

7 April 2015

Manager  
Small Business Ombudsman and Programmes Unit  
Small Business, Competition and Consumer Policy Division  
The Treasury  
Langton Crescent  
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Dear Sir / Madam

**SUBMISSION ON AUSTRALIAN SMALL BUSINESS AND FAMILY ENTERPRISE  
OMBUDSMAN BILL 2015**

I refer to the Australian Small Business & Family Enterprise Ombudsman Bill 2015 (Bill) and the explanatory materials provided by your office. Thank you for the opportunity to provide comment on the draft Bill.

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia, and our members represent more than 90 per cent of total premium income written by private sector general insurers. Small business insurance policies written by our members include public and products liability, property, business interruption and loss of profits, workers' compensation and professional indemnity.

The ICA supports the establishment of the proposed new Australian Small Business and Family Enterprise Ombudsman (Ombudsman) on the basis that there is no overlap or duplication of existing services, particularly in relation to industry dispute resolution schemes.

Our members are signatories to two codes of conduct – the General Insurance Code of Practice and the Motor Vehicle Insurance and Repair Industry Code of Conduct. Our support for the establishment of the Ombudsman is based on the premise that these codes and their dispute resolution processes will continue to operate unfettered. More information about the codes is provided below.

**The General Insurance Code of Practice**

The ICA has responsibility for the development of the General Insurance Code of Practice (Code), and members of the general insurance industry voluntarily enter into a contract with the ICA to be bound by the Code. The Code recently underwent a comprehensive external review, and a revised Code came into effect on 1 July 2014.

The Code is the instrument by which the general insurance industry sets standards for its own conduct and in particular its dealings with customers. This includes small businesses that employ 20 people or less (or less than 100 people if the business is involved in the manufacture of goods).

One of the five objectives of the Code is to provide fair and effective mechanisms for the resolution of complaints and disputes between insurers and their insured. The Code does this by establishing a comprehensive two-stage internal complaints process, including timeframes. A flowchart of the Code's internal complaints process is attached. Small businesses may access their insurer's internal complaints process in relation to any retail insurance product they hold.

The Code also outlines an external dispute resolution scheme administered by the Financial Ombudsman Service (FOS), which may be accessed by those customers who are unsatisfied with the outcome of the internal complaints process.

It should also be noted that consumers may report alleged breaches of the Code to the independent Code Governance Committee. The day-to-day compliance monitoring is outsourced to the FOS Code Compliance team.

### **The Motor Vehicle Insurance and Repair Industry Code of Conduct**

ICA members who offer motor insurance can also sign up to the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct) which came into effect in 2006, and whose signatories include insurance companies, smash repair trade associations and individual smash repairers. The Code of Conduct is a voluntary industry code in all states except NSW where it became mandatory in 2007.

The Code of Conduct's intention is to promote transparent, informed, effective and cooperative relationships between smash repairers and insurance companies. Signatories agree to observe high standards of honesty, integrity and good faith in conducting their businesses with each other and in the provision of services to claimants.

The Code of Conduct is administered by the Code Administration Committee, comprising three appointees of the ICA and three appointees of the Motor Trades Association of Australia (MTAA).

One of the principles of the Code of Conduct is to provide efficient, accessible and transparent dispute resolution processes for issues arising between individual repairers and insurers. It provides a clear and detailed dispute resolution process, initially involving the use of internal dispute resolution (through an insurer using an established internal dispute resolution mechanism which provides for prompt, transparent and fair resolution of disputes).

In the event a repairer disagrees with the outcome of an internal dispute resolution process, it can elevate the dispute to external dispute resolution, involving an agreed mediator (or if the parties cannot agree, a mediator appointed by the Code Administration Committee).

Should a dispute still be unresolved following mediation, either party retains the right to take legal action in relation to the dispute.

Currently, following recent recommendations of the NSW Parliament's motor vehicle repair industry inquiry, the Code Administration Committee is working on the establishment of an arbitration process for final determination of disputes.

### **Dispute resolution**

Section 69 of the Bill states that the Ombudsman must transfer a request for assistance if the request could have been made to, and more conveniently or effectively dealt with by, another agency of the Commonwealth, a State or a Territory, and under the law the other agency has the power to deal with the request.

Unfortunately the Bill's definition of "*agency of the Commonwealth, a State or a Territory*" does not encompass the Financial Ombudsman Service (FOS), or the dispute resolution processes contained in the codes described above.

The explanatory materials accompanying the draft Bill note that "*the role of the Ombudsman will be complementary to, and avoid overlap with or duplication of, the roles or responsibilities of other ombudsmen...*"

The ICA is concerned, however, that the drafting of the Bill does not go far enough to avoid overlap or duplication with existing internal complaints and external disputes procedures. Having duplication of dispute resolution services could result in the ability for small businesses to "shop around" for the most favourable outcome. There will likely be multiple handling of complaints, with additional time and expense and confusion in situations where our members wish to have a speedy resolution.

We seek clarification that the Bill is not intended to exclude, limit or provide a parallel process to the effective dispute resolution procedures provided by way of industry codes of conduct.

