



3 February 2017

EDR Review Secretariat
Financial System Division
Markets Group
The Treasury
Langton Crescent
PARKES ACT 2600

Email: EDRreview@treasury.gov.au

Dear Review Secretariat,

Interim Report – Review of the financial system external dispute resolution and complaints framework

IAG welcomes the opportunity to provide comment on the Review of the financial system external dispute resolution framework Interim Report. IAG is a general insurance company, whose purpose is to make your world a safer place. This applies to customers, partners, employees, shareholders and the communities IAG serves across Australia, New Zealand and Asia. Further information on IAG can be found at www.iag.com.au.

IAG is pleased that the Panel has found that the existing ombudsmen schemes are the “cornerstone of the EDR framework.” In doing so, the Panel has recognised the critical role of the schemes in providing accessible, efficient dispute resolution that occurs in a less onerous and stressful manner than going to court.

We strongly support the Panel’s view that an additional statutory dispute resolution body, or tribunal is not required. There is little or no benefit in a tribunal to replace or sit alongside the existing ombudsman schemes - particularly when it comes to general insurance. With members currently being bound by a decision of Financial Ombudsman Service (FOS) but a complainant being able to pursue alternatives if they do not agree with a decision, we consider there is sufficient option for further review. An additional layer by way of a tribunal risks creating an overly legalistic framework that could undo the success of today’s model – which enables consumers a quick, easily accessible and free avenue with which to pursue their disputes for redress.

IAG supports in principal the recommendation that there is a single industry ombudsman scheme to deal with financial, credit and investment disputes to replace the FOS and the Credit and Investment Ombudsman (CIO). However, we strongly recommend that the general insurance expertise and focus remain in the single industry ombudsman scheme. It would be to consumer detriment if the consolidation of schemes resulted in the undoing of years of work the industry and the FOS have

undertaken to ensure specialised and efficient handling of insurance disputes, open discussion and continuous learning that currently occurs.

IAG considers that the current arrangement, whereby ASIC must approve an EDR scheme, is working effectively and that current governance arrangements of the FOS should be transferred into the newly formed scheme.

It is important that as part of merging the two schemes (FOS and CIO) into one, a full and independent review is carried out in order to ensure a successful transition. Following this review, there needs to be time for the recommendations to be implemented, embedded and then evaluated. Arguably this should be done prior to any change to ASIC's oversight of industry ombudsman schemes, and could be done in line with further consultation on whether the schemes themselves need additional powers and how or whether any additional reporting on IDR needs to occur.

IAG notes that while many complaints are resolved well within the 45 day period, some will always require more time due to the specific circumstances of the complaint. Therefore, we caution against the reduction of dispute handling timeframes. This could result in suboptimal outcomes for consumers and financial service providers. For example, insurers often experience delays in IDR if a consumer needs to gather additional information to support their claim or if an external expert report is required. Arguably this is an important part of the review process itself.

Please find attached more detailed commentary in relation to key findings and recommendations that relate to IAG. Should you wish to discuss this submission or make further enquiries, please contact Anna Taperell, Manager, Public Policy & Industry Affairs (anna.taperell@iag.com.au or 02 9292 9582).

IAG would be pleased to discuss aspects of this submission in greater detail.

Yours sincerely,

Hilary Whiteley
National Manager, Customer Resolution

Response to Draft Recommendations

Draft Recommendation 1 – A new industry ombudsman scheme for financial, credit and investment disputes

IAG supports in principal the recommendation that there is a single industry ombudsman scheme to deal with financial, credit and investment disputes to replace the FOS and the Credit and Investment Ombudsman (CIO). Ideally this will overlay, but not overlap with existing schemes. The Panel has found that the current schemes “are working well”, and IAG reiterates the fact that the FOS has over the years evolved to become experts in dealing with general insurance disputes – which are different from banking and credit disputes.

Currently general insurance disputes are dealt with in a specific stream/division of the FOS which accommodates the particular issues that arise from these matters. This stream/division has a specialised understanding of insurance allowing tailored services for policy holders and efficiency of review. This has facilitated processes that complement the unique nature of general insurance products, including the implementation of a fast track process to expedite small and low value disputes – which include the majority of general insurance disputes.

IAG recognises that creating a single industry ombudsman scheme to replace the FOS and the CIO has the benefit of creating a single access point for consumers, and can result in economies of scale and reduction of costs for ASIC and the financial services industry. However, IAG strongly recommends that the general insurance expertise and focus remain in the newly formed ombudsman scheme. It would be to consumer detriment if the consolidation of schemes resulted in the undoing of years of work the industry and the FOS have undertaken to ensure specialised and efficient handling of insurance disputes, open discussion and continuous learning that currently occurs.

