12 November 2017

Dr Patrick Hodder
Committee Secretary
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Dear Dr Hodder

Submission to review and refresh regulatory requirements applying to the life insurance industry

The Financial Services Council (FSC) would like to thank the Committee for the opportunity to provide this submission to review the *Life Insurance Act 1995* (Cth) and the *Insurance Contracts Act 1984* (Cth), being the primary legislation affecting the life insurance industry, to ensure that they remain relevant to current and emerging industry practice.

In addition, we included the FSC Treasury submission that was lodged in December 2016 outlining issues under the *Life Insurance Act 1995* (Cth) and the *Insurance Contracts Act 1984* in relation to the cancellation of life risk contracts of insurance for non-payment of premium. For your convenience, we attach that submission as an addendum to this submission (see Addendum 1).

The FSC has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The industry is responsible for investing more than $2.7 trillion on behalf of 13 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

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Should you wish to discuss this submission further please do not hesitate to contact me on .

Yours sincerely

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SUGGESTED MODIFICATIONS TO THE LIFE INSURANCE ACT 1995 (CTH)

While the *Insurance Contracts Amendment Act 2013* (Cth) significantly amended the *Insurance Contracts Act 1984* (Cth) (**ICA**) to respond to market developments and judicial decisions since its enactment, updates to the *Life Insurance Act 1995* (Cth) (**Life Act**) to address developments in the life insurance industry have not been forthcoming.

This has meant that there are a number of provisions in the Life Act which are outdated and not relevant to the way that life insurance contracts are administered in 2017. For example, if a policy owner notifies a life insurer that they do not have a copy of a policy document and wish to be issued with a replacement, the Life Act requires the life insurer to place an advertisement in the local newspaper at least 10 days before issuing a replacement policy document to mitigate the risk that the policy may have been transferred to someone else. This is despite the fact that all life insurers maintain electronic records of policies, including details of the policy owner. Strict adherence to these provisions causes significant detriment to consumers, as they are required to wait over 10 days for a replacement policy document which could actually be provided in a matter of minutes.

Such outdated requirements should be contrasted against initiatives of the life insurance industry to commit to more efficient timeframes in responding to consumers, such as the implementation of the Life Insurance Code of Practice, which sets out strict timeframes in relation to claims handling practices.

We submit that there are a number of sections of the Life Act which should be amended immediately to allow the life insurance industry to focus on providing high levels of service for consumers.

Other suggested amendments may require additional consultation.

In Schedule 1 of this submission, we have highlighted those changes that we consider can be implemented without consultation, while highlighting other changes which may require additional consultation.

PROPOSED AMENDMENTS TO THE LIFE ACT

DEFINITIONS OF LIFE POLICY AND CONTINUOUS DISABILITY POLICY SHOULD BE EXPANDED

Sections 9 and 9A of the Life Act set out the definitions of a 'life policy' and a 'continuous disability policy', which in our view are restrictive as they exclude the following contracts of insurance (amongst others):

- consumer credit insurance (CCI) policies (section 9A(6)), which typically include both life insurance and general insurance cover;

- income protection (disability) policies, which are less than three years' duration (section 9A(1)); and
- accidental death and specified sickness policies, which are less than one year's duration (section 9(2)).

This demarcation has restricted life insurers from providing such cover. As a result, such cover is often not provided, or provided in conjunction with an authorised general insurer. This has limited product innovation, efficiency and competition.

In addition, these restrictions have resulted in general insurers writing policies which are inherently similar to life insurance, and require some assessment of an applicant's risk of mortality or morbidity, without the need to adhere to the legislative and regulatory requirements applying to life insurers. Assessment of an applicant's mortality or morbidity is clearly within a life insurer's core business and not the business of a general insurer. Accordingly we see no reason why life insurers are not permitted to write business of this type.

If the definition of a life policy was amended to allow life insurers to write policies in the above instances, it would allow for greater product innovation in certain areas, for example linking short term disability policies with death policies, or offering these policies through superannuation.

A practical example is illustrated in the case where disability and accidental death insurance is required for contractors on a building site. In this instance, there is likely to be a specific need for insurance to be applicable for a short time frame until completion of the building project (which may be less than 12 months, or up to 2 years). The current definition of life policy, including a continuous disability policy, would result in this insurance falling outside the scope of the Life Act in relation to the continuous disability cover, but within the scope of the Life Act in relation to the death cover. The Life Act currently defines continuous disability policies as life policies only where the term is <u>more than three years</u>. Accordingly, it is recommended that the term in continuous disability policies be removed to include all circumstances which require an assessment of an applicant's risk of mortality or morbidity regardless of the duration of the insurance contract.

RESTRICTION ON ANNUITIES UNDER SECTION 9(1)(D) AND THE LIFE INSURANCE REGULATIONS SHOULD BE REMOVED

The section 9(1)(d) Life Act definition of 'life policy' includes 'a contract that provides for the payment of an annuity for a term not dependent on the continuance of human life but exceeding the term prescribed by the regulations…' Currently, Regulation 2.01 of the Life Insurance Regulations 1995 (Cth) (**Life Regs**) prescribes a term of 10 years.

We submit that the specified ten year annuity period is out of step with the current annuity market expectations where consumers can purchase annuities which are shorter than ten years in duration.

The proposed amendment is also consistent with declarations made by APRA under section 12A of the Life Act, whereby APRA can declare that an annuity with a term of ten years or less can be life insurance business. This declaration has been provided to a number of life insurers who currently issue annuities.

It is recommended that Regulation 2.01 be repealed, and section 9(1)(d) be amended so that any annuity for a term not dependent on the continuance of human life falls within the definition of a 'life policy'.

In defining the scope of annuities which constitute life policies, we suggest that regard is had to the meaning of annuities as set out in Regulation 1.05 of Superannuation Industry (Supervision) Regulations 1994 (Cth) (**SIS Regulation**) so that clarity and consistency is achieved in relation to annuities constituting life insurance policies. Ideally, life insurers should be permitted under the Life Act to issue any annuity within the meaning of SIS Regulation 1.05.

APRA DECLARATION THAT INSURANCE OR ANNUITY BUSINESS IS LIFE INSURANCE BUSINESS

Section 12A provides APRA with the power to declare that business relating to the payment of annuities is life insurance business for the purposes of the Life Act where such business is "insurance business".

It is recommended that consideration be given to broadening the power granted to APRA to provide it with additional flexibility given the current interest in the development of retirement income products by life insurers and the government. For example, this section should be amended so that APRA has the power to declare that business that shares some of the characteristics of annuities can be declared to be life insurance business, regardless of whether such business is "insurance business". Ideally, life insurers should be permitted under the Life Act to issue any annuity within the meaning of SIS Regulation 1.05.

