

Recommendations

Recommendation 2.1

2.80 The committee recommends that life insurance be included in the open banking regime.

Consumer protections

Recommendation 3.1

3.89 The committee recommends that:

- consumer protections for financial and non-financial services are aligned to remove current inconsistencies;
- section 15 of the *Insurance Contracts Act 1985* be reformed to enable consumer protections to apply to life insurance contracts, with appropriate transitional and other arrangements to accommodate the challenges observed by ASIC to exist;
- consumer protections for life insurance are aligned with consumer protections for other financial services and products, including but not limited to removing the exemptions identified in Table 3.2 of this chapter;
- consumer protections for life insurance uniformly cover:
 - all life insurance industry sectors, including direct, retail and group;
 - all life insurance industry participants, including but not limited to insurers, distributors, licensees, advice licensees, advisers, superannuation trustees and employees of such organisations; and
 - all forms of life insurance, including but not limited to life, trauma, disability, income protection; funeral insurance; and
- consumer protections for general insurance are aligned with consumer protections for other financial services.

Recommendation 3.2

3.94 The committee recommends that ASIC engage with life insurers to begin removing unfair terms from life insurance contracts as soon as possible.

Recommendation 3.3

3.98 The committee recommends that ASIC's proposed product intervention powers be amended to:

- include funeral insurance;
- give ASIC the ability to make interventions in relation to remuneration; and
- increase the 18 month timeframe for which product intervention orders can apply.

Recommendation 3.4

3.102 The committee recommends that the government's proposed Banking Executive Accountability Regime, financial product design and distribution obligations, and financial product intervention powers for ASIC, should apply to life insurance and life insurers.

Recommendation 3.5

3.106 The committee recommends that the scope of the Banking Executive Accountability Regime be extended to include consumer related conduct matters and enable ASIC powers to take action on these matters.

Recommendation 3.6

3.112 The committee recommends that the penalty amounts under ASIC-administered legislation, including the life insurance industry, should be set at three times the benefits obtained for every party to the transaction, including advisers, licensees and insurers.

Recommendation 3.7

3.113 The committee recommends that ASIC conduct random audits of 20 per cent of the life insurance adviser population over a three year period. Where misconduct is identified, appropriate entries should be recorded on the financial advisers register, and statistics on licensees and insurers should be published, so the public can be informed. Advisers that have been reviewed must also publish the outcome on their website in a highly visible location. If necessary ASIC should be provided with additional funding to allow these random audits to occur.

Codes of Practice

Recommendation 4.1

4.52 The committee recommends that the government implement the co-regulatory approach put forward in the ASIC Enforcement Review Taskforce Position Paper across the whole financial services sector, while ensuring, where possible, that there are no exemptions for any part of the life insurance industry and that codes are written in plain English.

Recommendation 4.2

4.58 The committee recommends that ASIC be given the power to undertake enforcement action (halting misconduct, remedies and sanctions) in relation to systemic or systematic breaches of codes of practice in the financial services sector, including in the life insurance sector.

Recommendation 4.3

4.61 The committee recommends that, in order for ASIC to approve any code of practice in the financial services sector, including life insurance, the code must apply to all relevant industry participants, without exemptions.

Recommendation 4.4

4.63 The committee recommends that, prior to seeking ASIC approval, the two codes of practice for the life insurance industry be combined into a single code of practice if possible.

Remuneration, commissions, payments and fees

Recommendation 5.2

5.105 The committee recommends that:

- ASIC conduct a systematic review and risk assessment of all payments and benefits flowing between participants in each sector of the life insurance industry—direct, group, and retail—and inform the government of any regulatory gaps; and
- the government consider further regulation of payments between life insurance industry participants following the ASIC review.

Recommendation 5.3

5.108 The committee recommends that ASIC and APRA immediately undertake an audit of all superannuation trustees to identify the nature, purpose and value of all payments, including any 'soft-dollar' benefits that occur between life insurers and trustees or any related parties in connection with the provision of default insurance to members of MySuper and choice superannuation products, including:

- current and historical payments made by life insurers to trustees or any related parties and/or by trustees to life insurers under profit-sharing, premium adjustment models, experience share arrangements or any arrangement of a similar nature;
- the total premium value attributable to the existence of profit-sharing, premium adjustment models, experience share arrangements or any arrangement of a similar nature between a trustee and a life insurer; and
- payments, including any 'soft-dollar' benefits made or that may become payable by life insurers to trustees or any related parties of trustees for any

purpose, for example, subsidisation of administration costs, technology, marketing, sponsorship, hospitality, staff expenses etc.

