Chapter 2
Background

2.1 The terms of reference for this inquiry reflect a proposal for life insurers to have a greater role in providing rehabilitation and related health services presently prohibited by the *Health Insurance Act 1973*. This proposal was expressed in evidence by various members of the life insurance industry, particularly the Financial Services Council (FSC).

2.2 In brief, the FSC posited that some Australians experience a gap in their cover when seeking access to medical treatment in order to recover from injury and return to work. Observing that this gap has negative repercussions for the individual, for society, and for the economy more broadly, the FSC argued that the life insurance industry is well-placed to address this problem but is currently prevented from doing so. In addition, the FSC indicated that its proposal would help address concerns about the financial sustainability of the life insurance industry.

2.3 The FSC's proposal calls for amendments to primary and delegated legislation that currently prohibit life insurers from providing benefits for worker rehabilitation in certain circumstances. A representative of the FSC presented the proposal in a positive light:

> It's not every day that you see a convergence of the interests of customers and private sector providers in relation to a public policy issue which also contributes positive benefits to the Australian economy through increased workforce participation and lower government health and welfare expenditure.[1]

2.4 This chapter outlines the FSC's proposal and puts it in context, as follows:

- firstly, the problem that the proposal seeks to address;
- secondly, the origins of the proposal; and
- thirdly, the details of the proposal.

The problem that the proposal seeks to address

2.5 Currently, an injured person can receive assistance for medical treatment from various sources. This includes benefits received under Medicare, private health insurance, or other schemes such as workers compensation or travel insurance.[2]

2.6 Despite these possible funding sources, the committee heard evidence indicating that Australians can experience a gap in their coverage.[3] This gap can arise in various circumstances, including where the injured person:

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1 Mr Allan Hansall, Director of Policy and Global Markets, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 25.

2 See, for example, National Insurance Brokers Association, *Submission 5*, p. 1.

- has exhausted their Medicare benefits, or Medicare does not cover the treatment they require;
- does not have private health insurance, or their private health insurance does not cover the treatment they require, or they have exhausted their private health insurance coverage;
- has exhausted benefits subject to statutory caps applying to workers compensation or similar schemes; or
- is unable to access other sources of cover, such as workers compensation schemes, including because the injury did not take place at work.[4]

2.7 Even where an injured person is covered, it is possible that they will experience delays in accessing treatment. This could be, for instance, due to wait times in the public health system.[5]

2.8 The FSC cited research which illustrates that the longer a person spends away from work, the less likely it is that they will return to work:

> If a person is off work for:
>
> - 20 days, the chance of ever getting back to work is 70 per cent;
> - 45 days, the chance of ever getting back to work is 50 per cent;
> - 70 days, the chance of ever getting back to work is 35 per cent.[6]

2.9 The FSC's Director of Policy and Global Markets, Mr Allan Hansall, also referred to economic modelling (commissioned by the FSC and some life insurers) to show how many people experience a gap in coverage and could benefit from the proposal:

> [R]eforms could provide benefits to a pool of up to 10,118 people a year. Of this pool, Cadence [Economics] conservatively estimates that there are 1,379 people for whom early intervention would be beneficial and cost effective, potentially rising to 3,600 under the research's high-side scenario. It is thought an average of 87 people per year could be prevented from becoming totally and permanently disabled as a result of receiving additional healthcare intervention paid for by life insurance…Cadence's

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3 See, for example, beyondblue, *Submission 3*, p. 1; Australian Council of Trade Unions, *Submission 8*, p. 3; Mr Patrick O'Connor, Private Capacity, *Committee Hansard*, 19 June 2018, pp. 3–4; Ms Alexandra Kelly, Principal Solicitor, Financial Rights Legal Centre, *Committee Hansard*, 19 June 2018, p. 13.

4 See, for example, Mr Patrick O'Connor, *Committee Hansard*, 19 June 2018, pp. 3–4; Financial Services Council, *Submission 1.1*, pp. 12–13; MLC Life Insurance, *Submission 12*, pp. 2–3; MetLife, *Submission 13*, p. 4; AIA, *Submission 20*, pp. 6–9.