MORTGAGING THE ASSETS OF A STATUTORY FUND

Section 38(3) of the Life Act provides that a life insurer must not mortgage or charge any of the assets of a statutory fund save for three exceptions.

The prohibition on mortgaging of statutory fund assets in section 38(3) of the Life Act is out-dated because it has not kept pace with current developments in:

- collateral management practices of life insurers when exposed to potential credit risks of reinsurers; and
- prudential standards that prescribe risk-based capital requirements.

Collateral management

When entering into reinsurance arrangements, a life company is exposed to the credit risk of the reinsurance company. For example, consider where Company A is exposed to the credit risk of Company B. Company A, as a prudent life company, could reasonably expect that any material credit exposure it has to Company B is supported by collateral. A common form of posting collateral, which is used in similar jurisdictions, is for Company B to put assets into a trust or account and provide Company A with security over that trust or account.

Unfortunately this approach is unavailable to Australian life companies because it is in breach of the prohibition on mortgaging the assets of the statutory fund of Company B.

In order to address this, life companies have developed structures to address the security needs of their counterparties. However, these have disadvantages when compared to the more common approach. These structures include:

- Title transfer: Under this approach, the ownership of the collateral assets is actually transferred from Company B to Company A. This puts Company B in a worse credit position because it no longer has any claim on the assets. In a default of Company A, Company B will rank as an unsecured creditor over the collateral assets (remembering that Company A can similarly not provide security on the transferred assets back to Company B).
- Funds withheld: Under this approach, Company A only pays a portion of the premium to Company B, and withholds an amount for its credit exposure. This is effectively another form of the title transfer approach and results in the same disadvantages.

The restrictions on the more common collateral structures place Australian life companies at a competitive disadvantage against life companies based in other jurisdictions because they are unable to enter into the more common collateral arrangements.

Risk based capital requirements

Following significant developments in the life insurance market over many years, life companies are now subject to a number of prudential standards set out by APRA that prescribe risk-based capital requirements.

As a risk-sensitive measure, the regulatory capital requirements contemplate a life company's gross exposure to risk, and will automatically adjust to consider any additional risk arising from the mortgaging of statutory fund assets.

Further, this level of capital represents the regulatory minimum. Under prudential standards, life companies are also required to have in place an internal capital adequacy assessment process (**ICAAP**) that is appropriate to the life company's size, business mix and complexity of its operations.

The ICAAP requires, inter alia, a strategy for ensuring that adequate capital is maintained over time, including specific capital targets set in the context of the life company's risk profile, the Board's risk appetite and regulatory capital requirements. This strategy will contemplate how capital is managed, including any risks arising from the mortgaging of statutory fund assets.

Under Prudential Standard LPS114 Capital Adequacy: Asset Risk Charge (**LPS114**), the calculation of the Asset Risk Charge specifically contemplates a life company investing in trusts or controlled investment entities that are geared. A footnote clarifies that a trust or entity may be geared through borrowings or through the use of derivatives. Therefore, the regulatory framework contemplates that a life company may hold geared investments, and that they are appropriately dealt with through capital standards. However, the prohibition on mortgaging of the assets of a statutory fund means that structures must be put in place to achieve this outcome. The prohibition therefore leads to additional costs in order to achieve a geared investment that could be undertaken directly in the statutory fund.

In response to the view that the regulatory framework allows investment into a geared entity, it could be argued that holding any geared investment in a trust or entity protects the statutory fund because losses are limited to the investment in the fund. However under section 38(6) of the Life Act, the assets of a statutory fund are available to meet a liability of a life company under a contract of guarantee if the contract of guarantee was entered into in connection with an investment of assets of the fund. That is, a life company may guarantee the performance of a geared trust or entity, resulting in the same effective exposure as if the gearing were directly in the statutory fund. In any case, a mortgaging of assets can be structured on a non-recourse basis in the statutory fund which limits the exposure to the investment amount.

A life company is also required to maintain a risk management framework that is appropriate to the size, business mix and complexity of the institution. Again, this risk management framework will contemplate any risks arising from the mortgaging of statutory fund assets.

Superannuation funds also have had less restrictive requirements in relation to asset security. Amendments to the *Superannuation Industry (Supervision) Act* (**SIS Act**) in 2010 have allowed superannuation funds to enter limited recourse borrowing arrangements on the security conditions set out in sections 67A and 67B of the SIS Act. This demonstrates the growing acceptance of the mortgaging of assets as a valid investment strategy where an appropriate risk management framework is in place.

Overall, the comprehensive framework for risk and capital that has been introduced in the life insurance market over the last 20 years means that the risks associated with mortgaging of assets of a statutory fund are addressed through other means, and the prohibition in the Life Act is no longer required.

We therefore recommend that the prohibition on mortgaging of the assets of a statutory fund, as set out in subsection 38(3) of the Life Act, be amended so that such arrangements may be allowed in accordance with APRA prudential standards.

REQUIREMENT FOR ENDORSEMENT TO BE MARKED ON THE POLICY DOCUMENT FOR SUCCESSFUL ASSIGNMENT SHOULD BE REMOVED (SEE ADDENDUM 1)

Section 200 of the Life Act provides that an assignment of the policy is not effective unless a memorandum detailing consent of the old policyholder, new policyholder and insurer is "endorsed" on the policy.

The endorsement requirement should be removed as any assignment needs to be notified to the life insurer and recorded in their system.

Prior to life insurers keeping very sound electronic records, it was very important for policy owners to keep the original insurance policy document but this is not the case in 2017. Everything is stored electronically so that the requirement for each party to mark a policy is out-dated.

Completion of the memorandum should be sufficient as long as a copy is given to the affected persons and recorded in the life insurer's systems.

We recommend that the requirement to register the assignment under section 200(1)(d) be amended to allow the assignment to be otherwise recorded on the system of the life insurer.

Requirement for paper notices of non-forfeiture

Section 210(5) sets out the process a life company must follow in order to validly forfeit a policy of life insurance. This provision originates from a time when life policies were typically whole of life and endowment policies, with an asset value constituting property that could be 'forfeited'. Current risk policies differ, as they do not have any value at the end of each period covered by a premium, and the life company's promises only continue to be effective if the next premium is paid on time.

