all insurance products provided to retail clients, including life, general, and group insurance.

#### Potential additional issues and new definition

Financial planners play an important role in helping and acting for clients during a life risk insurance claim. Financial planners do not act for the insurer in any capacity. Financial planners are heavily regulated under the Corporations Act, including a best interests duty to retail clients under s961B. Financial advice licensees are already obliged to meet licensing obligations set in the Corporations Act, such as the requirement under s912A to provided services efficiently, honestly and fairly.

Therefore, the FPA recommends the definition of handling or settling an insurance claim for the purposes of implementing recommendation 4.8, should not include financial planners acting on behalf

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<sup>1</sup> The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Graham McDonald, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.



of clients. Capturing financial planners under these new requirements would potentially conflict with their existing obligations under the Act.

The FPA recommends:

- the new financial service defining the handling or settling an insurance claims, be restricted to persons or entities (including contractors) acting on behalf of the insurer. This restriction is in line with the recommendation made by the Royal Commission.
- the new financial service explicitly exempt persons permitted to use the terms financial planners and financial advisers under s923C of the Corporations Act, and who are acting on behalf of a retail client.

### Financial advice provisions

The FPA notes that to overcome some of the issues of the proposed two-pronged approach, Treasury has suggested that some documents or statements given to consumers during the claims handling service, be exempt from the financial product advice requirements.

Events that lead to a consumer making an insurance claim can be traumatic and leave the individual vulnerable and not-thinking clearly. Many in this circumstance may not have been through a claims process before and therefore may miss-interpret information provided by the insurer's representative as personal advice provided with the customer's interests in mind. Consumers making a claim under traumatic or stressful circumstances may not realise that the information provided by the insurer's representative is in the insurer's interest, not the claimants.

While it should be a matter of drawing a line between what constitutes a claims handling or settlement service on behalf of an insurer, and the provision of personal financial advice in the best interests of the client, we appreciate that it is not that simple under the definitions and structure of the Corporations Act and that there are always shades of grey given the complexity of the legal framework.

The FPA notes that not all requirements in relation to the provision of financial advice are appropriate to apply to claims handling, however excluding the handling or settling of insurance claims from many of the advice provisions will exacerbate this issue to the detriment of consumers.

The FPA has concerns about the suggestion in the consultation paper to prescribe in the Corporations Regulations that certain documents or statements given to consumers in the provision of claims handling services be considered "exempt documents or statements" under s766B(1A) of the Act.

Rather than exempting insurers from the financial advice provisions, including documentation, it may be more appropriate and deliver the consumer protection benefits sought by Commissioner Hayne, in a cost effective manner, if alternative documentation requirements were developed specifically for the handling and settling of insurance claims by insurers and insurer's representatives. This approach would be in line with the modern legislative framework.



The FPA recommends (for example) clear disclosure and consumer advice warnings should be provided to consumers by representatives acting on behalf of the insurer.

The advice warning should include that:

- the individual is representing the insurer and the interests of the insurer
- the insurer's representative is not representing the interests of the individual making the claim
- the information the insurer's representative provides includes the insurer's views of the facts of the claim, not the claimants views
- the insurer's representative is prohibited from providing personal advice or making recommendations about the insurer's settlement offer to the claimant
- the claimant should consider their views of the facts relating to the claim and the conditions on their insurance policy prior to accepting the insurer's claims settlement offer
- any process to appeal the insurer's claim settlement offer
- how the claimant can lodge a complaint.

Insurer's representatives should also be prohibited from providing personal advice about the claim beyond the facts relating to the claim. This should include an explicit ban from providing recommendations or opinions about the claim to the claimant, including whether the claimant should, in the first instance make a claim, or accept or decline the insurer's claim offer.

### Penalties

The FPA agrees with ASIC's statement to the Royal Commission:

*"For consumers, the intrinsic value of an insurance product lies in the ability to make a successful claim when an insured event occurs."*

However, as demonstrated during the Royal Commission, the claims process can be complicated and stressful for consumers who are often traumatised and become vulnerable by the event that lead to the need for a claim.

Therefore, the FPA supports penalties commensurate to the consumer detriment caused. The penalties attached to insurance claims handling or settlement should be the same that attach to other financial services.

### Superannuation trustees

Superannuation trustees commonly offer life insurance products to fund members with premiums paid for out of the member's super account balance.

While superannuation trustees are involved in claims handling and settling activity, they do not act for the insurer. In relation to claims handling, trustees do not usually act on behalf of the individual member either, unless a trustee's representative is providing personal advice to the member. As trustees are obliged to act in the best interests of their membership as a whole, their interest in the handling and settlement of insurance claims generally relates to any potential impact to the fund.



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We do however believe superannuation fund employees who are involved in the preparation of a claim, on behalf of the fund, for a member should also be covered by the claims handling obligation.

The FPA would welcome the opportunity to discuss with Treasury the issues raised in our submission. If you have any questions, please contact me on [ben.marshan@fpa.com.au](mailto:ben.marshan@fpa.com.au) or 02 9220 4500.

Yours sincerely

**Ben Marshan**

*Head of Policy and Professional Standards*  
Financial Planning Association of Australia