



Insurance Council
of Australia

Financial Regulator Assessment Authority
The Treasury
Langton Crescent
PARKES ACT 2600

To (email): FRAA@treasury.gov.au

Submission deadline: Wednesday 2 February 2022 (as per granted extension)

1 February 2022

To whom it may concern,

Assessment of the Australian Securities and Investments Commission

The Insurance Council of Australia, ('Insurance Council') supports the Financial Regulator Assessment Authority's (FRAA) first review of the effectiveness and capability of the Australian Securities and Investments Commission (ASIC) and its public consultation. We note that the first review is a targeted assessment of ASIC's effectiveness and capability in strategic prioritisation, planning, and decision-making, surveillance and licensing. It will also examine ASIC's use of data and technology in each of these areas of focus.

The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 95% of private sector general insurers. As a foundational component of the Australian economy the general insurance industry employs approximately 60,000 people, generates gross written premium of \$57.4 billion per annum and on average pays out \$164.2 million in claims each working day (\$42.7 billion per year).

Currently the market presents challenging economic environment for insurers, even before the pandemic. Events such as bushfires, storm losses, and the increased number of class actions had resulted in reinsurance price increases for Australian programs by between 10-20%. Over the 2020-21 Financial Year, the sector saw relatively small premium growth of just over 5%, similar to two years prior¹.

This premium growth was offset by increased claims costs caused by inflationary pressures and the year-on-year increased cost of reinsurance. This reinsurance cost is expected to continue to increase in 2022 driven in part by the return-on-investment capital still being below target and the impact of global reinsurance cost increases on local pricing. In 2020-21, the industry faced the worst return on equity performance in almost two decades, the 2% return was lower than the 3% reported in 2020 and was significantly lower than the 15% return achieved in 2018-19.

Considering this, we particularly welcome the current review being undertaken against the background of the Government's Statement of Expectations of ASIC which includes the need to continue to support Australia's economic recovery from the COVID-19 pandemic. We submit that this encompasses regulation which supports industry competition and innovation. We consider that the establishment of ASIC's Regulatory Efficiency Unit

¹ Finity Optima – general insurance insights report 2021, page 11-14



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complements the Government's intent noting that the Unit is currently examining practical ways in which industry-ASIC engagement could be improved.

Financial services regulatory framework and objectives

As a precursor to addressing the granular questions posed as part of the consultation which are at **Attachment A**, we would like to reference our input to the Department of the Prime Minister and Cabinet Regulator Performance Guide Consultation noting that the Guide provides the foundational framework for all Commonwealth regulators, including ASIC. While the feedback isn't specific to ASIC, it provides context to some of our specific commentary on industry's dealings with ASIC.

As part of our feedback on the draft Regulatory Performance Guide, the Insurance Council supported the need for greater emphasis on economic competition in driving consumer outcomes within financial services. This is in line with the Productivity Commission's (PC) findings as part of its 2018 inquiry, *Competition in the Australian Financial System*. While the focus of Australia's policy and regulatory settings has primarily been stability, the PC noted that policy settings should also foster competition within financial services.

Competitive markets and well-informed consumers offer the best prospect for meeting community needs without government intervention. The PC further supported the need for a designated competition champion within financial services, noting that none of the regulators within the Council of Financial Regulators (CFR – the primary forum for cooperation between financial regulators) specifically have competition within their objectives.

The Australian Competition and Consumer Commission (ACCC) is not included within the CFR. In contrast, the role of competition in enhancing the welfare of Australians is clearly articulated for the ACCC as part of the Object² of the Competition and Consumer Act 2010.

Government policy and regulators' approaches could benefit from articulation of a clearer vision and principles for financial services regulation, including insurance, under the auspices of the CFR. We further suggest the inclusion of the ACCC within the CFR given their competition lens and recent and ongoing examination of insurance affordability and accessibility issues.³

In 2021 the general insurance industry navigated some of the most comprehensive regulatory reforms seen in nearly two decades. The time is right for all stakeholders, government, and industry alike, to reflect, let the reforms take effect, consider the overall strategic goals for the insurance sector and measures of success, one of which should be a vibrant and innovative market for insurance.