Other elements of this submission deal with the current uncertainty about whether the impending forfeiture notification process under section 210(5) applies to risk only policies (as well as to policies with an asset value) or whether they are covered by sections addressing policy cancellation in the ICA. The issue raised here is unrelated to that uncertainty, and should be considered for reform irrespective of how that uncertainty is ultimately resolved.

Following legislative reform in 2013, which removed the exemption of the ICA from *Electronic Transactions Act 1999* (Cth) (**ET Act**), notices given under section 59 of the ICA may be given electronically where the policy owner has consented to the information being given that way. This is because Section 9 of the ET Act allows for written notices to be given in electronic form where the person receiving the notice has consented to it being given in that form. However, that is not the case for notices given under section 210(5) of the Life Act, which serve the same purpose, because the Life Act remains exempted from the ET Act.

We submit that there is no justification for this difference, and that the ETA should be amended to allow notices given under section 210(5) of the Life Act to also be given electronically. Doing so would provide the opportunity for process simplification, faster communication, improved reliability of communication and technological neutrality with the process permitted by section 59 of the ICA.

LIMITS NEED TO BE INCREASED FOR CIRCUMSTANCES WHERE BENEFITS CAN BE PAID TO FAMILY MEMBERS WITHOUT PROBATE OF ADMINISTRATION

Currently sections 211 and 212 of the Life Act allow an insurer to pay to a surviving spouse and other relatives an amount up to $50,000 under a life policy without a grant of probate or letters of administration. The Supplementary Explanatory Memorandum to the *Life Insurance Bill 1994* (Cth) outlines the section as allowing life companies to pay “small claims”.

The rationale is that in the case of most small estates where there is no will, the surviving spouse will likely be the main beneficiary on intestacy. Further, considerable administrative difficulties are often encountered to secure grants of probate or letters of administration which can result in considerable delays in the payment of the life insurance death benefit.

The limits set in the Life Act have not been increased in over 20 years so have not kept pace with inflation and the increases in average sum insured amounts.

The Reserve Bank of Australia’s inflation calculator indicates an inflation rate change of 67.3% over 21 years, with an average annual inflation rate of 2.5%. Accordingly, the amount of $50,000 in 1995 is equivalent to the amount of $83,642 in 2016.

We recommend that the limit be raised to $100,000 or $200,000 and the section include a CPI indexation factor to ensure that the limit keeps pace with inflation.

LIMITS NEED TO BE INCREASED WHERE LIFE INSURER CAN APPOINT A LIFE INSURED AS POLICY OWNER OF THE POLICY AFTER THE ORIGINAL POLICY OWNER HAS DIED

Section 213 of the Life Act allows life companies to make a life insured a policy owner, if the original policy owner has died and the life insured satisfies the life company that they would be entitled to the policy proceeds under the policy owner's will or probate rules. The policy amount must be less than the prescribed amount of $25,000.

Once the life company is satisfied that the requirements are fulfilled, the life company must endorse on the policy a declaration that the life insured is the owner of the policy and can benefit from the proceeds.

The requirement to specifically endorse on the policy can increase administrative burdens and costs on life companies and the life insured.

To simplify the process for the applicant and the life company, a recommendation is made to instead allow for the transfer of ownership to be recorded in some form (i.e. in the electronic records of the life insurer).

We recommend that to maintain consistency across the Life Act and to cater for the increases in inflation and in average sum insured amounts, as discussed above, the prescribed amount be increased from $25,000 to $100,000 or $200,000 and the section include a CPI indexation factor to ensure that the limit keeps pace with inflation.

UNCLAIMED MONIES PROCESS SHOULD BE STREAMLINED

Section 216 of the Life Act provides that where the life insurer has paid unclaimed money to ASIC, a claimant must contact the relevant life insurer when they become aware of unclaimed money. The life insurer then contacts ASIC, to request return of the unclaimed money to the life insurer by a one off request.

The claimant then waits for payment for around 28 days from the date the life company lodges the request. Claimants find such delays unacceptable. Some companies therefore fund the repayment from their own reserves while waiting for the money from ASIC to enable prompt payment.

The life insurer is clearly best placed to verify that the claimant is in fact the policyholder (or otherwise entitled to the money where the policy holder has died), to identify the claimant and to obtain bank account details for the payment to be made – this is not something ASIC can efficiently do. However, the current process causes unnecessary double handling of money and delay – ASIC makes the payment to the life insurer, and the life insurer then pays the claimant.

We recommend that the life insurer notify ASIC after customer identification has occurred, and to advise the bank account details for ASIC to make the payment directly. In the FSC's view, it would be more efficient for ASIC to pay the claimant directly using payment details advised by the life insurer, and unlikely to result in additional work for ASIC as it is already making the payment to the life insurer.

MODERNISATION OF THE LIFE ACT FROM PAPER TO ELECTRONIC INCLUDING REMOVAL OF ARCHAIC EVIDENTIARY REQUIREMENTS

Sections 221-225 of the Life Act constitute Part 10, Division 7---Lost or destroyed policy documents. These sections are in substantially similar form to provisions in the predecessor legislation, the *Life Insurance Act 1945* (Cth). In our view these provisions and the governance they mandate for the process for replacing lost or destroyed policy documents is out-dated and unduly cumbersome for modern requirements. The process can be lengthy and involve consumer cost. Examples of the out-dated nature of these provisions are set out below.

- Firstly the life insurer has to be satisfied as to consumer evidence of loss of a policy document. If it isn't, an application can be made to court, on failure of the life insurer to issue the policy document (section 221). A replacement policy document must as far as possible copy the original, include any endorsements and state the reasons for its issue (section 222).

- If the claim value is in excess of $25,000 on the replaced policy, the life insurer is required to give notice of intention to issue a replacement policy document by way of newspaper advertisement (section 223) (see Addendum 2). This can be in a newspaper circulating in the district in which the policy owner resides or the district in which the insurer considers the original policy document to have been lost or destroyed. The applicant bears all the costs of advertisement and issue of the policy document, and they have to be paid up front (section 223(4)). The Part 10, Division 8 register must be updated to reflect the issue of the replacement policy document and the reasons for it.

- Similar advertising requirements apply in the case of loss or destruction of the original policy document where a claim under the policy is made under section 211, 212 or 213 (section 224).

Technological advances have meant that the print media has far less significance as a news channel than when the Life Act commenced. The requirement for advertising serves no useful purpose, involves consumer expense, and means a lengthy wait for a policy owner when in reality, without the Part 10, Division 7 requirements, the request could be dealt with in a matter of minutes.

