INSURANCE COUNCIL OF AUSTRALIA

Ms Kathryn McCrea
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Financial System Division
Treasury
Level 29, 201 Kent Street
SYDNEY NSW 2000

13 January 2020

Dear Ms McCrea

CLAIMS HANDLING AS A FINANCIAL SERVICE: EXPOSURE DRAFT LEGISLATION

The Insurance Council of Australia[1] appreciates the opportunity to provide comments on the exposure draft legislation and regulations (*Exposure Draft*), released by the Government on 29 November 2019, to implement Recommendation 4.8 of the Final Report of the Financial Services Royal Commission (*FSRC*) to remove the exemption for handling and settlement of insurance claims, or potential insurance claims, from the definition of a "financial service" for the purposes of Chapter 7 of the *Corporations Act 2001 (Cth)*.[2]

We support Recommendation 4.8 and the Government's overall proposed approach as outlined in the Exposure Draft. We recognise making a claim is often a new experience for consumers, frequently taking place when they are already under considerable personal stress because of a traumatic loss event such as a natural disaster. It is imperative for customers during those difficult times that their claims are settled as efficiently and compassionately as possible.

The general insurance industry's ongoing response to the recent catastrophic bushfire season highlights its commitment to ensuring claims handling is done well, so that people can rebuild their lives and businesses. The implementation of the proposed regulatory changes will provide greater assurance to the community that insurers and their representatives will handle and settle insurance claims honestly, efficiently and fairly. To that end, we are submitting a number of ideas on ways to ensure that Recommendation 4.8 is implemented effectively and pragmatically to ensure better consumer outcomes.

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[1] The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent about 95 per cent 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. September 2019 Australian Prudential Regulation Authority statistics show that the general insurance industry generates gross written premium of $49.5 billion per annum and has total assets of $128.3 billion. The industry employs about 60,000 people and on average pays out about $155.1 million in claims each working day.

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).

[2] All legislative references in this submission (including attachments) are to the Corporations Act 2001 (Cth) unless expressly stated otherwise.

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1. Fulfilment providers as representatives

Proposed Section 911A(2)(ek) requires that fulfilment providers (such as builders or car repairers) who have the authority to reject all or part of a claim need to have an Australian Financial Services Licence (AFSL) or be an Authorised Representative. The Insurance Council agrees with this approach.

There is however also the question of whether all other fulfilment providers would be "representatives" for the purposes of Section 910A as they would be providing a financial service (under Section 766G(1)(g)) "on behalf" of the licensed insurer, which we submit remains unclear in the Exposure Draft.

If fulfilment providers were to be representatives for the purposes of Section 910A, this would mean the insurer would be obliged to comply with all the requirements of Section 912A in relation to the fulfilment provider. Importantly, small businesses which most frequently are fulfilment providers would need to ramp up their own regulatory compliance to give the AFSL holder confidence that their obligations are being met.

This will create unnecessary red tape which will impede speedy and efficient claims outcomes for consumers. While there are a number of ways that this problem could be avoided, the Insurance Council submits that it is best resolved by the legislation making it clear that fulfilment providers not having authority to reject a claim will not be "representatives" for the purposes of Chapter 7. In our view, it is unnecessary that fulfilment providers be treated as "representatives" given the overall assurance provided by Section 912A(1)(a) that insurers will provide claims handling services (which will include fulfilment services) efficiently, honestly and fairly.

In relation to fulfilment providers, this means that insurers will be responsible for ensuring that appropriate governance and oversight frameworks are in place, including choosing fulfilment providers with appropriate qualifications and competencies; monitoring customer feedback regarding conduct and performance; and not continuing to use those providers that are subject to substantive customer complaints regarding conduct and performance. Insurers will also be responsible for the quality of the work done by those fulfilment providers, directly addressing concerns raised in the FSRC.

As we are seeing in the 2019-20 bushfire season, insurers are called upon to handle large volumes of claims within a short period of time. Our concern is that having all fulfillment providers captured as "representatives" will result in compliance related obligations being imposed on small businesses which are often relied upon, particularly in regional and remote Australia, to enable insurers to expand rapidly their claims handling capability in times of disaster.

While Insurance Council members have assured the Government that they will use local tradespeople as far as possible in rebuilding destroyed properties after the current bushfires, satisfying the compliance requirements in the Corporations Act governing financial services may be beyond those small-scale operations. This could potentially cause a shift to reliance on larger service providers from outside the disaster area.

It is also important to note that insurers are already currently contractually obligated to ensure the quality of work of providers. The General Insurance Code of Practice also requires insurers to accept responsibility for the quality of repairs and includes procedures for handling any complaints about a repairer's conduct, timeliness or quality of work. Insurers are also required under the Code to provide a hire car or accommodation over and above what is provided for in the policy if the poor repair work necessitates it. Furthermore, as Treasury would be aware, insurers are subject to a range of other obligations including under the Australian Consumer Law and the various state and territory regulations that apply to specific fulfilment activities.

