



Treasury Consultation

Making Insurance claims handling a financial service

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About Financial Counselling Australia and Financial Counselling

Financial counsellors provide advice to people with money and debt issues. Working in community organisations, their services are free, confidential and independent.

Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia. FCA's members are the State and Territory financial counselling associations.

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1 Introduction

We welcome the exposure draft, *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers) 2020 Measures Bill 2020* and accompanying regulations (the “Insurance Claims Handling Bill”). The Insurance Claims Handling Bill includes important protections to ensure that insurance claims handling is fair.

We have three issues which we do not believe are adequately covered in the proposed Insurance Claims Handling Bill:

1. Paid claims handling services that assist people to make insurance claims are not included.
2. Life insurers are not covered in the proposed Insurance Claims Handling Bill when life insurance was specifically mentioned as a claims handling issue in the Financial Services Royal Commission.
3. Additional protections are required for people settling insurance claims (particularly for natural disasters).

2 Executive Summary

The Financial Services Royal Commission recommended¹ improvements in consumer protection for insurance claims handling. We support that recommendation and the draft legislation to implement it.

The proposed changes will ensure that insurance claims are covered under the definition of “Financial Service” in the Corporations Act and improve disclosure when settling an insurance claim. This will be beneficial for people claiming on their insurance policies.

Additional protections are needed in the proposed laws however, to protect people from exploitation, including extending the legislation to include paid claims handling services and life insurance. There should also be additional protections for people settling an insurance claim following a natural disaster.

3 Implementing Recommendation 4.8 of the Financial Services Royal Commission

The Explanatory Memorandum to the Insurance Claims Handling Bill is a comprehensive analysis of the need for reform of insurance claims handling. We support that reasoning and the implementation of Recommendation 4.8 in the Financial Services Royal Commission.

¹ Recommendation 4.8 in the Final Report of the Financial Services Royal Commission

People take out insurance to protect themselves from an event that would cause significant financial hardship. Common events that people insure against are loss of life, damage to a home or car, unemployment, illness or total disability. All of these events can be disastrous for a person and/or their family. When an insured event occurs, it can be devastating but an unpaid or delayed insurance claim can significantly add to that trauma.

From time to time, financial counsellors see clients experiencing trouble getting an insurance claim paid. This scenario is likely to become more prevalent for those financial counsellors working in the areas affected by the current bushfire disaster. Some people are talked out of making a claim, there are unreasonable requests for documents, unfounded accusations of fraud and/or unreasonable delays. Improvements to claims handling means that people can get their insurance claim paid and get on with their lives.

4 The bushfire disaster and claims handling

Financial counsellors are already assisting people affected by the bushfire disaster that has happened over the last two months. Financial counsellors will assist many people with insurance claims and the financial difficulty that can be caused by the bushfires. Financial counsellors offer assistance both over the phone through the National Debt Helpline (1800 007 007) and face to face appointments. The National Debt Helpline website (www.ndh.org.au) will also have tailored online resources available for members of the public affected by the bushfires, including information on making an insurance claim and financial difficulty.

The bushfire disaster is an important reason to make sure that adequate consumer protections are in place for people making an insurance claim. Claims handling services need to be comprehensively covered and regulated. It is critical that people do not pay a firm to represent them in an insurance claim only to be exploited and ripped off. The current drafting of the Insurance Claims Handling Bill does not include paid claims handling services. This is a serious omission and the issues with this are discussed below under the heading "Paid Claims Handling Services".

People are also exposed to the risk of unfair settlements following the bushfire disaster (or any large natural disaster). People are often desperate and traumatised after a major natural disaster. They may agree to completely unfair settlements because they are vulnerable. We believe that the current protections are inadequate and further protection is needed. This is discussed further below.

We urge the Government to implement the additional suggested protections to ensure that people affected by bushfires are adequately protected.

5 Including insurance in the definition of a "financial service"

We support the long overdue change to include insurance claims in the definition of a financial service, as defined by the Corporations Act. This in turn will mean that insurers will be required to act efficiently, honestly and fairly when handling and settling insurance claims (section 912A).

6 Recommendation 4.8 and the proposed Insurance Claims Handling Bill

The drafting of the proposed changes is very difficult to follow and more importantly leads to the proposed changes being narrow in scope. The original Financial Services Royal Commission Recommendation 4.8 was:

4.8 The handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial service'.

This is a wide recommendation. It means that claims handling of whatever type should be regulated as a financial service. This is significant because people need to be protected when making a claim or settling a claim. The significance of this protection is even greater given the current bushfire disaster.

Recommendation 4.8 therefore is not being implemented in full, and as intended by the Financial Services Royal Commission.

The definition of *claims handling and settling service* at the proposed s. 766G (1) is widely drafted to include all, or most aspects of, insurance claims handling and settlement. It covers recommendations, statements of opinion, assistance, assessment, quantifying and settlement of insurance claims.

There is then an exemption for lawyers with some details.

Then there is the proposed 911A(2)(ek) which is a clause designed to **exempt** all *claims handling and settling services* except the services listed from (i) to (vi). The services listed include the insurer, a loss assessor, an insurance fulfilment provider, an insurance claims manager, an insurance broker or a person providing Financial Product Advice.

