

EDR Review Secretariat  
Financial System Division  
Markets Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Submitted online: <http://consult.treasury.gov.au/financial-system-division/dispute-resolution>

6 October 2016

Dear Sir/Madam

### **Review of the financial system external dispute resolution framework**

The Insurance Council of Australia (ICA) welcomes the opportunity to provide feedback to the Issues Paper for the Review of the financial system external dispute resolution framework (Issues Paper). The ICA strongly supports the existing external dispute resolution (EDR) framework and the role of the Financial Ombudsman Service (FOS) in providing fair and accessible dispute resolution to consumers. The ICA submits that any changes made to the EDR framework should enhance and build on existing strengths and not result in an overhaul of the current scheme.

The 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 general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system.

ICA members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance and 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).

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).

Section 912A of the Corporations Act provides, among other matters, that an AFS licensee must have a dispute resolution system consisting of specified internal dispute resolution (IDR) procedures and membership to one or more EDR schemes.

As AFS licensees, ICA members are members of the FOS. According to the 2015 -16 FOS Annual Review, general insurance disputes represented 31% of total disputes accepted by FOS.<sup>1</sup>

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<sup>1</sup> Financial Ombudsman Service, *Annual Review 2015 -16*, September 2016, p 43.

In our submission to this Issues Paper we have not sought to respond to each discussion question posed. Instead, we have provided an overview of the strengths of the FOS EDR framework and have identified areas that could be improved. The ICA and members seek to continually work with FOS to improve the consumer experience of the dispute resolution process.

### **ASIC-approved industry funded model**

The ICA is supportive of the existing EDR arrangement with FOS. Our members have been working in close consultation with FOS as FOS has implemented procedural and process improvements.

In particular, we acknowledge the efforts FOS has taken in response to the recommendations from the 2013 Independent Review<sup>2</sup>. Improvements have included increased engagement both directly with insurers and via liaison meetings and open forums, and implementation of a Fast Track process to expedite small and low value disputes.

FOS is funded by members in the form of membership fees and dispute fees. The arrangement keeps individual financial service providers directly and financially accountable for the number of disputes that proceed to EDR. This arrangement is conducive to healthy stakeholder engagement and is a strength of the industry funded model. High levels of consumer and industry engagement help to maintain the accountability and robustness of the scheme. It is arguable that stakeholder engagement of this level, is not as achievable under a statutory arrangement.

The ICA also submits that the FOS governance arrangement facilitates adaptability. This is fundamental for a financial services EDR scheme responsible for resolving disputes in a rapidly changing environment. Whilst statutory schemes established under an Act of Parliament require legislative change before amendments can be made to their powers or jurisdiction, the FOS Terms of Reference can be adjusted following stakeholder consultation and Board approval.

As an ASIC-approved EDR scheme, FOS is required to meet strict conditions concerning accountability and impartiality. These conditions are set out by ASIC in its Regulatory Guide 139. They require FOS to operate independently of industry; act impartially and fairly in its decision-making; and be governed by a Board of Directors (comprising equal numbers of consumer and industry directors and an Independent Chair). ASIC's Regulatory Guide 139 also requires FOS to undertake an independent review every 5 years and specifies how the reviews must be conducted.

We submit that the industry funded ASIC-approved model results in an EDR framework that:

- Provides a quick, free means for consumers to resolve disputes;
- Is subject to impartiality and fairness standards;
- Is not overly bureaucratic and can adapt as needed; and
- Supports high levels of involvement from consumer representatives and industry.

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<sup>2</sup> Cameron Ralph Navigator, *Report to Board of Financial Ombudsman Service – 2013 Independent Review*.

## **Alternative models of dispute resolution**

The ICA would caution against establishing an entirely new dispute resolution body for the financial services sector. It is questionable whether the creation of a single new body would reduce administration costs or lead to greater efficiencies.

Instead, enhancements can be made to the existing framework. The ICA supports, in principle, a 'one-stop shop' or triage service that overlays but does not overlap with existing schemes. We would support this proposal being considered in further detail in consultation with stakeholders. Such a service has the benefit of creating a single access point, thereby reducing consumer confusion about where to lodge a dispute. However existing EDR schemes, along with their experience and expertise, should be maintained.

The concept of an additional forum for dispute resolution is raised in the Issues Paper. The ICA suggests that further research is carried out to fully understand the type and extent of complaints that currently can not be resolved within existing EDR schemes. This should assist with adequately determining whether the existing arrangements are satisfactory or if an additional tribunal is indeed required.

With regards to establishing a tribunal for a complainant who is not satisfied with the EDR decision, this has the potential to duplicate the existing EDR process. An additional tribunal of this nature could substantially lengthen timeframes for finally resolving disputes and be costly to administer.

## **Strengths of FOS Code and FOS**

The current EDR framework supports an effective relationship between FOS and the FOS Code Compliance team (FOS Code). The establishment of a new EDR arrangement has the potential to disrupt the important nexus between Code monitoring and enforcement, and the FOS EDR process.