2. Training requirements for representatives

In the event that the Government does not accept that fulfilment providers without the authority to decline claims need not be "representatives", we submit that the explanatory materials should clearly state that the Section 912A(1)(f) obligation regarding the training and competency of representatives ought to apply in a targeted and proportionate manner, to appropriately reflect the representative's role in the claims handling process. It should be made clear for example that the training and requirements for a representative who makes decisions to reject a claim ought to be different to that of a representative whose role is limited to the repair of motor vehicles or home buildings.

3. Application of Section 912A(1)(a) requirements to natural disasters

Furthermore, if the Government requires all fulfilment providers to be representatives, we submit that the Section 912A(1)(a) obligation regarding the efficient, honest and fair provision of financial services applies in a pragmatic manner, so as to appropriately reflect what insurers can reasonably be expected to do in the context in which claims are being handled.

In particular, we submit there should be greater recognition of the difficulties created by extraordinary circumstances such as natural disasters, especially in rural regions. As noted earlier, as we are seeing with the 2019-20 bushfire season, insurers are called upon to handle large volumes of claims within a short period of time. They also undertake urgent property repairs to ensure customers' safety well ahead of claims decisions and often going above and beyond contractual requirements. At the same time, insurers will find it more difficult to marshal the necessary pool of fulfilment providers in a timely manner in rural regions than they would in larger metropolitan areas. We note that this is recognised already in Example 1.14 of the proposed explanatory materials but submit that broader guidance in the legislation would provide greater certainty on this topic particularly given the current bushfire season.

4. Application of Section 912A(1)(a) where insurers do not have control or authority over factors influencing claims outcomes

We submit that the legislation should provide that Section 912A obligations do not apply in a limited number of prescribed circumstances where insurers do not have control or authority over key factors determining claims outcomes for customers.

Specifically, these are the handling and settlement of claims:

- In relation to third party claimants whose claims entitlements are determined outside the terms and conditions of the insurance contract (for example where public liability claims are determined by a court ruling).

- Where insurers are relying on the advice and actions of experts (for example doctors and other registered health professionals) operating under independent accreditation and regulatory frameworks (including for consumer protection) which they inherently do not have the capacity to question. These experts operate under independent accreditation and regulatory frameworks, and are relied upon to act professionally within their areas of expertise. Similar policy justifications to those used to exclude the legal activities prescribed in the proposed Section 766G(1) in the Exposure Draft would apply to exempt other categories of experts.

- Where fulfilment providers (under a cash settlement scenario) and intermediaries (such as brokers, travel agents, and vets) are engaged directly by customers (and where the insurer does not subsequently enter into separate contractual arrangements with those providers).

5. Clarifying the authorised representative requirement

We submit the legislation should be modified to more precisely define the terms “loss assessor” and “insurance claims managers” in the proposed Section 761A in order to ensure that only those entities that carry on loss assessment and claims management as their principal business activities are caught.

We submit that these definitions should be linked to the industry qualifications and accreditations for loss assessors and insurance claims managers, and should not capture entities that carry out those activities as ancillary parts of their broader business. For example, it is assumed that builders whose principal business is to build and repair homes, and who may provide ancillary services of assessing the extent of insurers’ liability, are not intended to be caught by this provision.

6. Interaction with Section 911B requirement to become authorised representatives

We submit that the legislation should be clarified so that entities not required to be licensed under Section 911A(2)(ek) are not inadvertently required to be a licensee or an authorised representative of an AFSL holder due to the operation of section 911B.

The clarification of the operation of Section 911B will help ensure that the operation of the licencing exemption in 911A is effective. The proposed Section 911A(2)(ek) will not require representatives to be licensed (or become an authorised representative of a licensee) unless they are an insurer, a loss assessor, an insurance fulfilment provider with the authority to reject a claim, an insurance claims manager, an insurance broker or a financial product advisor acting on the insurer’s behalf.

However, Section 911B(1) states that a person must only provide a financial service if that person is a licensee, or is an employee, director or an authorised representative of a licensee. Most importantly for insurers, this appears to have the unintended effect that a fulfilment provider without the authority to reject a claim will need to become a licensee or an authorised representative to be able to provide claims handling financial services.

7. Statement of Cash Settlement Options

We submit that the legislation should be amended so that the requirement for a Statement of Cash Settlement Options (SCSO) is limited to situations where there would be consumer benefits, as outlined in more detail in Attachment A.