Draft Recommendation 3 – Small business monetary limits and compensation caps

It has been proposed by the Panel that the new scheme increase the current monetary and compensations caps for the Small Business area from their current caps of \$500 000 and \$309 000 respectively for General Insurance. This was based on stakeholder feedback that the current caps were inadequate to allow Small Business to pursue their disputes because the sums involved exceeded the caps. Our observation (as one of Australia’s largest Small Business Insurers’) is that Small Business owners are reluctant to access the scheme, despite being advised of their ability to refer any complaints. This could be due to the fact that this segment traditionally uses courts and advisors to resolve issues.

Further, the overwhelming majority of all Small Business claims fall within the existing compensation caps. We note that the average claims size for a “Business Package Claim” for our four major business brands is less than \$ [REDACTED]. This indicates that the current compensation caps are

adequate and there is some other barrier that prevents Small Business from utilising the scheme. Perhaps a solution could be explored with regards to creating better understanding that the schemes are a viable, cost effective and fast alternative for brokers and their customers to use.

Draft Recommendation 6 - Ensuring schemes are accountable to their users

A major benefit of the current EDR framework for general insurance is that it has facilitated a high quality, professional response to complaints and disputes. IAG puts significant resourcing into clear processes and training for our front line staff as well as into specialist Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR) teams. Our teams are dedicated to resolving complaints and disputes as quickly, completely and fairly as possible. Therefore, IAG supports the Panel's draft recommendation that the scheme should continue to be required to meet standards developed and set by ASIC in relation to internal and external dispute resolution. IAG believes that the current governance model strikes the important balance of the schemes remaining independent, while being funded by the industry they operate to support.

The Panel has recommended that the new scheme be subject to more frequent reviews and while there may be some merit in this, IAG notes that reviews can be time and resource intensive and if conducted too often, may have a reduction in value. Reviews should be targeted, timely and powerful in assisting continuous improvement and can be complimented with ongoing stakeholder consultation and feedback. Perhaps resources should be directed into being as responsive as possible to findings of independent reviews, and should include updates on implementation of actions instead.

IAG considers it important that a full and thorough independent review is carried out of the new single scheme in order for a successful transition from two into one. Following this review, there needs to be time for the recommendations to be implemented, embedded and then evaluated. Arguably this should be done prior to any change to ASIC's oversight of industry ombudsman schemes, and could be done in line with further consultation on whether the schemes themselves need additional powers and how/whether any additional reporting on IDR needs to occur.

IAG notes that as it is today, the FOS and industry have strong working arrangements with opportunity for discussion, collaboration and feedback when improvements are required. This has evolved over many years and ideally will continue to evolve and improve within any newly formed scheme.

IAG considers that the establishment of an independent assessor to review the handling of complaints by the scheme is a sound approach. This complements the Review's core principles and the intent of the schemes to have sufficient accountability, transparency and opportunity with which to continuously improve. In fact, allowing further review by way of granting consumers *and* financial service providers the right to appeal a determination would complement this approach for

completeness. The newly formed ombudsman scheme could be introduced with a form of enhanced accountability via the right of either party to the dispute to appeal a decision.

Certainly the risk of delays and additional process would need to be weighed up against the benefit of added robustness and ability to ensure that correct and fair decisions are made as far as possible. In this sense the right of appeal as a form of explanatory accountability has two distinct and overlapping functions, one private and one public. The private function is to provide accountability to the individual parties to the dispute. The public function is that enabling improvements to be made maintains and enhances the confidence of consumers in the scheme. Another aspect of the public function is that the independent assessor can provide guidance for future cases and thus facilitate certainty. In these ways the right of appeal furthers the fair application and enforcement of the General Insurance Code of Practice. Clearly this would require more consultation as it represents a significant change to the FOS in its current form, but it has the ability to promote scheme accountability and improve scheme design.

We support the Panel's recommendation that there should be an appropriate level of financial transparency to ensure the scheme remains accountable to users and the wider public. It is important that the new single ombudsman scheme provides clarity around fee structures and charges to all stakeholders including the financial service providers who are funding the scheme.

Information request – should schemes be provided with additional powers and, if so, what additional powers should be provided?

The current ombudsman model delivers fair outcomes for consumers and industry. It provides important support for ASIC and for industry by way of identifying and raising systemic issues to help improve customer service. The scheme also assists in upholding the standards of IDR handling in individual financial services providers, this is done through data capture and analysis, which is shared through individual and benchmarking reports. This helps financial services providers understand issues and take improvements as necessary.

IAG would welcome further consultation on this matter to better understand the types of issues the Panel is trying to address and ensure the most appropriate solution is identified. Any review of scheme powers will need to have adherence to legal principle and correct use of the weight of evidence.

IAG takes the opportunity to note that the aim of the FOS or any ombudsman scheme is to resolve disputes fairly, informally, efficiently, quickly and cheaply. The goals of economy, speed and efficiency should not compromise the requirement for fairness. The absence of formality and the technical requirements of the rules of evidence should not override natural justice or procedural fairness.

The benefit of the FOS is that in disputes, submissions may be received in a form which would not be permitted in accordance with the rules of evidence. However, the consumer and the financial services provider will always be given the opportunity to test the evidence if it is reasonably challenged.

