



**ASIC**  
Australian Securities &  
Investments Commission

**Insurance claims handling:  
Taking action on  
recommendation 4.8 of the  
Royal Commission**

**Submission by the Australian  
Securities and Investments  
Commission**

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## Executive summary

- 1 The Australian Securities and Investments Commission (ASIC) is Australia's national corporate, markets, financial services and consumer credit regulator, with oversight of conduct and disclosure regulation in the general and life insurance sector.
- 2 ASIC welcomes the opportunity to comment on Treasury's consultation paper [\*Insurance claims handling: Taking action on recommendation 4.8 of the Banking, Superannuation and Financial Services Royal Commission\*](#).
- 3 Our submission responds to questions relevant to ASIC's regulatory functions.

### ASIC's key position

- 4 ASIC supports the proposals made in the consultation paper.
- 5 Currently, the general conduct obligations that apply to Australian financial services (AFS) licensees (such as the obligation to provide financial services in a way that is efficient, honest and fair) do not apply effectively to conduct that occurs during the process of handling and settling insurance claims.
- 6 This is a result of:
  - (a) limitations in the definition of the financial services that are regulated by ASIC under Ch 7 of the *Corporations Act 2001* (Corporations Act); and
  - (b) a specific exemption for conduct that would otherwise be considered a financial service where it occurs as a necessary or incidental part of handling and settling insurance claims.

Note: General conduct obligations for AFS licensees are outlined in s912A of the Corporations Act. The exemption for financial services provided during claims handling and settling is set out in reg 7.1.33 of the Corporations Regulations 2001 (Corporations Regulations).
- 7 Applying the licensing requirements and general conduct obligations of AFS licensees to claims handling and settling conduct would extend ASIC's jurisdiction in a way that would enable us to take regulatory action to address poor conduct and consumer outcomes.
- 8 ASIC supports the two-pronged proposal set out in the consultation paper. We consider this will be a significant step towards improving the conduct engaged in by or on behalf of insurers during the claims handling and settling process. Removing the exemption in reg 7.1.33 and making claims handling a new financial service will mean the general financial services conduct obligations will apply, and give ASIC regulatory oversight of this process.

- 9            We acknowledge that creating a new financial service will have consequences for existing licensees and authorised representatives (as the licence authorisation structure does not currently allow for a financial service beyond those currently prescribed in Ch 7 of the Corporations Act). Consideration would need to be given to ways to minimise the administrative burdens on industry participants associated with adding a new financial service.
  
- 10          Creating a new financial service will also involve changes to ASIC systems and guidance. These changes will also allow ASIC to identify and generate reports for stakeholders about AFS licensees that hold these authorisations. ASIC will need to be given appropriate funding for these changes.

## A Extending the financial services regime to claims handling and settlement conduct

### Key points

ASIC supports the proposals to extend the financial services regime to claims handling and settlement conduct.

Fair and timely claims handling and settling are central to ensuring appropriate consumer outcomes for insurance and other risk management products. Poor conduct during claims handling and settlement may cause significant harm to consumers.

Because the financial services licensing regime and associated conduct obligations do not currently apply in this area, there is a gap in consumer protection. The proposals will address this gap.

We support consistent treatment of claims handling and settlement conduct for the different kinds of products and structures that are typically accessed by consumers to manage risks. We consider consumers should be entitled to expect fair and timely treatment of claims in all cases.

- 11 The consultation paper sets out proposals to implement recommendation 4.8 of the report by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) to ensure that conduct engaged in during the insurance claims handling process is treated as a financial service, and subject to the same obligations as any other financial service.
- 12 ASIC supports the extension of the financial services regime to conduct that is engaged in during the process of considering and settling claims made under the terms of insurance contracts. As indicated in our submission to the Royal Commission, we consider ‘the intrinsic value of an insurance product lies in the ability to make a successful claim when an insured event occurs’. We agree with the statement in the consultation paper that it is counterintuitive to identify the performance of contractual obligations under a contract of insurance as not providing a financial service that is subject to the conduct principles in the Corporations Act.
- 13 For these reasons, we consider that any regulation of claims handling and settlement conduct should expressly apply to providers of other ‘insurance-like’ risk management products (e.g. warranty products and discretionary risk products where the consumer can claim if a good they have purchased needs repairs). This will ensure regulatory neutrality between these products and insurance products so that consumers who obtain those products will have their claims handled in a way that complies with the general conduct obligations of AFS licensees.

