

A BIG WEEK FOR THE AUSTRALIAN LIFE INSURANCE INDUSTRY

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Legal Briefings - By **Claire Machin**

This week is shaping up to be a significant week for the life insurance industry.

On Tuesday, 11 October, the Financial Services Council (**FSC**) launched the much anticipated [Life Insurance Code of Practice](#) and on Wednesday ASIC released its [Report 498: Life Insurance Claims - an industry review](#).

In keeping with the theme of life insurance, APRA, also released the findings of [its review](#) of life insurers' claims oversight and governance arrangements and the Government reintroduced an updated Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016. The last Bill lapsed due to the Federal election. When passed, this law will implement a significant component of the life insurance reform package announced in November 2015 designed to bring about a better alignment between the interests of consumers and the providers of life insurance advice by focusing on the way in which providers of advice are paid.

In this article we focus on the key recommendations of the ASIC Report, The Government requested that ASIC review the claims handling practices in the industry that followed the media publicity about CommInsure earlier this year.

SNAPSHOT OF THE ASIC REVIEW

ASIC did not find evidence of cross-industry misconduct in the life insurance sector in relation to life insurance claims payments and procedures and life insurers are paying the considerable majority of claims in the first instance (approximately 90% of claims).

Nonetheless, the ASIC report card does give a clear message that the life insurance industry can do better. The review of claims over the past 3 years from 15 insurers (representing 90% of the market) revealed that:

- More TPD¹ and trauma claims are declined than any other type of life insurance cover reviewed in the Report.
- The most common reasons for claims disputes related to the evidence required by life insurers to review claims (including surveillance) and the delay in responding to claims.

The Report sets out five key recommendations. The importance of the Life Insurance Code of Practice is closely wrapped up in one of those key recommendations.

PUBLIC REPORTING OF LIFE INSURANCE CLAIMS

ASIC will in conjunction with APRA establish a world leading public reporting regime for claims data and claims outcomes, including claims handling timeframes and dispute levels across all policy types.

It is expected that data will be made available on an industry and individual insurer basis. ASIC has highlighted that to improve transparency and trust, better and consistent data reporting by the industry is needed. APRA has confirmed its commitment to this initiative and the regulators and industry will work together over 2017 to establish this.

The idea of having reliable and robust information publicly available will shine a light on how life insurers perform relative to their industry counterparts in the management of claims.

REFORMING THE LEGAL FRAMEWORK

Insurance claims handling is exempted from the financial services conduct provisions of the Corporations Act.² ASIC recommends that this exemption be removed by amending the Corporations Act and that more significant penalties for misconduct in relation to insurance claims handling be included in the current review of ASIC's penalty powers. Consequently, claims handling will be a financial service and will be regulated as such.

ASIC has indicated that this reform will allow ASIC to focus more readily on how claims management procedures are carried out and to ensure that these are conducted in a fair and transparent manner. ASIC has stopped short of recommending that the government legislate for fairness. It does suggest however that consumer outcomes and expectations can be better managed and greater transparency in claims management is desirable. It highlights the use of ex gratia payments by insurers as an example where greater transparency and accountability is necessary.

In some respects, this recommendation will, if implemented, complete what the 2013 reforms to the Insurance Contracts Act³ started when these made explicit that the duty of utmost good faith implied in contracts of insurance be extended to the handling and settlement of claims.

STRENGTHENING THE CONSUMER DISPUTE RESOLUTION FRAMEWORK

ASIC has recommended that the coverage of life insurance claims by dispute resolution schemes (such as the Financial Ombudsman Service and the Superannuation Complaints Tribunal) should be considered as part of the Ramsay Review (the current inquiry into external dispute schemes).

ASIC has highlighted two important areas for consideration: the ability to ensure better and more effective consideration of issues of fairness to consumers; and improved access for those consumers who experiencing delays in claim resolution and better remedies when these types of complaints are found in favour of the consumer.

FOLLOW UP REVIEWS

ASIC identified some areas of concern in their review. It intends to follow up with targeted surveillances of particular insurers that have disproportionately high decline rates and dispute numbers. ASIC proposes to examine TPD claims procedures and timeframes given that this type of insurance has the highest rate of declined claims and disputes.

Interestingly, one of the findings of the Report is the higher declined claims rates for direct insurance (or non-advised insurance as defined by ASIC). ASIC intends to conduct a major review of the sales practices of companies in relation to this type of insurance.

THE LIFE INSURANCE CODE OF PRACTICE

And this brings us back to the Life Insurance Code. With the ink not even dry on the final Code released this week, ASIC took the opportunity to pass some observations on the Code in its Report and highlighted the opportunity for the industry to continue to work on strengthening standards and practice.

While noting the value of the Code in addressing some of the issues raised in its review, ASIC highlighted that there were some specific areas where the Code could improve claims handling standards including:

- more prescriptive criteria about what types of 'unexpected circumstances' may affect claims timeframes and the value in monitoring any trends that may develop in the use of

the 'unexpected circumstances' exemption under the Code;

- squarely addressing timeframes for claims management with reinsurers and third parties to ensure compliance with the Code in order to minimise the risk of unexpected circumstances arising;
- extending the conduct standards for surveillance by third parties (e.g. investigators) and providing documented reasons for carrying out surveillance to a claimant, and restricting or prohibiting the use of surveillance for mental health claims; and
- exploring further staff training obligations on dealing with claimants with mental health issues.

Incidentally on Wednesday ASFA also announced its plans to develop an equivalent code to the Life Insurance Code of Practice but for the superannuation industry.

It is shaping up to be a very big week

ENDNOTES

1. Meaning Total and Permanent Disability – insurance cover provided for where as a result of injury or illness, a person can no longer work in their usual occupation.
2. Meaning the *Corporations Act 2001* (Cth)
3. Meaning the *Insurance Contract Act 1984* (Cth) which was amended by the *Insurance Contracts Amendment Act 2013*.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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