The General Insurance Code of Practice sets out the standards that general insurers must meet when providing services to their customers. This includes their complaints and dispute resolution processes.<sup>3</sup>

The Code Governance Committee (CGC) is the independent body that monitors and enforces insurers' compliance with the Code.

The CGC outsources its day-to-day compliance monitoring work to FOS Code. FOS Code is a separately operated and funded unit of FOS that provides monitoring, secretariat and administrative services to the CGC.

According to the CGC's *General Insurance Code of Practice Annual Report 2015 -16*, 75 per cent of new Code investigations came from FOS. 23 of the Code breaches the CGC closed during 2015-16 also came from possible Code breaches referred by FOS.<sup>4</sup>

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<sup>3</sup> Insurance Council of Australia, *General Insurance Code of Practice*, Section 10.

<sup>4</sup> General Insurance Code Governance Committee, *General Insurance Code of Practice Annual report 2015 – 16*, September 2016, p8.

The ICA greatly values the relationship between FOS Code and FOS, and the ability for FOS to quickly and easily notify the CGC of concerning trends and possible Code breaches. An aim of FOS Code is to support financial service providers to improve their complaints handling and reduce the number of customer disputes. FOS Code's relationship with FOS is an important mechanism by which this can be achieved.

### **Internal dispute resolution and interaction with FOS**

The ICA and insurers recognise the absolute importance of having an effective IDR process that works in smooth conjunction with FOS.

We have been working closely with our members, particularly during the process of revising the General Insurance Code of Practice, to enhance insurers' IDR procedures and provide better outcomes for consumers. We strongly support provisions that require insurers to provide consumers with clear processes and timeframes, along with regular communication about the dispute process.

The General Insurance Code of Practice stipulates that Code Subscribers must:

- Handle complaints in a fair, transparent and timely manner;
- Make information available about a consumer's right to make a complaint;
- Complete Stage One and Stage Two of the complaints process within 45 days; and
- Respond to the consumer in writing which should include notification of their right to take their complaint to FOS along with the contact details for FOS.

We have worked with members to ensure that provisions under the Code of Practice align with ASIC's requirements under Regulatory Guide 165.

ICA members support the need for continuous improvement to ensure the best possible outcome for consumers. For this reason, we welcome the work of the CGC and the insights they provide. The CGC collects data from Code Subscribers and reports on the number of internal disputes, their characteristics and trends.<sup>5</sup> The ICA is then better equipped to work with the CGC and insurers on specific areas that require improvement.

As has been noted, measures have been implemented to ensure insurers have effective and responsive IDR processes in place. As such, all effort must be given to encourage consumers to make a complaint with their financial service provider in the first instance, before proceeding to FOS.

The provisions stipulated in the Code and in ASIC's Regulatory Guide 165 provide a solid framework through which effective IDR practices have been established. The ICA and insurers will continue to work with the CGC and FOS to deliver improvements and enhance the relationship between members' IDR processes and FOS.

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<sup>5</sup> General Insurance Code Governance Committee, *The General Insurance Industry Data Report 2014 – 2015*, June 2016.

## General insurance complaint numbers

The 2015 – 16 FOS Annual Review reports a spike in general insurance disputes.<sup>6</sup> The ICA has commenced working with FOS and insurers to understand the factors behind this increase.

It is important to note that there is an inherent volatility in general insurance dispute numbers. For example, major weather events and natural disasters can lead to a sudden increase in claims, this in turn can result in an increase in disputes.

Insurers and the ICA have measures in place to ensure that industry responds to a catastrophe in an efficient and compassionate manner.<sup>7</sup> This includes providing the claimant with the right to have their property claim reviewed if they are dissatisfied with the decision and the claim was finalised within one month after the catastrophe.<sup>8</sup>

Nonetheless, severe weather events, increasing consumer awareness and other factors could lead to further spikes and fluctuations in general insurance dispute numbers. We would welcome FOS being adequately resourced to deal with these changes.

In conclusion, the ICA submits that the existing EDR framework for consumers of general insurance products is operating effectively and is continually subject to process improvements and stakeholder consultation. Nevertheless, improvements can be made. We would be willing to work with FOS and the Treasury on measures designed to enhance the current arrangement and improve the dispute resolution process for consumers. This includes:

- The introduction of a triage service to provide a single point of entry for consumers with financial services disputes;
- Working with FOS to ensure they are appropriately resourced to manage general insurance disputes; and
- Continually working with insurers to improve IDR processes and maintain an effective interaction with FOS.

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](mailto:vmullen@insurancecouncil.com.au)

Yours sincerely



Robert Whelan  
Executive Director and CEO

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<sup>6</sup> Financial Ombudsman Service, *Annual Review 2015 -16*, September 2016, p 54.

<sup>7</sup> Catastrophe means as event declared by the ICA to be a catastrophe, including but not limited to, fire, flood, earthquake, cyclone, severe storm and hail, resulting in a large number of claims and involving multiple insurers.

<sup>8</sup> See *General Insurance Code of Practice*, Section 9.