## Poor conduct in claims handling may cause harm to consumers

- 14 Insurers sell a contractually binding promise. The promise is that if a claim is lodged for something that is covered under the terms of the policy, the insurer will honour the claim in accordance with the terms of the policy.
- 15 We agree with the statement in the consultation paper that ‘[f]or insurance products in particular, post-contractual obligations are critical, and ensuring fair and timely claims handling and settling are central to ensuring appropriate consumer outcomes’. Misconduct during the process of receiving, assessing and settling claims may negatively impact consumers and undermine the benefit to the consumer of holding insurance.
- 16 In ASIC’s view, the claims handling process broadly involves the following stages:
- (a) lodgement of the claim;
  - (b) assessment of the claim to determine whether it is covered under the policy, which includes investigation of the circumstances and extent of the event and loss that is the subject of the claim;
  - (c) acceptance or refusal of the claim either in whole or part;
  - (d) settlement of the claim in accordance with the terms of the policy (which, for a liability claim, may include an agreement to pay a third party claiming against a person covered under the policy); and
  - (e) recovery against other persons who are liable for the event covered.
- 17 During each stage, there is potential for conduct of, or on behalf of, the insurer to have an adverse impact on a consumer:
- (a) *Lodgement of the claim*—During the initial lodgement of claims, adverse decisions could be made about coverage based on preliminary information where the insurer does not have full details, or views the claim in a way that results in consumers being convinced to either not make or withdraw a potentially valid claim. A report by the Insurance Law Service noted:

Consumer groups have grave concerns about the regular reports received by assistance services that customers have been told over the phone ‘not to bother claiming’ as they would not be covered. This is particularly problematic when there are complex facts, difficult arguments about the meaning of policy wording and its application to the circumstances, and possibly expert evidence required.

Note: See Insurance Law Service, [Joint consumer submission to the General Insurance Code of Practice independent review 2012 issues paper](#), November 2012, p. 29 (PDF, 3.68 KB).
  - (b) *Assessment of the claim*—During the assessment stage, conduct of concern may include unreasonable requests for information from the claimant, unreasonable requests for the claimant to do things (such as attend too many medical appointments), unfair investigative practices, inappropriate surveillance and unreasonable delays in processing claims.

- (c) *Acceptance or refusal of the claim*—In relation to acceptance or refusal of the claim, conduct of concern may include:
  - (i) inappropriate settlement discussions where the insurer wrongly alleges the claimant is not entitled to certain components of the claim;
  - (ii) pressure on the claimant to withdraw the claim on the basis it is not covered;
  - (iii) failure to adequately advise the claimant of the reasons behind an adverse decision including providing inadequate evidence in support of the decision;
  - (iv) failure to advise the claimant of their rights to internal/external dispute resolution (IDR/EDR) in the event a claim is refused or only paid in part; and
  - (v) not having adequate IDR or EDR processes that the claimant can use.
- (d) *Recovery against other persons*—Other issues include using unfair practices in recovery actions against third parties, particularly parties in financial hardship.

18 ASIC has conducted thematic reviews and published reports that highlight concerns about claims handling conduct for both life insurance and general insurance products, and the effect of poor conduct on consumer outcomes. We consider the proposed changes should apply to both kinds of insurance products.

Note: See [Report 245](#) *Review of general insurance claims handling and internal dispute resolution procedures* (REP 245) and [Report 498](#) *Life insurance claims: An industry review* (REP 498). See also ASIC's submission to the Royal Commission, [Round 6: Insurance](#), 25 October 2018.

