

5 April 2019

Manager, Insurance and Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: claimshandling@treasury.gov.au

Dear Sir/Madam

Thank you for the opportunity to comment on the consultation paper *Insurance Claims Handling – Taking action on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission*.

Suncorp welcomes the Government's intention to adopt the overwhelming majority of Commissioner Hayne's recommendations. We support reforms that enhance consumer protections in the insurance industry.

Our response to this consultation, and other Royal Commission recommendations, focuses on two things. Firstly, ensuring the recommendations are implemented without introducing new sources of customer detriment. Secondly, feedback around how the Royal Commission reforms and other pieces of legislation are coordinated and sequenced to minimise the disruption to customers and regulatory change costs across the industry.

Suncorp supports removing the existing exemption of claims handling and settlement of insurance claims from the definition of 'financial service' (Recommendation 4.8). This will mean that insurers are obliged to do all things necessary to ensure claims handling services are provided efficiently, honestly and fairly.

We are concerned that if this exemption is not designed with customers in mind, conversations between our people and policyholders that are currently of value will become unhelpful, costly and inefficient. Without careful drafting, this recommendation could lead to claims handling falling within the financial advice regime, which would lead to poorer customer outcomes. This could drag out even the simplest of claims and leave customers confused about what course of action to take, because they will receive advice that is generic and not focused on their specific circumstances.

Currently the exemption from the financial advice regime enables our staff to have open and timely discussions with customers when they are making a claim. As the Townsville floods demonstrate, there is a clear community expectation that insurers act quickly and decisively to support our customers when a natural disaster occurs and restore them and their possessions to the position they were in immediately prior to the event.

If the financial advice regime were to apply, our staff (and potentially anyone in the repairer supply chain) would be unable to have a conversation with a customer regarding their claim, without first investigating the customer's full personal circumstances, considering whether certain disclosures or warnings need to be provided, and potentially needing to provide a Statement of Advice. Higher educational requirements – which are intended to improve the quality of personal advice provided on complex products and services across the financial advice industry – would also apply to claims handling.

Suncorp is keen to work with Government to ensure that the Royal Commission recommendations are implemented in a way that does not jeopardise the ability of customers to access affordable and timely insurance, as well as timely assistance at claim time.

Should you wish to discuss this or any other matters, please don't hesitate to contact Suncorp's Senior Manager, Government, Industry and Public Policy, Pip Freebairn, on 0402 417 368 or by email at pip.freebairn@suncorp.com.au.

Yours sincerely



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Executive Summary

Suncorp supports the implementation of Royal Commission recommendations that will enhance consumer protections, including Recommendation 4.8 that “*handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of “financial service”*”. This reform will provide ASIC with an additional avenue of oversight into claims handling activities of insurers.

Insurers should be obliged to handle claims efficiently, honestly and fairly. As Treasury notes, many claims handling activities do not fall within the current definition of providing a ‘financial service’. Secondly, where they do fall within the definition, Regulation 7.1.33 of the *Corporations Regulations 2001* (‘the Corporations Regulations’) exempts these activities from financial service regulation (the “claims handling exemption”).

Suncorp supports Treasury’s proposal to remove the claims handling exemption and introduce a new financial service known as claims handling. Removing the current exemption will complement existing obligations to provide claims handling in an efficient and fair manner, such as the duty of utmost good faith under the *Insurance Contracts Act* as well as the provisions of the General Insurance Code of Practice and the consumer protection provisions of the ASIC Act.

We strongly believe that claims handling should be subject to an appropriate carveout from the financial advice regime. The new definition of claims handling (as a financial service) should be clearly defined so as to not capture persons that act in the capacity of a service supplier - like builders or smash repairers who make repairs. Rather, the new definition should only apply to those who **handle** or **settle** claims including assessing the claim, agreeing on the scope of works, and making the offer to pay out the claim or organise a repairer.

This distinction is critical, as it will ensure that customers are able to continue to access timely and relevant support when they make claims, and that third parties are not unnecessarily pulled into the administration required under financial services licensing regimes.

Third parties responsible for claims fulfilment, such as repairers, assessors and tradespeople, are generally required to meet relevant industry codes as well as supplier agreements before providing their service. In addition, Suncorp provides a lifetime guarantee over repair work undertaken by agreed third parties.

In this submission, we have provided case studies to illustrate how Suncorp’s customers benefit from being able to access this support at claim time, and the issues that should be considered when implementing this reform.