5 See, for example, Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 25; Financial Services Council, *Submission 1.1*, pp. 12–15; MLC Life Insurance, *Submission 12*, p. 13; MetLife, *Submission 13*, p. 4; Allianz Australia, *Submission 14*, p. 2; AIA, *Submission 20*, p. 6.

6 Financial Services Council, *Submission 1.1*, p. 8.

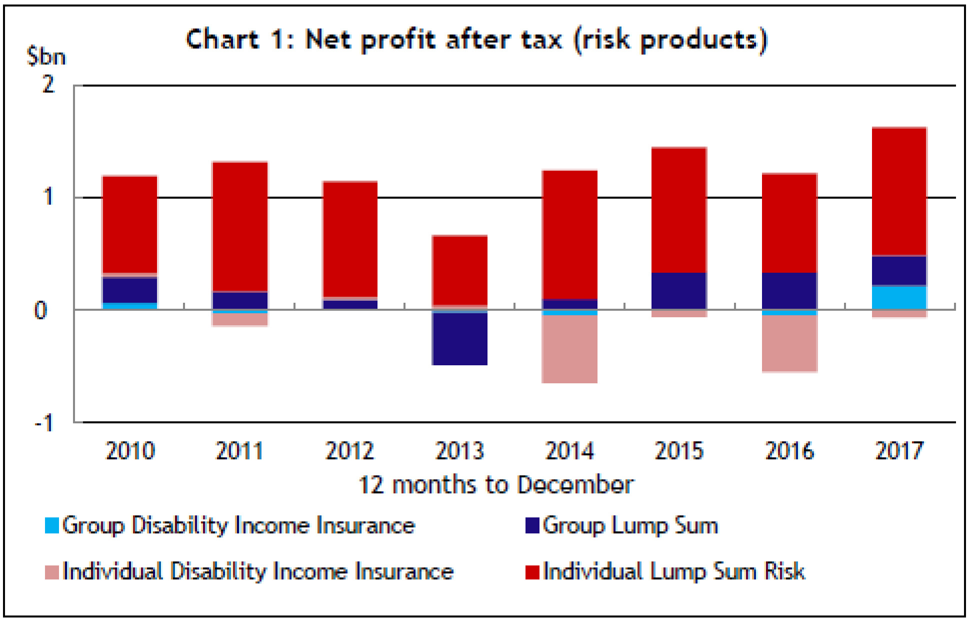
report estimates early intervention could improve return to work times by five weeks, from 18 to 13 weeks.[7]

2.10 Mr Hansall told the committee that the FSC supports the proposal because it is 'the right thing to do for our customers, to make sure that what we do responds better for them and is more efficient'. However, he also acknowledged that the proposal would save insurers money, because intervening early and helping the policyholder return to work may reduce the need for larger payouts down the track.[8]

2.11 On this latter point, the committee understands that the Australian Prudential Regulation Authority (APRA) has identified prudential risks in the life insurance industry.[9] While life insurers were profitable between 2009 and 2016, this was primarily driven by Individual Life Lump Sum business (which includes death cover, trauma, and total and permanent disability insurance). Life insurers experienced low returns and material losses in respect of individual disability income insurance (also known as income protection insurance) and group lump sum business.[10]

2.12 APRA provided the following chart, which shows life insurers' net profit after tax in risk products, from 2010 to 2017:

Figure 2.1—Life insurers' net profit after tax in risk products, 2010 to 2017



Source: Australian Prudential Regulation Authority, *Submission 10*, p. 2.

2.13 APRA told the committee that there are a variety of factors driving these losses, and the sustainability of the industry is an issue that APRA is continuing to

7 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 26.

8 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 27.

9 Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry*, March 2018, p. 9.

