

Ms Delia Rickard
Executive Director, Consumer Protection and International
Australian Securities and Investments Commission
GPO BOX 9827
CANBERRA ACT 2600

5 October 2010

Dear Ms Rickard

CHANGES TO REGULATORY GUIDE 165

The Insurance Council of Australia Limited¹ (Insurance Council) notes the recent release of Regulatory Guide 165 (RG165 July 2010) which replaces Regulatory Guide 165 (RG165, May 2010) and Regulatory Guide 165 (RG165, May 2009)

We welcome the recent amendment in RG165 July 2010 to delete the requirement that an insurer inform a customer about the availability of External Dispute Resolution (EDR) when a complaint is resolved to the customer's satisfaction by the end of the next business day from when the complaint was made.

However there are two other matters on which insurers seek clarity in relation to RG165 July 2010. These matters are:

- whether and when a written final response is required
- whether insurers are required to record complaints resolved by the end of the next business day after the day the complaint was received.

Insurance Council members seek clarification of these matters given ambiguity in the RG 165, the changes to RG165 since January, and what was communicated by ASIC in the quarterly meetings with insurers in the lead up to implementation of RG165 last year.

Written final responses

RG165.92 July 2010 states:

“A ‘final response’ requires that you must write to the complainant or disputant within 45 days, informing them of:

- a) the final outcome of their complaint or dispute at Internal Dispute Resolution (IDR);
- b) their right to take their complaint or dispute to EDR; and

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. June 2010 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of \$33.2 billion per annum and has total assets of \$99.2 billion. The industry employs approx 60,000 people and on average pays out about \$95 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

- c) the name and contact details of the relevant EDR scheme to which they can take their complaint or dispute.”

RG 165.93 July 2010 goes on to qualify this²:

“You do not need to provide a final response when a complaint or dispute is resolved to the complainant’s or disputant’s satisfaction by the end of the next business day from when the complaint or dispute was received and the complainant or disputant has not requested a response in writing.”

However, Appendix 1 to RG165 July 2010 which provides guidance on how ASIC will apply the Australian Standard on Complaints Handling to IDR procedures states:

- Guiding Principles and relevant Sections of ASO 10002-2006 may apply differently depending on the size and nature of your business (see page 37), and
- ASIC considers that, **where practicable**, reasons for a decision should be in writing and should refer to applicable provisions in legislation, codes, standards or procedures (our emphasis) (see page 40).

AS ISO 10002-2006 (which became the relevant standard in December 2009) does not itself require ‘final responses’ to be in writing. At paragraphs 7.8 ‘Communicating the decision’ the Standard states:

“The decision or any action taken regarding the complaint, which is relevant to the complainant or to the personnel involved, should be communicated to them as soon as the decision or action is taken. “

Members also submit that these requirements need to be considered alongside the mature and functioning dispute resolution framework set out in the General Insurance Code of Practice.

Practical issues around when a ‘final response’ should be required

The following paragraphs explain the practical issues raised by a written ‘final response’ requirement in all circumstances, regardless of whether the complaint is resolved to the customer’s satisfaction.

Given the breadth of the new definition of ‘complaint’ in RG165, it is a heavy burden for insurers to respond in writing in every case where a complaint is resolved to the customer’s satisfaction but resolution is outside the ‘next business day’ timeframe. For direct insurers of personal lines, the vast majority of customer interactions take place over the phone. Insurers will always attempt to resolve matters at first contact with the complainant, as customers expect. Front-line call centre staff are trained to handle customer concerns and objections in telephone calls. This will include communicating the ‘outcome’ of a complaint verbally.

Call centre operations are not, however, equipped to handle personalised written communications to customers. Such communications are best handled by experienced dispute resolution staff to whom unresolved complaints, complaints which have not been resolved to a customer’s satisfaction, or complaints where a written response is required or requested, can be escalated. Generally, insurers will maintain a record of the ‘outcome’ of

² This paragraph was inserted into RG165 in May 2010

the complaint as communicated to the customer in its complaint recording system. If front-line staff were to provide 'written' final responses to all complaints, this would require:

- significant front-line system processes changes;
- development of standard letter templates;
- significant training effort of front-line staff; and/or
- increased handling time for customer calls.

Alternatively, if all complaints were escalated to skilled dispute resolutions staff, it would be inconsistent with efforts to achieve first point resolution and result in the double handling of complaints. Either of these solutions would increase costs for insurers which in turn may lead to higher premiums for consumers. Insurers believe that the operational cost of such a requirement substantially outweighs any consumer benefit.

At RG165.37 to RG165.39 it is stated that:

- ASIC considers IDR to be an important and necessary step in the complaints process;
- independent research commissioned by ASIC also indicates that the timely resolution of complaints particularly at IDR can be instrumental in consumers being satisfied with the complaints handling process; and
- it is important that IDR systems interface smoothly with EDR schemes.

Requiring a written 'final response' to complaints which have been resolved to a customer's satisfaction within 45 days, does not in our view support their timely resolution, nor aid the smooth interface between IDR and EDR.

Alternative Proposal

The Insurance Council submits that if a complaint can be resolved to the customer's satisfaction within the 45 days, a written 'final response' should not be required unless the customer specifically requests a response in writing.

An insurer should be entitled to treat a complaint as 'resolved' once the outcome of a complaint has been communicated to the customer and, having advised them of their options, the customer is satisfied with the outcome.

If, on the other hand, a customer is not satisfied with the outcome or the complaint cannot be resolved within the 45 day timeframe then the customer should be given a 'final response' in writing. Further, we agree that if a 'final response' to the complaint cannot be given within 45 days then the insurer should, as required by RG165.94, inform the complainant of the reason for the delay, advise the complainant of their right to complain to EDR and provide the complainant with the name and contact details of the relevant EDR scheme to which they can complain.

These requirements, along with the ready availability of dispute resolution information in Product Disclosure Statements, Financial Services Guides, insurer websites and customer relations brochures, will ensure customers are appropriately informed of their rights in this respect.

Whether insurers are required to record complaints resolved by the end of the next business day after the day the complaint was received

RG165.82 states that when a complaint is resolved to the customer's satisfaction within the 'next business day' time frame the insurer will not be required to apply the full IDR process - that is, to capture and record the complaint as set out at Appendix 1 under 'Collection of Information'. Yet Appendix 1 includes the following statement:

"Your recording system should at least be able to identify the number of complaints or disputes that were resolved by the end of the next business day after the day on which the complaint or dispute was received."

To require insurers to log numbers of complaints resolved within the 'next business day' timeframe (even if the individual detail of the complaint is not recorded) involves considerable operational effort with, we suggest, no apparent consumer benefit. We do not believe that statistics produced from recording numbers of complaints will provide meaningful insights which justify the operational cost and complexity of this requirement.

The Insurance Council therefore suggests that ASIC delete the statement quoted above from Appendix 1.

The Insurance Council requests that ASIC gives serious consideration to these matters and would appreciate an opportunity to discuss them with you. Mr John Anning, Insurance Council's General Manager Policy – Regulation (tel: (02) 9253 5121; email: janning@insurancouncil.com.au) will contact your office to explore the possibility of a meeting or teleconference.

Yours sincerely



Robert Whelan
Executive Director & CEO