In the 22 years since the current Life Act commenced, technological advances have greatly reduced the reliance on paper as the sole source of identification and evidence of a life insurance policy. The concept of a lost or destroyed policy document has ceased to be relevant, and there is no legislative or economic basis for retaining Part 10, Division 7 in the Life Act. To overcome this, life insurers should maintain their own records of policy documents they issue electronically. Section 74 of the ICA requires insurers to provide to insureds a statement of all the provisions of the contract on request. Failure to do so is an offence attracting 300 penalty units. We feel the law here adequately protects consumers.

We recommend the repeal of Part 10, Division 7 for sound legislative and consumer reasons. The widespread use of e-technology across all forms of business activity has rendered the paper-based thrust of Part 10, Division 7 anachronistic. The onus is on insurers to maintain availability of policy terms.

Requirement to keep registers

Part 10, Division 8 of the Life Act requires insurers to keep registers of policies by state and to amend registers when policies move between states (at the cost of the policy owner). In our view, the Life Act provides little guidance as to the structure and form of the register, and currently there is ambiguity as to whether an electronic register would be permissible under the Act. We believe the provisions should be modernised to allow for electronic registers.

Sections 226 and 227 of the Life Act require life insurers to register life insurance policies by state, keep registers of policies according to state, and to amend registers when policies move between states (at the cost of the policy owner).

The process has led to regulatory complexity and increases in unnecessary burdens and costs for the life insurer and the policy owner and is out of date given life insurers keep all records electronically, including the addresses of all policy owners.

Section 12 of the ET Act allows for the recording of information in electronic form and would undoubtedly allow for administrative simplification if implemented in the context of sections 226 and 227 of the Life Act. Nevertheless, the Life Act is presently excluded from the ET Act under the Electronic Transaction Regulations 2000 (Cth) (**ET Regs**).

We recommend that the ET Regs be amended to remove the Life Act from the exclusions under the ET Act to provide certainty that electronic records maintained by the life insurer would suffice as an accurate record.

WAR EXCLUSIONS VOID UNLESS WRITTEN ON THE POLICY DOCUMENT AND SIGNED BY THE POLICY OWNER

Section 229 of the Life Act makes war exclusions for death cover void unless there is written on the policy document an acknowledgement signed by the person to whom the policy is issued that the policy is subject to the term or condition.

The provision is historical and is no longer in keeping with current practice. A requirement for a signed acknowledgement on the policy document does not work with the way insurance policies are sold and administered today. Most applications are completed electronically and any exclusion is provided in either the product disclosure statement (**PDS**) or in the policy schedule. The PDS must be provided prior to sale and any additional exclusion applied at underwriting needs to be agreed by the policy owner.

We recommend that this section be repealed or amended to ensure that it is line with current practices.

CONCLUSION

It has been over 22 years since the Life Act replaced the *Life Insurance Act 1945* (Cth) and in that time technological advancements have been significant. The Life Act has not kept pace with those advancements and contains requirements that if strictly followed, will cause significant detriment to consumers, in terms of the time it takes to receive replacement policies and the angst associated with out-dated processes. Consumers are often asking for this information in their time of need, so mechanisms which provide barriers to providing consumers with peace of mind should be removed.

Similarly, the level of scrutiny on life insurers by regulators has increased significantly, including the requirement to comply with APRA's Prudential Standards, so some of the protectionist measures in the Life Act are no longer required. If anything, they can stifle a life company's ability to keep pace with collateral management which may be required in arrangements with reinsurers.

We understand that some of these proposals are not straightforward and that Treasury may seek input from other stakeholders before making these particular changes. We agree that this may be appropriate for the more complicated changes but for the majority of the suggested changes, the amendments can be made immediately given that there is no sound basis for keeping many of the out-dated provisions of the Life Act.

SCHEDULE 1 – TABLE OF SUGGESTED AMENDMENTS TO THE LIFE ACT

ISSUE	SECTION	SUGGESTED AMENDMENT	CONSULTATION REQUIRED
Life insurance definition to include policies less than three years duration	9 and 9A	Amend to allow for shorted duration to be considered life insurance	Likely consultation with general insurers
Annuities of any duration to be considered life insurance	9(1)(d)	Amend Life Regs to include annuities of any duration	No
APRA declaration of annuities as life insurance	12A	Amend to allow APRA to declare annuity characteristics as life insurance	Yes, but part of current discussions
Mortgaging assets of a statutory fund	38(3)	Remove restrictions	Yes
Requirement for endorsement of assignment of policy	200	Remove this requirement	No
Limits for payment without probate or administration	211 and 212	Need to be increased from $50,000 to $200,000	No
Appointment of life insured as policy owner following death of original policy owner	213	Endorsement requirement should be removed and limits need to be increased from $50,000 to $200,000	No
Unclaimed monies requirements	216	Streamline the payment mechanism so ASIC pays claimant directly	No
Move from paper to electronic	221-225	Repeal sections which are in place to deal with a single paper policy document rather than An electronic record	No
Requirements to keep registers of policies by State	226 and 227	Remove exclusion of the Life Act from the	No

		Electronic Transactions Act 1999 (Cth)	
War exclusion	229	Remove requirement for written endorsement of policy document for exclusion	No
Use of statutory funds	78-80	Are statutory funds in all cases appropriate? Further consultation is required.	Yes

SCHEDULE 2 – AMENDMENTS TO REMEDY POLICY CANCELLATION ISSUE

LEGISLATION OR REGULATION	SECTION	SUGGESTED AMENDMENT	CONSULTATION REQUIRED
Life Insurance Regulations	New	Include a Regulation to make it clear that section 210(5) of the Life Act only applies to life investment products and not life risk insurance products.	Consultation with Treasury, ASIC and APRA has already occurred.
Insurance Contracts Act	59A	Make it clear that the ICA provides cancellation rights for non-payment for premiums providing that the life insurer has complied with section 59	As above.
Insurance Contracts Act	63	Removal of the note which currently causes confusion.	As above.

ADDENDUM 1 – BRIEFING PAPER FOR TREASURY - CANCELLATION OF LIFE RISK CONTRACTS OF INSURANCE

12 December 2016

1. Overview of issues

We thank Treasury for the opportunity to provide this briefing paper.

In this paper, we:

- outline issues under the *Insurance Contracts Act 1984* (**ICA**) and the *Life Insurance Act 1995* (**LIA**) in relation to the cancellation of life risk contracts of insurance for non-payment of premium. In particular, the life insurance industry and the Financial Ombudsman Service (**FOS**) have differing views as to which Act applies to the cancellation of life risk contracts of insurance for non-payment of premium, and
- submit that Treasury should seek legislative amendment to resolve these issues.