10 Australian Prudential Regulation Authority, *Submission 10*, p. 2.

address. However, APRA said that the provision of 'early and targeted rehabilitation and medical benefits to improve return to work rates for [disability income insurance] policyholders' could help improve the sustainability of the industry.[11]

2.14 Indeed, an FSC representative explained that the proposal is partly intended to assist with the sustainability of the life insurance industry:

> For insurers, the reform is also about reducing the cost of income protection and total-and-permanent disability claims, and making these policies more sustainable in the longer-term. This is beneficial for customers and insurers because it reduces cost to the risk pool, which will be transferred to all customers through cheaper insurance. It is also beneficial for government and taxpayers because it helps reduce people relying on welfare benefits.[12]

The origins of the proposal

2.15 The committee recently completed a substantial inquiry into the life insurance industry.[13] It presented its final report for that inquiry on the same day that this inquiry was referred to the committee.[14]

2.16 In the committee's report on the life insurance industry, the Chair, Mr Steve Irons MP, reflected on the nature of Australia's life insurance industry:

> 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.[15]

2.17 The committee made a total of 49 recommendations, many of which were directed either at government or the life insurance industry itself. The committee's report focussed on areas where 'substantial changes are required to ensure the life insurance industry is held to account', namely:

- 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;

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11 Australian Prudential Regulation Authority, *Submission 10*, p. 3.

12 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 25.

13 The Senate referred the inquiry to the committee on 14 September 2016 and the committee presented its final report to the House of Representatives on 27 March 2018; see *Journals of the Senate*, No. 6, 14 September 2016, p. 193; *Votes and Proceedings*, No. 105, House of Representatives, 27 March 2018, p. 1462.

14 *Votes and Proceedings*, No. 105, House of Representatives, 27 March 2018, p. 1461–1462.

15 Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry*, March 2018, Chair's Foreword, p. ix.

- 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.[16]

2.18 During the committee's inquiry into the life insurance industry, some submitters drew attention to restrictions on life insurers' ability to pay medical expenses and other benefits for worker rehabilitation. The FSC in particular argued that these restrictions should be lifted, and put a proposal that resembles the one being considered under the current inquiry.[17]

2.19 In its previous inquiry, the committee acknowledged the importance of early intervention and measures that support worker rehabilitation. It also noted that the detail of the FSC's proposal arrived fairly late in the inquiry, so the committee did not have an opportunity to hear from other witnesses and submitters about any potential unintended consequences. The committee made the following recommendation:

> 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.[18]

2.20 During this inquiry, FSC representatives were asked whether the FSC was in conversation with the government about advancing the FSC's proposal. Mr Hansall of the FSC advised the committee he was not aware of any such conversations.[19]

2.21 However, the Treasury informed the committee that last year the FSC wrote to government outlining its proposal at a high level. The government saw potential benefits and risks to the proposal, as the Treasury told the committee:

> From the government's perspective, it was really a case of: 'Well, this is an interesting issue. We can see that it's a complex issue. We can see that there may be some gains.' I think the government made a decision to refer the matter to this committee to see if it could dig up some submissions and shed some light on more-detailed proposals from the industry in terms of how it might work and how the regulation might work, given that it's pretty complex, across life, super and health.[20]

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16 Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry*, March 2018, Chair's Foreword, p. ix.

17 Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry*, March 2018, pp. 189–190.

18 Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry*, March 2018, p. 191.

19 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 28.

20 Mr Ian Beckett, Principal Adviser, Retirement Income Policy Division, Treasury, *Committee Hansard*, 19 June 2018, p. 34.

The detail of the proposal

What are the current restrictions on life insurers?

2.22 Life insurers currently offer a variety of continuous disability policies. These include total and permanent disability insurance, income protection insurance for temporary incapacity, and trauma or critical illness benefits for specified illnesses, conditions or injuries.[21]

2.23 The FSC told the committee that life insurers routinely provide rehabilitation services under these policies to help claimants recover from injury.[22] Indeed, the committee understands that many life insurers are investing in in-house rehabilitation resources.[23]

2.24 While the current regulatory system allows life insurers to provide some vocational rehabilitation services, it does not allow them, in certain circumstances, to pay for medical treatment or therapy that could help claimants return to work.[24] As the FSC explained, life insurers are currently not permitted to:

> …provide a benefit to a claimant under a continuous disability policy for treatment costs where either a corresponding Medicare benefit is payable or where the treatment is a hospital treatment or general treatment (and is not otherwise excluded from the concept of a health insurance business).
>
> This restriction applies regardless of whether the Medicare or Private Health Insurance benefit is exhausted, meaning that any gap in costs after reimbursement under a private health insurance policy or receipt of a Medicare benefit will not be able to be paid by the life insurer and will need to be funded directly by the person receiving the treatment.[25]

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21 Financial Services Council, *Submission 1.1*, p. 4.

