

## **Claims Handling and Settling Services**

*February 2022*

### Contents

<b>Introduction .....</b>	<b>2</b>
<b>What is a Claims Handling and Settling Service? .....</b>	<b>2</b>
<b>Who needs Claims Handling and Settling Authorisations? .....</b>	<b>3</b>
<b>Who is exempt from the Claims Handling and Settling Licensing Regime? .....</b>	<b>3</b>
<i>General Exemption .....</i>	<i>3</i>
<i>Specific Exemption .....</i>	<i>4</i>
<b>When must Claims Handling Authorisations be attained by? .....</b>	<b>4</b>
<b>Upholding Claims Handling Requirements and Best Practices .....</b>	<b>4</b>
<i>General Obligations of Good Faith .....</i>	<i>4</i>
<i>Disclosing Documents .....</i>	<i>6</i>
<i>Balancing an Automated and Personalised Claims Process .....</i>	<i>7</i>
<i>Providing A/Rs with the appropriate training and oversight for Claims Handling .....</i>	<i>7</i>

**Document Description**

Claims Handling and Settling Services

**Page #**

2 of 7

**Date**

10/02/2022

## ***Introduction***

---

Previously, claims handling and settling services for insurance products were excluded from the definition of a 'financial product/service'. This exclusion was removed as part of the Financial Sector Reform (Hayne Royal Commission Response) Act 2020 which now recognises claims handling and settling as a 'financial service'.

From 1 January 2022, businesses in Australia providing claims handling and settling services that belong to certain prescribed categories (see page 2) must hold an AFS licence with the correct claims handling authorisation, or be authorised by a person who holds a claims handling authorisation, unless an exemption applies (see page 3).

This article summarises the explanations and guidance provided in RG-1, RG-2, RG-3, RG-104, RG-105, RG-126, RG 132, RG-146, RG-166, RG-175 (Licencing: Financial Product Advisers - conduct and disclosure), PF209 and INFO-253.

## ***What is a Claims Handling and Settling Service?***

---

Under Chapter 7 of the Corporations Act, businesses undertaking certain specific activities in relation to an insurance product are providing insurance claims handling and settling as a financial service (a 'claims handling and settling service'). These activities include:

- making a recommendation or stating an opinion in response to an inquiry about a claim or potential claim
- making a recommendation or stating an opinion that could influence a decision about making or continuing with a claim
- representing someone in pursuing a claim
- assisting another person to make a claim
- assessing whether an insurer is liable under an insurance product
- making a decision to accept or reject all or part of a claim
- quantifying an insurer's liability under an insurance product
- offering to settle all or part of a claim, or
- satisfying a liability of an insurer under a claim.

### ***Who needs Claims Handling and Settling Authorisations?***

---

Under section 911A (2) (ek)(i)—(vi) of the Corporations Act, persons required to hold or be authorised under an AFS license with claims handling authorisations include:

- Insurers
- Insurance claims managers
- Claimant intermediaries
- Insurance broker
- Financial advisers

### ***Who is exempt from the Claims Handling and Settling Licensing Regime?***

---

Depending on the business or the role played along the claims handling process, individuals or businesses may be exempt from the AFS licensing regime. There are two types of exemptions:

#### *General Exemption*

Businesses do not need to hold an AFS licence with a claims handling authorisation if they do not meet the categories described above (under section 911A (2) (ek)(i)—(vi) of the Corporations Act).

This 'general exemption' means that some persons who are often involved in the claims handling process do not need to hold a licence. These include:

- loss assessors or loss adjusters
- specialists who are providing an expert opinion to help an insurer assess a claim (e.g., engineers, geologists, forensic accountants)
- investigators
- other 'fulfilment providers' (e.g., builders, smash repairers) - unless they are authorised to reject claims
- independent medical examiners
- debt collection agents, and
- superannuation trustees

**Document Description**

Claims Handling and Settling Services

**Page #**

4 of 7

**Date**

10/02/2022

### *Specific Exemption*

Services specifically exempted from the requirement to hold an AFS licence with a claims handling authorisation include:

- professional legal services provided by a lawyer in a professional capacity relating to insurance claims handling and settling (section 911A(2)(en))
- claims handling and settling services provided to a wholesale client under an arrangement between an AFS licensee and the issuer of the insurance (section 911A(2)(em)), and
- claims handling and settling services provided to a person under an arrangement between an AFS licensee and the issuer of the insurance product being a Lloyd's underwriter or an unauthorised foreign insurer (section 911A(2)(el) and regulation 7.6.01AAAB).

*Note: There are additional general licensing exemptions in section 911A(2) and the Corporations Regulations.*

### ***When must Claims Handling Authorisations be attained by?***

---

Applications for a new or varied AFS License commenced 1 January 2021. The deadline has since closed (30 June 2021) and businesses can only continue to provide claims handling and settling services **if** a claims handling authorisation has been attained. Moreover, if the claims handling variation has not been attained by the 30<sup>th</sup> of June 2021, then businesses are no longer able to rely on the transitional arrangements which allowed businesses to continue providing claims handling and settling services while in the process of applying for a claims handling authorisation.

In short, businesses currently providing claims handling and settling services **without** an authorisation on their license/the license they operate under must cease all claims handling and settling activity until the authorisation is attained. It is now considered an offence under Chapter 7 of the Corporations Act to provide such services without claims handling authorisations.

