

Chair's Foreword

The life insurance industry is a significant part of the financial services sector in Australia. It has a noble purpose in providing financial protection to policyholders in times of need and financial distress. Despite this, there are sections of the industry that can and must do better in delivering the protection they promise whilst remaining financially viable long into the future. The committee has taken a broad view of the life insurance industry covering direct, retail and group life insurance products including life cover, total and permanent disability cover, trauma cover, and income protection. The committee's inquiry has followed on from, and overlapped with, significant reviews and legislative changes, as well as ownership changes in the industry.

The committee's report has focussed on areas where substantial changes are required to ensure the life insurance industry is held to account in relation to:

- effective consumer protections and industry codes of practice;
- the transparency of remuneration, commissions, payments and fees;
- the provision of advice in the best interests of consumers;
- group life insurance arrangements that do not disadvantage certain groups of consumers;
- appropriate access to personal medical and genetic information; and
- fair claims handling practices.

Consumer protections

The consumer protections that currently apply to life insurance are substantially weaker than the consumer protections that apply to other financial and non-financial services and other products sold together with life insurance. This leads to confusion for consumers in understanding and asserting their rights. The committee also considers that the inconsistent application of consumer protection law also creates inappropriate incentives for industry participants that are subject to weaker consumer protections. The committee is therefore recommending that consumer protections for financial products including life insurance be aligned with Australian Consumer Law. This recommendation includes removing a number of exemptions that the life insurance industry currently enjoys compared to other financial services. To ensure that life insurance industry participants are treated fairly, the committee is recommending that the changes uniformly cover all types of life insurance, all sectors (direct, retail and group), and all industry participants.

Codes of practice

Industry codes of practice can form an effective means of guiding the interaction of corporations with their customers. The committee welcomes the recent development of two codes of practice in the life insurance industry. However, the committee is not convinced that a self-regulatory approach is sufficient. The committee is therefore

recommending that the co-regulatory approach foreshadowed by the ASIC Enforcement Review Taskforce position papers be adopted across the financial services sector including the life insurance industry. The committee encourages the implementation of one single combined code of practice. At a minimum, the co-regulatory approach should require codes to be registered with ASIC, be mandatory for all industry participants, give the code compliance committees the power to determine whether breaches have occurred, give the Australian Financial Complaints Authority the power to enforce compliance through determinations, and provide genuine remedies for breaches of the code, including financial remedies, thereby creating an incentive for compliance. It is recognised that any enforceable code with regards to insurance in superannuation would need to expressly permit trustees to act in members' best interests.

As a matter of practice, ASIC focusses its activities on systemic and systematic misconduct. However, under the proposed co-regulatory arrangements, ASIC may not have the power to undertake enforcement action for systemic and systematic code breaches. This would result in a very significant gap in consumer protections. The committee is therefore also recommending that ASIC be given the power to undertake enforcement action in relation to systemic or systematic breaches of codes of practice in the financial services sector, including in the life insurance industry.

Remuneration, commissions, payments and fees

The committee notes that the rules banning conflicted remuneration have been introduced specifically in order to mitigate some of the risks around conflicts of interest in the life insurance industry. However, evidence to the committee, particularly from ASIC, indicates that a plethora of hidden payments including commissions, fees, performance-related payments, soft dollar benefits, and non-financial benefits still exist within the various structures of the life insurance industry. These money flows continue to exist to varying degrees across all three sectors: retail, direct, and group. The wrong type of financial incentives have contributed significantly to a range of poor practices and misconduct in the financial services industry including misleading advice and mis-selling with poor outcomes for customers.

The committee is therefore recommending that ASIC and APRA conduct detailed examinations of all payments, benefits, and fees across all sectors of the life insurance industry and that the government consider further regulation following the results of those examinations.

Retail life insurance and approved product lists

Approved Product Lists (APLs) are used by advice licensees and advisers selling life insurance to maintain a list of life insurance products that they have available to sell. APLs are also used for providing financial advice. The way that APLs are currently constructed can lack transparency and generate conflicts of interest that lead to selling life insurance on the basis of misleading advice that herds customers to products from insurers that pay the most to be on the APL. The committee is not convinced that the

draft APL Standard being proposed by the Financial Services Council will adequately address the full range of concerns identified by this inquiry.