5.109 The committee also recommends that the report be published by ASIC and APRA as soon as practical to ensure confidence in the compulsory superannuation system.

Retail life insurance and approved product lists

Recommendation 6.1

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

Recommendation 6.2

6.48 The committee recommends that ASIC and the ACCC jointly investigate whether the past use of APLs in the life insurance industry breaches any anti-competitive laws they administer. The report of the investigation should also inform government whether the current legislation inappropriately constrains the capacity of ASIC or the ACCC to investigate anti-competitive behaviour in the financial service sector, including life insurance.

Group life insurance

Recommendation 7.1

7.41 The committee recommends that trustees that have access to information on accounts that are duplicate, have low balance risks or lack contributions, should be required to contact members annually to inform them, in summary form and in plain English, of:

- the status of their accounts; and
- whether their insurance policy is still providing coverage.

7.42 The committee further recommends that, in addition to annual notification, trustees should be required to contact members in a timely manner when trigger points such as low balance risk are reached.

Recommendation 7.2

7.47 The committee recommends that superannuation funds should be required to inform the Australian Tax Office of the type and status of the insurance that is held for the benefit of the member for each of their superannuation accounts.

Recommendation 7.3

7.48 The committee recommends that, when it sends out individual annual tax assessments, the Australian Tax Office also provide a statement of superannuation and insurance, subject to system capacities and cost effectiveness, including information on:

- the number of superannuation accounts held;
- the number of life insurance accounts held through superannuation; and
- the insured's right to seek information from the superannuation trustee about the balance, and the continued coverage or otherwise of any insurance policy.

Recommendation 7.4

7.52 The committee recommends that the life insurance industry fund a prominent media advertising campaign, particularly aimed at those most vulnerable to duplicate accounts and fee erosion, to alert consumers to:

- the prevalence of duplicate life insurance accounts held within group superannuation;
- the negative impacts that duplicate life insurance accounts can have on superannuation account balances;
- the mechanisms for removing duplicate insurance policies within group superannuation; and
- the importance of seeking specific advice before making changes, if you have any pre-existing conditions.

Recommendation 7.5

7.53 The committee recommends that the government appoint the appropriate existing body to undertake an immediate review of all superannuation trustees to determine their compliance with existing obligations under the *Superannuation (Industry) Supervision Act 1993*, including section 52(7)(c) covenants, *'to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries'*.

Recommendation 7.6

7.54 The committee recommends that, the Australian Government consider legislating to protect the retirement savings of members with low account balances and members who do not receive any value from default insurance.

Recommendation 7.7

7.55 The committee recommends that the Australian Government consider legislating to require life insurers and superannuation funds to provide regular updates to policyholders of the level, type, extent and cost of life insurance cover that they have using a standard form disclosure format, enabling them to compare with other funds or, in the case of superannuation, make them aware that they have access to life insurance.

Access to medical information

Recommendation 8.1

8.93 The committee recommends that:

- the Financial Services Council and the Royal Australian College of General Practitioners collaborate to prepare and implement agreed protocols for requesting and providing medical information;
- the Financial Services Council develop a uniform authorisation form for access to medical information at the time of application and at the time of claim that must be used by all of its members;
- this uniform authorisation form explain to consumers/policyholders in clear and simple language how information will be stored and used by third parties; and
- a consumer/policyholder should be able to use the same uniform authorisation form between different life insurers and different life insurance products.

Recommendation 8.2

8.94 If the Financial Services Council and the Royal Australian College of General Practitioners have not agreed to protocols within six months, the committee recommends that at the time of application, life insurers must only ask a consumer's General Practitioner, or other treating doctor where relevant, for a medical report specific to the consumer's relevant medical conditions. In circumstances where such a report cannot be prepared, life insurers cannot ask for access to clinical notes regarding the consumer/policyholder.