This means that every other *claims handling and settling service* (whatever they may be) is **not** regulated or covered by the Corporations Act. This legislation as drafted, is significantly narrower in scope than what would have happened if Recommendation 4.8 was implemented as intended by Commissioner Hayne.

Our main concern is that paid claims handling services remain exempt under the proposed Insurance Claims Handling Bill. This is a serious oversight and is discussed below.

7 Paid claims handling services

Paid insurance claims handling services are available for all sorts of insurance claims. There are two main types of help:

- Lawyers
- Firms assisting people to make claims

We support the exemption for lawyers and will focus on other paid claims handling services.

Firms assisting people to make insurance claims are currently mainly unregulated. The proposed Insurance Claims Handling Bill would leave them unregulated. These firms need to be regulated -

that need is now urgent given the current bushfire disaster. We remain concerned that people will use these services and be ripped off.

There are a lot of scare tactics used to convince people they need to pay for assistance to make an insurance claim. These include convincing people that:

- The fine print is tricky
- If they make a claim themselves it can cost more later to seek paid help because they may need to fix existing mistakes (although we dispute this)
- That they have a much better chance of getting the claim paid if they pay for assistance

It is essential that people are not misled into believing they need paid assistance to make an insurance claim. Insurance claims should be straightforward to make, fair, timely and transparent. The Australian Financial Complaints Authority (AFCA) should be able to ensure that people can make an insurance claim. AFCA does this through a range of measures which include:

- incorporating fairness into decision making²
- considering good industry practice in decision making³; and
- making referrals to community lawyers and financial counselling that can assist with advice on making a claim.

We recommend that the proposed Insurance Claims Handling Bill is redrafted to cover paid claims handling services at section 911A(2)(ek) and be the new (vii).

Recommendation

The Bill must regulate paid claims handling services by adding these to the list at section 911A(2)(ek).

8 Exemption for financial counsellors

Financial counsellors assist people in financial hardship. As part of this work, they may on occasion assist people to make insurance claims. Making a claim on an insurance policy can be an important way to alleviate ongoing financial hardship. Financial counsellors also perform a vital role in identifying insurance that a person may be able to claim. Many people do not know what insurance they have and financial counsellors can help people check.

The proposed definition of *claims handling and settling service* (the new s.766G of the Corporations Act) appears to cover the work that financial counsellors may do in assisting their clients with insurance claims. Financial counsellors provide the following services for free:

- a) Providing an opinion about the potential to make an insurance claim
- b) Recommending that people make an insurance claim
- c) Assisting people to make an insurance claim

² AFCA Terms of Reference A2.1(c)(i) available at <https://www.afca.org.au/about-afca/rules-and-guidelines/>.

³ AFCA Terms of Reference A 14.2 (c) available at <https://www.afca.org.au/about-afca/rules-and-guidelines/>

- d) Some (although limited) assessment as to whether an insurer may be liable to pay. This is not legal advice but instead an expectation that there may be liability based on the insurance provided.
- e) Assisting clients with settling insurance claims

Financial counsellors do not give legal advice. However, financial counsellors often source legal advice from free community lawyers if required.

We accept that as the Insurance Claims Handling Bill is currently drafted financial counsellors are not listed in section 911A(2)(ek) and are currently exempt. However, if paid claims handling services are regulated (as we recommend above) we would ask that consideration is given in drafting to not inadvertently catch the work of financial counsellors which must remain exempt.

9 Statement of Claim Settlement Options

The Statement of Claim Settlement Options is a welcome addition to the laws relating to insurance claims.

The main change required is to include life insurers (including those offering insurance through superannuation), not just general insurers in the provisions. Settling with a life insurer has similar risks and concerns as a settlement with a life insurer. People need to be provided information on how a claim may be paid and options. A particular concern for financial counsellors is that people with total and permanent disability claims need to be informed of the possible options for payment of the claim (including keeping it in superannuation).

Financial counsellors do see people who are dissatisfied with their insurance claim as they have been misled or they misunderstood their rights and options on how an insurance claim can be paid. The proposed amendment will ensure that people know whether they can settle for cash or seek repair/replacement of a car, house etc.

We suggest that in the current bushfire disaster that amendments are made to protect people making insurance settlements following a natural disaster.

The General Insurance Code of Practice (section 9.3) has specific provisions regarding the review of the settlement of claims a month after a catastrophe:

If you have a property claim resulting from a Catastrophe and we have finalised your claim within one month after the Catastrophe event causing your loss, you can request a review of your claim if you think the assessment of your loss was not complete or accurate, even though you may have signed a release. We will give you 12 months from the date of finalisation of your claim to ask for a review of your claim.

We will inform you about:

- (a) this entitlement when we finalise your claim; and*
- (b) our Complaints process.*

This provision is in a voluntary code. We do not believe these protections are adequate. People can be vulnerable for far longer than a month after a natural disaster. The “not complete and accurate” is not sufficient to cover unfair settlements.

People affected by a natural disaster are often traumatised and vulnerable. They make an insurance claim. The insurer is usually busy and the prospect of paying out many millions of dollars in claims. In these circumstances, people are often desperate to get back to normal life. In these circumstances, people may agree to unfair settlements.

Amendments to the law are required to ensure that people have a right of review for any settlement following a natural disaster that is unfair for whatever reason.

Recommendations

1. Life insurers must be included in the definition of section 948B.
2. There must be a right of review for any settlement following a natural disaster that is unfair for whatever reason.