



29 March 2019

Manager

Insurance and Financial Services Unit

The Treasury

Submitted by email: [claimshandling@treasury.gov.au](mailto:claimshandling@treasury.gov.au)

Insurance Australia Group (**IAG**)<sup>1</sup> welcomes the opportunity to provide feedback on the Insurance Claims Handling Taking action on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission *Consultation Paper*.

At IAG, our customers are our priority and claims time is viewed as the most important part of the insurance cycle. IAG's businesses have extensive experience in handling claims, both day-to-day and after catastrophes. We employ claims handling processes which are designed to be the most effective in any given scenario. No catastrophe is the same and each has its own set of unforeseen challenges. We build on our extensive experience to respond decisively and flexibly to events as they unfold and use resources in the most efficient way possible, while putting our customers first.

Like IAG, we believe many insurers in the general insurance industry employ sound claims handling processes and conduct claims handling in an honest, fair, transparent and timely manner, as required under the General Insurance Code of Practice.

Despite this, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Royal Commission**) cited a number of case studies examined in the sixth round of hearings where certain home insurance claims (following natural disasters and / or severe weather events) were not handled in an efficient, honest

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<sup>1</sup> IAG is the parent company of a general insurance group, with operations in Australia and New Zealand. Our businesses sell insurance under many leading brands, including: NRMA Insurance, CGU, SGIO, SGIC, Swann Insurance and WFI in Australia; NZI, State, AMI and Lumley Insurance in New Zealand. Our purpose is to make your world a safer place, which means we are working to create a safer, stronger and more confident tomorrow for our customers, partners, communities, shareholders and our people throughout Asia Pacific.



and fair manner resulting in very poor claims handling experiences for consumers. In addition, it was noted that ASIC is limited in the regulatory interventions it can take to address these issues.

In response, the Royal Commission recommended (recommendation 4.8) that “The handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of ‘financial service’”. That is, insurance claims should be handled ‘efficiently, honestly and fairly’ as set out in section 912A(1)(a). Importantly, this recommendation would also allow ASIC to use its enforcement powers to deal with breaches of the general obligations set out in section 912A(1).

While we are not opposed to the extension of the general obligations under section 912A(1) to claims handling, we believe any legislative change should be carefully considered and implemented in order to:

- strike the right balance between consumer protection and the burden of compliance; and
- avoid any unintended consequences that may arise by inadvertently extending the licensing and financial advice rules to claims handling.

These issues are outlined in our responses to the consultations questions set out below.

IAG welcomes the opportunity to discuss anything raised in this submission further. Please contact Vincent Lee, Principal, Public Policy and Industry Affairs on 02 9292 3715.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Luke Gallagher', written in a cursive style.

Luke Gallagher  
EGM, Short Tail Claims



## Consultation questions

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

No. We have not identified any additional issues.

### 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)?

We understand that given the scope of the proposed new 'financial services' incorporating handling and settling an insurance claim, it is expected that certain suppliers (**Suppliers**) of the insurers involved in the claims management chain (including loss adjusters, loss assessors, investigators and repairers/builders) may be covered.

It is important to note that the case studies reviewed at the Royal Commission relate to the following issues concerning the conduct of insurers (this is not an exhaustive list):

- Failure to handle the claim in an honest, fair and transparent manner as required by clause 7.2 of the GI Code
- Failure to act in an efficient, professional and practical way and in a compassionate manner in responding to Catastrophes, as required by clause 9.2 of the Code
- Breach of the duty of utmost good faith to the insured
- Engaging in misleading or deceptive conduct, or making false or misleading representations
- Engaging of, and inappropriate use of, and instructions to, external investigators
- Excessive use of surveillance
- Bullying tactics and offensive communications.