Recommendation 8.3

8.95 If the Financial Services Council and the Royal Australian College of General Practitioners have not agreed to protocols within six months, the committee recommends that at the time of a consumer/policyholder making a claim, life insurers can only ask a policyholder's General Practitioner, or other treating doctor where relevant, for a medical report that is specifically targeted to the subject matter of the claim. In circumstances where such a report cannot be prepared, life insurers cannot ask for access to clinical notes regarding the consumer/policyholder.

Recommendation 8.4

8.96 If the Financial Services Council and the Royal Australian College of General Practitioners have not agreed to protocols within 6 months, the committee recommends that life insurers must obtain consent from a policyholder each time it intends to:

- request a policyholder's medical records, reports or other medical information from their General Practitioner or other treating doctor; and
- share a policyholder's information with a third party.

Recommendation 8.5

8.97 The committee recommends that the Financial Services Council, in discussion with the Royal Australian College of General Practitioners, update the *Life Insurance Code of Practice* and relevant Standards to reflect Recommendations 8.1, 8.2, 8.3, and 8.4.

Recommendation 8.6

8.98 The committee recommends that if insurance contracts are to be subjected to consumer protections, including laws on unfair contract terms:

- where the authorisation form for a life insurer to access a consumer's/policyholder's medical information is within the insurance contract, consumer protections apply, including laws on unfair contract terms; and
- where the authorisation form for a life insurer to access a consumer's/policyholder's medical information is outside of the contract, authorisation forms are to be brought within the contract to allow for the application of consumer protections, including laws on unfair contract terms.

Recommendation 8.7

8.99 The committee recommends that it become the practice of life insurers to institute real-time disclosure that would allow consumers to track the progress of their claim.

Genetic information

Recommendation 9.1

9.98 The committee recommends 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 using predictive genetic information, unless the consumer provides genetic information to a life insurer to demonstrate that they are not at risk of developing a disease.

Recommendation 9.2

9.99 The committee recommends that the Financial Services Council make any updates as necessary to Standard 16—Family History and the *Life Insurance Code of Practice* to support the recommended changes to Standard 11—Genetic Testing Policy as outlined in Recommendation 9.1.

Recommendation 9.3

9.100 The committee recommends that life insurers be banned from using predictive genetic information while the Financial Services Council is updating Standard 11—Genetic Testing Policy, Standard 16—Family History, and the *Life Insurance Code of Practice* to align with Recommendation 9.1.

Recommendation 9.4

9.101 The committee recommends that if the Financial Services Council and life insurers have adopted a moratorium on the use of predictive genetic information as outlined in Recommendation 9.1, the Australian Government should continue to monitor developments in genetics and predictive genetic testing to determine whether legislation or another form of regulation banning or limiting the use of predictive genetic information by the life insurance industry is required.

Claims handling

Recommendation 10.1

10.13 The committee recommends that the Australian Government review Corporations Regulation 7.1.33 to ascertain whether the exemption provided by this regulation limits in any way ASIC's ability to oversight the claims handling processes of insurance companies.

Recommendation 10.2

10.21 The committee recommends that a requirement be inserted, where necessary, into both the *Insurance Contracts Act 1984* and the *Disability Discrimination Act 1992* to the effect that an insurer must provide a person with written reasons when an application for insurance has been rejected or an insurance claim denied. The committee further recommends that the written reasons be provided as a plain English summary of such evidence and be targeted to the part of a person's medical history relied on by the insurer. The committee also recommends that the statistical and actuarial evidence and other material relied on by the insurer be available on request.

Recommendation 10.3

10.60 The committee recommends that in relation to definitions in life insurance policies, 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;
- use clear and simple language in definitions; and
- clearly explain which associated conditions that may arise from the initial condition, including mental ill health, are covered by the insurance policy.

Recommendation 10.4

10.61 The committee recommends that the Financial Services Council's *Life Insurance Code of Practice* be updated to reflect Recommendation 10.3.

Recommendation 10.5

10.62 The committee recommends that the Insurance in Superannuation Working Group's *Insurance in Superannuation Code of Practice* be updated to reflect Recommendation 10.3.