22 Financial Services Council, *Submission 1.1*, p. 4.

23 Australian Prudential Regulation Authority, *Submission 10*, p. 2.

24 Financial Services Council, *Submission 1*, p. 1; also see Australian Super, *Submission 6*, p. 2; MLC Life Insurance, *Submission 12*, pp. 2, 16–17; Allianz Australia, *Submission 14*, p. 1.

25 Financial Services Council, *Submission 1.1*, p. 5.

2.25 The following table, which was provided by MetLife, distinguishes between the benefits that, at the moment, life insurers are generally permitted and not permitted to provide:

Table 2.1—Benefits that life insurers are currently permitted and not permitted to provide

Benefits that are generally permitted	Benefits that are generally not permitted
Lump sum payments for total and permanent disability insurance	Physiotherapy
Income replacement payments	Psychiatric treatment
Vocational guidance	Psychological counselling
Occupational rehabilitation	Funding for surgery
Training support	Any treatment that may be a Medicare benefit
Referral to support services (such as community based services)	

Source: MetLife, *Submission 13*, pp. 3–4.[26]

2.26 These restrictions are given effect by a range of legislation and subordinate legislation, including (but not limited to) the:

- *Health Insurance Act 1973*, including section 126;
- *Income Tax Assessment Act 1997*, including section 295.460.
- *Life Insurance Act 1995*, including sections 9A and 234;
- *Private Health Insurance Act 2007*, including section 121-1;
- Private Health Insurance (Health Insurance Business) Rules 2018, including rule 16;
- *Private Health Insurance (Prudential Supervision) Act 2015*, including section 10;
- *Superannuation Industry (Supervision) Act 1993* including section 62, and
- Superannuation Industry (Supervision) Regulations 1994, including regulation 4.07D.[27]

26 MetLife noted that the benefits in the right hand column may be provided as part of a trauma policy where the insured amount exceeds $10,000.

2.27 The FSC's proposal would reduce these restrictions, and its submission provided some specific amendments to the above legislation and subordinate legislation.[28]

How would the proposed system work?

2.28 The committee acknowledges that the proposal has not yet reached a stage where specific legislative amendments have been drafted in bill form. It also notes that the proposal has been presented by various members of the life insurance industry and in various pieces of evidence. Nonetheless, it appears that the key features of the proposal include the following:

- In the first instance, an injured person would seek assistance for rehabilitation from existing sources of cover, such as Medicare, private health insurance, and workers compensation.[29]
- A life insurer may provide assistance for a person's rehabilitation if existing sources of cover are:[30]
  - insufficient (possibly because the relevant treatment is only partially covered);
  - not immediately available (including 'where waiting times in the public health system would result in an adverse return to work outcome');[31] or
  - otherwise unavailable (possibly because the injured person is not covered or has exhausted their coverage).
- In cases where existing sources of assistance partially cover the rehabilitation costs, the life insurer may pay the gap payment. In other cases, the life insurer may cover the full cost.[32]
- The injured person would need to hold a continuous disability insurance policy in order to be offered rehabilitation assistance by a life insurer.[33]
- The life insurer would not offer to pay for medical treatments for every customer. As the FSC stated, payments would be made at the life insurer's

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27 See Financial Services Council, *Submission 1.1*, pp. 5–8; ClearView, *Submission 2*, p. 4; Private Healthcare Australia, *Submission 4*, p. 2; Australian Super, *Submission 6*, p. 2. Australian Prudential Regulation Authority, *Submission 10*, p. 1; MLC Life Insurance, *Submission 12*, pp. 5–7; MetLife, *Submission 13*, pp. 8–9; AIA, *Submission 20*, pp. 10–13.