The issues are obviously of considerable importance to the life insurance industry, and for holders of life risk contracts of insurance.

2. Summary of differing views taken by the life insurance industry and FOS

The FSC's and its life insurance members' view is that the correct procedure for cancelling a life risk contract of insurance for non-payment of premium is set out in section 59 of the ICA. This view is supported by commentary provided by Ian Enright and Rob Merkin in *Sutton's Law of Insurance in Australia* (Thomson Reuters, Sydney, 4th ed, 2015) (**Sutton's Law of Insurance in Australia**), and legal opinions from Mr Ian Jackman SC, dated 26 November 2015 and 15 December 2015 (collectively, **Jackman Opinion**)(attached).

We understand that FOS's view is that the correct procedure for cancelling a life risk contract of insurance for non-payment of premium is set out in section 210(5) of the LIA[1]. FOS's view is supported by Stanley Drummond, currently a partner at Thomson Geer, in an article published in 2007 in the *Insurance Law Journal*[2] (attached) and in *Wickens The Law of Life Insurance in Australia*, which is edited by Stanley Drummond (**Drummond View**).

3. Outline of issues under the ICA and the LIA

Prior to amendments made by the *Insurance Contracts Amendment Act 2013*, the ICA did not impose any restrictions on the circumstances in which an insurer could cancel a life risk contract of insurance. As such, an insurer could cancel a life risk

[1] FOS has applied section 210(5) of the LIA to life risk contract of insurance in the following cases:

- FOS Determination 351351 (20 April 2015),
- FOS Determination 355625 (11 February 2015), and
- FOS Determination 278157 (12 December 2013).

[2] "Which cancellation procedure for contracts of life insurance?" (2007) 18 *Insurance Law Journal* 153.

contract of insurance in accordance with its rights under the policy terms, the common law, or the LIA.

However, from 28 June 2013, amendments made by the *Insurance Contracts Amendment Act 2013* apply to life risk contracts of insurance entered into after the commencement of those amendments.

In particular, new section 63 provides:

> *(1) Except as provided by this Act, an insurer must not cancel a contract of general insurance.*
>
> *(2) Except as provided by this Act or section 210 of the Life Insurance Act 1995, an insurer must not cancel a contract of life insurance.*
>
> *Note: Section 210 of the Life Insurance Act 1995 deals with cancellation of a contract of life insurance because of non-payment of premium.*
>
> *(3) Any purported cancellation of a contract of insurance in contravention of subsection (1) or (2) is of no effect.*

There are differing views as to whether section 63(2) acts as a code as to the circumstances in which a contract of life insurance can be cancelled, or only as to the procedure which must be followed when a contract of life insurance is cancelled. If section 63(2) acts as a code as to the circumstances in which a contract of life insurance can be cancelled, the effect of new section 63(2) is that a contract of life insurance can **only** be cancelled in the following circumstances - as provided by:

- the ICA, which only provides for cancellation if an insured has made a **fraudulent claim** (section 59A(1)); and
- section 210 of the LIA, which only provides for forfeiture of ***certain*** contracts of life insurance due to **non-payment of premium** (section 210(5)).

At issue, is whether section 210 applies to ***all*** contracts of life insurance or only contracts of life insurance which have an ***investment*** component.

Division 4 of the LIA (which includes section 210) relevantly provides:

> ***Division 4—Surrender values, paid-up policies and non-forfeiture of policies***
>
> *206 Application of Division*
>
> *(1) Subject to subsections (2) and (3), this Division applies to all policies.*
>
> *(2) This Division does not apply to policies declared by the regulations to be excluded from the operation of this Division.*
>
> *(3) The regulations may provide that this Division applies to a class of policies subject to specified modifications. If such provision is made, this Division applies to the class of policies accordingly…*
>
> *210 Non-forfeiture of policies in certain cases of non-payment of premiums*
>
> *(1) A policy is not liable to be forfeited only because of the non-payment of a premium (the overdue premium) if:*
>
> *(a) at least 3 years' premiums have been paid on the policy; and*

(b) the surrender value of the policy exceeds the total of:

(i) the amount of the overdue premium; and

(ii) the total of any other amounts owed to the company under, or secured by, the policy.

(2) For the purposes of paragraph (1)(b), the surrender value of the policy is to be worked out as at the day immediately before the day on which the overdue premium falls due.

(3) Until the overdue premium is paid, the company may charge interest on it on terms not less favourable to the policy owner than such terms (if any) as are prescribed by the regulations.

(4) The overdue premium and any unpaid interest charged on it are taken, for the purposes of this Act, to be a debt owing to the company under the policy.

(5) A life company may only forfeit a policy because of the non-payment of a premium if:

(a) the company has given the policy owner a written notice:

(i) setting out the amount of the premium and the day on which it became, or will become, due; and

(ii) stating that the policy will be forfeited at the end of 28 days after the giving of the notice or 28 days after the day on which the premium became, or will become, due, whichever is the later if the amount due to the company has not been paid; and

(b) at least 28 days have elapsed since:

(i) the day on which the notice was given; or

(ii) the day on which the premium became due;

whichever is the later.

The Drummond View (expressed in his article in the Insurance Law Journal) is that, *"There are presently no exceptions or modifications in the Regulations to the forfeiture procedure in s 210(5). That procedure therefore applies to all life policies that are forfeited for non-payment of premiums."*

However, both Sutton's Law of Insurance in Australia and the Jackman Opinion consider that section 210 of the LIA ***only*** applies to life insurance contracts of insurance that have an investment component, and not life risk contracts of insurance.

