



Insurance Council
of Australia

21 December 2023

Director
Consumer Policy Unit
Market Conduct and Digital Division
Treasury

Via email: consumerlaw@treasury.gov.au

Dear Sir/Madam

Designated Complaints

The Insurance Council of Australia (Insurance Council) and its members welcome the opportunity to comment on Treasury's Designated Complaints Exposure Draft Legislation (Exposure Draft).

The Insurance Council is the representative body for the general insurance industry in Australia and represents approximately 89% of private sector general insurers. Our membership is diverse, ranging from large ASX-listed companies to medium and smaller insurers who offer bespoke products.

General insurers perform a critical role in the Australian economy, assisting individuals, small business and communities to become more resilient and financially recover from loss or damage to their insured assets (for example car, home and contents, or an investment property). In support of the claims handling service outcomes provided to customers who might make a claim on their policy, general insurers have supply chain networks with builders, car repairers and other service suppliers to be able offer rebuild, replacement or repair claims resolution outcomes.

We note the proposed Designated Complaints function will apply to complaints that relate to a potential breach of the Australian Consumer Law (ACL) or to one or more of the ACCC's powers or functions under the *Competition and Consumer Act 2010*. We note that while reforms to the ACL may not affect financial services law aspects of general insurers' businesses, they will impact the side of general insurers' business associated with supply chains and other non-financial service law aspects (i.e. competition, rewards programs, roadside and home assist, some online services, offers and marketing). We further note that it will be important for designated complainants to fully understand the distinctions between the ACL and the *Australian Securities and Investments Commission Act 2001* (the ASIC Act) and their application to general insurers' businesses, so as to avoid designated complaints being made in relation to non-ACL related matters. We recommend the definition of a designated complaint is further clarified in the legislation to confirm exclusions from coverage of any matter falling outside the ACL.

A strong and stable general insurance industry that provides affordable general insurance products requires an efficient and effective regulatory system that delivers good policy outcomes for everyone – consumers (individual and small business), and the entire business community including small, medium, and large participants. The addition of inefficient or unnecessary regulatory layers creates further risk of increasing operational and related costs that could worsen the availability and affordability of insurance in Australia, particularly at a time of sustained cost pressures on insurers and

a growing insurance protection gap in Australia.¹ Such regulatory layers may impact the sustainability of general insurers, especially small to medium-sized insurers, who may find it increasingly challenging to continue to operate a viable general insurance business. We would not wish to see unintended consequences on this segment of the general insurance market, which could have flow on consequences for competition, and pose a significant countervailing cost to consumers and the economy which might outweigh any possible benefits designated complaints regime might achieve.

The ways in which general insurers are obliged to conduct their business, by interacting fairly with customers across the customer experience life-cycle, including at sales and renewal time, while handling claims and complaints, and also when providing extra care and support to vulnerable consumers, is highly regulated by the Australian Financial Services (AFS) Licence issued by ASIC under the *Corporations Act 2001*, the ASIC Act, the *Insurance Contracts Act 1984*, the *Privacy Act 1988* (currently under reform) and the best practice standards in the 2020 General Insurance Code of Practice (Code). Code subscriber performance against the Code is independently monitored and enforced by the General Insurance Code Governance Committee.² The Insurance Council recently announced an Independent Review of the Code as part of a regular three-year cycle of continuous improvement.³

To manage the effects of any cumulative regulatory burden, the introduction of the designated complaints regime will strengthen the need for ongoing co-operation, information sharing, and data sharing between the ACCC, ASIC, AFCA, and the various Code of Conduct monitoring and governance committees. Consideration should be given to how to strengthen existing co-operation mechanisms to ensure requests to general insurers for information and data are not duplicative or cause additional regulatory burden.

We make the following specific comments for your consideration.

1. Scope of Designated Complaints

The Insurance Council supports a regulatory regime that promotes robust consumer protection practices, minimum effective intervention in markets, and efficiency of application to minimise cumulative regulatory burden for businesses. It will be essential to the efficient and effective operation of the designated complaints regime that complaints made are well evidenced, thoroughly considered, strictly comply with mandatory content requirements, and are not duplicative or repetitive in nature. We agree with the Productivity Commission's previous commentary on a proposed super complaints regime that any such regime must "be supported by operational guidance and principles, to ensure that the process is effective and efficient".⁴

Complaints already dealt with by other bodies

The Insurance Council agrees that duplication of efforts should and will be reduced by the ACCC to having discretion to take no further action on a designated complaint where the subject of the complaint is the subject of another inquiry. We support the current provision providing discretion to the ACCC to take no further action if it is satisfied that the subject matter is, or is part of a matter into which a Royal Commission, coronial inquiry, coronial investigation, or coronial inquest is inquiring or has inquired within the past two years, however we recommend that the provision be amended to require the ACCC to take no further action in these instances, or that they be required to state the reasons for a re-examination of such matters.

¹ ICA [News Release](#) *Andrew Hall's speech at the National Press Club on the importance of addressing the protection gap* (23 November 2023)

² General Insurance [Code Governance Committee](#)

³ ICA [News Release](#) *Independent Review of the 2020 General Insurance Code of Practice* (14 November 2023)

⁴ Productivity Commission, [Right to Report Inquiry Report](#), 29 October 2021, p9.