² Section 2, *Competition and Consumer Act 2010*, "The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection"

³ [Australian Competition and Consumer Commission, Final Report of the Northern Australia Insurance Inquiry, 28 December 2020](#)



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Financial regulation: planning and prioritisation

The Government response to the Financial Services Royal Commission (FSRC) which was aimed at improving the conduct of the industry and reducing harm to consumers while important, was not without a cost to businesses and individuals. Treasury estimates of the average regulatory costs for the package of reforms placed it at nearly \$344 million a year for businesses and over \$15 million a year for individuals.⁴

Articulation of the strategic goals for the financial services industry, including insurance, would serve as a guidepost for financial services industry regulators and allow for strategic regulatory planning and prioritisation by the CFR. This would be a similar approach to that adopted in the United Kingdom (UK) by the Financial Services Regulatory Initiatives Forum (FSRIF) made up of the UK's financial regulators.

The FSRIF sets the regulatory pipeline over a 24-month horizon so that the financial services industry and all stakeholders can understand and plan for initiatives that could have a significant operational impact on them. This approach in Australia would benefit all financial services stakeholders, industry, and community alike, and would particularly assist insurers who must factor in an increasingly volatile business environment due to frequent extreme weather events.

Post-implementation review and cumulative impact of regulatory reform

Given the pace and complexity of recent reforms, it is more important than ever for Government and regulators to commit to post-implementation reviews guided by clearly articulated principles, including competition and a financially strong industry, for financial services regulation. It would provide an opportunity for policy makers to repeal any outdated regulation or de-prioritise any policy development that may be superseded by the recent reforms. In this context, we support a post-implementation review of the cumulative impact of the recent regulatory reform undertaken in a holistic and coordinated manner and under the auspices of the CFR.

Data strategy

In line with our suggestions in relation to planning and prioritisation and adoption of measures like the UK Regulatory Initiatives Grid and work by the Bank of England in developing a data transformation strategy, we support the publication of a clear data strategy by Australian regulators. Regulators' and policymakers' data strategy and needs should be guided by the Government's strategic goals for the financial services industry, including insurance.

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[Government response to the Financial Services Royal Commission, September 2019](#)
[Treasury Office of Best Practice Regulation submission](#)



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Consultation periods

As noted at the outset, the insurance industry has navigated the cumulative burden of regulation both at the state and federal level (diagram at **Attachment B** is an illustrative example of regulatory interaction by industry over the most recent two years).

We recommend that the Government provide industry sufficient time to embed the reforms (at least three years), with data gathered over that period to inform a post-implementation review in October 2024. Going forward, we recommend the adoption of longer consultation periods by Government and its agencies, noting that the UK standard is around two months. This could be reflected in the Office of Best Practice Regulation's guidance.

Summary

The general insurance industry has navigated a period of unprecedented change in recent years in terms of regulation, the economic environment and climate impacts. These changes, particularly those related to climate, highlight the need for a strong and robust general insurance industry able to protect against the economic and human costs of these events.

The convergence of technological advances and unprecedented access to data, combined with the digital revolution and changing expectations of consumers has the potential to transform the insurance industry. The industry supports regulation that will facilitate and improve consumer outcomes by encouraging competition, flexibility, and innovation in the market. The industry advocates for a co-operative and collaborative approach with regulators to work through the issues we have identified in this submission.

The comments above are not specific to ASIC's performance but, if adopted, could result in greater efficiency, consistency and clarity in policymakers' and financial regulators' approaches (including ASIC's). It could address some of the frictions and pressures ASIC faces in prioritisation and allocation of resourcing which is driven by rapid policy implementation. In turn, this would provide all financial services industry stakeholders greater transparency and certainty when operationalising regulatory reforms, decrease regulatory burden and enable industry to better meet Government and regulators' needs.

Contact

Should you wish to discuss this further, please contact General Manager Policy and Regulatory Affairs, Ms Aparna Reddy at areddy@insurancecouncil.com.au or 0427 902 960.

Regards

A handwritten signature in blue ink, appearing to read 'Andrew Hall'.

Andrew Hall

Managing Director and Chief Executive Officer



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ATTACHMENT A – additional information to address submission questions

Strategic prioritisation, planning and decision making

Regular engagement with general insurers and responsiveness

ASIC has clearly and proactively articulated its strategic priorities through external communications (website, newsletters, corporate plan, and products). Although further opportunity exists for ASIC to be more flexible to specific requests, be cognisant to internal and external factors affecting insurers and modify decisions as necessary. Generally, ASIC has been reasonably flexible in their approach with insurer requests and feedback, particularly during the pandemic.

