INSURANCE COUNCIL OF AUSTRALIA

CCAAC Secretariat
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Consumer Policy Framework Unit
Competition and Consumer Policy Division
Treasury
Langton Crescent
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By email: CCAAC@treasury.gov.au

6 June 2013

Dear Sir/Madam

COMMONWEALTH CONSUMER AFFAIRS ADVISORY COUNCIL
ISSUES PAPER: REVIEW OF THE BENCHMARKS FOR INDUSTRY-BASED CUSTOMER DISPUTE RESOLUTION SCHEMES

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

The Insurance Council of Australia (ICA) welcomes the opportunity to provide comments to be considered by the Commonwealth Consumer Affairs Advisory Council (CCAAC) in response to the public Issues Paper for the Review of the Benchmarks for Industry-based Customer Dispute Resolution Schemes (Issues Paper).

We very much appreciate the extension of time for making this submission until Friday, 7 June 2013.

The Issues Paper notes that the six benchmarks (as initially released in 1997) are referenced in Australia and New Zealand for the approval of dispute resolution schemes where participation is required by legislation for some industry sectors.

Members of the ICA that are licensed general insurers are required to hold an Australian Financial Services (AFS) licence in accordance with the *Corporations Act 2001* (Corporations Act).

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Section 912A of the Corporations Act provides, among other things, that an AFS licensee must have a dispute resolution system that consists of:

(a) Internal Dispute Resolution (IDR) procedures that:

  (i) comply with the standards and requirements made or approved by ASIC; and

  (ii) cover complaints made by retail clients in relation to the financial services provided; and

(b) membership of one or more ASIC-approved External Dispute Resolution (EDR) schemes that covers complaints made by retail clients in relation to the financial services provided.

ASIC Regulatory Guide 165 (*Licensing: Internal and external dispute resolution*) explains what AFS licensees must do to have a dispute resolution system in place that meets ASIC's requirements. ASIC Regulatory Guide 139 provides for the approval and oversight of external dispute resolution schemes.

As AFS licensees, ICA members are members of the Financial Ombudsman Service (FOS), which is an ASIC-approved EDR scheme for financial services providers.

The 2011-2012 FOS Annual Review notes that 10,423 general insurance disputes were received, which represent 28% of all disputes received by FOS in this 12 month period.

ICA members are therefore vitally interested in the evolution of the best practice framework, and the benchmarks as they apply to FOS. The Issues Paper notes that industries with existing schemes are able to refer to the benchmarks when evaluating the scheme's operations. In this regard, the comments below address those consultation questions posed in the Issues Paper as relevant to ICA members' views about the benchmarks and their application to the FOS EDR scheme.

To what extent do the benchmarks act as a useful guide for industry schemes as well as consumers and industries that access such schemes? Are there any ways in which they could be improved to more effectively fulfil this role?

The benchmarks, as "formally applied in the financial and credit industry sectors where complaints schemes operate within a quasi-regulatory framework" (Issues Paper, p 12), are not well known to industry participants and financial services consumers.

Subject to comments below in relation to the Fairness benchmark, ICA members believe the benchmarks remain relevant and appropriate as a guide for FOS. However, they could be updated to reflect current practices, community awareness and technological advances. The benchmarks should then be clearly published on the websites of The Treasury and FOS.

Are there any other standards or guidelines that are commonly used by industry schemes to deliver and determine best practice operations? If so, how are they applied in conjunction with or as an alternative to the benchmarks?

As noted above, ASIC Regulatory Guide 165 (*Licensing: Internal and external dispute resolution*) explains what AFS licensees must do to have a dispute resolution system in place that meets ASIC's requirements.

ASIC Regulatory Guide 139 provides for the approval and oversight of external dispute resolution schemes. Section B of Regulatory Guide 139 provides the guidelines for initial and ongoing approval of an EDR scheme. The six Benchmarks are set out in Regulatory Guide 139, and ASIC may also take into account any matter considered relevant to approval. Section B of Regulatory Guide 139 also sets out detailed guidelines for the application of each Benchmark.

The General Insurance Code of Practice (Code) sets out a self-regulatory framework for Code signatories (which includes all ICA members). The Code requires Code signatories to be open, fair, and honest in dealings with customers. The Code sets out customer service standards for (among other things) buying insurance, claims and complaints handling procedures. Code breaches are reported to FOS, which also monitors and reports on Code compliance.

