

# Making insurance claims handling a financial service

Submission

**Australian Financial Complaints Authority**

January 2020

# Contents

- Overview..... 3**
- 1. Licensing..... 3**
- 2. Disclosure about cash settlements ..... 4**
- Appendix – About AFCA ..... 8**



## Overview

The Australian Financial Complaints Authority<sup>1</sup> (AFCA) is the independent external dispute resolution (EDR) scheme for the financial sector.

AFCA agrees with the Financial Services Royal Commission's Recommendation 4.8, which is to remove the exclusion of handling and settling insurance claims from the definition of a 'financial service' in the *Corporations Act 2001*. We strongly supported reforms to implement this recommendation in our [submission in April 2019](#) to an earlier round of consultation.

We confirm our strong support for reforms to implement Recommendation 4.8. We welcome the opportunity to provide feedback on the draft legislation and related material released for consultation by Treasury on 29 November 2019.

This submission<sup>2</sup> draws on the experience of AFCA and its predecessors – organisations that have handled financial services complaints for more than 25 years.

### Key points

- The new licensing requirements in the draft legislation may affect the resolution of insurance complaints. AFCA would be pleased to discuss this point.
- AFCA supports the proposal to impose new disclosure requirements for cash settlements and suggests some aspects of the requirements should be strengthened.

## 1. Licensing

The draft legislation requires a range of people involved in handling and settling insurance claims to either hold an Australian Financial Services Licence covering that service or be an authorised representative of such a licence holder. This range of people includes loss assessors, loss adjusters and 'insurance fulfilment providers'.

This wider licensing requirement may affect complaint resolution. It could add complexity to complaints about the handling and settlement of insurance claims and could confuse consumers seeking to make these complaints.

AFCA considers complaints about insurance claims at present. These complaints may relate to conduct of an insurer or conduct of another party authorised by the insurer, for example, to investigate or prepare a report on a claim.

---

<sup>1</sup> The Appendix provides a brief overview of AFCA. For comprehensive information about AFCA, see our website [www.afca.org.au](http://www.afca.org.au).

<sup>2</sup> This submission has been prepared by the staff of AFCA and does not necessarily represent the views of individual directors of AFCA.

We have developed an approach to examine these complaints effectively through the insurer, which is required to maintain AFCA membership to meet its obligations as a licensee. From the EDR perspective, it is sufficient to only require insurers to be members of AFCA.

If the wider licensing requirement is imposed, and businesses such as loss assessors and insurance fulfilment providers are licensed, they will need to join AFCA. Complaints about insurance claims involving multiple AFCA members may present a new threshold question: Against which AFCA member should the complaint be made?

The added complexity could make it more difficult for consumers to understand how they can pursue complaints. There is also a risk that the new threshold question could slow down the processes of both internal dispute resolution by financial firms and EDR.

AFCA would be pleased to discuss the complaint resolution issues outlined above.

## 2. Disclosure about cash settlements

AFCA supports the proposal to impose new disclosure requirements for cash settlements of general insurance claims. Based on our complaint resolution experience, we suggest the proposed provisions specifying the contents of the Statement of Claim Settlement Options should be strengthened.

### 2.1 AFCA approach

AFCA regularly considers complaints about general insurance claims that raise issues relating to cash settlements. In these and other complaints, our decision-making focusses on considering what is fair in all the circumstances of the complaint.<sup>3</sup>

To reach a fair outcome in cash settlement complaints, AFCA reviews the available material and considers questions of the kind listed below. Footnotes in the list identify EDR decisions that illustrate particular points.

- Do the parties agree on the scope of works?
- Does the available material show flagged risks, likelihood of unforeseen damage and additional work?

---

<sup>3</sup> [AFCA's submission in April 2019](#) explained our decision-making process.

- Will a cash settlement ensure the complainant can properly complete all necessary or possible repairs? For example, is it based on a quote available to the complainant?
- What is the complainant's position? Could they manage the repair process?
- Is the complainant prepared to lose the insurer's guarantee on the repairs by accepting a cash settlement?
- Does a cash settlement make fair allowance for the transferred risk?
- Does a cash settlement take into account other relevant factors such as the margin of a builder or repairer and the full range of benefits provided by the complainant's insurance policy (which may, for example, include temporary accommodation, contents storage, removal of debris or extra costs of rebuilding)?<sup>4</sup>
- Is the insurer's ability to repair damage compromised by pre-existing damage?<sup>5</sup>
- Is the relationship between the parties still workable so that repair is a viable option?<sup>6</sup>

In home building complaints, AFCA often awards an additional percentage on the insurer's quotes when assessing a cash settlement. This takes into consideration several factors including the transferred risk, whether the insurer's quote is actionable (that is, available to the complainant) and the possibility of additional damage.