The Insurance Council and its members have a good working relationship with ASIC, meeting with staff on both an informal and formal basis through our quarterly ASIC liaison meetings. We have appreciated this ongoing dialogue and open engagement which has allowed us to coordinate industry responses effectively and efficiently to ASIC on its consultations and data requests. Through ongoing dialogue, we have been able to seek clarity as needed on any requests for input and have met ASIC's needs and expectations.

An illustrative example is when ASIC wrote to the Insurance Council in August 2021, setting out its expectations as regards communications with small business policy holders about Business Interruption (BI) claims arising from COVID-19. Insurers had some concerns about aspects of the expectations set out in ASIC's letter. The Insurance Council on behalf of its members met with ASIC and discussed these concerns, subsequently following up with a letter to ASIC. Ultimately ASIC addressed the concerns raised and modified its position on certain matters relating to the way in which insurers could communicate and update insureds for the time being. ASIC considered the practical difficulties that insurers had raised and adopted a pragmatic position given the progress of the second BI test case at that time.

Resourcing and regulatory parameters

ASIC and industry alike have faced immense resourcing and time pressures in the context of the largest reforms seen in nearly two decades. Viewed in this light, ASIC has performed well and responded in a timely and professional manner considering class order relief on four applications by the Insurance Council lodged in the last quarter of 2021 to address the inadvertent impacts of some of the FSRC related reforms. We acknowledge the practical approach ASIC has adopted to the implementation of these reforms, and the industry would appreciate the continuation of the facilitative approach ASIC has taken in areas where minor or technical breaches occur without material customer impacts.

At certain peak periods when the largest tranche of the reforms took effect, for example between October and the end of 2021, we consider ASIC could have benefitted from *better* allocation of resourcing (as opposed to more resourcing). Recognising that some of the time pressures were due to the Government's legislative timeframes which were beyond ASIC's control, we suggest consideration of scalable workforce arrangements or panel processes which may be utilised during future peak periods.



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On class order relief applications, ASIC has faced the challenge of addressing the inadvertent impact of legislation with significant impacts for certain cohorts of customers even before the legislation has taken effect.

For example, the industry class order relief application for cash payments to customers in financial need. The Cash Settlement Fact Sheet (CSFS) requirements, without ASIC relief, would have meant that insurers would have been required to give a CSFS to customers in all scenarios and wait for the customer's acceptance before sending their cash payment.

This requirement would have slowed down payments to customers impacted by an event or a disaster such that they are no longer at an easily locatable address (for example, due to bushfire), without access to mobile coverage or a specific address to collect mail sent to them by the insurer.

The legislative framework itself does not provide any exemption for even relatively basic cash payments made to customers in financial need so that they can buy necessities when impacted by a disaster. In lodging its final application, the Insurance Council liaised with ASIC over a period of four months:

- lodging its initial application
- making refinements to the scope recognising that ASIC was operating within the confines of its mandate which required it to consider relief in its narrowest scope lest it subvert parliamentary intent
- arranged presentations and meetings with ASIC staff
- consulted with other interested stakeholders (the Consumer Advisory Committee of the ICA), and
- responded to ASIC on follow up queries around practical examples to illustrate financial need for customers.

A more considered and longer timeframe for policy development and legislation may have resulted in fewer unforeseen consequences, saving the need for ASIC relief and both industry and ASIC resources which could be better dedicated to core business.

In terms of regulatory guidance, recognising resourcing pressures due to the pace of the recent reforms, on some aspects ASIC could have been timelier. For example, the final anti-hawking guidance released by ASIC on 23 September 2021 did not provide a lot of time for implementation (including systems and training) before the compliance deadline of 5 October 2021.

Another example, possibly indicating resourcing pressures might be ASIC's proposed workstream to update RG 183 to introduce FSRC enforceable code provisions. The work was initially announced for consultation in early 2021, with the view to releasing the updated guidance by the end of 2021⁵. Near the end of 2021, the ICA was informally advised this work would be paused, with a further update being provided when ASIC may resume the work in the second half of this year.

