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MTAA Member Briefing

13 November 2020

Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 Corporations (Fees) Amendment (Hayne Royal Commission Response) Bill 2020

Implications for Motor Body Repair Industry

Context

- MTAA on behalf of Members, AMBRA and other industry sectors provided submissions, representations, and advocacy on a range of matters impacting automotive sector industries relating to the Hayne Financial Services Royal Commission findings and recommendations.
- On 12 November 2020, the Government introduced the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 and the Corporations (Fees) Amendment (Hayne Royal Commission Response) Bill 2020 to the Australian Parliament. The Bills will now proceed through both houses. The amendments made by Schedule 7 commence on the later of 1 January 2021 or the day after Royal Assent. MTAA will monitor and advise when the Bill receives Royal Assent.
- A critical matter MTAA advocated on was the issue of insurance claims handling and settling services (Hayne recommendation 4.8. Claims handling and settling services were previously exempted as a financial service.

What does the Bill do regarding Claims Handling and settling services?

- The current regulation which excludes claims handling from being a financial service will be repealed.
- **The Bill makes claims handling a financial service** and subject to the regulatory regime in Chapter 7 of the Corporations Act.

What does this mean?

- MTAA advocated on behalf of Member Associations and AMBRA significant concerns with claims handling and cash settling of car insurance claims. MTAA agreed with the Hayne Recommendation. MTAA also advocated for more robust regulatory action on cash settling practices. A settling fact sheet with significant inclusions is part of the reforms.
- Motor Body repair businesses and consumers will have more robust protections and increased clarity by the inclusion of claims handling and settling services as a financial service. Increased transparency on the accountabilities and requirements on those involved in the claims handling and settling services are part of the reforms.



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What does this mean (Cont.)?

- Insurers and other people who provide claims handling services for insurers (including certain tradespeople, insurance claims managers, certain insurance brokers and certain financial advisers):
 - must obtain an Australian financial services licence covering claims handling;
 - must provide appropriate disclosure to retail clients when offering to settle a general insurance claim using cash payments;
 - can authorise representatives to provide claims handling services on their behalf;
 - can continue to appoint service providers, such as tradespeople to fulfil insurance contracts on their behalf;
 - must ensure insurance claims are handled and settled efficiently, honestly and fairly (whether they handle the claims themselves, or have representatives handle the claim on their behalf); and
 - when providing claims handling services to retail clients, must have an internal dispute resolution process in place and be a member of AFCA.

- The reforms also mean that people who represent an insured (a consumer) to pursue an insurance claim:
 - must hold an Australian financial services licence covering claims handling;
 - must represent the consumer efficiently, honestly and fairly; and
 - when representing a retail client to pursue an insurance claim, must have an internal dispute resolution process in place, be a member of AFCA and give the client a Financial Services Guide.

- Under the reforms, Australian financial services licensees who offer to settle a general insurance claim using a cash payment **must provide the consumer with a Cash Settlement Fact Sheet** if the consumer is a retail client.
 - A person who offers to settle a general insurance claim of a retail client with a cash payment must give the consumer a Cash Settlement Fact Sheet. This ensures the consumer has sufficient information about the offer to make an informed decision about whether to accept the offer.
 - A Cash Settlement Fact Sheet only needs to be provided when the consumer has a choice to make between cash settlement and another settlement option under the insurance contract. An alternative option for settling a claim could be the repair or replacement of the insured item.
 - The Australian financial services licensee or the person acting on behalf of the licensee must give the consumer the Cash Settlement Fact Sheet at the same time the cash settlement offer is made.



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- The Cash Settlement Fact Sheet must be given in writing in printed or electronic form and provided to the insured personally, sent to the insureds nominated address or fax, or another way agreed between all parties and:
 - include all options for settlement that are legally available (for example, the option to have the insured product repaired or replaced);
 - include a statement of the cash settlement being offered, broken into components representing the sum insured and any additional payments;
 - include a statement that the insured should consider obtaining independent legal or financial advice before settling;
 - include an outline of any rights of review regarding the payout the insured may have;
 - be titled as 'Cash Settlement Fact Sheet' on the cover;
 - be dated with the date on which the Cash Settlement Fact Sheet was prepared;
 - be presented in a clear, concise and effective manner; and
 - contain any other information prescribed by the regulations.
- Offences and civil penalties and liability provisions will extend to Cash Settlement fact sheets
- Australian financial services licensees with licences covering claims handling must comply with the general obligations in section 912A of the Corporations Act, including the obligation to ensure:
 - claims are handled efficiently, honestly and fairly;
 - their representatives are adequately trained and competent to provide claims handling services; and
 - they have a compliant internal dispute resolution process and be a member of AFCA if they provide claims handling services to retail clients.
- People representing a consumer to pursue a claim must hold an Australian financial services licence covering claims handling if they obtain a benefit for that service. If the consumer is a retail client, the licensee must have a compliant internal dispute resolution system, be a member of AFCA and give a Financial Services Guide to the consumer.
- The new claims handling service only applies to insurance products under the Corporations Act. Therefore, it does not extend to products that are not financial products under the Corporations Act, including:
 - health insurance;
 - insurance provided by the Commonwealth, and State and Territory insurance (including compulsory third-party insurance);
 - insurance entered into by the Export Finance and Insurance Corporation;
 - reinsurance; and
 - insurance-like products (such as warranties).



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An example

- The following example is provided by the Treasury Department in explanatory material provided with the Bill (MTAA has added emphasis of relevance)

- *Vhairi has insurance for her rare sports car. After being involved in a crash, Vhairi makes an insurance claim.*
- *Vhairi's insurer has authorised an insurance claims manager to handle all of its claims.*
- *Vhairi's insurer notifies the claims manager of Vhairi's claim. The claims manager then hires an assessor to assess the damage to Vhairi's car and a **smash-repairer** to repair the car.*
- ***Each of these people (the insurer, insurance claims manager, assessor and smash repairer) provide a claims handling service.***
- ***However, they are affected by the reforms in different ways.***
 - *The insurer must obtain an Australian financial services licence covering claims handling.*
 - *The claims manager can obtain their own Australian financial services licence covering claims handling or become an authorised representative of the insurer.*
 - *The assessor and smash repairer do not need to obtain an Australian financial services licence (or be authorised representatives of a financial services licensee), unless the insurer has given them the power to reject a claim.*

For further information see Chapter 7 of the Explanatory Memorandum attachment to this briefing

MTAA Secretariat



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