

SUBMISSION

Submission to Treasury — Making insurance claims handling a financial service

10 January 2020

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The Manager
Financial System Division
The Treasury
Langton Crescent
Parkes ACT 2600
Via email: claimshandling@treasury.gov.au

10 January 2020

Dear Sir/Madam

Making insurance claims handling a financial service

The Association of Superannuation Funds of Australia (ASFA) is writing to you in response to the Government's consultation on the draft legislation and regulations for *Making insurance claims handling a financial service*.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.9 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 16 million Australians with superannuation.

General comments

ASFA supports the removal of the exclusion of handling and settling an insurance claim, or potential insurance claim, from the definition of a 'financial service' in the *Corporations Act 2001*.

ASFA understands from clause 1.8 of the Exposure Draft Explanatory Materials for the *Financial Sector Reform (Hayne Royal Commission Response– Protecting Consumers (2020 Measures)) Bill 2020* (page 4) that the regulation of handling and settling an insurance claim by Registrable Superannuation Entity (RSE) licensees is intended to be excluded from the scope of this round of consultation on draft legislation, and instead dealt with as part of a subsequent consultation in relation to superannuation regulators. For that reason we will not be making a substantive response with respect to this consultation but intend to do so when that subsequent consultation takes place in early 2020.

We would, however, be grateful if — for the avoidance of doubt — it could be confirmed explicitly in the legislation that RSE licensees and claims made with respect to insurance cover provided under a superannuation product are excluded from the scope of the changes to be effected by this draft legislation.

Specific comments

When excluding RSE licensees and claims made with respect to insurance cover provided under a superannuation product consideration will need to be given to the range of business models through which insurance in superannuation is provided.

Whilst acknowledging that the trustee is ultimately responsible for outsourced arrangements, nevertheless the variety of in-house, partially in-house and partially outsourced, and fully outsourced models for the delivery of insurance in superannuation will need to be recognised to ensure that the policy intent applies consistently across the different business models.

By way of example, draft proposed paragraphs 766G(1)(a) reads as follows: -

“766G Meaning of claims handling and settling service

- (1) A person provides a claims handling and settling service if:
- (a) the person makes a recommendation, or states an opinion, in the following circumstances:
 - (i) the recommendation, or statement of opinion, is made *in response to an inquiry by or on behalf of another person about a potential claim by the other person under an insurance product*;
 - (ii) the recommendation, or statement of opinion, *could reasonably be expected to influence a decision whether to make the claim*” (emphasis added).

If the exemption is drafted too narrowly, for example just to exclude RSE licensees (and their employees), the above provisions could apply to activities performed by outsourced administrators who field inquiries from members of superannuation products, notwithstanding that the administrator is acting on behalf of the RSE licensee and not the insurer.

For example, a member of a superannuation fund, who has become unemployed as a result of the recent bushfires, may contact the call centre of the fund’s administrator about making a claim for an income protection benefit. As the member is not ill or injured the call centre operator is likely to indicate to the member that they would not be eligible to make a claim. As currently drafted this could be considered to fall under the definition of a claims handling and settlement service, notwithstanding that it was performed with respect to insurance within a superannuation product.

A similar issue arises under paragraphs 766G(1)(b) and (c), which provide as follows:

- “(1) A person provides a claims handling and settling service if:
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- (b) the person *assists another person to make a claim under an insurance product*; or
 - (c) the person assesses whether an insurer has a liability under an insurance product, *or provides assistance in relation to such an assessment*” (emphasis added).

RSE licensees have very different service models – often the staff of the RSE licensee will act as a liaison point between a member and the insurer, including collating and referring information between the parties, but is not acting for the insurer. It is unclear whether such activity may be considered to be “*provid[ing] assistance in relation to ... an assessment*” or “*assist[ing] another person to make a claim under an insurance product*”.

Finally we note that, under draft proposed sub-section 766G(2), various services, when provided by a lawyer, are considered not to constitute a claims handling and settlement service. We query whether consideration could be given to the possibility of extending this to other, non-legal, external dispute resolution specialists acting for or on behalf of the member / insured, for example financial counsellors.

If you have any queries or comments in relation to the content of our submission, please contact me on (03) 9225 4021 or by email to fgalbraith@superannuation.asn.au.

Yours sincerely

Fiona Galbraith
Director, Policy