## Application of general conduct obligations will benefit consumers

- 19 ASIC agrees with the view expressed in the consultation paper that applying the AFS licensee obligations in Div 3 of Pt 7.6 of the Corporations Act—in particular, the general conduct obligations in s912A—would improve consumer outcomes by imposing an express requirement to conduct the claims handling process in a way that complies with those obligations, and to ensure the representatives are appropriately trained to engage in this service and supervised in their provision of this service.
- 20 Recent legislation to strengthen penalties for breaches of s912A obligations and offer additional remedies through relinquishment orders will further:
- (a) provide a deterrent to licensees continuing to engage in poor conduct during the claims handling process; and

- (b) allow both ASIC and consumers to take more effective action in response to misconduct.

Note: The amendments made by the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* commenced on 13 March 2019.

- 21 We consider that the same penalties should apply to contraventions in claims handling and settlement services as those that apply for other financial services.

## Consistent treatment for different kinds of life products

- 22 ASIC supports consistent treatment of claims handling and settlement conduct for the different kinds of life products and structures that are typically accessed by consumers to manage risks. We consider consumers should be entitled to expect fair and timely treatment of claims in all cases.

### Group life insurance policies

- 23 With life insurance, consumers will expect their claims experience to be the same whether they are claiming under an individually-held or a group product. We would have concerns if the standards for insurers and regulatory oversight differ significantly between group and individually-held insurance products. We therefore support extending the scope of the proposals to group life insurance.

### Life insurance in superannuation

- 24 The superannuation trustee is the policyholder for group life insurance policies obtained as part of a superannuation product. We consider it is imperative for trustees to play a robust role in processing claims alongside insurers for consumers to have a good claims handling experience.
- 25 However, we are also aware of the nuances with life insurance in superannuation—particularly extra stakeholder involvement (i.e. in-source/outsource superannuation administrators) and that life insurance is only one component of superannuation. We consider specific analysis and consideration should be given to identifying claims handling and settlement conduct in the context of insurance in superannuation, and how the general conduct obligations will apply.

## Other risk management products

- 26 ASIC notes that consumers may also obtain ‘insurance-like’ risk management products as an alternative to insurance products. For example, consumers may obtain cover for the breakdown of a motor vehicle through an extended warranty, or broader cover for a range of risks through a discretionary mutual fund.



- 27 One of the key features of these kinds of products preventing them from being a contract of insurance is that the issuer has a discretion about whether to make a payment on a valid claim. The additional consumer risks involved in discretionary cover have been recognised by Parliament in applying an additional requirement that a Product Disclosure Statement be given to wholesale clients.

Note: See reg 7.9.07CA of the Corporations Regulations.

- 28 The discretion about whether to make a payment on a valid claim may raise an additional circumstance in which consumers are reliant on the fairness of the conduct of the product provider when considering and making a decision on a claim. ASIC supports consideration being given to treating claims handling and settlement conduct in relation to these products as a financial service in the same way as for insurance products. This would also support regulatory neutrality between similar, competing products.

- 29 We also note that funeral expenses policies are a form of life insurance policy that are not currently regulated as a financial product under the Corporations Act. The Royal Commission recommended (recommendation 4.2) that these products should be regulated as financial products, and proposals to implement that recommendation are being considered. For completeness, ASIC supports treating claims handling and settlement conduct in relation to these products as a financial service in the same way as for other insurance products.

## B Proposal 1: Remove regulation 7.1.33

### Key points

ASIC supports the proposal to remove reg 7.1.33.

### ASIC supports this proposal

30 Regulation 7.1.33 specifies conduct that is taken not to be a financial service within the meaning of s766A(1)(a) (which refers to financial product advice) and s766A(1)(b) (which refers to dealing).

