



FINANCIAL PLANNING  
ASSOCIATION of AUSTRALIA

10 January 2020

The Manager  
Financial System Division  
Langton Crescent  
Parkes ACT 2600  
Email: [claimshandling@treasury.gov.au](mailto:claimshandling@treasury.gov.au)

Dear Sir / Madam

### Making insurance claims handling a financial service

The Financial Planning Association of Australia<sup>1</sup> (FPA) welcomes the opportunity to provide feedback in response to Treasury's exposure draft legislation and regulations to make insurance claims handling a financial service. The FPA supports the Royal Commission's recommendation 4.8, that *"the handling and settling of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial services'.*

This submission focuses on FPA recommendations in relation to some changes to the Statements of Claims Options that will enhance its purpose and provide appropriate consumer protection. We also wish to ensure that financial planners are still able to provide the necessary services to Australians when they are claiming insurance, which can occur in times of hardship.

The FPA would welcome the opportunity to discuss with Treasury the issues raised in our submission. If you have any questions, please contact me on [ben.marshan@fpa.com.au](mailto:ben.marshan@fpa.com.au) or 02 9220 4500.

Yours sincerely

**Ben Marshan**  
*Head of Policy and Professional Standards*  
Financial Planning Association of Australia

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<sup>1</sup> The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Graham McDonald, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.



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## Financial Advice Provisions

The FPA supports the licensing obligation to include:

*“A person who provides financial advice to an insured and who handles and settles an insurance claim on behalf of the insurer.”*

We understand the obligations aim largely to ensure consumer protection provided in the Corporations Act are applied to the new financial service of claims handling. As the explanatory material state, the claims handling definition captures ‘certain financial advisers’ and FPA seek further clarity, possibly through regulations, whether the claims handling obligations capture financial advisers who are receiving commissions through the insurer. These commissions which are paid by the insurer are partly designed to retain the person(s) to the insured to ensure assistance is available when the insured makes a claim.

### Restricted terms s923C

Section 923A provides consumers with important protections which ensure only individuals who meet strict definitions are able to use certain terms restricted by the Act. It is important to ensure a licensed relevant provider who provides this limited financial service without meeting the ethical and education standards under s921B are not allowed to use the restricted term financial planner/adviser.

Further, capturing financial planners under these new requirements would potentially conflict with their existing obligations under the Act. Thus the FPA recommends:

- the new financial service explicitly exempt persons permitted to use the terms financial planners and financial advisers under s923C of the Corporations Act, and who are acting on behalf of a retail client.

### Statement of claims settlement options

The FPA notes that to overcome some of the issues of the proposed two-pronged approach, Treasury has suggested that some documents or statements given to consumers during the claims handling service, be exempt from the financial product advice requirements.

The FPA support in the implementation of alternative documentation requirements developed specifically for the handling and settling of insurance claims by insurers and insurer’s representatives. In addition to the requirements<sup>2</sup> listed for the Statement of Claim Settlement Options (SCSO) the FPA recommends clear disclosure and consumer advice warnings should be provided to consumers by representatives acting on behalf of the insurer.

The advice warning should include that:

- the individual is representing the insurer and the interests of the insurer;
- the insurer’s representative is not representing the interests of the individual making the claim;

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<sup>2</sup> Paragraph 1.37 of the exposure draft explanatory materials



- the information the insurer's representative provides includes the insurer's views of the facts of the claim, not the claimant's views;
- the insurer's representative is prohibited from providing personal advice or making recommendations about the insurer's settlement offer to the claimant;
- the claimant should consider their views of the facts relating to the claim and the conditions on their insurance policy prior to accepting the insurer's claims settlement offer;
- any process to appeal the insurer's claim settlement offer; and
- how the claimant can lodge a complaint.

As outlined (in the penalties section), applying the same penalties to insurance claims handling demonstrates that

*"...Statements of Claim Settlement Options are treated consistently in the Corporations Act 2001 with other important disclosure documents and statements, such as financial service guides and Statements of Advice"*

As the regulations are flexible to prescribe further information required in SCSO, we recommend the aforementioned information is representative of the current practices such as Statement of Advice which are heavily regulated documents and are required to prevent consumer detriment. Thus, without providing additional warnings, the principle of consistent 'importance' across these documents are only true for penalties but not for consumer protection.

Furthermore, as stated in the explanatory materials the SCSO should include:

*"A statement that the insured should obtain independent financial advice before settling"*

Additional information that adequately warns the insured the consequences of proceeding in the absence of independent advice, is more evident when the interests of parties involved are disclosed.

Thus, the FPA recommends additional advice warnings on these documents will ensure the production of SCSO serves its purpose which is to provide consistent consumer protection.

### **Financial product advice**

Insurer's representatives should also be prohibited from providing personal advice about the claim. This should include an explicit ban from providing recommendations or opinions about the claim to the claimant, including whether the claimant should, in the first instance make a claim, or accept or decline the insurer's claim offer.



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## Disclosure exemptions

At paragraph 1.30 of the explanatory materials, the FPA recommends extending the provision of excluding financial products to all types of recommendations made. Such as

- Recommendations as to the appropriateness of repairing or replacing an item in relation to an insurance claim, ***that do not relate to different financial products.***
- *Recommendations of ways to mitigate the extent of loss or damage associated with an insurance claim, that do not relate to different financial products*