Draft Recommendation 7 - Increased ASIC oversight of industry ombudsman schemes

IAG considers that the current arrangement, whereby ASIC must approve an EDR scheme, is working effectively and that current governance arrangements of the FOS should be transferred into the newly formed scheme.

The new governance arrangement should provide for an effective Board that is independent, fair and obliged to operate in close consultation with ASIC. This will help to facilitate authority and accountability and will help to avoid duplication of responsibilities between the Board, the General Insurance Code Governance Committee and ASIC – which represent the current layers of governance that currently exist for the FOS.

The current requirements as outlined in ASIC Regulatory Guide 139 facilitate effective reporting between the FOS and ASIC. These include the requirement for the FOS to consult with ASIC about the terms of the mandated independent reviews, the appointment of an independent reviewer as well as the requirement of the FOS to identify, resolve and report on systemic issues and to notify ASIC of any serious misconduct¹.

In responding to whether ASIC's oversight should be increased, ASIC should continue to ensure that the new scheme is compliant with the standards set out in its regulatory guidance, however clear boundaries must be established to ensure the scheme operates with accountability to ASIC yet remains independent in conducting review and adjudication. Equally, the scheme should be independent of the industry that provides its funding – so the scheme itself retains autonomy for the handling and determination of disputes and is accountable only to an overseeing body. This is the sentiment of ASIC RG 139 as it current stands with the view to minimising the risk of any potential conflicts of interest to occur.

The Panel has suggested that ASIC could be provided with the powers to require schemes to undertake targeted reviews of particular types of disputes.² We would welcome further consultation on this matter to better understand the types of issues the Panel is trying to address and ensure the most appropriate solution is identified. Without full detail, there is a chance this may risk duplicating processes already being undertaken as part of the FOS systemic issues team and the role that the Code Governance Committee takes. We note that a review of the General Insurance Code of Practice

¹ <http://fos.org.au/publications/flipbooks/annual-review/2015-2016/index.html#page=110>, FOS Annual Review 2015- 2016

² Interim Report, p160

(GICOP) has been flagged for 2017. It may be that this review can assist in identifying and rectifying specific issues or concerns stakeholders may have.

Draft Recommendation 8 - Use of Panels

IAG supports the recommendation that “users should be provided with enhanced information regarding under what circumstances the schemes will use a panel to resolve a dispute”.

If the definition of ‘complex’ is consistent with that currently used by the FOS, it would be prudent for the new industry ombudsman to adopt a similar approach. IAG recommends that criteria be developed to clarify when and how panels are used. This will assist with managing resources and costs involved with running panels, and result in more efficient outcomes for consumers.

Draft Recommendation 9 - Internal Dispute Resolution

The report notes that “a key difficulty with IDR is that, as it pertains to individual financial firms and the way they run their business, the nature and quality of process and outcomes can be very variable³”. IAG agrees with this observation and cautions the requirement for further reporting.

In recognising the need for identification of trends, emerging issues and determining regulatory priorities, a solution could be to use the reporting requirements already in place as part of the Annual Review process, and instead improve consistency that allows for analysis that more equally compares “apples with apples”. It is highly likely that different financial service providers may record and track their internal dispute resolution processes in varying ways. To ensure consistency and therefore appropriate consumer outcomes, IAG encourages further consultation with industry and the respective Code Committees. This could result in a more efficient reporting regime that reduces duplication and cost. Appropriate transition times will also be required if additional reporting procedures are established.

IAG does not support a reduction in IDR timeframes. IAG aims for the highest possible complaints resolution rates, the vast majority of complaints are resolved internally. The current timelines required (45 days) are demanding, but are managed. Time delays are often caused when either party needs to get the opinion of an expert (repairer, engineer, estimator etc.). This area potentially requires additional consideration with the view to increasing flexibility. We do not believe that rushing resolution of complaints is in consumer, the scheme nor industry’s best interests. Current mechanisms are sufficient to ensure the right degree of urgency is placed on completing reviews (e.g. engagement between the consumer and the financial service provider, FOS intervention, awards of compensation, etc.).

³ Interim Report, p 137

There is more to be lost by creating further inconsistency than there is to be gained. It is noted that the FOS timeframes do not quite align with RG 165 and GICOP. This change came into place as part of the last FOS review process (approximately 18 months ago). This can cause confusion for both consumers and financial service provider employees. There is potential for this to be reviewed and the time frames be realigned to the RG 165 and the GICOP. Reducing timeframes at a scheme level would create even more inconsistency and confusion than exists now.

IAG notes that while many complaints are resolved well within the 45 day period, some will always require more time due to the specific circumstances of the complaint. A reduction in timeframes could result in suboptimal outcomes for consumers and financial service providers. For example, insurers often experience delays in IDR if a consumer needs to gather additional information to support their claim or if an external expert report is required. Arguably this is an important part of the review process itself.