There are several bodies already empowered to investigate complaints about, or the conduct of, general insurers in their dealings with both consumers and small businesses. These include Parliamentary Inquiries, the General Insurance Code Governance Committee (GI CGC), the Australian Securities and Investments Commission (ASIC), the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), and the Motor Vehicle Insurance and Repair Industry Code of Conduct Code Administration Committee (MVIRI CAC). Duplication of efforts by the ACCC in reviewing complaints that are the subject matter of, or part of the subject matter of an inquiry or review undertaken by one of these bodies within the two years prior to the complaint being made should also be avoided.

Further, there is a significant amount of information already at the call of ASIC to enable them to monitor the financial services industry and identify where to take regulatory action. This is a very different set of circumstances than for other sectors covered by the ACL. These information sources include:

- the Australian Financial Complaints Authority (AFCA) being required to notify ASIC of certain matters;
- the GI CGC sharing Significant Breaches of the Code with ASIC;
- Regulated Entities being required to report 'reportable situations' to ASIC;
- Regulated Entities being required to report complaints data to ASIC; and
- Regulated Entities being required to provide granular product and claims data to both the Australian Prudential Regulation Authority (APRA) and ASIC under the forthcoming Strategic Data Transformation work.

As such, we recommend that the draft legislation be amended to require the ACCC to take no further action in these instances, or that they be required to state the reasons for a re-examination of a subject that is before a body listed above or has been within the past two years.

Complaints substantially similar to previous complaints

We note and support the compulsory approval criteria for designated complainants, including the likely integrity of the applicant in their role as a designated complainant. We further note and support the Minister's capacity to cap the number of designated complaints that may be submitted in a given period, in order to ensure that the ACCC has adequate resources to progress designated complaints alongside their identified enforcement priorities, while also encouraging designated complainants to consider the type and quality of proposed designated complaints ahead of lodgement.

To further strengthen the integrity of the process and ensure designated complainants are deeply considering the type and quality of proposed designated complaints ahead of lodgement, we recommend that the mandatory content requirement criteria be amended to include a requirement that the designated complaint is not the same or substantially similar to a complaint already reviewed by, or subject of action, or a 'no further action' notice by the ACCC in the previous two years.

Required precursor to making a designated complaint

In addition to the requirement that a designated complaint not be substantially similar to a previous complaint, and to ensure the ongoing integrity of the designated complaints regime, we recommend a further amendment to the mandatory content requirement to the effect that prior to making the designated complaint, the designated complainant or the individuals/businesses they represent, have sought to resolve the complaint or dispute through an alternative method. There are several avenues for consumers and small businesses to seek to resolve disputes or concerns with insurers, including through Internal Dispute Resolution processes, and externally through AFCA or the GI CGC (for consumers), and the ASBFEO or the MVIRI CAC (for small businesses).

We note the existing strong engagement and information sharing processes that exist between the ACCC and these various bodies, and therefore recommend that where appropriate methods of dispute and complaint resolution exist, these should be exhausted prior to a designated complaint being made.

2. Variation or Revocation of Designated Complainant status

To support the ongoing integrity of the designated complaints regime, and the organisations and individuals approved as designated complainants, we recommend that additional criteria for variation or revocation be included. Specifically, we recommend that in considering a variation or revocation of approval, the Minister may have regard to a designated complainant making three or more designated complaints within a year that do not meet the mandatory content requirements or where the ACCC has issued a no further action notice. This additional criteria will strengthen the integrity of the regime and ensure designated complainants are deeply considering the type and quality of proposed designated complaints ahead of lodgement.

3. Timeframe for ACCC response

From a practical standpoint, we note that there may be issues in relation to the 90 day response timeframe for the ACCC where they need to consult with the entity or entities a designated complaint is made about, as well as any other regulatory bodies, to determine whether the subject matter of the designated complaint is or has already been dealt with by one of those bodies. Equally, where there is a technical assessment required of whether the complained about conduct relates to a potential breach of the ACL, such a determination may take some time.

As such, we recommend that provision be made for the ACCC to provide either an interim notice advising that further investigation is being undertaken, or an ability to extend the response timeframe if the designated complaint relates to an AFS License holder.

4. Review of the regime's effectiveness

As with the introduction of any regulatory or legislative change, it will be important for the regime to be reviewed to ensure ongoing effectiveness while managing any unintended consequences that may arise. As such, we recommend inclusion of a formal 'post implementation review' mechanism at three years following the commencement of the regime, as well as an ongoing review mechanism. The initial post implementation review timeframe should allow sufficient evidence of the value of the regime, as well as allow for surfacing of any unintended consequences resulting from the regime's introduction. Reviews of the effectiveness of the regime should also examine whether the ACCCs resources remain adequately allocated to the designated complaints regime as opposed to their ongoing enforcement priorities.

We would welcome further engagement with Treasury to ensure the Designated Complaints regime is implemented in the most efficient and effective manner, without creating any unintended consequences. To continue this discussion, please feel free to contact Alexandra Hordern, General Manager, Regulatory & Consumer Policy, at ahordern@insurancecouncil.com.au or 0411 281 790.

Yours sincerely,



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