The Insurance Council supports improvements that aid consumer understanding and decision-making. In the claims context, this includes providing consumers with additional information about the settlement options available to them. While the proposed new requirement for a SCSO will be effective in certain situations, there are also circumstances that we believe the SCSO may operate to cause delay in the claims settlement process. We submit that the current drafting of the legislation results in unintended consequences that would mean, for example, that those in need of emergency payments following a natural disaster would be unable to access such payments until the insurer had sent them a SCSO and until they had sought the recommended financial advice to receive such payments .

In particular, we submit that the SCSO requirement should be limited to home and contents insurance, consistent with the findings of the FSRC case studies, and to claims above a threshold amount (which could be determined as a percentage of sum insured, or a set dollar value).

8. Licensing of insurance claims advocates

We submit that the proposed legislation should require insurance claims advocates to hold licenses to be able to provide advocacy services to customers. It is difficult to justify the exclusion of claims advocates from the new regulatory framework. They have a substantial impact on consumer outcomes on par with other actors in the claims management process. All other such actors will be regulated as a result of the proposed legislation.

We note that this has recently been raised by ASIC as a key concern in relation to the 2019-20 bushfires:

> "These unscrupulous operators typically target homeowners, farmers and small businesses in the aftermath of natural disasters. They may claim to be able to identify damage to your property, sometimes by way of a free inspection. Be wary of anyone who asks for payment up front and who asks you to sign a contract immediately. Don't agree to sign anything which prevents you from dealing directly with your insurer, broker, financial adviser or lawyer. Anybody who is concerned about the conduct of such a person or firm should contact ASIC. You should contact your insurer directly if you are approached by a firm offering to assist with your claim."
>
> ASIC Media Release 20-006MR of 9 January 2020

9. Transitional arrangements

We submit that the legislation should be modified to provide greater clarity around the transitional arrangements, as outlined in more detail in Attachment A. In particular, we propose that the Government should provide in the legislation for the continuation of transitional arrangements until 30 June 2021 for all entities, regardless of when the licencing application has been lodged, so that entities who submit their applications earlier are not disadvantaged.

Additional issues

Detailed suggestions on additional issues are explained in Attachment A. If you have any questions or comments in relation to our submission please contact John Anning, Head of Policy, Regulation Directorate, on telephone: 02 9253 5121 or email: janning@insurancecouncil.com.au.

Yours sincerely

Robert Whelan
Executive Director & CEO

ATTACHMENT A: DETAILED ISSUES

Policy issue	Suggested actions	Supporting points
LICENSING REQUIREMENTS		
Policy issue 1: "Reject all or part of a claim" Reference: Proposed Section 911A(2)(ek) and paragraph 1.13 of the explanatory materials in the Exposure Draft	We submit that the explanatory materials should further clarify the treatment of fulfilment providers other than those with the authority to reject "all or part of a claim", under proposed Section 911A(2)(ek(iii). Specifically, we seek greater clarity regarding the meaning of "reject all or part of a claim".	*"Reject all or part of a claim"* We expect that this should be the ultimate decision to reject, based on evidence and recommendations, rather than the provision of recommendations or opinions upon which the decision is to be based. • Whether the quantum of the claim is a relevant consideration. For example, if a policyholder claims $10,000 and but the damage is assessed at $8,000 after making allowance for wear and tear. • Our position is that this should not constitute the rejection of "all or part of a claim" but rather the adjustment of the value of the damage under the terms of the insurance policy.
Policy issue 2: Definition of loss assessors Reference: Proposed insertions to Section 761A in the Exposure Draft	*Principal business test* We submit that the proposed legislation and explanatory materials should clarify that loss assessors are persons whose *principal* business is the investigation of the validity of claims under insurance. This would exclude persons who may from time to time undertake such investigations as ancillary activities but do not have loss assessment as their main business activity.	*Principal business test* The current proposed definition could be interpreted broadly to capture a motor vehicle repairer or a builder who provides assessments of repair costs while carrying on their broader business activities. We believe this would be inconsistent with a broader policy intent to exclude fulfilment providers without the authority to "reject all or part of a claim" from licensing requirements, and that this should be clarified in the legislation and the explanatory materials.

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Policy issue	Suggested actions	Supporting points
	Qualifications We submit that the definition of loss assessor should recognise the qualifications required under industry practice to work as loss assessors. For example, we note that the Australasian Institute of Chartered Loss Adjusters provides a framework of education standards, courses and qualifications for loss adjusters in Australia and New Zealand. *Experts* Experts (for example medical, building consultants, engineers, hydrologists, forensic accountants, valuers) provide specific expertise to enable the insurer to make a claims decision and it is possible that such experts may fall within the broad definition of a "loss assessor". These experts operate under independent accreditation and regulatory frameworks, and are relied upon to act professionally within their areas of expertise. Similar policy justifications to those used to exclude from the definition of handling and settling a claim the legal activities prescribed in the proposed Section 766G(1) in the Exposure Draft would apply to exempt other categories of experts.	