31 The conduct identified in reg 7.1.33 is:

- (a) the giving of advice that consists only of a recommendation or statement of opinion provided in the course of, and as a necessary or incidental part of, either or both of the handling and settlement of claims or potential claims in relation to an insurance product; and
- (b) a dealing in an insurance product in the course of, and as a necessary or incidental part of, either or both of the handling and settlement of claims or potential claims in relation to an insurance product.

32 The effect is to remove the identified conduct from the obligations in the Corporations Act that apply to financial services, even if the person engaging in that conduct is an AFS licensee.

Note: There is no similar provision in the *Australian Securities and Investments Commission Act 2001* (ASIC Act). Accordingly, giving advice and dealing in insurance products in the course of, or as a necessary or incidental part of, handling and settling claims under an insurance product are financial services for the purpose of the consumer protection provisions in Div 2 of Pt 2 of the ASIC Act.

33 Revoking reg 7.1.33 will remove a barrier to ASIC taking action to address some misconduct in relation to claims handling and settlement that amounts to the provision of financial product advice and dealing in an insurance product.

### Limiting unintended consequences

34 We note the concerns from industry participants referred to in the consultation paper that:

- (a) specific obligations for financial product advice would apply and be inappropriate for advice given in the context of claims handling and settlement; and
- (b) licensing requirements and obligations would extend to a wider range of service providers involved in the claims management process.

35 We consider that these concerns can be addressed in creating a new category of financial service: see our comments on the second proposal in Section C.

## C Proposal 2: Make ‘handling and settling an insurance claim’ a new financial service

### Key points

ASIC supports the proposal to create a new category of financial service, for both the Corporations Act and the ASIC Act.

We agree with the coverage of service providers identified in the consultation paper. Where service providers are engaged in the claims handling and settlement process on behalf of the product issuer, they should be subject to the same conduct obligations (either as a licensee or as a representative of a licensee).

We consider the proposed new financial services definition should not be affected by whether the insured person is a retail or wholesale client, although this may affect the particular obligations that apply to the licensee in relation to the client. This would be consistent with the application of the Corporations Act to other financial services.

Creating a new financial service will require changes to the AFS licensing framework (and/or consequential legislative changes) to ensure that the AFS licences of existing and new licensees cover the new service.

We agree that conduct covered by the new financial service should not be treated as also being financial product advice. Further consideration may need to be given to how this conduct can be removed from the definition of financial product advice.

### ASIC supports this proposal

- 36 ASIC considers it is necessary to create a new category of financial service to effectively cover the range of conduct involved in the claims handling and settlement process and address the potential for consumer harm resulting from misconduct.

Note: As outlined in Section A, we consider the new category of financial service should also apply to other ‘insurance-like’ risk management products. Accordingly, we support a broader reference to handling and settling claims under insurance and other risk management products.

- 37 We support the proposal to create a new category of financial service and clarify that conduct that is covered by this service is taken not to be financial product advice. We submit that this new category should be included in both the Corporations Act and the ASIC Act.

## Current limitations on ASIC's jurisdiction

### Corporations Act

- 38 Under s766A(1) of the Corporations Act, a person provides a financial service if they:
- (a) provide financial product advice;
  - (b) deal in a financial product;
  - (c) make a market for a financial product;
  - (d) operate a registered scheme;
  - (e) provide a custodial or depository service (for a financial product or an interest in a financial product);
  - (f) provide traditional trustee company services;
  - (g) provides a crowd-funding service; or
  - (h) engage in conduct of a kind prescribed by the regulations (no such regulations have been made).
- 39 Of the above, the activities of providing financial product advice and dealing are most relevant to insurance claims handling; in some cases, a custodial or depository service may be involved where insurance is held under those kinds of arrangements. While some conduct involved in claims handling and settling constitutes a financial service (e.g. providing advice about whether a claim is likely to be within the terms of the policy, or about the interpretation of particular provisions and terms used in the policy), it is likely that a significant amount of conduct in the process will not involve any of the existing financial services.
- 40 Examples of claims handling and settlement conduct that may not be covered by the existing categories of financial service include:
- (a) requiring a consumer to provide information and undergo specified tests and other forms of investigation of a claim—this means that imposing unfair requirements of this kind may therefore not involve a breach of the licensee obligations; and
  - (b) making a decision on a claim—this means that failure to make a decision in a timely way may therefore not involve a breach of the licensee obligations.