To what extent do the underlying principles and key practices under the benchmark of Accessibility remain relevant and appropriate to the needs of industry scheme stakeholders? How can they be improved?

There has been a significant increase in the number of consumers accessing EDR schemes over the past 10 years. This indicates that the efforts of EDR schemes to increase consumer awareness have been effective.

We would support initiatives to make EDR schemes meet certain accessibility requirements to improve access by under-represented sections of the community, and by customers with special needs. However we consider the current wording around Accessibility ('the scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers") to be suitable.

Accessibility for those customers with special needs could be clarified further in the benchmark. For example, minimum requirements could be established. This is particularly important in light of the service channels and technology offerings today. Although the document identifies "key practices" that support participation by "disadvantaged complainants or those with special needs", it might now be appropriate to explicitly identify these members of the community.

To what extent do the underlying principles and key practices under the benchmark of Fairness remain relevant and appropriate to the needs of industry scheme stakeholders? How can they be improved?

We agree that the underlying principles and key practices remain relevant. However, the first key principle should be improved by clarification. The first of the key practices (what is fair and reasonable in decision-making) can be interpreted in more than one way, which is not necessarily equitable to all parties in all instances.

The commentary on page 18 of the Issues Paper says, relevantly, "… the benchmarks highlight that industry schemes should make determinations in accordance with relevant industry codes of practice and the law. The benchmark of Fairness also allows for the decision-maker to consider what is fair and reasonable having regard to good industry practice". This clarifies the intended construction of the key principle, in that "determinations on … relevant industry codes of practice and the law" should not to be modified by "what is fair and reasonable [having regard to good industry practice]".

Accordingly, we believe, from the clarifying commentary on page 18 of the Issues Paper, and also in accordance with the general insurance industry's view of the proper role of the dispute resolution scheme, that the first of the key principles as to Fairness should be rewritten as follows:

"… that industry schemes provide that the decision-maker makes decisions *in accordance* with relevant industry codes of practice and the law, and may, in doing so, consider what is fair and reasonable having regard to good industry practice".

A further suggestion is that the benchmarks should outline requirements for EDR decisions to be brief and concise, and include a succinct explanation of legal principles applied.

To what extent do the underlying principles and key practices under the benchmark of Accountability remain relevant and appropriate to the needs of industry scheme stakeholders? How can they be improved?

While most industries and industry schemes are very good at meeting their obligations and reporting on key statistics, more can be done to analyse experience from the management of complaints and disputes to inform ongoing EDR scheme improvements. The ICA and its members liaise regularly with FOS in relation to continuous improvements of the operation of the scheme, and on the reporting for the scheme.

The benchmarks could include guidance on best practice scheme reporting to all stakeholders in a way that reflects the relationships and contracts that underpin the scheme, and that best captures the performance experience of the scheme.

To what extent do the underlying principles and key practices under the benchmark of Efficiency remain relevant and appropriate to the needs of industry scheme stakeholders? How can they be improved?

The implementation of this benchmark could be improved with guidance on how schemes can best handle an overlap of jurisdiction with another EDR scheme, or Tribunal.

Further, benchmark guidance for service level agreements on timelines for decisions by the EDR scheme would greatly assist.

Could any element of the benchmarks, including terminology or key practices, be modernised in the light of subsequent developments in ADR processes or technologies?

The benchmarks need to be updated to reflect social media complaint handling, online dispute practices and also the improvements in ADR processes as a result of these changes.

The matter of consumer financial hardship could be acknowledged in the benchmarks. This issue affects all sectors of the financial services industry. A more consistent approach across industry sectors would be beneficial.

Do each of the six benchmarks remain appropriate as part of a best practice framework for industry-based dispute resolution services, and are there any additional benchmarks (and associated key practices) that could be included?

The six current benchmarks are still appropriate for these schemes. Consideration could also be given to including a best practice model for scheme funding that best supports the benchmarks.

Would industry schemes benefit from additional implementation guidance and if so, how?

If the benchmarks do not alter considerably then additional assistance is not required. EDR schemes have Terms of Reference and review processes that should assist with detailed guidance for the particular scheme. If you have any questions in relation to this submission, please contact Vicki Mullen, General Manager, Consumer Directorate on (02) 9253 5120 or vmullen@insurancecouncil.com.au.

Yours sincerely

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