28 Financial Services Council, *Submission 1.1*, p. 5, pp. 6–8.

29 Financial Services Council, answers to questions on notice, 18 July 2018 (received 27 July 2018), p. 1.

30 Financial Services Council, answers to questions on notice, 18 July 2018 (received 27 July 2018), p. 1.

31 Financial Services Council, *Submission 1.1*, p. 6.

32 Financial Services Council, *Submission 1.1*, pp. 5–6.

33 Financial Services Council, *Submission 1.1*, p. 6; see also ClearView, *Submission 2*, p. 1.

discretion 'if it makes financial sense to do so'.[34] The committee understands that this may refer to cases where the life insurer considers that providing rehabilitation assistance would save it money in the long run (for instance, by assisting an injured person to return to work the insurer may avoid making larger payouts under income protection insurance down the track).

- The proposed payments would not be part of contracts with customers, and provision of the payments would not appear in product disclosure statements.[35]
- Life insurers would be able to provide rehabilitation assistance to an injured policyholder regardless of whether or not the injury was work-related.[36]
- Any assistance offered by a life insurer would be arranged through the policyholder's treating physician with the policyholder's consent.[37] However, the life insurer would also 'assess any ideas that are put to them from the customer in partnership with their medical advisor'.[38] As an FSC representative explained:

> The GP would make the decision about whether the treatment is appropriate and effective and will return the person back to work earlier. An insurer will make the decision about whether they will choose to pay for it.[39]

2.29 Mr Hansall of the FSC emphasised that this proposal 'is not about life insurers providing private health insurance by the back door or stepping in the way of existing workers compensation schemes'. Rather, the proposal intends to provide additional, complementary support where that support would help with the policyholder's recovery but is not available through other coverage.[40]

2.30 MLC Life Insurance similarly clarified that the intention is for life insurers to act as a 'supplementary funder' of medical treatments, which means that 'any funding would be additive to existing health funding sources in a limited range of circumstances'. These 'top up' payments would only be made if both the following criteria are met:

> 1. Where it can be demonstrated that the planned medical service is reasonable and necessary to the goal of restoring the customer to health and employment.

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34 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 25; Financial Services Council, answers to questions on notice, 18 July 2018 (received 27 July 2018), p. 1.

35 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 25.

36 Allianz Australia, answers to questions on notice, 18 July 2018 (received 26 July 2018), p. 1.

37 Financial Services Council, *Submission 1.1*, p. 3; Financial Services Council, answers to questions on notice, 18 July 2018 (received 27 July 2018), p. 1.

38 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 26.

39 Mr Kirwan, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 26.

40 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, p. 25.

2. Where principal healthcare funders are constrained from funding the required services due to regulation, timing of the availability of treatment (including health system capacity issues), or, in the case of private health insurance, the customer is not insured or has exhausted their benefits.[41]

2.31 The FSC also provided four overarching points about how the proposed policy framework would operate:

1. All treatment the life insurer offers to pay for would be arranged through the claimant's treating physician with the customer's consent.
2. Life insurers will not coerce or pressure customers to seek treatment or return to work.
3. Life insurers will not stop Income Protection (IP) or Total and Permanent Disability (TPD) insurance payments merely because a customer refuses any treatment that is offered.
4. Decisions and processes relating to an offer to pay for treatment would be subject to the usual internal dispute resolution and external dispute resolution processes.[42]

2.32 In conclusion, Mr Hansall of the FSC told the committee that the life insurance industry would, in consultation with government, 'ensure this policy is ring-fenced by the proper consumer protections'. He strongly recommended that any legislation passed to enact the proposal should also provide for a review to be conducted three or five years after commencement. The review would consider the effectiveness of the legislation as well as the conduct of life insurers.[43]

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41 MLC Life Insurance, *Submission 12*, pp. 2–3.

42 Financial Services Council, *Supplementary Submission 1.1*, p. 3.

43 Mr Hansall, Financial Services Council, *Committee Hansard*, 19 June 2018, pp. 25–26, 28.