

Claims handling and settling services to be closely monitored by ASIC

Following the first year of regulation of claims handling and settling services as a financial service, we expect that ASIC will continue to focus its attention on the delivery of these services by insurers, in order to ensure that they are provided efficiently, honestly and fairly.

Since 1 January 2022, a person who provides claims handling and settling services must hold an Australian Financial Services Licence (AFSL) with an authorisation to provide those services, or be able to rely on an applicable exemption.

With insurance claims handling and settling services no longer an exempt financial service under the *Corporations Act 2001* (Cth), the general obligation on Australian financial services licence holders to do all things necessary to provide financial services efficiently, honestly and fairly, now extends to the handling and settling of insurance claims.

The regulation of claims handling and settling services includes the assessment of insurance claims, making requests for information and conducting settlement negotiations.

In September 2022, ASIC expressed concerns about the handling of life insurance claims. ASIC conducted a review of 4,800 individual disability income insurance claims received between 1 January 2021 and 30 June 2021. It found that life insurers need to do more work to ensure that consumers are protected from unfair practices in non-disclosure investigations and physical surveillances.

ASIC noted that insurers may be in breach of the obligation to do all things necessary to handle claims efficiently, honestly and fairly if they do not have a reasonable basis to test for non-disclosure or misrepresentation. ASIC officially put insurers 'on notice' that it will take action where it sees consumer harm from poor claims handling practices.

ASIC is also willing to prosecute insurers for breaching the duty of utmost good faith during claims handling. In December 2022, it commenced proceedings against OnePath Life alleging it failed to comply with its duty to act with utmost good faith during claims handling and is seeking financial penalties for the first time.

Recommendations

In order to comply with obligations in the context of handling and settling insurance claims, insurers should implement robust processes which ensure that claims are handled in a timely manner and in the least onerous and intrusive way possible.

Along with life insurers, general insurers managing business interruption claims arising from COVID-19 and claims arising from natural catastrophes, have been identified as areas of focus by ASIC. Process design and oversight will be increasingly important to deal with high volume claims in an appropriate manner.