Sutton's Law of Insurance in Australia relevantly notes at 12.250:

> *Remarkably and unnecessarily, [the Insurance Contracts Act 1984] omits the failure to pay premium as a ground for cancellation on the basis that this ground is the subject of the Life Insurance Act 1995 s210. The better view is that s210 applies only to a policy with a surrender value. A surrender value is in an investment life insurance only.*

The Jackman Opinion dated 10 November 2015 notes:

2. *In my opinion, sub-section 210(5) applies only to investment-based policies, and does not apply to policies with no investment component…*

17. *First, sub-section 210(5) itself is confined to the concept of "forfeiting" a policy. As a matter of ordinary legal language, "forfeiture" refers to the loss or determination of a proprietary interest or right, rather than merely contractual rights: Legione v Hately (1983) 152 CLR 406 at 445 (Mason and Deane JJ); Kostopoulos v G. E. Commercial Finance Australia Pty Ltd [2005] QCA 311 at [53] (Keane JA, with whom McMurdo P and Dutney J agreed); Westminster Properties Pty Ltd v Comco Constructions Pty Ltd (1991) 5 WAR 191 at 197-8 (Malcolm CJ), 202-6 (Kennedy J). The more general term "cancellation" is apt to refer also to the termination of contractual rights. The distinction is preserved in the language of sub-section 59(3), which is part of a section dealing with cancellation, and recognises expressly that sub-section 210(5) is concerned with life policies that may be "forfeited".*

18. *Second, sub-section 210(5) must be read in the context of section 210 as a whole, which begins in sub-section (1) with the forfeiture of policies where the "surrender value" exceeds the total of overdue premiums and any other amounts owed under the policy. As it is sub-section (1) which provides for the circumstances in which a policy is liable to be forfeited for non-payment of a premium, it is necessarily to be read together with sub-section (5) which provides the procedure for forfeiture for non-payment of premium. The section, read as a whole, is not concerned with risk-only policies, as they do not have any surrender value.*[3]

Both Sutton's Law of Insurance in Australia and the Jackman Opinion then conclude that it would be an absurd result if life risk contracts of insurance could not be cancelled for non-payment of premium.

Sutton's Law of Insurance in Australia relevantly notes at 12.250:

> *The mystifying consequence would be that there is no right to cancel a life [risk] insurance contract for failure to pay the premium and the absurdity of such a result would persuade a court to embark on the necessary intellectual gymnastics to avoid it.*

The Jackman Opinion dated 10 November 2015 goes further, arguing that section 59A of the ICA does not operate as a code in relation to the cancellation of contracts of life insurance. The Jackman Opinion provides:

25 *… it might be argued that section 59A of the ICA operates as a code in relation to the cancellation of contracts of life insurance which are not capable of being forfeited under sub-section 210(5) of the Life Act, in the same way that section 60 acts as a code in respect of the circumstances*

[3] We consider that the Drummond View is mistaken in advancing the argument that "forfeiture" includes a cancellation where there is no proprietary interest or right in the subject matter of the contract, such as a life risk contract of insurance. The authorities as to the meaning of "forfeiture" in various contexts arrive at the opposite conclusion. Indeed, this is the approach in section 210(5), where there is reference to "forfeiture" of a policy having a surrender value, which clearly is a proprietary interest or right. Unfortunately, this is an error the drafter of the 2013 ICA amendments appears to have fallen into, as the note to section 63(2) of the ICA provides, "*Note: Section 210 of the Life Insurance Act 1995 deals with **cancellation** of a contract of life insurance because of non-payment of premium" (our emphasis).* Section 210, however, is quite clearly expressed to deal with the **forfeiture** of life insurance contracts.

pursuant to which a contract of general insurance can be cancelled. In my opinion, that is a highly improbable construction of section 59A. Section 59A refers to only one ground for cancellation, namely the insured making a fraudulent claim, in contrast to the broad range of grounds under section 60. It would be absurd for the legislature to have intended that there could be no right of cancellation on other grounds, such as failure to comply with the terms of the contract…

However, the issue of whether or not section 59A of the ICA operates as a code in relation to the cancellation of contracts of life insurance has been left open to differing views because of the recent amendments to the ICA. The situation is perhaps best summed up in an address by the Hon. Michael Kirby AC CM to the Australian Insurance Law Association's National Conference on 19 September 2014 ("Insurance Contract Law Reform - 30 Years On", (2014) 26 *ILJ*, pp. 1-18)(attached):

> *Until 28 June 2013, the ICA had no cancellation grounds for life insurance. However, the Insurance Contracts Amendment Act 2013 (Cth) makes the ICA a complete code for the cancellation of life insurance contracts. It allows cancellation only for fraud… There is no right to cancel for any of the other grounds permitted for general insurance. For example, there is no clear (certainly no express) right to cancel even for non-payment of premiums. The Life Insurance Act 1995(Cth) affords no salvation here. This is because it probably applies to investment life contracts only…*
>
> *The legitimate question is presented as to what are the appropriate grounds for the cancellation of a life insurance contract? It would seem appropriate that those grounds should be the same, or so far as applicable similar, to the grounds for cancellation of policies of general insurance. If that view were adopted, the harsh and unfair exception in section 59A(2-5) would also be removed; as there is no equivalent provision applicable to general insurance contracts.*

Our view, supported by the Jackman Opinion, is that in such a case in order to avoid a lacuna, the general law must have some operation to "save" the essence of the contract, ie cover will continue to be provided in return for payment of premiums. Thus, the contractual terms as to cancellation must apply and there is nothing in the current drafting of the LIA or ICA which prevents a **life risk contract of insurance** being cancelled in accordance with the terms of the contract for non-payment of premiums.

4. Legislative amendment to resolve these issues

We submit that the above issues could be resolved, to remove all doubt, by:

- inserting a new regulation into the *Life Insurance Regulations 1995*, which would clarify that section 210(5) of the LIA only applies to investment life insurance policies, and
- modifying section 59A of the ICA (which sets out the circumstances in which a contract of life insurance may be cancelled) and section 63 of the ICA, so that the ICA provides an express right to cancel a life risk contract of insurance for non-payment of premium.

5. Inserting a new regulation into the *Life Insurance Regulations 1995*

Background

As noted above, section 206 of the LIA provides that Division 4 of Part 10 of that Act (which includes section 210(5)) applies to “all policies”, other than “policies declared by the regulations to be excluded from the operation of this Division.”

Prior to its repeal in 1998, regulation 10.03 of the *Life Insurance Regulations 1995* provided:

> *Division 4 of Part 10 of the Act (relating to surrender values, paid-up policies and non-forfeiture of policies) does not apply to the following life policies:*
>
> *(a) a contract for the payment of an annuity (except a deferred annuity during the period of deferment) for a term dependent on human life;*
>
> *(b) a policy of insurance against contingencies that may or may not happen, other than:*
>
> > *(i) a policy providing for the payment of a sum of money if the life insured by the policy survives a period specified in the policy; or*
> >
> > *(ii) a policy:*
> >
> > > *(A) the term of which exceeds 10 years; and*
> > >
> > > *(B) under which premiums are paid at a level rate throughout the term; and*
> > >
> > > *(C) under which the age of the life insured is 71 years or older at the end of the term;*
>
> *(c) an investment-linked contract.*

The Explanatory Statement relevant to this Regulation (Statutory Rules 1995 No. 141) provided:

> *Division 4 of Part 10 of the Act sets out the requirements for surrender values, paid-up policies and non-forfeiture of policies. There are certain life policies for which the requirements of Division 4 of Part 10 of the Act are inappropriate. In the broad, policies with no investment element, where the policy owner has no expectation of a return on early termination of the policy, require no provisions in respect of surrender values, paid-up policies or non-forfeiture of policies.*

The Explanatory Statement to the regulation repealing regulation 10.03 indicates that regulation 10.03 was repealed on the basis that (perhaps erroneously) it was no longer necessary given that new actuarial standards in respect of minimum surrender values came into effect from 30 June 1998.