The ICA suggests that the Bill be amended to broaden the sections dealing with transfer of requests for assistance to include industry codes and FOS alongside government agencies, to make it clear that where an existing dispute resolution scheme applies to a small business complaint, that scheme takes priority and the Ombudsman cannot provide dispute resolution for that complaint.

### **Definition of "small business"**

We note that the Bill seeks to have as broad a definition of small business as possible, which was determined to be a business with fewer than 100 employees. We would instead suggest that the Bill has a definition consistent with that in the Corporations Act 2001,<sup>1</sup> being a

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<sup>1</sup> Section 761G.

business with fewer than 20 employees, or fewer than 100 for a manufacturer of goods. This is echoed in the FOS Terms of Reference, and in the Code.

It is our position that it would create confusion if different definitions of “small business” resulted in companies accessing different dispute resolution systems – i.e. those that fall within the FOS Terms of Reference can access FOS and those that do not can access the Ombudsman.

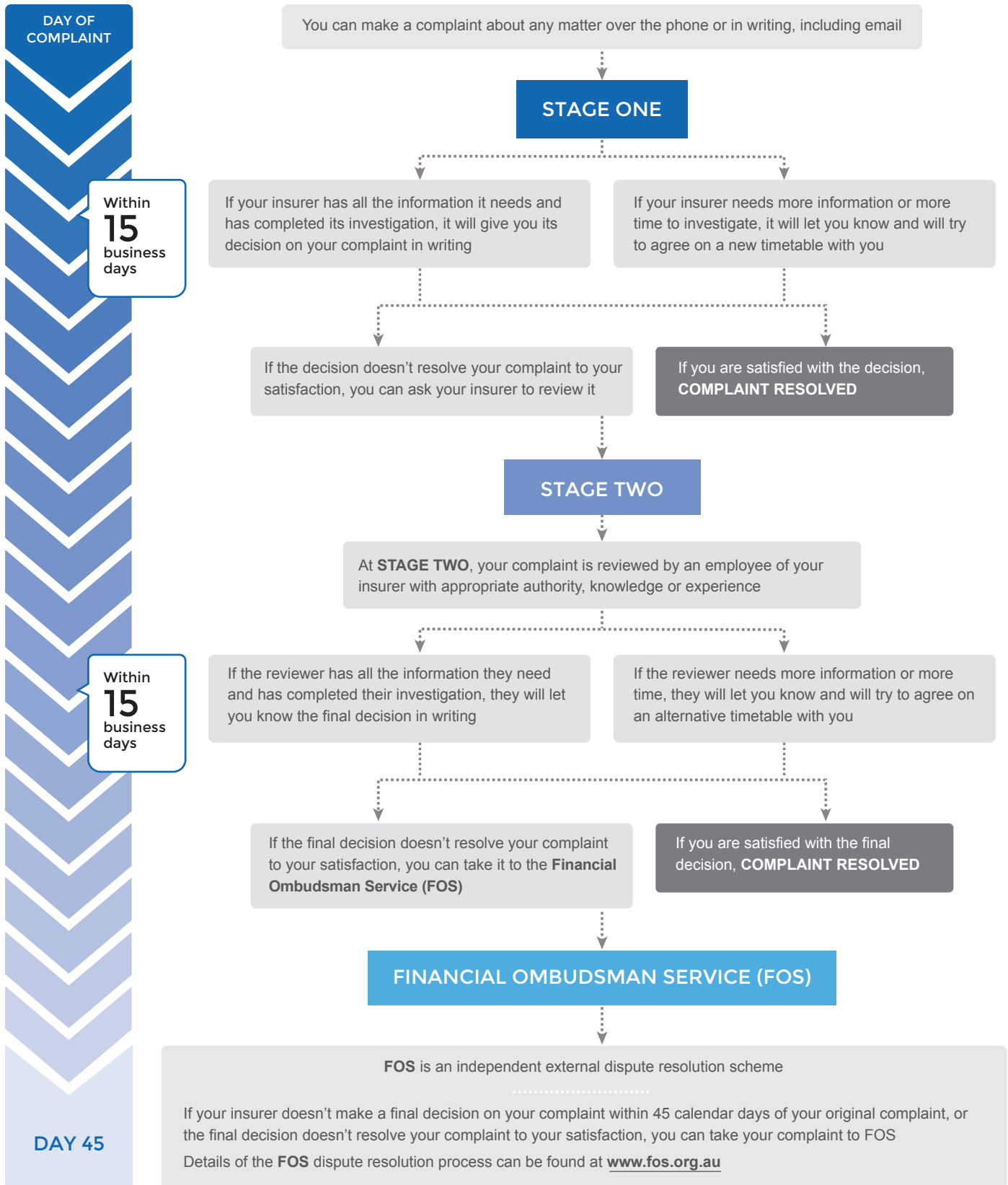
If you require any further information in relation to this submission, please contact Vicki Mullen, General Manager, Consumer Relations & Market Development Directorate, on (02) 9253 5120 or [vmullen@insurancecouncil.com.au](mailto:vmullen@insurancecouncil.com.au).

Yours sincerely



Robert Whelan  
Executive Director & CEO

# HOW TO MAKE A COMPLAINT\*



\* This process does not apply if your complaint is resolved within 5 business days and you have not asked for a response in writing, unless your complaint is about a declined claim, claim value, or financial hardship