### ASIC Act

- 41 ASIC's jurisdiction under the ASIC Act is similarly limited by reference to the existing categories of financial service.

Note: The definition of 'financial service' in s12BAB of the ASIC Act is broader than the definition in the Corporations Act. It does not have an exclusion equivalent to reg 7.1.33. It also includes an additional kind of service being '(g) provide a service ... that is otherwise supplied in relation to a financial product ...'.

- 42 We currently use our jurisdiction under the consumer protection powers in Div 2 of Pt 2 of the ASIC Act to exercise some regulatory oversight of insurance claims handling conduct.
- 43 The kinds of misconduct that may be covered by these provisions include unconscionable conduct, misleading representations and harassing or coercive conduct in connection with the supply of financial services (e.g. financial product advice or dealing services in relation to the insurance product which occurs during claims handling and settlement process).
- 44 However, these provisions do not cover conduct that is not ‘in connection with a financial service’, and so may not cover some conduct that occurs during the investigation and settlement of a claim or undertaking recovery action against other persons.

## What service providers should be covered?

- 45 ASIC supports the proposal in the consultation paper that the new financial service cover conduct engaged in by the following persons:
- (a) *The issuer of the product*—This should include the insurer’s employees (broadly defined to include contractors), and related bodies corporate of the issuer and their employees (broadly defined to include contractors) if they provide claims handling on behalf of the issuer.
  - (b) *Third party representatives of issuers that provide claims handling on behalf of the issuer*—We consider that third party representatives should include service providers such as investigators, loss adjustors, loss assessors, collection agents and claims management service providers.
  - (c) *Other persons that ASIC declares are included*—This would enable ASIC to include other persons if problematic conduct is identified in the future.
- 46 We note that the current General Insurance Code of Practice identifies and defines relevant third-party representatives of insurers as follows:
- (a) *Investigator* means a person who is not the insurer’s employee but is contracted by the insurer to verify the circumstances relating to a claim.
  - (b) *Loss assessor or loss adjuster* means a person who is not the insurer’s employee but is contracted by the insurer to examine the circumstances of a claim, assess the damage or loss, determine whether a claim is covered by a policy, assist in obtaining repair/replacement quotes and help settle the claim.
  - (c) *Collection agent* means a person who is not the insurer’s employee but is contracted by the insurer to recover money owing to it.
  - (d) *Claims management service* means a person who is not the insurer’s employee but is contracted by the insurer to manage the claim on its behalf.

- 47 In relation to the specific question in the consultation paper about superannuation trustees, we have noted in paragraph 24 that we consider it is imperative for trustees to play a robust role in processing claims alongside insurers in order for consumers to have a good claims handling experience.
- 48 Generally, we consider that a person would not need to be covered by the new financial service if they:
- (a) provide a service that is incidental to the assessment and settlement of the claim; and
  - (b) do not act on behalf of the issuer when providing that service.
- 49 For example, we do not consider that it would be necessary or appropriate for service providers such as medical practitioners, mechanics, builders and property valuers who assist the insured person in the claims handling process to be treated as providing a financial service. It may not be necessary to cover persons who are involved in these kinds of related services even if they are required and paid for by the insurer, such as medical staff who conduct examinations required by the insurer. This may require further consideration about who is acting ‘on behalf of the insurer’ in a relevant way.