The removal of the claims handling exemption applies to both general and life insurance. In this submission, we have focused on general insurance as Suncorp no longer manufactures life insurance within Australia. Finally, Suncorp also supports the Insurance Council of Australia’s submission to this inquiry.

1. Introduction

The submission first steps through our observations to the paper's proposal. We then address the questions posed in the paper. Case studies have been provided to demonstrate the potential consumer detriment that could arise from claims handling being subject to the financial advice regime.

2. Regulation 7.1.33 and financial advice

As Treasury notes in the Consultation Paper, simply repealing the claims handling exemption would trigger obligations for insurers around the provision of "advice" at claim time. Without an appropriate carveout, conversations between a customer and their insurer, or conversations with any party involved in the repair, or replacement supply chain during an insurance claim, would fall within the financial advice regime, imposing significant obligations on insurers and third parties. This would not lead to a corresponding improvement in customer protection and may instead deliver perverse customer outcomes.

The value of an insurance policy is the ability to make a successful claim following an event, which is often well after the point of sale. It is at the point of claim that assistance from the insurer, and their third parties, can be critical to a customer. If claims handling falls under the advice regime, an insurer would need to meet (and govern with suppliers), various requirements that would inevitably slow response times and unnecessarily delay the process. This would hinder an insurer's ability to deal with the claim efficiently, as is intended by removing the exemption.

The financial advice regime distinguishes between factual information, general advice and personal advice. It was designed to be applied at the point of sale, which is different to claims handling.

Suncorp typically provides all three types of information to customers at claims time. If claims handling became subject to the advice regime, insurers would have two options:

– Switch to a no-advice model

This would mean insurers would only provide factual information and general advice at claim time. Customers who may be emotionally distressed following loss of their home or vehicle would only receive information that does not take into account their personal circumstances. Customers would find this insensitive and impersonal, and it is hard to see how it would enhance customer protections.

– Meet the financial advice regime obligations

Claims handling staff would need to be trained and authorised to provide personal advice, including meeting the three-year university degree education requirement of the advice regime. As Treasury notes, a claims handler has a narrower job scope than a financial advisor and for the most part, the training would not be relevant to their day-to-day activities. The training requirements would be disruptive for the large section of the workforce that do not currently meet this requirement. It would also be very costly, without an associated improvement in outcomes for the customer.

The claims handler would need to undertake a wide-ranging analysis of a customer's personal circumstances. For retail general insurance products, they would also need to provide a Statement of Advice for any personal advice they gave to the customer. Alternatively, they would need to ensure that any conversation they have does not amount to personal advice.

Detailed Statements of Advice in times of crisis are unlikely to be helpful especially as they are intended for the point of sale. Research by the Insurance Council of Australia found customers do not read existing product disclosure statements.¹ Research commissioned by ASIC on the financial advice regime found that customers do not understand the difference between personal and general advice, with many customers using general advice on the misapprehension it was specific to them.²

¹ Insurance Council of Australia; *Too Long; Didn't Read Enhancing General Insurance Disclosure* Report of the Effective Disclosure Taskforce to Insurance Council Board, October 2015

² Australian Securities and Investment Commission; *Financial advice: Mind the gap Report 614*, March 2019

In times of catastrophe when large numbers of customers face property loss, insurers seek to respond as efficiently as possible by scaling up the claims workforce from other areas of their business. Application of the advice regime would not only prohibit insurers from doing this, but the need to assess full personal circumstances would add to the assessment time without any additional benefit to customers, as most of the additional information that would be sought would have limited relevance.

The ultimate impact of the financial advice regime applying would be to prevent claims handling staff from engaging in effective and timely discussions with customers regarding claims. It would also increase the cost of providing support to customers, which would flow on to increasing the cost of insurance. This would exacerbate affordability in regions that are already paying higher premiums given their exposure to natural disasters like cyclones.

This would have consequences throughout the life cycle of a claim and would affect the services provided by vehicle smash repairers, builders and restorers, loss assessors (who assist customers to understand the extent of their loss) and other suppliers involved in the handling and settlement of claims.

Claims fulfilment service providers are already subject to industry and/or state-based licensing regimes relevant to their profession or trade, but they would not be familiar with financial services law obligations. These obligations would limit third parties' willingness to provide services to insurance companies if they were required to comply with extended financial licensing obligations. Suncorp is concerned this would be acutely felt in regional and remote areas, which would reduce our ability to meet customer needs in these areas. Finally, when there is increased demand following large loss disasters, it would be more difficult for insurers to access service providers if they require the service providers to comply with additional obligations that other potential clients do not.