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Policy issue	Suggested actions	Supporting points
	Forensic investigators We submit that the proposed explanatory materials should clarify that forensic investigators, who provide scientific expert opinions regarding forensic matters arising as part of claims should not be regarded as loss assessors for the purposes of Section 761A in the Exposure Draft. See also Attachment B: Scenario 2**.**	
Policy issue 3: Definition of insurance claims managers Reference: Proposed insertions to Section 761A in the Exposure Draft	As with loss assessors we submit that the proposed legislation and explanatory materials should clarify that insurance claims managers are persons whose principal business is the management of claims. This would exclude persons who undertake those activities on an ancillary basis.	
Policy issue 4: Interactions with existing Corporations Act provisions: Clarification of the treatment of persons not required to be licensed under proposed Section 911A(2)(ek) in the Exposure Draft References: Sections 910A, 911B and 912A.	We submit that the proposed legislation should be clarified so that persons not required to be licensed under the proposed Section 911A(2)(ek) in the Exposure Draft will not be required to be an Authorised Representative as a result of Section 911B and would not be treated as a representative under Section 912A.	The proposed Section 911A(2)(ek) will not require persons to be licensed (or become an authorised representative of a licensee) unless they are an insurer, a loss assessor, an insurance fulfilment supplier with the authority to reject a claim, an insurance claims manager, an insurance broker or a financial product advisor acting on the insurer's behalf. However, Section 911B(1) states that a person must only provide a financial service if that person is a licensee, or is an employee, director or an authorised

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		representative of a licensee. Most importantly for insurers, this appears to have the unintended effect that a fulfilment supplier *without* the authority to reject a claim will need to become an authorised representative to be able to provide claims handling financial services. It should also be clarified that persons not required to be licensed are not "representatives" for the purposes of the Section 912A obligations.
Policy issue 5: Licensing requirements: The treatment of claims advocates engaged by customers Reference: Section 911A(2)(ek) in the Exposure Draft	We submit that the proposed legislation should be amended to require insurance claims advocates to hold licenses to be able to provide advocacy services to customers.	It is difficult to justify the exclusion of claims advocates from the new regulatory framework. They have a substantial impact on consumer outcomes on par with other actors in the claims management process. All other such actors will be regulated as a result of the proposed legislation. In in relation to the current bushfires, we note ASIC media release 20-006MR of 9 January 2020: "ASIC is also warning consumers and small business owners to watch out for firms offering to assist them with their insurance claim. Commissioner Hughes said "These unscrupulous operators typically target homeowners, farmers and small businesses in the aftermath of natural disasters. They may claim to be able to identify damage to your property, sometimes by way of a free inspection. Be wary of anyone who asks for

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Policy issue	Suggested actions	Supporting points
		payment up front and who asks you to sign a contract immediately. Don't agree to sign anything which prevents you from dealing directly with your insurer, broker, financial adviser or lawyer. Anybody who is concerned about the conduct of such a person or firm should contact ASIC. You should contact your insurer directly if you are approached by a firm offering to assist with your claim."
Policy issue 6: The requirement to request information in the "least onerous and intrusive way possible" Reference: paragraph 1.18 of the explanatory materials in the Exposure Draft	We submit that the explanatory materials should be modified to balance this requirement with what can reasonably and fairly be expected from an insurer in a given set of circumstances. We suggest there should be regard for the circumstances of the claim and the quality of the outcome.	For example: in some cases, an insured (or someone acting on their behalf) may voluntarily provide the insurer with additional information which is not strictly relevant to the claim. An insurer should not be precluded from receiving this information or relying on it if and where it is relevant to future claims (for example, a future claim for a different event). It would be an unreasonable burden on both the insurer and the insured if the insurer had to ask the insured for the same information again in the future.
Policy issue 7: Insurers' responsibility for the claims handling conduct of another licensee Reference: paragraph 1.20 of the explanatory materials in the Exposure Draft	We submit that the proposed explanatory materials clearly explain the responsibility of insurers for claims handling conduct where another licensee – for example, a fulfilment provider dealing with multiple insurers which decides to get its own licence – is in a more direct position to influence claims handling conduct.	This appears to be the intent of Example 1.12 of the proposed explanatory materials but we would appreciate further clarification.