### ***Upholding Claims Handling Requirements and Best Practices***

---

#### *General Obligations of Good Faith*

Accordingly, claims handling and settling service providers must uphold the general AFSL obligations to provide services efficiently, honestly and fairly.

In addition, INFO 253 stipulates the added responsibility to provide claims handling and settling services:

**Document Description**

Claims Handling and Settling Services

**Page #**

5 of 7

**Date**

10/02/2022

- *in a timely way*

This means that service providers are expected to act without undue delay, relaying relevant information as soon as possible, regularly reviewing and following up on outstanding information. Service providers are encouraged to subscribe to industry codes of practice which set timeframe obligations that ASIC considers appropriate.

- *with minimum intrusion and burden*

Service providers should aim to assess claims in the least onerous and intrusive way possible. Surveillance and other assessments should only be taken under exceptional circumstances.

- *fairly and transparently*

At all times, claimants must know what to expect from the claims process, what is expected of them, timeframes of the claims process, why certain information is needed from them, regular progress updates, any adverse findings, justifications behind the decision to accept/reject a claim and their right to make a complaint through internal and external dispute resolution channels.

- *in a way that supports consumers, particularly ones who are experiencing vulnerability or financial hardship.*

Service providers must ensure that their service is tailored to consumers who are experiencing vulnerability or financial hardship. This includes having policies that recognise a person's vulnerability, defines the factors that contribute to vulnerability and sets out how the claims process will be tailored for the needs of those consumers. Representatives must also be trained on how to proactively identify if a person is experiencing vulnerability or financial hardship, and not rely on a person to self-identify this.

These expectations set out in ASIC INFO-253 are reinforced by Chapter 13 of the Insurance Contracts Act 1984 (Cth) ("ICA") which implies the *duty of good faith* in all insurance contracts. Recently, ASIC successfully enforced section 13(1) of the ICA which requires an insurer to act towards the insured in respect of any matter arising under, or in relation to, the policy with utmost good faith. ASIC has flagged that the case is an "important warning for insurers". Given subsequent amendments to the ICA in March 2019, ASIC now has powers to seek a pecuniary penalty against an insurer, which for a breach after 1 July 2020, is the greater of:

- i. \$1,100,000 (5,000 penalty units); or
- ii. three times the benefit obtained or detriment avoided; or
- iii. 10% of annual turnover of the body corporate for the 12-month period before the contravention (capped at \$555 million).

**Document Description**

Claims Handling and Settling Services

**Page #**

6 of 7

**Date**

10/02/2022

### *Disclosing Documents*

As an AFS licensee or AR providing claims handling and settling services, there are disclosure documents that must be provided to clients in certain circumstances. There are three disclosure documents:

1. Cash Settlement Fact Sheet

AFS Licensees and their representatives must give a Cash Settlement Fact Sheet to retail clients who are offered a cash payment to settle part or all of a general insurance claim if there are other legally available options to settle the claim.

The fact sheet must contain:

- options for settlement legally available under the insurance product (e.g., to have the insured person's goods repaired or replaced, or to receive a cash payment)
- the sum insured under the insurance product
- the amount of the cash settlement you are offering in total and as a breakdown of each component (e.g., sum insured, emergency payments and ex gratia payments), and
- a statement that the client should consider obtaining independent legal or financial advice before agreeing to the cash settlement.

The fact sheet must be:

- in writing
- titled on the cover or front as 'Cash Settlement Fact Sheet' (but can be abbreviated to 'CSFS' elsewhere on the fact sheet)
- dated with the date on which it was prepared, and
- worded and presented in a clear, concise and effective way.

*Penalties apply for failing to comply with these requirements*

2. Financial Services Guide

Claimant intermediaries, that is, businesses representing a client in pursuing an insurance claim as part of their claims handling services, will need to provide an FSG

3. Confirmation of Transactions

The following transactions between the service provider and their retail clients must be confirmed by the provided in writing or electronically:

- the acceptance of an insurance claim, and
- the settlement of an insurance claim (including payment of a settlement amount).

The confirmation of the transaction must:

- identify the issuer and holder of the product, and
- give details of the transaction (including the date and a description of the transaction).

**Document Description**

Claims Handling and Settling Services

**Page #**

7 of 7

**Date**

10/02/2022

*Balancing an Automated and Personalised Claims Process*

Technological advances have rapidly evolved many industries and the insurance industry is no exception. As insurers and claim handling service providers aim to streamline claims processes and boost productivity with technology, it is important to not lose sight of the importance of customer engagement. A personal lines consumer survey by Deloitte found that 58% of Australian respondents conduct research into the customer engagement and experience of a particular auto or homeowners insurer before buying coverage. As making a claim may be the only touchpoint a customer has with an insurer, this element is inadvertently crucial to retention and growth.

It is not a mutually exclusive choice between technology or personal engagement but rather businesses should aim to hybridise their claims processing model to optimise cost and customer satisfaction. Businesses can continue to bolster their technology infrastructure to settle claims more efficiently and accurately, while upskilling their claims professionals.

*Providing A/Rs with the appropriate training and oversight for Claims Handling*

As an AFS Licensee with Claims Handling authorisations, it is imperative that authorised representatives are under regular supervision and oversight. Representatives should be subject to the appropriate training to ensure they meet the claims handling requirements and achieve the best practices aforementioned.