Suncorp strongly believes that providing customers with timely and helpful advice at the point of claim, is part of our customer value proposition. We are proud of our ability to provide the best assistance that we can to our customers at claims time, helping them through stressful situations. Insurers' ability to compete and differentiate on customer service especially during the fulfilment of a claim, is part of maintaining a competitive and dynamic insurance market.

We welcome increased oversight of claims handling but do not believe the financial advice regime will strengthen consumer protections or deliver better customer outcomes. Rather, it will increase compliance costs and slow customers' ability to access relevant support based on their circumstances. We have provided some case studies of claims handling scenarios in the Appendix to illustrate the value of timely and relevant support and information.

3. Introducing a new financial service - claims handling

Drafting a new financial service for 'claims handling' will require close consideration to ensure it is sufficiently clear and does not hinder innovation.

Suncorp does not believe that the activities of service suppliers should fall into the financial service definition or expose an insurer's AFS licence. Examples of third party service suppliers that are involved in the fulfilment of a claim include smash repairers and builders. Trades are typically subject to regimes like building codes. The training, monitoring and controls that would be required to ensure that these third parties were complying with their obligations under the AFS would slow down the fulfilment of a claim and limit insurers' ability to process claims efficiently and would ultimately deliver poorer outcomes to customers.

Other third parties include external lawyers and investigators. They should not be deemed to engage in claims handling, nor should they have authorised representative obligations applied to them. For example, lawyers undertake litigation on an insurers' behalf, and litigation is not claims handling. Service providers like these are not set up to comply with s912A such as having a complying dispute resolution system. Rather, their conduct is subject to supervision by the Courts and legal profession regulation schemes.

We note these points are also relevant for the Royal Commission recommendation to make provisions of financial services Industry Codes enforceable, with a Treasury paper currently out for consultation. If the legislation is not designed carefully, this could also lead to sanctions imposed on insurers for failing the Code Standards.

In our submission to Treasury on enforceable Code provisions, we note that claims handling is arguably the most contentious part of insurers' codes, as this is when insurers meet their promises to customers. It is important that the multiple proposed changes afoot are designed to work together and enhance the outcome for customers.

4. Consultation Questions

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

Statutory Insurance

Statutory compulsory third party motor injury insurance ("CTP") and worker's compensation insurance have been privatised in many states and territories. CTP and workers compensation schemes are governed by state and territory legislation and are specifically exempted from the Corporations Act requirements.³

These exemptions should be maintained. There are existing regulators for each state and territory statutory insurance scheme, enabled by comprehensive legislation in those jurisdictions. State and territory regulators undertake monitoring and enforcement activities regarding insurers management of claims under those schemes. Extending ASIC's powers to claims handling for these schemes would create duplication and increase the regulatory burden on insurers.

Customer scope

Suncorp notes that Royal Commission focused on retail customers and for this reason we believe that it is appropriate that this reform cover retail customers as defined by the Corporations Act. A consistent definition of retail customer across financial services would ease the compliance and monitoring requirements of reform.

Suncorp also seeks clarity on how far the obligations under s912A would extend. For example, how do the obligations in section 912A apply to the dealings with a claimant/plaintiff in such a claim? This issue is explored further in the Appendix.

Natural Hazard event responses

We also note the unique circumstances around natural hazards like cyclones and bushfires. These disasters place both large sections of the community and insurers under strain. A natural disaster may place resource constraints on an insurer at a time of high demand and this could be exacerbated by the financial advice regime at a time of high stress for customers.

Post implementation review

Suncorp would encourage Treasury to undertake a post implementation review 12 months after the relevant legislation is introduced to see if the reforms are operating as intended.

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)?*
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?*

We note that elements of claims handling are also covered by the *Insurance Contracts Act* and the General Insurance Code of Practice. Regulatory complexity does not serve customers well. Not knowing where to turn to in cases of dispute or understanding how they are protected will not provide customers with a better experience.

³ Specifically, CTP is excluded from the definition of a 'motor vehicle insurance product' (for both retail and wholesale clients) by Regulation 7.1.11(2)(b)(i), and Regulation 7.1.14(2)(c)(ii). Workers compensation is excluded from the definition of sickness and accident insurance (for both retail and wholesale clients) by Regulation 7.1.14(2)(c)(i).