## What kinds of clients should be covered?

- 50 We consider the new financial service should cover claims handling and settlement conduct in relation to all insurance products (and other similar risk management products), regardless of whether the client or any beneficiary of the product is a retail client.
- 51 In general, the existing structure under the Corporations Act does not use the distinction between kinds of client to determine whether a service is regulated as a financial service. This distinction is instead relevant for determining which obligations apply to the person who provides the financial service. We consider this structure should be maintained for the proposed new financial service.
- 52 This would mean, for example, that where a general insurance product is issued to a person as a wholesale client, the insurer would:
- (a) be required to comply with the general conduct obligations in s912A that apply in relation to financial services without reference to the kind of client—this would include, for example, the obligation to do all things necessary to ensure the financial service is provided efficiently, honestly and fairly, and to manage conflicts of interest; and
  - (b) not be required to comply with those obligations that apply only in relation to financial services provided to retail clients—this would include, for example, dispute resolution requirements and financial services disclosure requirements.

- 53 It will be important to consider whether the obligations that apply in relation to this new financial service will adequately cover conduct for insurance products acquired and held by a person as a ‘group product’ that provide cover to other people who are retail clients (e.g. group life insurance policies provided through superannuation, and home building insurance held by an owners’ corporation under a strata scheme).
- 54 We consider that all obligations should apply if the financial service is provided in relation to claims made by an insured person under a group product as a retail client, even if the person who acquired the product is a wholesale client.
- 55 We note that in relation to life insurance products, the current provisions for interpreting the meaning of retail/wholesale clients may apply in the following ways:
- (a) if the product is an investment life insurance product, the retail/wholesale test under s761G(7)(a) (i.e. the price/value aspect) has already been modified by regulations to deal with the ‘group product’ situation;  
  
Note: See reg 7.1.18(5), 7.1.19(7) and 7.1.21(6) for how this test applies to investment-based and income stream products for individuals covered under group products.
  - (b) if the product is a life insurance risk product, the price/value aspect of the retail/wholesale test does not apply (see reg 7.1.25); and
  - (c) for insurance in superannuation, s761G(6)(b) provides that if a financial service provided to a person relates to a superannuation product or retirement savings account (RSA) product, the service is provided to the person as a retail client.
- 56 However, if there is any doubt, it may be preferable for the new financial service to be framed broadly, and then use exemptions to restrict the circumstances in which the requirements in Ch 7 apply.

## Effect on the AFS licensing framework

- 57 We agree with the general outline in the consultation paper about how the current AFS licensing framework may be affected by the creation of a new category of financial service. A new financial service would:
- (a) need to be reflected in the licences of existing AFS licensees, and the authorisations those licensees have given to authorised representatives, which will involve administrative costs for varying those licences and notifying ASIC of any changes to existing authorisations; and
  - (b) mean that persons who are not currently subject to the AFS licensing requirements will need to comply with those requirements (by either obtaining an AFS licence or ensuring that they can act as a representative or otherwise rely on an exemption from these requirements).

## Authorisations of AFS licences

- 58 The authorisations that are typically available for insurance products are set out in Pro Forma 209 *Australian financial services licence conditions* (PF 209).
- 59 Under the authorisation framework in PF 209, the authorisations that AFS licensees most commonly select (and which would typically be endorsed on a licence relating to an insurance business) include:
- (a) provide financial product advice for specified classes of financial products;
  - (b) deal in a financial product by:
    - (i) issuing, applying for, acquiring, varying or disposing of a financial product for specified classes of financial products;
    - (ii) applying for, acquiring, varying or disposing of a financial product on behalf of another person for specified classes of financial products;
    - (iii) arranging for another person to issue, apply for, acquire, vary or dispose of a financial product for specified classes of financial products; or
    - (iv) arranging for another person to apply for, acquire, vary or dispose of a financial product for specified classes of financial products, to retail and/or wholesale clients.
- 60 Creating a new financial service would require additions to these authorisations. The authorisations endorsed on existing AFS licences will not automatically cover a new financial service relating to claims handling and settlement.
- 61 We note that further consideration will be given to whether it is possible and appropriate to include the new service within the existing authorisation framework. The following options have been raised:
- (a) Claims handling and settling could be made a new form of *dealing* conduct. This option would not of itself allow the new service to be provided under existing licence authorisations. This is because the standard authorisations specify the particular kinds of *dealing* services the licensee is authorised to carry on (e.g. issuing, acquiring, vary and disposing).
  - (b) The Government could consider making regulations under s926B of the Corporations Act that modify Pt 7.6 so that an AFS licence with specified authorisations is taken to also include an authorisation for claims handling and settlement.
- Note: ASIC's powers to make modifications do not allow modification of Div 4 of Pt 7.6 (which sets out provisions dealing with AFS licence authorisations and other conditions).
- 62 While incorporating the new financial service within the existing authorisation framework would minimise the need for existing licensees to