Proposed regulation

In order to clarify that section 210(5) of the LIA does not apply to life risk contracts of insurance, we propose that a new regulation could be inserted into the *Life Insurance Regulations 1995* along the following lines:

Section 210 of the Act (relating to non-forfeiture of policies in certain cases of non-payment of premiums) does not apply to a life policy which provides for the payment of a benefit only on:

(1) the death of a person or on the happening of a contingency dependent on the termination or continuance of human life;

(2) injury to, or disability of, the insured as a result of accident or sickness; or

(3) the insured being found to have a stated condition or disease,

and which is not a contract referred to in paragraph (f) or paragraph (g) of section 9(1) or a sinking fund policy.

6. Amending the ICA

In order to clarify that the ICA provides an insurer with a statutory right to cancel a life risk contract of insurance for non-payment of premium, and thus that the correct procedure for cancelling a life risk contract of insurance for non-payment of premium is set out in section 59 of the ICA, we propose that sections 59A and 63 of the ICA be amended along the following lines (amendments struck through/underlined):

59A Cancellation of contracts of life insurance

(1) An insurer under a contract of life insurance ~~(the first contract)~~ may cancel the contract if:

(a) the insured has failed to comply with a provision of the contract with respect to payment of the premium (other than in relation to a contract of life insurance that may be forfeited under the Life Insurance Act); or

(b) the insured has made a fraudulent claim:

(~~a~~i) under the ~~first~~ contract (the first contract); or

(~~b~~ii) under another contract of insurance with the insurer that provides insurance cover during any part of the period during which the first contract provides insurance cover.

(2) If an insurer has cancelled a contract of life insurance under subsection (1)(b) because of a fraudulent claim by the insured under that contract, then, in any proceedings in relation to the claim, the court may, if it would be harsh and unfair not to do so:

(a) disregard the cancellation of the contract; and

(b) order the insurer to pay, in relation to the claim, such amount (if any) as the court considers just and equitable in the circumstances; and

(c) order the insurer to reinstate the contract.

(3) If an insurer has cancelled a contract of life insurance (the cancelled contract) under subsection (1)(b) because of a fraudulent claim by the insured under another contract of insurance with the insurer, then, in any proceedings in relation to the claim, the court may, if it would be harsh and unfair not to do so:

(a) order the insurer to pay, in relation to the claim, such amount (if any) as the court considers just and equitable in the circumstances; and

(b) order the insurer to reinstate the cancelled contract.

(4) If an insurer has cancelled a contract of life insurance under subsection (1)(b), then, in any proceedings in relation to the cancellation, the court may, if it would be harsh and unfair not to do so, order the insurer to reinstate the contract. This subsection does not limit, and is not limited by, subsection (2) or (3).

(5) In exercising the power conferred by subsection (2), (3) or (4), the court:

(a) must have regard to the need to deter fraudulent conduct in relation to insurance; and

(b) may also have regard to any other relevant matter.

63 Cancellations of contracts of insurance void

(1) Except as provided by this Act, an insurer must not cancel a contract of general insurance.

(2) Except as provided by this Act or section 210 of the Life Insurance Act 1995, an insurer must not cancel or forfeit a contract of life insurance.

Note: Section 210 of the Life Insurance Act 1995 deals with ~~cancellation~~ forfeiture of ~~a~~ certain contracts of life insurance because of non-payment of premium.

(3) Any purported cancellation of a contract of insurance in contravention of subsection (1) or (2) is of no effect.

ADDENDUM 2 - REPEAL OF SECTION 223 OF THE LIFE INSURANCE ACT 1995

5 May 2016

Red Tape Repeal
The Hon. Kelly O'Dwyer MP
Assistant Treasurer
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Delivered by email: kelly.odwyer@aph.gov.au

Dear Assistant Treasurer,

The Financial Services Council (FSC) welcomes the opportunity to provide a recommendation to the Federal Government's Red Tape Reduction Agenda for repeal of Section 223 of the Life Insurance Act 1995, in particular the requirement to advertise before issuing a replacement policy. This would absolve life insurers of the existing redundant administrative and cost burdens which does not result in measurable consumer benefit.

The FSC represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The Council has over 125 members who are responsible for investing more than $2.3 trillion on behalf of 11 million Australians.

Current Legislative Requirements

The FSC advocates for the complete repeal of Section 223 of the Life Insurance Act 1995, which outlines a life insurers' obligations with respect to notices that must be placed before issuing replacement policy documentation.

Some of the requirements associated with this for life insurers are:

- Preparing correspondence for newspaper advertisements
- Collecting a replacement policy fee

- Managing the 10 day waiting period
- Mailing the client

The minimum 10 day waiting period (in which the insurer must notify its intention to replace a policy document) is regularly the subject of customer complaint.

Legislation to be repealed

223 Notice before issuing replacement policy document

(1) This section applies if the amount of the net claim value of a policy at the date the replacement policy document is issued is more than $25,000 or such other amount as is prescribed.

(2) For the purposes of subsection (1), the net claim value of a policy at a particular time is
the amount calculated according to the regulations.

(3) At least 10 days before issuing the replacement policy document, the company must give notice of its intention to do so:

(a) in a newspaper circulating in the district in which the owner of the policy resides; or

(b) if a person claiming the benefit of section 211, 212 or 213 applies for the replacement policy document—in a newspaper circulating in the district in which the deceased policy owner ordinarily resided at the time he or she died; or

(c) in a newspaper circulating in the district in which the company considers the original policy document to have been lost or destroyed.

(4) The applicant for a replacement policy document must meet all the expenses of the advertisement and of the issue of the replacement policy document. The expenses must be paid at the time the person asks the company to issue the replacement policy document.

(5) After a replacement policy document has been issued, the company must arrange for the following details to be entered in the appropriate register kept under Division 8:

(a) the fact that a replacement policy document has been issued;

(b) the reason for the issue of the replacement policy document.

For convenience we refer to section 223 for balance of this letter as “the advertising requirement”.