Claims handling is, or is likely to be, regulated under:

- Section 7.2 of the General Insurance Code of Practice. This contains a similar obligation to s912A, requiring claims be handled “in an honest, fair, transparent and timely manner”. Both AFCA and the Code Governance Committee have the ability to respond to breaches.
- The duty of utmost good faith requirements in s13, and ASIC powers in relation to claims handling contained 14 A of the *Insurance Contracts Act*, provide consumers a level of protection.
- Commissioner Hayne has recommended the Unfair Contract Terms regime from the *ASIC Act* apply to general insurance claims – this will provide significant consumer protection, once enacted.
- Commissioner Hayne has also recommended that certain provision of the Code be given the force of law (“Enforceable Code Provisions”). If section 7.2 of the Code became an Enforceable Code Provision, civil remedies will be available to consumers where a subscriber has breached that provision.

Appropriately sequencing reforms arising from the Royal Commission's Report will be essential to ensure that customers are protected and have clear avenues of inquiry over the coming years. Implementation of these reforms should consider how these changes are communicated to customers by government, regulators and industry.

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?*

Treasury proposes to make “handling and settling an insurance claim” a new financial service, and then create a Regulation that specifies “*documents given to a consumer as part of the new financial service, in certain circumstances, do not constitute financial product advice*”.

The wording in italics is taken directly from the Consultation Paper. The only reference is to “documents”. With the majority of insurer support at claims time being provided through conversations, it is important that this is extended to read “documents, conversations and statements” so that other forms of communication insurers and their third parties have with customers are also excluded from being deemed financial product advice.

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?*

Currently, ASIC can apply a licence condition or suspend/revoke a licence where an AFSL holder breaches s912A. Potentially, these sanctions could be disproportionate to the breach in certain circumstances – for example, it would be heavy handed for an insurer's licence to be cancelled or suspended because an individual claim was not handled efficiently or in a timely fashion. This is particularly the case where there are natural hazard events.

ASIC's powers to cancel or suspend a licence should only be exercised where there is a serious systemic breach that impacts a large number of customers. Isolated and individual breaches should be dealt with through more measured remedies (e.g. civil penalties). This is particularly the case, given that the introduction of Enforceable Code Provisions will create a multitude of enforcement pathways for breaches of the obligations on insurers (to AFCA, the Code Governance Committee, ASIC and the Courts). We also cover the matter of overlapping remedies in our submission to Treasury on Enforcement of Codes.

Criminal penalties should not apply to breaches of s912A. Civil penalties should also not apply to individual claims handlers, rather they should only apply to the licence holder.

Our claims handlers are not remunerated to the level that senior executives are – hence imposing civil and/or criminal penalties on them individually would be disproportionate and unfair.

5. Appendix - Suncorp's claims handling process and advice

Claims are typically made via our stores, telephone and online (including via apps). In the case of natural disasters, Suncorp responds with mobile claims assessors to assist customers on the ground.

Depending on the nature of the claim and the customer, there may be ongoing interaction between the customer and Suncorp.

In the case of a natural disaster, a customer will be assigned a claims management specialist who has received training on products, customer relations, compliance and technical systems. They are chosen for their skills to listen and help customers. An important responsibility for Suncorp, is that we provide customers with helpful support at a very stressful time. It is part of the value we offer our customers and an important part of our social responsibility. We ensure our customers are first safe, and then have good, relevant and timely advice on their options.

The customer may also interact with a loss adjustor and loss assessor. In the case of a car accident, they may deal with a Suncorp-appointed smash repairer.

Case Study One – Total loss of home after a cyclone

Steve and Lisa are a couple with two young children. Their community is hit by a tropical cyclone causing widespread damage and flooding. Their home is severely damaged.

They are AAMI Insurance customers, and they hold an AAMI Complete Replacement Cover home and contents policy. After they get to safety, they make a claim on their policy.

AAMI's property damage assessor deems their home to be a total loss. The assessor commences the process of creating a Scope of Works for rebuild and seeks quotes to rebuild and reinstate the home that the customer had.

Steve and Lisa are staying in temporary accommodation (a hotel) nearby and have suffered emotional trauma with the loss of their first family home and their belongings including sentimental items. During a meeting with the assessor, Steve and Lisa ask the Assessor for advice on their best option. They are considering if they should rebuild their home through Suncorp, and they ask for the sum that it would have cost Suncorp to rebuild their home. They also say they are also considering purchasing another established home to move straight into.