The committee is therefore recommending that the life insurance industry should have, as a matter of urgency, a balance of affiliated and non-affiliated products on their APLs, and if affiliated products are recommended, the affiliation should be disclosed, and the customer should be offered a comparison with non-affiliated products. Beyond this, the committee further recommends that the industry transition to open APLs.

Group life insurance

The committee considered issues associated with group life insurance through superannuation, including opt-out requirements, member awareness of cover, and the impact of premiums on small super balances.

Evidence to the committee from a broad range of stakeholders strongly supported the opt-out model for life insurance within group superannuation, particularly as a means of addressing the problem of under-insurance. Nevertheless, concerns were raised in relation to the opt-out model, particularly for those with low super balances such as low-income earners, women, and young people. The mechanism for opting out of life insurance held within group superannuation does not appear to be straightforward.

The committee views the current dearth of action by superannuation trustees and life insurers to fix the problem of duplicate insurance within group superannuation as completely unacceptable. The committee is therefore recommending that superannuation funds, superannuation trustees, and life insurers be more proactive in informing customers about the status of group life insurance accounts.

Access to medical information

Life insurers request authorisation to access a consumer's medical information. This request for authorisation may occur at the time a consumer acquires a life insurance policy and also at the time of making a claim. The amount and type of medical information a consumer authorises a life insurer to access and share is typically broad, particularly at the time of policy acquisition.

The committee is also very concerned about evidence provided that patients are reluctant to seek necessary treatment, particularly for mental ill health, due to concerns over life insurers having access to their full medical record and then using such information to limit or deny coverage or a claim.

The committee is firmly of the view that life insurers should only have access to targeted medical information. The committee is therefore recommending that the Financial Services Council and the Royal Australian College of General Practitioners collaborate to prepare and implement agreed protocols and standards for:

- requesting and providing relevant medical information only, not complete medical files;
- uniform authorisation forms for access to medical information;
- appropriate storage of medical information; and

- real-time disclosure to consumer about the progress of their claim, including requests for medical records.

Genetic information

As the use of genetic testing in health care increases, concerns have been raised around privacy and genetic discrimination. In response to concerns over genetic discrimination, several countries have enacted legislation or voluntary agreements to restrict or fully ban the use of genetic information by insurance companies.

The committee is of the view that it is inherently unfair to limit or deny a person access to products such as life insurance based on factors that are out of their control. The committee is concerned that the use of genetic information by life insurers has impacted on participation in public health research projects and other forms of research. The committee is recommending that the Financial Services Council, in consultation with the Australian Genetic Non-Discrimination Working Group, assess the consumer impact of imposing a moratorium on life insurers from using predictive genetic information.

Claims handling

The committee was concerned to hear about claims handling practices that may be used by life insurers as a means to delay or deny a claim or limit the amount of payment made when a claim is successful. The committee is also concerned about the transparency of the claims handling process and the lack of reasons provided to customers when claims are denied. Evidence to the committee highlighted that policies with technical definitions can have high decline rates.

The committee is therefore recommending that the life insurance industry must:

- regularly update all definitions in policies to align with current medical knowledge and research;
- standardise definitions across all types of policies and use clear and simple language in definitions;
- set industry standards for claim timeframes and limits on the number of medical examinations;
- clearly explain which associated conditions that may arise from the initial condition, including mental ill health, are covered by the policy; and
- develop a mandatory and enforceable Code of Practice for its members in relation to mental health life insurance claims and related issues.

The committee is also recommending that the current exemption under the Corporations law that excludes certain claims handling activities by life insurers from ASIC's oversight should be reviewed.

The committee considers that life insurance plays a vital role in Australia's social and economic life, and that the recommendations made in this report will help to improve the transparency, accountability, and effectiveness of the life insurance industry.

As Chair, I thank my fellow committee members for their collegiate approach to considering the issues that arose during the inquiry. The committee also thanks those individuals and witnesses that made submissions to, and appeared as witnesses before, the inquiry. Their contributions provided a strong evidence base which informed our deliberations.