⁵ ASIC Media Release 20-131MR *ASIC's Interim Corporate Plan for 2020-21* and ASIC's revised timetable of ongoing work (June 2020), page 8



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Regionally based cohorts and vulnerable groups

Another area for consideration is ASIC's on ground presence and appreciation of challenges for regionally based cohorts and vulnerable groups. Some very small communities may not have easy access to the internet or regular mail delivery. Taking a one-size-fits-all approach and expecting regulatory obligations such as notices to be provided as a matter of course through email communication or expecting postal delivery within two-five business days may adversely impact on both customers and insurers.

Small business

Recently, there has been both Government and industry focus on insurance availability and affordability pressures within commercial lines products, notably public liability, professional indemnity, and areas impacted by physical and sexual abuse claims. Some of these issues are beyond 'local' regulation, for example, when taking into account the pressures caused by international reinsurance pricing. ASIC may wish to consider these matters as part of its strategic prioritisation and deepen its understanding of insurance needs of small and medium businesses.

ASIC expectations around customer care

Related to the commentary around the competition lens that may be better applied to the financial services industry including insurance, ASIC has previously written to insurers following its review of insurers' performance during major events.

We are pleased to report that generally insurers have performed well meeting customers' and community expectations. In relation to claims management, ASIC has referred insurers to its guidance (Report 54 Getting home insurance right: A report on home building underinsurance), noting that in the event of mass claims following a disaster, best practice includes providing dedicated staff to assist customers until their claim is resolved.

Insurance Council members are cognisant of the number of individual claims managers that customers may have to deal with and its potential impact. Our members employ a variety of service models and offer differentiated products which fosters competition. Insurers compete on a variety of measures, including price, contractual terms, customer support, service models among others.

Tailored offerings for specific markets support consumers choice, allowing individuals to choose products that best meet their needs. For example, an insurer may lower the cost of their product by offering a streamlined customer experience such as online support. In turn, this may prompt a market response from a competitor to match the new offering or emphasis other features of their own product. Overall, such competitive trade-offs allow the iterative development of products that better meet customer needs.

Smaller competitors may need to rely on scalable and part-time workforces during periods of high demand which can preclude the appointment of a dedicated claims manager. Flexible workforce arrangements allow members to respond to customers more efficiently and eliminate the time required to recruit and train additional support. We submit ASIC's expectations around best practice in relation to customer care and experience needs to be



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balanced against encouraging diversity within the market which fosters competition and encourages newer entrants.

Assessment of the effectiveness and capability of ASIC's surveillance function

The Insurance Council was a point of liaison on ASIC's thematic review of insurance contracts for unfair contract terms (UCT) in 2021. The process was a positive one with ASIC making itself available to meet with members, gain an understanding of why certain types of terms were included in policies and working with industry to clarify wording. It resulted in ASIC publishing its findings calling out the proactive work by industry.

More generally, ASIC employs a risk-based approach, which is well-received. ASIC may wish to consider a more focused and narrow initial scoping review to identify potential focus areas prior to the commencement of a more in-depth and comprehensive review. This may assist ASIC and industry to 'test' and validate if a more comprehensive review is required.

Assessment of the effectiveness and capability of ASIC's licensing function

The Insurance Council has been a conduit for certain members' concerns around the delay in claims handling licensing application consideration by ASIC ahead of the new claims handling regime taking effect. As before, we submit that both a longer lead time for implementation of the reforms by policymakers along with a more efficient allocation of resourcing by ASIC may have assisted both industry and ASIC navigate this process.

Some members have noted the significant burden and practical challenges involved in meeting the "*fit and proper*" requirements associated with applying to vary their licence (and for new licence applications), under section 913BA of the *Corporations Act 2001*. For members with overseas ownership, in particular, the work involved in obtaining personal information for all "*officers*" of the applicant and each of its controlling entities, and a criminal history check, bankruptcy check and Statement of Personal Information for all officers of the applicant and its ultimate holding company, was considerable. Licence variations or other administrative licensing matters have typically taken anywhere between three to six months which could be improved.

Our members' experience with meeting ASIC data requests

In relation to more formal requests from ASIC to provide ASIC with data during COVID-19, we are aware that some of our larger members may have received statutory notices to compel the provision of data.