BACKGROUND

The advertising requirement is triggered when a consumer is unable to produce a policy document. As the Life Insurance Act 1995 requires the policy document to be "endorsed" in certain claims circumstances such as upon the death of the policy owner who is not the life insured[4] or transfer of ownership of the policy[5], life insurance companies require the consumer to return the policy document. If the consumer is unable to produce the policy document, the life insurance company is able to issue another replica policy document, but only after the advertising requirement has been complied with.

<u>Previous Legislation</u>

The advertising requirement mirrors the same requirement in the Life Insurance Act 1945, which was the predecessor to the current Life Insurance Act 1995 (the 1945 Act). In the 1945 Act[6], a life insurance company was similarly required to advertise when a consumer had lost or destroyed the policy document. The requirement in the 1945 Act made sense in the context of the time:

(i) Firstly, in the absence of computerised technology, the policy document issued by the life insurer comprised one document which served as the contractual document for the entire duration of the policy. The policy document was often on A3-sized (or comparatively large-sized) parchment.

This reflected the relative lack of sophistication of insurance products at the time, where a consumer is likely to be covered for one type of insurance only (such as death cover only) for the entire duration of the policy.

In the event that the ownership of the policy was transferred to another person, the policy document was physically stamped or endorsed with details of the new owner. For example, if a policy ownership was transferred to **seven** different persons in succession during the duration of the policy, the policy document would have (at least) **seven** endorsements on the document itself with details of each owner. Again, until computerised technology became available, the physical endorsement on the policy document was one of the limited means of proving who was the owner of the policy at a particular point in time;

(ii) Secondly, newspapers were the most likely method by which the general

[4] S213 Life Insurance Act 1995 (Cth)
[5] s200 Life Insurance Act 1995 (Cth)
[6] S119 Life Insurance Act 1945 (Cth)

public could be notified.

The advertising requirement was a means of mitigating risks that arise if the policy document could not be produced by the consumer. This risk is the primarily that the policy might have been assigned to another person.

Changes arising from technology and other law

The advertising requirement in current times has become unnecessary and anachronistic. This is because of changes in the way life insurance companies issue policies to consumers and changes to processes with the development of technology and application of more robust financial services law.

Policy documents no longer comprise the one document that lasts for the entire duration of the policy. The standard insurance industry practice is to issue a policy document at the commencement of the policy, and each year issue a policy schedule which brings up to date the terms that apply to the policy – this includes updated information on the benefit amount, and the premium payable for the year. A policy schedule may also be issued at any time if the consumer has made changes to the policy, such as adding additional types of cover to the policy. The policy schedule comprises part of the insurance contract (or policy document).

The fact that policy schedules may be issued annually and at any time reflects the advent of computer technology and computerised record-keeping. It also reflects the sophistication of insurance products and the greater variety of types of insurances that are now available than during the time of the 1945 Act. With that came the ability of the consumer to transact on their policy as frequently as they required, such as by increasing their benefit amount, adding additional types of insurances on the one policy or even adding another life insured under the same policy.

Insurance companies also issue annual policy schedules as a means to comply with robust financial services laws. For example, annually-issued policy schedules are the means by which insurance companies provide advance notice, as required under the Corporations Act 2001, of premiums and fees that will be payable for the coming year.

Details about the policy and ownership are also now fully recorded in specialised and sophisticated computer systems (many insurance companies use systems specifically programmed for insurance purposes). This includes the change of ownership of the policy.

Over time, the need to advertise a lost policy has become unnecessary as the policy document no longer serves as the primary record of ownership of the policy, as it did in the past. Records of ownership are stored in the computerised systems of the life insurance company (in compliance also with record-keeping obligations in financial services law). Therefore, there is now little or no risk arising from a lost policy document as all details relevant to a consumer's policy are stored by the insurance company.

Negative Consumer Impact

Newspaper advertising as a means of giving notice is also anachronistic. As stated above, there is no need for it as there is little risk arising from a lost policy document.

In any event, it is our belief that notices in the newspapers are in reality useless as such notices are unlikely to be read by any person. A recent informal survey of representatives of our life insurance members suggests that there has never been response to a newspaper advertisement in relation to a lost policy.

Newspapers do not fulfil the central communication role to the extent they once did. In 2003, the annual readership of the Monday to Friday edition of the Sydney Morning Herald was 900,000, and the readership of The Age was 687,000.[7] By 2015, the readership for the Sydney Morning Herald was 514,000 (a reduction of 43%), and the Age 475,000 (a reduction of 31%).[8] At the same time the Australian population increased from 20,008,700 in December 2003[9] to 23,781,200 in June 2015.[10]

Not only have has newspaper readership declined in absolute terms, but it has suffered an even greater reduction in readership as a proportion of the population. In this context there is a significantly decreased public utility to newspaper advertising of lost policies, and the advertising requirement does not achieve the protective purposes for which it was designed.

Importantly, the expense associated with advertising a lost policy in a newspaper is charged back to the consumer. As we have stated above[11], one of the triggers for producing a policy document (and advertising if it cannot be produced) is in certain claims circumstances, specifically death claims. We submit that it is inappropriate for a consumer (or dependants) and life insurance company to be required to bear the expense of advertising that does not serve any beneficial purpose. It is even more inappropriate that this expense should occur that the time of a death claim, when a consumer's dependants are possibly least able to afford it. It is also inappropriate that the payment of a death claim should be delayed by advertising a lost document where such advertising serves no beneficial purpose.

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[7] Danielle Veldre, 'Newspapers feel the heat', B&T Weekly, (Sydney) 28 November 2003, 20.
[8] Roy Morgan, Australian Newspaper Readership, 12 months to December 2015, December 2015, Roy Morgan Research <http://www.roymorgan.com/industries/media/readership/newspaper-readership>
[9] Australian Bureau of Statistics 3101.0 - Australian Demographic Statistics, Dec 2003
[10] Australian Bureau of Statistics 3101.0 - Australian Demographic Statistics, Jun 2015
[11] See first paragraph of "Background" information.

Compliance costs set to increase

The industry has a large number of endowment policies that will mature over the next **five** years. This maturation will significantly increase the regularity by which life insurers must complete the Section 223 process. It is envisaged that the number of requests for policy replacements for this period may increase by 50 per cent.

We thank you for the opportunity to provide material for this process and look forward to assisting you with more detailed feedback if and when required. Should you have any questions about this submission we encourage you to get in contact with Jesse Krncevic at or on
.

Yours Faithfully,

ANDREW BRAGG
Director Policy & Global Markets