We also note:

- the activities relating to handling or settling an insurance claim (set out as examples in regulation 7.1.33) are overseen by insurers and are not provided by the Suppliers in isolation
- under section 912A(1)(ca), a financial services licensee must also take reasonable steps to ensure that its representatives (which includes the Suppliers) comply with the financial services laws



- the submissions made to the Royal Commission at the sixth round of hearings did not suggest or recommend the extension of the obligations in section 912A(1) of the Corporations Act to the Suppliers.

Having regard to the above, we do not believe it is necessary to extend the licensing / disclosure rules to the Suppliers. We do not believe this will materially enhance consumer protection and could impose a heavy compliance burden on the Suppliers (the cost of which would ultimately fall on consumers but without providing significant benefits to them).

However, in the event that the licensing / disclosure rules are extended to the Suppliers, we believe the following options should be considered.

#### ***Option 1***

ASIC may provide relief<sup>2</sup> from licensing / disclosure to those Suppliers that provide claims handling services on behalf of insurers.

#### ***Option 2***

ASIC may provide relief, and / or amend the legislation, to allow Suppliers to operate under a modified form of 'limited AFS licence' so they would be authorised to provide financial product advice (or the new financial service of 'handling or settling insurance claims') about general insurance products, but bear an appropriately lessened compliance burden where there is no demonstrable consumer benefit. For example, limited AFS licensees and their representatives do not generally need to provide audited financial accounts to ASIC.

### **3. 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?**

No. We do not believe any further consumer protections are necessary.

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<sup>2</sup> We note ASIC has provided relief from licensing / authorisation for distributors of insurance that deal in general insurance products (see ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682). Similar relief could be provided to suppliers that provide claims handling services on behalf of insurers.



**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 believe there are two ways (options) of capturing the activity of handling or settling an insurance claim (in relation to both life and general insurance products) as a financial service. In our view, these options are consistent with Recommendation 4.8 of the Royal Commission.

For the avoidance of doubt, our response to this question assumes that the Suppliers will be granted full relief from the licensing / disclosure obligations (being option 1 in question 2).

***Option 1***

The activity of handling or settling an insurance claim could be defined as a new ‘financial service’ for the purposes of the Corporations Act.

However, we do not believe it is ideal to remove regulation 7.1.33 in its entirety as proposed in the Consultation Paper. As noted, the “removal of the exemption would trigger a number of requirements under the Corporations Act that would apply to AFS licensees where they provide financial advice in the course of handling or settling an insurance claim.”

We believe insurers should be free to discuss policyholders’ claims without triggering financial advice requirements. As such, we believe the better course of action is to amend this regulation to make it clear that a person is not taken to be providing financial product advice if the giving of advice consists only of a recommendation or statement of opinion provided in the course of, and as a necessary or incidental part of, providing the (new) financial service of handling or settling an insurance claim i.e. for regulation 7.1.33(1) (the advice limb of the exception) to be retained only.

The combination of these changes would ensure that claims handling activities are brought within the obligations set out in Division 3, Part 7.6 of the Corporations Act without imposing the advice requirements to those activities.

***Option 2***

Instead of defining the activity of ‘handling or settling an insurance claim’ as a new financial service, claims handling could be made a subset of financial product advice (which is presently a financial service).



This option is advantageous for:

- ASIC as it will reduce the administrative/(re)-licensing burden
- insurers that have an existing advice authorisation as they would not be required to obtain a new authorisation (reducing the compliance burden).

For this option to be effective, we also believe that it is important for ASIC to provide relief from certain disclosure obligations (i.e. insurers are not required to give a financial services guide and / or statement of advice).

**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?**

We believe the enforcement provisions and remedies available to ASIC should be modified where:

- an insurer is found to be in breach of the general obligations of section 912A(1); and
- that breach has come about as a result of the acts or omissions of the Supplier (in circumstances where the insurer has taken all reasonable steps to ensure that the Supplier complies with the financial services laws).

In these circumstances, we do not believe ASIC should take enforcement action against the insurer, including by applying a licence condition, or suspending or cancelling the insurer's licence. Instead, we believe it would be suitable for ASIC to impose penalties on the Supplier.