



NEW SOUTH WALES
BAR ASSOCIATION*

New South Wales Bar Association submission to the State Insurance Regulatory Authority regarding the Customer Service Conduct Principles Consultation Paper

The NSW Bar Association (“the Association”) provides this submission in response to the invitation to provide feedback on the Customer Service conduct principles dated July 2019. The Association thanks SIRA for the opportunity to make this submission.

At the outset the Association commends SIRA for seeking to promote a culture that is customer focussed and seeks to impose minimum service standards. The Association notes that the principles are not to supplant or replace the existing legislative standards licensed insurers must comply with.

Addressing the Consultation Questions raised by SIRA, the Association responds as follows:

1. Are the customer service conduct principles sufficient and appropriate to protect customers and ensure confidence within the state’s insurance schemes?

The Association’s tentative response is “Yes” as the principles are supported but this answer is subject to clarification of the “attestation” process that all licensed insurers must undergo. This “attestation” is necessarily a self-reporting process which an insurer may be able to complete without external scrutiny. The consultation paper does not identify such matters as how the “attestation” process will be conducted or the objective measurements of this self-reporting. The Association notes that SIRA will consider the most effective approach for inclusion of the principles in licence conditions. The Association looks forward to receiving information as to how the principles will be included in licence conditions including how they are to be enforced and how the self-reporting process is to be objectively measured.

2. Are there other principles of customer service conduct that should be considered?

The Association recommends that a further principle as to the rights to independent legal advice should be included. Such a principle may be drafted in the following terms:

“Principle 6: Customers should be made aware they have a right to independent legal advice about entitlements. This means:

- Customers will be informed that if a decision is made that the customer may not agree with, the customer is entitled to seek independent legal advice.”

3. How regularly should insurers attest to compliance with the customer service conduct principles? Is an annual attestation sufficient?

The Association regards the proposed annual attestation is sufficient subject to information about how this process will work including the sanctions that may be opposed on insurers who do not meet the minimal standards for compliance with the principles.

4. What kind of matters should be included in the attestations made to SIRA?

- a. Action they have taken to ensure compliance with the principles (for example governance and staff training)
- b. Self-assessment of compliance with each of the principles (for example an analysis of complaints)

The Association recommends that the following matters should be included in the attestations made to SIRA:

- c. Examples of correspondence provided to customers that demonstrate compliance with the principles.
- d. Examples of training modules/training programs that ensure compliance with the principles.

5. Should the attestations sought from insurers be at the Board and/or the management level?

The Association submits that the attestations should be provided by an officer of the insurer senior enough to bind the insurer as a corporation in accordance with the principles of *Tesco Supermarkets Ltd v Natrass* [1972] AC 153 that is, the officer represents the “mind and will” of the corporation. The Association recommends this person should be an officer of the company such as an executive director.

If the attestation is not provided by an employee senior enough to bind the corporation then there is a risk that the stated policy intention of SIRA to inculcate cultural change in licensed insurers will not be achieved.

The Association again thanks SIRA for the opportunity to make this submission.

Please feel free to contact the Deputy Executive Director of the New South Wales Association, [REDACTED] if you have any enquiries regarding this submission.

16 August 2019