



29 March 2019

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

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Dear Sir/Madam

**Re: Insurance Claims Handling – Taking action on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission – Consultation Paper**

**In brief:**

AIST strongly supports the removal of the current exemption of insurance claims handling as a 'financial service'. We query the basis for any exemptions if insurance claims handling becomes a 'financial service'. AIST suggests that Treasury conducts roundtables to consult on draft legislation and a Regulatory Impact Statement.

AIST would like to thank Treasury for the opportunity to make this submission. We appreciate Treasury issuing the *Insurance Claims Handling – Taking action on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission Consultation Paper* ('Consultation Paper').

**Introduction**

AIST confirms its support for recommendation 4.8 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry the "Royal Commission") that the handling and settlement of claims (or potential claims) should be included in the definition of 'financial service'. AIST is pleased that the Government has agreed to action this recommendation.

There are 5 key reasons for our support:

1. Consumer interests are paramount.
2. Insurance claims handling is a financial service.  
As ASIC commented, the intrinsic value of insurance products lies in the consumer's ability to make a successful claim when an insurable event occurs.
3. Carveouts from key legislative responsibilities are unacceptable.
4. Where the claims handling process does involve personal advice, then the advice should be treated as such.
5. ASIC would be provided with the necessary powers to intervene in the case of inappropriate behaviours and processes.

We now turn to the consultation questions.

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

AIST refers to various comments which raise the need to either exclude certain entities (e.g. loss adjusters, loss assessors or investigators) or potentially to exclude certain aspects of claims handling (e.g. facilitating completion of total and permanent invalidity claims forms) from the licensing and financial advice rules.

AIST strongly supports the removal of the insurance claims handling exemption. Accordingly, we also do not support the introduction of more specific carveouts going forward. The protection of members should take primary precedence.

The example of completing member total and invalidity claims forms demonstrates why specific carveouts should not be supported. While seemingly of value to members who are experiencing a difficult time, the current exemption has led to some law firms heavily advertising to undertake such work. Anecdotally, it seems that such law firms may be charging members up to large amounts (e.g. 70%) of any benefit which is paid from a superannuation fund. Such undertakings should be licensed, and members provided with adequate protection.

Ultimately, any benefits and products offered by superannuation funds may be explained to members in a factual way (here are the benefits and products offered). If a member requires personal advice, such advice should be under the licensing and financial advice rules. This should apply to instances where members are liaising with insurers or the superannuation fund about their total and permanent invalidity claim.

Insurance claims handling is a financial service. Accordingly, AIST supports the coverage of provisions to superannuation trustees, and others with a decision-making role over claims, including agents.

**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)?**

AIST supports Commissioner Hayne's comments that if it is said that complying with a requirement to handle claims efficiently, honestly and fairly imposes an extra burden of cost on one or more insurers or the industry generally, this argument would itself be the most powerful demonstration of the need to impose the obligation.

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

The Consultation Paper states that 'the only regulation of claims handling is through the two self-regulatory insurance Codes of Practice. These have been self-evidently ineffective at protecting consumers.'

AIST supports the Insurance in Superannuation Voluntary Code of Practice. This Code commenced on 1 July 2018. Trustees are required to implement the Code by 2021 and are currently in the process of rolling out implementation plans. The effectiveness of the Code should be gauged after a longer time and funds are given time to implement the Code. Additionally, as might be expected with an industry Code, it deals with issues which are over and above the type of matters which are covered by legislation, e.g. principles for handling claims, timeframes for handling claims, how reviews will be handled, timeframes for contacting members about a lack of member contributions and the effect on insurance, and access to interpreter services.

It is important that both the legislative setting – namely removing the exemption for insurance claims handling from licensing and financial advice – as well as industry standards work together.

**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?**

AIST would greatly appreciate having Treasury roundtables regarding draft legislation coupled with a draft Regulatory Impact Statement. We have difficulty in envisaging the ‘unintended’ consequences which the removal of regulation 7.1.33 could bring. As we have said above, any specific carveouts which are sought erode the protection of members.

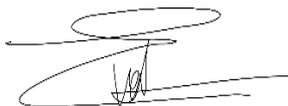
**5. What penalties should apply to insurers breaching the general obligations of s912A in the specific instance of insurance claims handling?**

AIST has long advocated for the introduction of civil penalties for breaches of the duty to act in the best interests of members – this should also apply to insurers.

In conclusion, AIST strongly supports the removal of the exemption for insurance claims handling from licensing and financial advice provisions, and that it should be included in the definition of ‘financial service’. AIST suggests that Treasury conducts roundtables to discuss draft legislation and a Regulatory Impact Statement, and we would be pleased to participate.

For further information regarding our submission, please contact Karen Volpato, Senior Policy Advisor on 0419127496 or at [kvolpato@aist.asn.au](mailto:kvolpato@aist.asn.au)

Yours sincerely



Eva Scheerlinck  
**Chief Executive Officer**

*The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.*

*As the principal advocate and peak representative body for the \$1.3 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

*AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.*