Steve and Lisa bought their home five years earlier before the birth of their young children. They have a large mortgage over the property with another bank. A day after the assessor visits the property, they call their AAMI Client Manager to ask what happens with their mortgage if they ask for a cash settlement for the rebuild cost of their home.

The AAMI Client Manager advises them they would need to discuss with their bank if the bank would like the loan paid out prior to any cash payments being made to Steve and Lisa. It is clear that Steve and Lisa are uncomfortable making a potentially life changing decision at this time.

Currently, AAMI's Client Manager can have a conversation with Steve and Lisa to advise of the options that they have with reference to progressing the claim. They are able to provide a recommendation that considers Steve and Lisa's circumstances that it may be best that they rebuild the home for the security of their family.

The removal of the advice exemption for insurance claims would harm the insurers' ability to assist Steve and Lisa to work through the options that appear to best suit them (based on the Assessor's training and experience with similar situations). Rather, the Client Manager would only be able to effectively offer the options available within the policy (i.e., rebuild or cash settle – and not be able to guide based on current circumstances). Steve and Lisa would purely be making a potentially life changing decision without the timely expertise/guidance of their insurer.

Case Study Two – Domestic violence and Property Damage

Anne has her home (building and contents) insured with Suncorp. Due to ongoing family violence issues, Anne is separated from her former partner, Peter, and has an AVO in place against him.

While Anne is at work on day, Peter breaks into her house, stealing some items and causing malicious damage.

After returning home to find the damage and items missing, Anne contacts Suncorp to make a claim. She is extremely upset during the call, telling the Suncorp Claims Consultant that she is not coping with her situation, has no support from family or friends, and doesn't know where to go.

In addition to advising Anne about the process for her claim, the Suncorp Claims Consultant sensitively offers referrals to other services, including trauma counselling. The Claims Consultant asks Anne questions in order to understand her situation better, and to advise her of other services that may be able to provide professional support.

Without the exemption from the financial advice regime, the Claims Consultant would be limited to discussing the strict facts of Anne's property damage claim. While providing advice on emergency accommodation and support services is not financial advice, the consultation would not be able to have the type of conversation where these personal details are typically raised. The Claims Consultant would not be able to ask Anne for more information about her situation, which would enable them to provide timely referrals to other services.

Case Study Three – Hailstorm and Smash Repair

John is a motoring enthusiast. Although his car is not high in value, it has significant sentimental value.

Nathan is John's partner. Unlike John, his car doesn't have sentimental value, but without it he wouldn't be able to get to and from work or take his elderly parents to regular medical appointments.

Both John and Nathan's cars were damaged in a hailstorm. Both cars are insured with GIO, and they both make claims.

An assessor determines that while both cars could be repaired, the repair costs for both John and Nathan's cars exceed their market values. Because the cars are repairable write-offs, they will need to be entered into the written-off vehicles register. The assessor informs John and Nathan that because their cars are repairable (economic) write-offs, they have two options:

- Accept a payment for the insured value of the car (as a total loss); or
- After the car has been written off, purchase the car as salvage, then have the car repaired and re-registered.

John is clearly not comfortable with the approach of purchasing the vehicle and re-registering it after repair, but he is also struggling with the prospect of losing his beloved car.

Nathan isn't upset about losing his car but is concerned about his ability to look after his parents and get to work.

The exemption from the financial advice regime means that the assessor is able to talk to John and Nathan about their priorities and needs, discuss the available options to them, and discuss the process of re-registering a written-off vehicle. During this discussion, the assessor would be relying on their expertise, and their experience of what customers have done in similar situations.

Under an advice model, the claims handler would be required to step through a process of understanding John and Nathan's financial position and their objectives. The claims handler would need to meet requirements including education background. This would require a significant investment in capability to deal with what is a common situation where the customer would receive the same advice as they do today, but it would take longer for them to receive it.

If the assessor was not trained to provide personal advice, they would be hampered in their ability to assist John and Nathan to work through their options and discuss what approach seems to best fit with their specific needs. It would also require GIO to invest across the workforce to ensure all assessors are trained to provide general advice, as well as to introduce controls to ensure that only general advice was given. This would leave John and Nathan to work out what to do, without the benefit of the assessor's expertise. This process would take longer, be more stressful for John and Nathan, and more disruptive to their lives (as well as those they care for).