



22 January 2021

Treasury
Langton Cres
Parkes ACT 2600
Email: ClaimsHandling@treasury.gov.au

Re: Regulation of Claimant Intermediaries

Thank you for the opportunity to comment on the regulation of claimant intermediaries.

The Financial Rights Legal Centre (**Financial Rights**) and the Consumer Action Legal Centre's (**Consumer Action's**) key interest is to ensure that financial counsellors are included in *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2020* as an exempt category to enable financial counsellors to continue to provide free and independent support and advice to consumers with respect to matters including their insurances.

Financial Counselling

Financial counselling is provided by not-for-profit community and local government organisations who offer free, independent support and advice services to help people in, or at risk of, financial hardship. As of 2018, there were approximately 500 financial counsellors in Australia who provided face-to-face financial counselling services to 125,000 people and received approximately 180,000 calls through the National Debt Helpline.¹

This support work includes generalist financial counselling and more specialised advice, such as assistance to those who have experienced domestic violence or a gambling addiction. Services are also provided in specific geographical areas such as financial counselling services for rural areas. Financial counselling is central to the work of the Financial Rights Legal Centre, where financial counsellors work closely with solicitors on a variety of matters related to financial hardship, credit, debt and insurance matters.

It is important to note that financial counsellors are distinct from financial advisers as financial counselling services are free to the consumer, completely independent of business interests, do

¹ A New Approach to Funding Community Financial Counselling and Better Advice Services (Financial Counselling Australia, 2019). https://www.dss.gov.au/sites/default/files/documents/10_2019/report-review-financial-counselling-services.docx

not provide advice about investments, are commission free and the advice provided is conflict free.

Financial counsellors regularly assist their clients with their insurance/s. They do so by:

- examining the types of insurance that their clients may hold; advising whether these are appropriate to their circumstances and assisting them with respect to over insurance issues (including any junk insurance or multiple insurances that they may hold) and underinsurance issues; and
- advising clients on any claims that there may be available to them including supporting them in making insurance claims, raising complaints and dispute or pursuing external dispute resolution where appropriate.

At the Financial Rights Legal Centre financial counsellors work closely with solicitors on the free and independent Insurance Law Service with respect to the legal issues that arise, while other financial counsellors obtain advice and support for legal issues from local community legal centres and state Legal Aids.

Claimant Intermediaries Regulation

The *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* implemented recommendation 4.8 of the Financial Services Royal Commission to regulate insurance claims handling as a 'financial service' under the *Corporations Act 2001*.

This Act ensures that claimant intermediaries are also captured by the new claims handling requirements. We strongly advocated for this as outlined in our submission to Treasury on the matter in 2020 and in subsequent correspondence with Treasury²

Section 761CAA defines claimant intermediaries as those who represent

persons insured for a benefit given as consideration for that service, whether a monetary benefit or otherwise and whether given to the person providing the services or another person nominated by that person.

This current bill - *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2020* - seeks to exclude certain people from the new regulations re: claimant intermediary and claims handling obligations under the *Corporations Act 2001*.

This lists the following professions to be exempted under the legislation:

- mortgage brokers and mortgage intermediaries;
- insurance brokers;
- qualified accountants;

² Submission to Treasury re: Insurance Claims Handling: Taking action on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission, Consultation paper, March 2019 https://financialrights.org.au/wp-content/uploads/2019/04/190329_InsuranceClaimsHandlingConsultation_Submission_FINAL.pdf

- veterinarians
- travel agents;
- financial advisers;
- property managers;
- estate managers; and
- public trustees.

The reason for this as outlined in the Explanatory Statement is:

because handling claims is typically not their core business and often they often do so for no monetary benefits. This will avoid the unnecessary regulatory burden of requiring these parties to obtain an Australian financial services licence.³

With respect to these reasons – we believe exemptions should be granted not on the basis of regulatory burden but where there is clear, demonstrable benefit to consumers. Any exemptions provided should be limited.

Financial Counselling and Claimant Intermediaries Regulation

Financial counsellors are not listed to be an exempt category.

For the avoidance of any doubt, financial counselling should be included in this bill to be exempted from claims handling requirements of an Australian financial services licence. They should be exempted for the exact same reason provided in the Explanatory Statement – ie handling claims is typically not their core business and they do so for no monetary benefits. Also there are clear, demonstrable benefit to consumers

Financial counsellors are currently exempted from financial advice regulations under subsection 911A(1) of the *Corporations Act 2001* via the *ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792*.⁴ Financial counsellors are exempt from the requirement to hold a credit licence or Australian Financial Services Licence on the basis that:

- they have undertaken appropriate training, are accredited with their state financial counselling peak body,
- offer free services and
- provide any financial service as part of a financial counselling service.⁵

³ *Financial Sector Reform (Hayne Royal Commission Response) (Claimant Intermediaries) Regulations 2020* Exposure draft explanatory material, page 2.

⁴ <https://www.legislation.gov.au/Details/F2020C00783>

⁵ See: Page 6, *The Countervailing Power: Review of the coordination and funding for financial counselling services across Australia* March 2019 https://www.dss.gov.au/sites/default/files/documents/10_2019/report-review-financial-counselling-services.pdf

This *may* exempt financial counsellors from the new oversight of claims handling as a financial service but this is not at all clear.

There is an argument too that financial counsellors are exempted from the definition of claimant intermediary as outlined above. It is arguable that a financial counsellor receives “no monetary benefit”. However the inclusion of “or otherwise” makes this a little ambiguous since financial counsellors do earn a wage and thus receive a monetary benefit for the work they do funded by government –not from the client.

We note too that financial advisors are listed to be exempted under the regulation 7.1.04CAA but as outlined above financial counsellors are not financial advisors.

Therefore to avoid all doubt we recommend that financial counsellors are listed to be an exempt category under the Bill.

Fee charging and exemptions

We have had the opportunity to read Financial Counselling Australia’s contribution to this current consultation and agree with them respect to the charging for claims handling services by those exempted. We agree that claiming on a personal insurance policy should be both free and easy to claim by all consumers. This will prevent loopholes from being exploited by unscrupulous entities.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Drew MacRae, Policy and Advocacy Officer, Financial Rights at drew.macrae@financialrights.org.au or on (02) 8204 1386.

Kind Regards,



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