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Policy issue	Suggested actions	Supporting points
Policy issue 8: Example 1.9 of the proposed explanatory materials regarding medical professionals not qualified in the specific medical field. Reference: Example 1.9 of the proposed explanatory materials in the Exposure Draft	We submit that Example 1.9 in the proposed explanatory materials should better explain the limits of the insurer's responsibility for choice of medical professional.	We recognise that insurers should be held responsible for continuing to engage a medical professional without giving proper regard to a large number of complaints (and that they should be responsible for selecting medical professionals with appropriate qualifications). However additional questions include: • The nature and level of complaints that should trigger an insurer's concern. The complaints may concern clinical matters which another expert thinks have no basis? • What if the complaints were to a regulator or other entities where insurers will not have ready access to complaints data?
Policy issue 9: Example 1.10 of the proposed explanatory materials where a person assists another person to make an insurance claim	We submit that the proposed legislation should be amended to make clear that intermediaries involved in the sale of insurance do not provide a financial service of handling or settling insurance claims by virtue of agreeing to assist a client to make a claim under their policy.	Absent such a clarification, the legislation as drafted would capture a travel agent that assists their client to make a claim on their travel insurance. This scenario often occurs for older travellers. In future, such requests would have to be refused
Policy issue 10: "Acting on behalf of" References: paragraphs 1.11, 1.13, 1.17 of explanatory materials in the Exposure Draft	We submit that references in the explanatory materials to the phrase "acting on behalf of" should make it clear that the relationship is not automatically to be taken as between AFSL holder and "representative".	There are good arguments that an expert should not be considered as a "representative" and similarly for those fulfilment providers that do not have the authority to accept claims (and in particular this would include those repairers nominated

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		by customers where the insurer wouldn't have auto-approval processes in place).
Policy issue 11: Licensing requirements: Example 1.11 in the explanatory materials on insurers' responsibility for its preferred smash repairer's action even though the smash repairer was the party causing detriment.	We submit that Example 1.11 in the proposed explanatory materials should be clarified in relation to insurers' responsibility for preferred smash repairers' actions where the smash repairer was the party causing detriment.	We acknowledge that insurers should be responsible under Section 912A(1)(a) for taking reasonable steps to ensure that their fulfilment providers are suitably qualified and competent (including for example having systems to choose the right providers and not choose those providers who are subject of complaints). Clarity would be appreciated on whether the conclusion to be drawn from Example 1.11 is that insurers would be held to have breached this obligation because of faulty mechanical or engineering decisions made by smash repairers who are suitably qualified and competent. This in our view goes beyond what could be reasonably expected from insurers.
Policy issue 12: Medical indemnity insurance	We submit that the proposed legislation should be amended to exclude claims in relation to medical indemnity insurance from the licensing requirements.	Medical indemnity related claims should be excluded given that this type of insurance is already highly regulated – under the Medical Indemnity Act 2002 (Cth) and the Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 (Cth). For insurers who provide access to certain government schemes, further contractual obligations are in place to ensure access for cover for medical practitioners.

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Policy issue	Suggested actions	Supporting points
Policy issue 13: Statutory classes of insurance	We submit that the proposed legislation should clearly be amended to exclude claims handling in relation to statutory classes of insurance (i.e. compulsory third party, workers compensation and builders warranty) from the licensing requirements.	Statutory classes of insurance are already highly regulated in each state and territory. Whilst we do not believe the intention is for the regime to extend to these classes of insurance product (as these are currently excluded from the scope of "general insurance" products for the purpose of Chapter 7 of the Corporations Act), clarity would be welcomed.
Policy issue 14: Third party recovery	We submit that the proposed legislation should be clarified to clearly exclude third party recovery from being treated as a financial service.	This would include recovery actions taken by insurers against third parties, and actions in respect of third parties seeking compensation from a policyholder or a third party beneficiary. We understand that is the intention of proposed Section 766G(3) and paragraph 1.9 of the proposed explanatory memorandum but greater certainty would be welcome.
INTERACTIONS WITH EXISTING CORPORATIONS ACT PROVISIONS		
Policy issue 15: Sub-authorisations in relation to claims handling Reference: Section 916B	We submit that the proposed legislation should provide that the Section 916B restrictions on sub-authorisations do not apply in relation to claims handling.	We suggest that the Section 916B restrictions are not necessary where there is a clear written line of authorisation and sub-authorisation from the licensee down the chain. We suggest the same approach could be used as applied to general insurance distributors appointed under ASIC regulatory instrument 2015/682 (ASIC Corporations – Basic Deposit and General Insurance Product Distribution Instrument – which has equivalent sub authorisation restrictions.

