

Treasury Consultation Paper – Insurance Claims Handling – Recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission

Submission by Legal Aid Queensland



Treasury Consultation Paper – Insurance Claims Handling

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in response to the Treasury Consultation Paper – Insurance Claims Handling.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ’s Consumer Protection Unit lawyers have extensive experience providing specialist advice and representation in consumer law matters. The unit provides advice to clients as well as lawyers and financial counselors in relation to mortgage stress, housing repossession, debt, contracts, insurance, loans, telecommunications and unsolicited consumer agreements.

LAQ lawyers provide advice and assistance to Queensland insurance consumers in relation to claims on their insurance policies following natural disasters such as cyclones & floods. LAQ has assisted clients who have had similar problems following natural disasters in Queensland to those clients who provided oral evidence before the Financial Services Royal Commission (FSRC). LAQ is therefore in a strong position to provide comment on Insurance Claims Handling.

LAQ supports the view expressed by the FSRC in Recommendation 4.8 of its Final Report that insurance claims handling should not be exempt from the definition of financial services.

LAQ supports the proposed changes which involve characterising insurance claims handling as a financial service as it will improve ASIC’s oversight of insurance claims handling, contribute to addressing the existing power imbalance between consumers and insurers in the insurance claims process, improve the insurance claims process. The changes will also make the system fairer and more accessible. The dispute resolution process would be more robust and independent and insurers would be more likely to interact with AFCA in a timely responsive and efficient manner.

Consultation questions

1. Are there additional issues that have not been identified? If so, are there potential options for addressing them within the proposal?

The Consultation Paper identifies the relevant issues associated with recognising insurance claims handling as a financial service.

LAQ supports the proposal to implement FSRC recommendation 4.8 by removing Regulation 7.1.3 and using existing legislative power to define the activity of handling or settling an insurance claim as a financial service for the purpose of the Corporations Act.

This approach will allow ASIC greater oversight of insurance claims handling processes across the industry and give it a greater ability to address problems as they arise.

Additionally, AFCA Rule 9.5 gives AFCA, in individual cases, the power to draw an adverse inference against a financial services provider (including an insurer) when they do not provide information requested by AFCA without a reasonable excuse.

This power provides potential remedies for consumers on individual cases when insurers do not handle claims well. However, the additional powers contemplated by the FSRC Recommendation 4.8 are very important because they give ASIC the ability to address insurer's conduct at an industry wide level.

2. Are there other approaches that can be taken in designing the legislative amendments that would further improve consumer outcomes (including by reducing compliance costs)?

LAQ is not aware of any other relevant approaches. LAQ supports the approach set out in the Consultation Paper.

3. Are there any obligations, besides the existing AFS licencing obligations, that would provide further useful consumer protections in respect claims handling activities and so should also apply to them?

See answer to Question 1.

4. How could the activity of handling or settling an insurance claim (in relation to both life and general insurance products) be defined as a financial service for the purposes of the Corporations Act?

The focus of the FSRC was on addressing circumstances when insurers and other financial services providers engaged in conduct that was in breach of the law or did not meet community expectations. As a result, it is important that defining the handling or settling of insurance claims handling as a financial service be undertaken through the lens of what a consumer understands is the handling or settling of an insurance claim.

For the past decade, LAQ has been assisting Queensland consumers making insurance claims following natural disasters. As a consequence, LAQ is in an excellent position to set out what Queensland consumers understand are the activities which make up the handling and settlement of an insurance claim.

From a consumer perspective it is important that these activities be defined widely and includes:

- a) The lodgment of a claim, whether that is done in person, on the phone or through any other technology;
- b) Any interactions a consumer has with assessors or other experts such as hydrologists or engineers. In LAQ's experience, many bad claims experiences for consumers start with a bad experience with an insurance assessor;
- c) Any interactions with claims handling service providers;
- d) Any letters, phone calls, emails or other correspondence between the consumer and any employee or representative or agent of the insurer;
- e) The claims letter from the insurer setting out that the claim has been accepted or that the claim has been refused and the reasons for the refusal;
- f) The negotiation of any scope of works or cash settlement payouts following the acceptance of an insurance claim;
- g) Where a claim is rejected, the insurer's IDR process, including any interactions between the consumer and the insurer's IDR area; and
- h) Where an insurance claim is rejected or only partially accepted, the insurer's interaction with AFCA.

5. What penalties should apply to insurers breaching the general obligations of s912A in the specific instance of insurance claims handling? Should the penalties attaching to insurance claims handling, be the same that attach to other financial services?

LAQ supports the view that the penalties that should apply to insurers breaching the general obligations of section 912A of the Corporations Act should be the same as those penalties that apply to other financial services.