vary their licence authorisations, it may create other regulatory issues as highlighted by the following examples:

- (a) Existing licensees would be authorised to engage in a financial service for which ASIC has not assessed their competence. Generally, we would not expect demonstrating competence to provide this service to be problematic. However, we are aware that some insurers have outsourced their claims handling and may be dependent on the continued availability and expertise of third parties.
- (b) Persons who only seek to provide claims handling and settlement, but not any other financial services in relation to insurance products, may not have a meaningful licence authorisation that distinguishes their conduct from other industry participants.
- (c) ASIC would not be able to identify through our systems persons who provide this particular financial service in order to generate reports on the affected population.
- (d) ASIC's public facing registers would not identify persons who are able to engage in claims handling and settlement conduct.

63 ASIC is of the view that claims handling and settlement should be categorised as a new discrete financial service under s766A.

64 Consideration will also need to be given to including a new category of financial service providers in ASIC's industry funding levy cost recovery model.

### **Third party service providers**

65 We consider that the burden of licensing for third party service providers can generally be managed by the service provider acting in a representative capacity and being appointed as an authorised representative of a licensee (such as the issuer of the product).

Note: If a service provider acts for a number of different licensees, it could choose to either obtain its own licence (and take responsibility to clients for its own conduct as a licensee) or be authorised as an authorised representative of each of the licensees (provided each of those licensees' consent to cross authorisations).

66 ASIC has previously taken the approach of creating a class of representatives referred to as 'product distributors'.

Note: See ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682. This approach involves modifying s911A and 911B to create a new class of representatives that can engage in financial services without either holding an AFS licence or being an authorised representative.

67 We do not support this approach in the case of claims handling and settlement as it would not provide for ongoing visibility of these service providers as ASIC would not be able to identify persons, or the number of persons, acting in this capacity.

68 The additional requirements that apply to authorised representatives (compared to other representatives) are also of benefit to clients. For example, authorised representatives must be listed in the publicly accessible financial services registers maintained by ASIC, which allows clients or potential clients to check whether a person is authorised, by whom and the scope of their authorisation.

### **Effect on unlicensed product issuers**

69 Some product issuers currently rely on an exemption in s911A(2)(b) of the Corporations Act.

70 This exemption applies where, under an arrangement between the product provider and an AFS licensee (an *intermediary authorisation*):

- (a) the AFS licensee, or their authorised representatives, may make offers to people to arrange for the issue, variation or disposal of financial products by the product provider (s911A(2)(b)(i)); and
- (b) the product provider issues, varies or disposes of financial products in accordance with such offers, if they are accepted (s911A(2)(b)(ii)),

provided that the offer under which the issue, variation or disposal is made is covered by the licensee's licence.

71 Claims handling and settlement conduct would not be covered by this exemption, and product issuers who rely on this exemption would (without any further exemption) need to obtain a licence that authorises this conduct.

72 ASIC is not aware of:

- (a) the number or identity of insurers (or other risk management product issuers) who rely on this exemption directly; and
- (b) the arrangements such product issuers have for handling and settling claims (e.g. whether they typically rely on the licensed intermediary to also engage in those aspects of the product on the issuer's behalf, and accept decisions made by the intermediary on their behalf).