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Policy issue	Suggested actions	Supporting points
Policy issue 16: Interactions with existing Corporations Act provisions: Cross endorsements for ARs of 2 or more licensees Reference: Section 916C	We submit that the proposed legislation should provide that the Section 916C requirement for cross endorsements for ARs of 2 or more licensees (that is, each of the licensees consenting to the person also being the AR of each of the other licensees) does not apply where the authorisation is for claims services only.	From a claims handling perspective, many third party providers who will be required to become Authorised Representatives will act on behalf of a number of insurers. Not only is the process of cross-endorsement impractical from a claims handling perspective, these provisions could effectively limit the ability of suppliers to provide services to more than one insurer. This is because under section 916C, licensees that have already appointed authorised representatives have an unqualified discretion to prevent those authorised representatives from also providing financial services on behalf of other licensees. The provisions could have the effect of substantially lessening the pool of available suppliers, such as loss assessors and fulfilment providers. As compared with other financial services requiring cross endorsement (for example dealing in general insurance policies) there will be a greater likelihood of claims handling and settlement ARs acting for two or more licensees. Many of these ARs will also be small businesses whose principal business is not the provision of financial services (e.g. builders with authority to deny claims) and for whom the administration of such cross endorsements could be quite burdensome.

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Policy issue	Suggested actions	Supporting points
		Such cross endorsements requirements will also impact on the speed and efficiency of claims handling activities during catastrophe events when there is a smaller pool of ARs for insurers to appoint.
Policy issue 17: Licensees acting as ARs of other licensees under binders Reference: Sections 916D and 916E	We submit that the proposed legislation should be amended so that Section 916D does not apply in relation to claims handling.	Under existing section 916D, a licensee cannot be an authorised representative of another licensee. However, we submit that Section 916E, which provides relief from Section 916D (which provides that licensees cannot generally be authorised representatives of other licensees) by allowing a licensee to be the AR of another licensee if they are acting under a binder given by the insurer if they are acting under a binder., This relief is too narrow for the purposes of claims handling as many claims agents will not have a claims binding authorisation and will not be caught by way of non-binding services they provide. An alternative approach could be ASIC relief similar to that provided to licensees that only arrange but do not bind. It would however be simpler to not have Section 916D apply in the first place. It is arguable that given insurers will be responsible for the conduct of their representatives under the reforms, the restriction on licensees acting as Authorised Representatives adds no consumer benefit.

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Policy issue	Suggested actions	Supporting points
Policy issue 18: Joint and several liability of licensees for representatives Reference: Section 917C	We submit that the proposed legislation should provide that Sections 917C(3)(e) and 917C(4) does not apply joint and several liability for licensees for the conduct of representatives in “any other cases” in relation to claims handling.	We submit that allowing joint and several liability for representatives’ conduct creates a disincentive for licensees to appropriately monitor and improve their representative’s conduct (as they would not be bearing the full cost of misconduct).
FINANCIAL PRODUCT ADVICE RULES		
Policy issue 19: Recommendations and opinions that “could reasonably be regarded as a necessary part of” claims handling	We submit that the proposed explanatory materials should clarify when recommendations and opinions could “reasonably be regarded as a necessary part of” providing a claims handling service.	The draft legislation excludes recommendations and opinions that "could reasonably be regarded as a necessary part of" providing a claims handling service from the financial product advice regime”. This means that, provided claims handlers operate within this scope, distinctions between personal and general advice, and the obligations that flow from each, will not apply. Members have raised particular situations for further clarification. For example, what would be the treatment of recommendations or discussion as to whether or not customers should lodge a claim? Or if a customer were to ask about the impact of their claim on future premiums? Also, in situations where the claim value is under or near the excess amount, claims consultants may have a conversation with the customer with respect to the option to accept the claim, in light of a potential premium increase? These are examples of conversations which in our view should fall into the exemption.

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Policy issue	Suggested actions	Supporting points
Policy issue 20: Application to builders Reference: paragraphs 1.25 to 1.32 of the explanatory materials in the Exposure Draft	We submit that the proposed explanatory materials should clarify that disclosure requirements for financial product advice will not be triggered when builders have conversations with a property owner about the methods and approaches which could be used to repair a property.	Paragraph 1.30 of the proposed explanatory materials notes that recommendations as to the appropriateness of repairing or replacing an item in relation to an insurance claim are types of advice that could reasonably be regarded as a necessary part of handling and settling an insurance claim. However, we would appreciate further clarification that this extends to conversations about various methods and approaches to repairing a property. A builder should be able to have open conversations with a property owner about the various methods and approaches to repairing property (typically a physical building) as they would in a non-claim environment. This will allow customers to ask questions about available options, increasing customer understanding and resolving potential roadblocks, leading to the more timely resolution of claims. For example, builders may have discussions about the need to rectify a pre-existing defect before the repair can proceed or matching issues (rendering versus replacing brickwork to maintain aesthetics). It is not clear if "recommendations as to the appropriateness of repairing or replacing an item in relation to an insurance claim" as outlined in the proposed explanatory materials would be broad enough to cover these types of discussions.