Standardised definitions for large data collection between insurers would assist clarity amongst industry and support ASIC effectiveness through standardised information gathering. It would be beneficial for ASIC and other regulators to share data in line with a whole-of-government data strategy in relation to financial service providers.

Received requests coincided with requests from other regulators in addition to ASIC, with the regulators asking for the same information in different ways, and often within highly compressed timeframes and under more than one notice. Our members have informed us that preparing their responses took a considerable amount of time and energy. There might have



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been benefits in having an initial discussion between ASIC and the Insurance Council and/or its members to inform the drafting of the statutory notices or data requests so they could be more targeted to meet ASIC's needs, as well as coordinated with other regulators with similar needs so a single response might have been provided.

Another example to illustrate our member's experience with data is ASIC's approach to setting its requirements for collecting data about customer complaints at the Internal Dispute Resolution (IDR) stage across the financial services sector through ASIC's review of RG 165 *Internal Dispute Resolution*. The review resulted in the publication of RG 271 Internal Dispute Resolution⁶ to replace RG 165 which requires financial firms, including general insurers, from 5 October 2021, to record all complaints, even those resolved within 5 business days.

The process has taken some time and has still not been completed with further consultations on the proposed IDR data book and data glossary continuing⁷, with an indicative IDR data book and glossary released to assist financial firms when considering their implementation⁸, and the final IDR data book subject to pilot program testing. ASIC recently foreshadowed it intends to publish the final IDR data book with minimal adjustment sometime in March 2022, alongside a consultation about how it will report IDR data⁹. Our members look forward to when the final IDR data book and start date for implementation is confirmed by ASIC so our members may start making the necessary preparations.

We are aware some of our members have found the shifting possible start date and lead time for implementation challenging for their planning and resourcing of their reform implementation projects, especially during a period of implementing major reforms and during the COVID-19 pandemic.

For example, our members were envisioning at the start of ASIC's review they would implement as a "whole of project", changes to their IT, systems, and processes, as well as training staff. As ASIC switched to a two-stage approach to their review, our members have found they will need to implement changes at another time once the final IDR data book is confirmed.

This involves having to implement some changes first (such as recording all complaints, notwithstanding the detail of the types of information that needs to be recorded about those complaints for reporting to ASIC was being discussed as part of ASIC's second stage of consultation). ASIC's approach to breaking up the implementation into stages has involved insurers having to try to anticipate what further changes might be required in the future while the regulatory requirements for the second stage are finalised. There can also be substantial budgetary cost implications for some members.

Our members are unsure if ASIC fully appreciates the implementation challenges this presents, especially for smaller general insurers. In future, it may be desirable for there to be

⁶ ASIC Media Release [20-171MR](#) *ASIC releases final updated guidance on complaints handling* (30 July 2020)

⁷ ASIC Media Release [20-327MR](#) *ASIC seeks further feedback on internal dispute resolution data reporting requirements* (Wednesday 16 December 2020)

⁸ ASIC Media Release [21-177MR](#) *ASIC publishes Internal Dispute Resolution data dictionary and glossary ahead of pilot* (19 July 2021)

⁹ [ASIC's regulatory tracker](#), updated on 22 December 2021 for the IDR data dictionary, data glossary, and legislative instrument



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one whole of topic implementation start date for industry once all of ASIC's regulatory requirements are landed.

Examples of other approaches for ASIC consideration: test cases

In the context of business interruption, the Insurance Council notes that the Financial Conduct Authority (FCA) of the UK brought the BI test case under the Financial Markets Test Case Scheme. This is a scheme which enables the FCA to bring a claim raising issues of general importance to financial markets to be determined in a test case without the need for a specific dispute between the parties, where immediately relevant and authoritative English law guidance is needed.

The Insurance Council believes that such a scheme giving a similar power to ASIC would be of utility for Australian financial markets and is preferable to the process that was used in Australia for the BI test cases under Australian Financial Complaints Authority (AFCA's) rules. This is the first time that test cases have been brought using the AFCA Rules. However, AFCA cannot initiate its own test case and once it provides approval for a test case it is not involved in the filing or running of a test case or any appeals. We submit that ASIC is better placed to bring a test case in the same way the FCA can, rather than the existing process where AFCA essentially simply consents to a test case.



Attachment B: Examples of changes over a two-year period between 2020-2022