73 To ensure full application of the consumer protections recommended by the Royal Commission and regulatory neutrality, we consider that obligations in relation to the proposed new financial service should, as far as possible, apply to product issuers that rely on this exemption in the same way as to licensed product issuers.

74 We note that the general conduct obligations in s912A are subject to civil penalties (and not merely administrative action against the AFS licensee's licence). It may be useful to consider whether these obligations, and related penalties, can apply to a person who relies on the exemption in s911A(2)(b) as if they were an AFS licensee, allowing action to be taken directly against those exempt persons (rather than any action being limited to action against the licensee on whom they rely).

75 We note that unlicensed product issuers are required to have an IDR process and be a member of the Australian Financial Complaints Authority: see s1017G.

## Financial product advice

- 76 As raised in the consultation paper, ASIC notes that some conduct involved in the claims handling and settlement process may be financial product advice (i.e. a recommendation or statement of opinion that is intended, or likely to have the effect of, affecting a decision about the insurance product), and may be personal advice. Removing reg 7.1.33 would mean that the requirements for financial product advice would apply to these services.
- 77 We broadly agree with the position in the consultation paper that the additional requirements and obligations in relation to financial product advice are not necessary for advice that is provided during claims handling and settlement.
- 78 We agree that amendments would be appropriate to ensure that conduct covered by the proposed new financial service will not be financial product advice. We note that further consideration will be given to how this position can be achieved through principal legislation or regulations.

## Key terms

Term	Meaning in this document
AFS licence (or licence)	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A of the Corporations Act.
AFS licensee (or licensee)	The holder of an AFS licence
ASIC	Australian Securities and Investment Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
authorised representative (of a general insurer)	A person authorised in accordance with s916A or 916B of the Corporations Act to provide financial services on behalf of the general insurer
authorised representative (of an AFS licensee)	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee  Note: This is a definition contained in s761A.
consultation paper	The consultation paper issued by Treasury on 1 March 2019, <a href="#">Insurance claims handling: Taking action on recommendation 4.8 of the Banking, Superannuation and Financial Services Royal Commission</a>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
EDR scheme	An external dispute resolution scheme approved by ASIC under the Corporations Act (see s912A(2)(b) and 1017G(2)(b)) in accordance with our requirements in <a href="#">Regulatory Guide 139 Approval and oversight of external complaints resolution schemes</a> (RG 139)
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C);</li> <li>• makes non-cash payments (see s763D)</li> </ul> Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.

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financial product advice	<p>A recommendation or a statement of opinion, or a report of either of these things, that:</p> <ul style="list-style-type: none"> <li>is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or</li> <li>could reasonably be regarded as being intended to have such an influence.</li> </ul> <p>This does not include anything in an exempt document or statement</p> <p>Note: This is a definition contained in s766B of the Corporations Act.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
general conduct obligations	The obligations of an AFS licensee under s912A(1) of the Corporations Act
IDR process	The internal dispute resolution procedures/processes that meet the requirements and approved standards of ASIC under <a href="#">Regulatory Guide 165</a> <i>Licensing: Internal and external dispute resolution</i> (RG 165)
insurer	An insurance company authorised to conduct new or renewal insurance business in Australia by the Australian Prudential Regulation Authority
policy	The insurance contract
Product Disclosure Statement (PDS)	<p>A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act</p> <p>Note: See s761A for the exact definition.</p>
recommendation 4.8	<p>The recommendation of the Royal Commission that the handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial service'</p> <p>Note: See Royal Commission, <a href="#">Final report</a>, p. 33.</p>
reg 7.1.33 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.1.33), unless otherwise specified
REP 245 (for example)	An ASIC report (in this example numbered 245)
Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
s912A (for example)	A section of the Corporations Act (in this example numbered 912A), unless otherwise specified