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Policy issue	Suggested actions	Supporting points
Policy issue 21: Cash settlements Reference: paragraphs 1.25 to 1.32 of the explanatory materials in the Exposure Draft	We submit that the proposed explanatory materials should clarify that disclosure requirements for financial product advice will not be triggered in relation to recommendations in relation to cash settlements.	The list in paragraph 1.30 of the proposed explanatory materials of types of advice that would not trigger disclosure requirements for financial product advice does not include recommendations in relation to cash settlements. Cash settlement is generally one of the available claim options under an insurance policy (along with repair and replacement) and it should be treated consistently with other claim options.
STATEMENT OF CLAIMS SETTLEMENT OPTIONS (SCSO)		
Policy issue 22: Scope of application Reference: Proposed Division 3A of the explanatory materials in the Exposure Draft	We submit that the proposed legislation or explanatory materials clarify that the requirement for a SCSO should be limited to situations where it would significantly benefit consumers. It should be restricted to: • Home and contents insurance which is where problems were identified in the FSRC case studies. • Claims above a threshold amount. This could be determined as a set percentage of the sum insured or a set dollar value. To provide flexibility, the level of threshold should be set by Regulation, with Treasury consulting stakeholders on the appropriate level of threshold. This could be reviewed for efficacy after a 12 month period.	We submit that for smaller claims (such as for damaged household appliances, total loss of low value vehicles etc.) which insurers typically fast track, the requirement for a SCSO will negatively impact on the speed and efficiency and insured's preference, with which a claim can be settled. Without an appropriate exemption for cash settlements offered over the phone, cash settlements could no longer be offered at the time the insurer is discussing a claim with a consumer over the phone, which would unreasonably delay the settlement of claims. In some circumstances, there may be no other reasonable option available apart from cash settlement (for example, retrospective payment for items such as a lost phone, stolen handbag, or broken window where the customer has already replaced or repaired

ATTACHMENT A: DETAILED ISSUES

Policy issue	Suggested actions	Supporting points
	Furthermore, a SCSO should not be required where cash settlement is the only option (for example where the customer has already purchased a replacement item, or when an insured is seeking reimbursement for medical expenses incurred overseas under their travel insurance policy), or cash payments by insurers to third parties (for example a repairer acting on its own behalf that will perform the repair). The explanatory materials should also detail how the SCSO requirement will operate where multiple claims payments are made. There should be a time limited exemption from the requirement to provide the SCSO "when the offer" to make a cash settlement is made over the telephone. When a cash settlement is offered over the telephone, the prescribed information could be provided orally, and then followed up with the written SCSO.	the item or the item is unique such as artwork or a stamp collection and is not capable of being replaced or repaired). In these circumstances, the need for a SCSO appears unnecessary given there is no other settlement option. Cash payments in complex claims – multiple cash payments may be made over the life of the claim (for example, progress payments on large losses for business interruption or repair/make safe/other mitigation of loss activities) where each payment could be considered a "cash settlement". It is currently unclear if a SCSO is required to be issued for each such cash payment, but if so, this would result in the customer potentially receiving the same information on multiple occasions which is unlikely to add value to the customer's decision-making. Emergency payments – in catastrophes or other significant individual losses, lump sum cash assistance is currently provided by insurers (for example, emergency payments to buy clothing or pay for emergency accommodation). By their nature, these payments are required to be made quickly and efficiently and would be slowed down if a SCSO is required, significantly impacting customers in times of need.

ATTACHMENT A: DETAILED ISSUES

Policy issue	Suggested actions	Supporting points
Policy issue 23: How it would operate Reference: Proposed Division 3A of the explanatory materials in the Exposure Draft	We submit that the proposed explanatory materials should spell out the process including how it would operate for multiple claim payments, and the process after the SCSO is sent. For example: • Is explicit consent from the customer required to proceed? Are reminders required to be sent? • Would the consent from the customer need to be in writing (can it be over the phone or digitally)? • What if customers do not respond? • Does an insurer need to validate that the customer has sought financial advice? What information can an insurer provide if asked by the customer where to obtain financial advice?	It would also be useful if ASIC provides additional guidance on what the SCSO should look like (ideally with a template). See also Attachment B: Scenario 2.
EXTRATERRITORIAL APPLICATION		
Policy issue 24: Extraterritorial application	We submit that the proposed explanatory materials should clarify that for an insurance product issued in Australia, third party providers in other jurisdictions will not be captured under the new claims handing and settling service (noting that Section 5 of the Corporations Act limits the extraterritorial application of the Act)	It is unclear whether the services provided by international third party providers would be captured under the claims handling and settling service. For example, in relation to travel insurance, some claims handling services (e.g. medical services) are provided offshore. Many travel insurers will have a network of medical providers in numerous jurisdictions. Applying Australian law to