Recommendation 10.6

10.82 The committee recommends that the Financial Services Council's *Life Insurance Code of Practice* include explicit commitments that:

- where a pre-existing condition is to be used by an insurer as the basis for denying a claim or avoiding a contract a direct medical connection between the prognosis of a pre-existing diagnosed condition and the claim must be established; and
- the statistical and actuarial evidence and any other material used to establish a pre-existing condition, as well as a written summary of the evidence in simple and plain language, be provided by the life insurer to the consumer/policyholder on request.

Recommendation 10.7

10.101 The committee recommends that after consultation with relevant medical professionals independent of the life insurance industry and mental health advocacy groups, the Financial Services Council establish a mandatory and enforceable Code of Practice for its members, or a dedicated part of its existing Code of Practice, specifically in relation to mental health life insurance claims and related issues.

10.102 The committee further recommends that these consultations discuss requiring insurers to:

- ensure that applications for insurance that reveal a mental health condition or symptoms of a mental health condition are not automatically declined;

- refer applications for insurance that reveal a mental health condition or symptoms of a mental health condition to an appropriately qualified underwriter;
- give an applicant for insurance the opportunity to either withdraw their application or provide further information, including supporting medical documents, before declining to offer insurance or offering insurance on non-standard terms;
- where an insurer offers insurance on non-standard terms, for example, with a mental health exclusion or a higher premium than a standard premium, specify:
 - how long it is intended that the exclusion/higher premium will apply to the policy;
 - the criteria the insured would be required to satisfy to have the exclusion removed or premium reduced;
 - the process for removing or amending of the exclusion/premium; and
- develop, implement and maintain policies that reflect the above practices.

Recommendation 10.8

10.103 The committee recommends that consideration be given to allowing insurers to more actively promote and fund evidence-based best-practice preventative health measures targeted at promoting good mental health at a general level.

Recommendation 10.9

10.129 The committee recommends that the Financial Services Council and the Insurance in Superannuation Working Group consult with financial legal services and mental health advocacy groups to determine appropriate timeframes for claims decisions and that the *Life Insurance Code of Practice* and the *Insurance in Superannuation Code of Practice* be updated to reflect the outcome of such consultation.

Recommendation 10.10

10.130 The committee recommends that after consultation with relevant stakeholders, including medical professionals that are independent of the life insurance industry and mental health advocacy groups, the Financial Services Council and the Insurance in Superannuation Working Group mandate through the *Life Insurance Code of Practice* and the *Insurance in Superannuation Code of Practice* an upper limit on the number of medical assessments that can be requested of a policyholder and the specific circumstances in which this upper limit could be deviated from.

Recommendation 10.11

10.138 The committee recommends that the concentration of power in the Claims Management Industry, as well as the Independent Medical Examiner market be monitored by the Australian Competition and Consumer Commission to ensure appropriate quality assurance practices are in place and conflicts of interests are managed.

Recommendation 10.12

10.142 The committee recommends that the government consider establishing mechanisms to ensure the appropriate bodies are able to undertake random audits of both historical and future medical reports procured by independent medical examination companies, comparing the original reports as drafted by doctors with those used by life insurance companies as the basis for the decision.

Recommendation 10.13

10.183 The committee recommends that the Australian Government introduce legislation to facilitate the rationalisation of legacy products noting that such legislative change should include a no-disadvantage rule whereby:

- existing policyholders would, at a minimum, be no worse off from being transferred to a new policy; and
- the determination of whether existing policyholders are no worse off should be assessed on an individual case-by-case basis and not by considering what is best for a group of policyholders who hold the same legacy product. Though this may be done on a class basis, similar to classes within schemes of arrangement under Chapter 2F of the *Corporations Act 2001*.

Recommendation 10.14

10.190 The committee recommends that the Australian Government conduct a thorough inquiry or consultation process before it progresses any reforms relating to life insurers funding rehabilitation services, including impacts on private health insurance, or Medicare, and any conflicts of interest that may arise for an insurer vis-a-vis their customer and the most appropriate care.

Recommendation 10.15

10.193 The committee recommends that the Financial Services Council, with the Royal Australian College of General Practitioners and key stakeholders, explore issues around those with dementia claiming on life insurance. Following this, the committee recommends that together they prepare and implement protocols within the Code specifically addressing the treatment by life insurers of those with dementia.

