



Committee Secretary  
Senate Economics Legislation Committee  
Parliament House  
Canberra ACT 2600

Submitted by email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

29 September 2017

Dear Sir/Madam

**Inquiry into the Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority Bill) 2017**

Thank you for the opportunity to provide a submission to the above inquiry. The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by general insurers. ICA members, both insurers and reinsurers, are a significant part of the financial services system.

ICA members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property and directors and officers insurance).

The ICA welcomes the release of the Australian Financial Complaints Authority (AFCA) 2017 Bill (the Bill). The Bill details AFCA's high-level objectives while leaving much of the operational requirements to AFCA's terms of reference. The ICA understands that a separate consultation process will provide stakeholders with the opportunity to comment on AFCA's terms of reference, and the AFCA transition team will consult extensively with stakeholders on issues around AFCA's establishment.<sup>1</sup>

The ICA submits that the specifics of AFCA's terms of reference and the practical implications of transitioning from one external dispute resolution (EDR) scheme to another will largely determine AFCA's ability to deliver an effective EDR experience for both consumers and industry. While acknowledging the importance of the scheme's terms of reference and transitional arrangements, we would like to make the following comments with regards to the Bill:

1. The ICA has detailed in previous submissions the imperativeness of adequate stakeholder consultation before key changes are made to the EDR scheme. Open and effective consultation with the current Financial Ombudsman Service (FOS) has been one of the scheme's widely acknowledged strengths. Particularly with regards to revised

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<sup>1</sup> Kelly O'Dwyer MP Minister for Revenue and Financial Services, Media Release – *AFCA Transition Team Reference Panel Established*, August 2017



claim limits and compensation caps, such consultation has helped industry detail the unintended consequences of significant monetary increases on the professional indemnity insurance market and on general insurance premium pricing more broadly.

To ensure opportunity for dialogue is preserved, the ICA suggests that consultation with stakeholders is embedded into AFCA's legislative framework. Specifically, Section 1052B of the Bill should be amended to include a provision requiring ASIC to consult with stakeholders before a direction to increase limits on the value of claims can be given. In addition, Section 1052C of the Bill should include a similar clause before ASIC can issue a direction to AFCA. While ASIC will ultimately be the entity responsible, and the final decision making authority, embedding stakeholder consultation is considered good practice and will support informed decisions and directions.

2. It is currently unclear how many industry and consumer representatives will comprise AFCA's total number of directors. The legislation indicates that there will be equal number industry and consumer representation and that the total number of directors appointed by the Minister must be less than half the total number of directors. The ICA would like to take this opportunity to request that a general insurance representative is included among industry representation. According to the FOS 2015-16 Annual Review, general insurers are significant subscribers to the scheme.<sup>2</sup> While there are many different sub-categories within this product type, a director with strong general insurance knowledge will be able to provide important input on general insurance policy matters.
3. We note the Bill provides ASIC with the ability to publish internal dispute resolution (IDR) data and to collect information about the operation of a firm's IDR procedures. As previously submitted by the ICA, the number of disputes lodged at IDR does not provide an accurate indication of a firm's performance. The ICA will be looking to work closely with ASIC on the publication requirements and note that adequate lead times will be needed if firms are required to develop new IDR reporting capabilities.
4. With regards to the scheme's terms of reference and operational arrangements, industry requests early sight of the draft terms of reference as soon as possible, with adequate time for consultation and discussion. In particular, we continue to hold concerns about the increased compensation caps and monetary limits and request further opportunity to engage on this matter before the limits are finalised.

Any changes to processes or reporting requirements will necessitate substantial lead times for our members. As an example, changes to IDR reporting requirements will likely be needed to ensure consistent reporting across firms. This is a significant endeavour and could require major system changes including the updating of procedural manuals, documentation, internal training, review and monitoring. For such implementation requirements, we will be calling for appropriate transitional timeframes to ensure all firms are given the opportunity to embed the changes.

In conclusion, the ICA supports the Government's approach whereby the high-level AFCA framework is provided for through legislation, and the operational detail is determined by the scheme's terms of reference. With regards to the latter, we will be looking to work closely with AFCA's transition team to ensure the mechanics of the scheme are conducive to

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<sup>2</sup> Financial Ombudsman Service, Annual Review 2015 -16, September 2016



effective dispute resolution for both general insurers and their consumers. While the intention of the Bill is to remain relatively high-level, we strongly request that stakeholder engagement is enshrined in the scheme's governing legislation.

If you wish to discuss any of the issues we have raised further, please do not hesitate to contact [REDACTED] General Manager Policy, Consumer Outcomes on [REDACTED]  
[REDACTED]

Yours sincerely

[REDACTED]

Robert Whelan  
Executive Director and CEO