The percentage often ranges between 10-25%. The higher proportion is usually provided when there is likely to be unforeseen damage, additional work and the quote is not actionable.

The purpose of this approach is to ensure that any cash settlement amount should be sufficient for the complainant to properly complete all necessary repairs.

Based on our experience, a wide range of factors often needs to be taken into account to ensure a cash settlement offer is fair. The content requirements for the Statement of Claim Settlement Options should reflect this.

## 2.2 ACCC recommendation

The ACCC's current inquiry into residential insurance in northern Australia includes an examination of issues relating to cash settlements. AFCA and our predecessor FOS commented on these issues in written submissions to the inquiry in 2018 and 2019.<sup>7</sup>

---

<sup>4</sup> Decisions [434126](#) and [433928](#).

<sup>5</sup> Decision [455777](#).

<sup>6</sup> Decision [433928](#).

<sup>7</sup> See [AFCA submission in April 2019](#) and [FOS submission in March 2018](#).

In the inquiry’s [Second Interim Report](#) released on 20 December 2019, Recommendation 26 proposes a special disclosure document should be provided for cash settlements.<sup>8</sup> The table below compares the disclosure document content obligations in Recommendation 26 with the content requirements for the Statement of Claim Settlement Options in the draft legislation.

<b>ACCC Recommendation 26</b> <b>Insurance Contracts Act amendment</b>	<b>Draft legislation</b> <b>Corporations Act amendment</b>
<p>The disclosure document must set out matters the consumer should consider to help them make an informed decision, including:</p> <ul style="list-style-type: none"> <li>• If cash settlement is accepted, the insurer would no longer be required to manage or guarantee the quality, cost or timeliness of any works the consumer decides to carry out.</li> <li>• If the insured property is mortgaged, the consumer should seek advice from their mortgage lender about any implications of accepting a cash settlement.</li> <li>• The insurer may be able to obtain lower repair/rebuilding quotes than the consumer.</li> <li>• The consumer should obtain independent quotes for repair/rebuilding before making their decision.</li> </ul>	<p>The Statement of Claim Settlement Options must include:</p> <ul style="list-style-type: none"> <li>• the options for settlement legally available under the insurance contract</li> <li>• statements of the amount of cash settlement offered and the sum insured</li> <li>• a statement that the insured should obtain independent financial advice before settling</li> <li>• any other information prescribed by regulations: s948F(1).</li> </ul> <p>The statement may also contain other information: s948F(4).</p>

The content requirements in Recommendation 26 are more extensive than those in the draft legislation. Recommendation 26 specifies:

- a general disclosure standard (to cover all of the matters the consumer should consider to help them make an informed decision) and
- more specific requirements (to highlight possible drawbacks of cash settlements).

<sup>8</sup> See page 327 of [Second Interim Report](#).

### 2.3 Suggestion

AFCA suggests that the content requirements for the Statement of Claim Settlement Options should adopt the ACCC's approach in Recommendation 26 by setting a general disclosure standard and also imposing more specific content requirements. To enable a consumer to make a fully informed decision about a cash settlement, we consider that a Statement of Claim Settlement Options should at least include:

- any quotes the cash settlement is based on
- any other quotes the insurer has obtained during the assessment of the claim
- the scope of works the quotes are based on (which may be included in the quote or in a separate document)
- the relevant rates being charged.

## Appendix – About AFCA

AFCA is the new independent EDR scheme for the financial sector replacing the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal.

AFCA sees its purpose as providing fair, independent and effective solutions for financial complaints. It does this not only by providing complaint resolution services free to consumers, but also by working with its members to improve their processes and drive up industry standards of service, thereby minimising complaints.

More broadly, AFCA plays a key role in restoring trust in the financial services sector. In addition to providing solutions for financial complaints, AFCA has responsibilities<sup>9</sup> to identify, resolve and report on systemic issues and to notify ASIC, and other regulators, of serious contraventions of the law.

AFCA's service is offered as an alternative to tribunals and courts to resolve complaints about financial firms made by individual and small business consumers. We consider complaints about:

- credit, finance and loans
- insurance
- banking deposits and payments
- investments and financial advice
- superannuation.

AFCA's role is to assist consumers to reach agreements with financial firms about how to resolve their complaints. We are impartial and independent.

If a complaint does not resolve between the parties, we will decide an appropriate outcome, including awarding compensation for losses suffered or substituting the trustee's decision in the case of a superannuation complaint.

---

<sup>9</sup> See [ASIC's Regulatory Guide 267](#) *Oversight of the Australian Financial Complaints Authority*.