ATTACHMENT A: DETAILED ISSUES

Policy issue	Suggested actions	Supporting points
		offshore providers would be inappropriate, and practically difficult to enforce. To be clear, we are not suggesting that claims handling and settling activities under an offshoring arrangement, e.g. call centres, are exempt and should be regulated in the same way that such activities provided in Australia are.
TRANSITIONAL ARRANGEMENTS		
Policy issue 25: Treatment of claims between commencement date and granting of licences	We submit that the proposed explanatory materials should provide greater certainty of the treatment of claims between the commencement date of 1 July 2020 and the granting of licences allowing licensees to handle claims as a financial service, preferably by using examples.	Certainty that Chapter 7 will not apply to claims handling activities until the end of the transition period will optimise better training, communication, effective changes to policies, procedures and systems.
Policy issue 26: The timing of lodgements and licence obligations Reference: Proposed Section 1669 in the Exposure Draft	We submit that the legislation should provide for the continuation of the transitional arrangement until 30 June 2021 for all entities regardless of when the licensing application has been lodged. We also note that any new representatives appointed by an insurer post 30 June 2020 will not have access to transitional relief. We suggest there should be consistency in the application of the transitional provisions.	This is in our view necessary to not disadvantage earlier applicants, and also given that insurers will need to lodge multiple licenses for different legal entities involved in their business. We also note that new representatives brought on after 30 June 2020 will not have access to transitional relief.
Policy issue 27: Provisional licensing	We submit that the proposed legislation should be amended to allow ASIC to provide provisional licencing arrangements for	We anticipate that there will be a large volume of licence applications from both the general and life insurance industries. This

ATTACHMENT A: DETAILED ISSUES

Policy issue	Suggested actions	Supporting points
	defined time periods in the event that there are delays in the processing of licence applications. Our reading of the Exposure Draft is that the current provisions do not allow for this.	stems from the breadth of activities and entities covered by the legislation, and since each insurer (and other businesses involved in claims handling) will likely be lodging several licence applications for each of its subsidiary legal entities that will now be required to be licensed. Our concern is that the deadline for lodging applications by 31 December 2020, and the 6 month transition allowing continued operations without a licence until 30 June 2021, will not provide sufficient time for the likely high volume of licences to be processed in a timely manner before the end of the transition period.

ATTACHMENT B: ILLUSTRATIVE SCENARIOS

	Scenario	Observations
Scenario 1: Motor repair providers providing factual reports and estimates	Motor repair providers will prepare a report and/or an estimate of damage in keeping with the customer's description. This is based on information derived from the customer and information provided by the insurer including the accident description on record. The repairer will then base their estimate or report on this factual information and then refer to the loss assessor to make the determination. The repairer does not make the decision on settlement or inclusion as part of the claim.	This scenario illustrates that motor repair providers do not fall under the definition of either a loss assessor or an insurance fulfilment provider that rejects all or part of a claim. It also illustrates that reports provided by motor repair providers do not contain advice or recommendations to accept or deny liability under the policy but rather contain factual information on the state of the vehicle.
Scenario 2: Property repair claims	In February 2019, extensive monsoonal rainfall fell over Far North Queensland, culminating in overflows from the Ross River Dam being released, causing extensive damage to homes in Townsville. Flooding affected both buildings and contents and temporary accommodation was needed. Property access was restricted for days and the rapid mould growth complicated the repair process. Post claim lodgement actions were: • A loss adjuster is appointed to maintain the overall claim response. • A panel builder and a repairer attends and prepares a Scope of Works statement for building repairs. • Entry into a repair contract with a builder for building works required. • A list of damaged contents is prepared, and relevant providers engaged, quoted,	This scenario illustrates the need for insurers to ascertain whether all the advice provided within the outlined actions can be regarded as "reasonably necessary in handling and settling an insurance claim". It also raises the question of whether a SCSO should be required for each step of the claim as cash payments occur at different times during the claim process – for e.g., emergency payments, temporary accommodation payments, and several payments for contents.

	Scenario	Observations
	fulfilled, advice on updated models received. • Restoration work and air conditioning repair advice. • Customers given option to purchase items and seek reimbursement. • Emergency payments as needed. • Temporary accommodation as needed during repair. • Mycologists engaged as needed to advise on mould levels at pre and post repair schedules. As part of this process: • Differing levels of advice is given. • The loss adjuster provides advice on policy coverage and any adjustments for payments in relation to pre-existing damage, maintenance, or progress of works. • Advice on meeting building codes. • Cash settlement payments will be continual as the claim proceeds.	