



PJC REPORT ON THE LIFE INSURANCE INDUSTRY

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Legal Briefings - By **Michael Vrisakis** and **Sarah Yu**

The Parliamentary Joint Committee on Corporations and Financial Services has now completed its report on the life insurance industry, recommending substantial reforms to better hold the industry to account.

On 27 March 2018, the Parliamentary Joint Committee on Corporations and Financial Services (**Committee**) completed its report inquiring into the life insurance industry (**Report**),¹ tabled in the Senate on 28 March. The Committee was referred this inquiry by the Senate on 14 September 2016.

The Committee considers that life insurance plays a vital role in Australia's social and economic life and that the recommendations in its Report will help to improve the transparency, accountability and effectiveness of the life insurance industry.²

The Committee's suite of recommendations call for substantial changes to ensure the life insurance industry is held to account in relation to:

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

The Committee's key recommendations are set out below:

- **Strengthen consumer protections:** consumer protections for financial and non-financial services be aligned to remove current inconsistencies. Consumer protections for life insurance be aligned with consumer protections for other financial products. This will include removing a number of exemptions that the life insurance industry currently enjoys and reduces incentives for industry participants subject to weaker consumer protection regimes. The Committee also recommends that the government's proposed Banking Executive Accountability Regime, financial product design and distribution obligations and financial product intervention powers for ASIC should apply to general insurance and remuneration and that ASIC should be allowed to make product intervention orders for longer than 18 months.
- **Adopt a co-regulatory approach:** as foreshadowed by the ASIC Enforcement Review Taskforce Position Paper across the whole financial services sector. The Committee encourages the implementation of one single combined code of practice. At a minimum, the co-regulatory approach requires a code of practice to be approved by and registered with ASIC. In order for ASIC to approve any code of practice, it must apply to all industry participants without exemption. The Committee recommends that ASIC also be given the power to undertake enforcement action in relation to systemic or systematic breaches of codes of practice in the financial services sector, including in the life insurance sector.
- **Review of conflicted remuneration:** ASIC conduct a systematic review and risk assessment of all payments, benefits and fees across all sectors of the life insurance industry to address a plethora of hidden payments including commissions, fees, performance-related payments, soft dollar benefits and non-financial benefits within various structures of the life insurance industry. The government to consider further regulation following the results of those examinations. The Committee further recommends that ASIC and APRA immediately undertake an audit of all superannuation trustees to identify the nature, purpose and value of all payments, including any 'soft-dollar' benefits that occur between life insurers and trustees or any related parties in connection with the provision of default insurance to members of MySuper and choice superannuation products.
- **Regulate Approved Product Lists (APLs):** the life insurance industry should have a balance of affiliated and non-affiliated products on their APLs. Where affiliated products are recommended, the affiliation should be disclosed and the customer should be offered a comparison with non-affiliated products. The industry should transition to APLs that include non-affiliated products. The Committee recommends that ASIC and the ACCC jointly investigate whether the past use of APLs in the life insurance industry breaches any anti-competitive laws they administer.
- **Access to information about group life insurance:** Superannuation funds, superannuation trustees and life insurers be more proactive in informing customers about the status of group life insurance accounts to remove the risk of duplicate

insurance and better communicate opt-out requirements. The Committee recommends that trustees who have access to information on accounts that are duplicate, have low balance risks or lack contributions, should be required to contact members annually to inform them of the status of their accounts and whether their insurance policy is still providing coverage. The Committee recommends that the ATO send out a statement of superannuation and insurance along with individual annual tax assessments.

- **Access to targeted medical information:** Life insurers should only have access to targeted medical information to reduce the risk that consumers do not seek necessary treatment, including for mental ill health, due to concerns that this would be passed on to the insurer and limit or deny coverage for a claim. The Committee recommends that the Financial Services Council and Royal Australian College of General Practitioners collaborate to prepare and implement agreed protocols and standards for requesting and providing relevant medical information only, uniform authorisation forms, appropriate storage and real-time disclosure to consumers about the progress of their claim, including requests for medical records.
- **Non-discrimination based on genetic information:** The Financial Services Council, in consultation with the Australian Genetic Non-Discrimination Working Group, should assess the consumer impact of imposing a moratorium on life insurers from using predictive genetic information.
- **Address claims handling processes used to delay or deny a claim or limit the payment made when a claim is successful:** Review the current exemption under the Corporations Regulation 7.1.33 that excludes certain claims handling activities by life insurers from ASIC's oversight and the life insurance industry must:
 - regularly update policy definitions to align with current medical knowledge and research;
 - standardise the definition across all types of policies and use clear and simple language in definitions;
 - set industry standards for claim timeframes and limits on the number of set medical examinations;
 - clearly explain which associated conditions that may arise from the initial condition, including mental ill health, are covered by the policy; and
 - develop a mandatory and enforceable code of practice for its members in relation to

mental health life insurance claims and related issues.

ENDNOTES

1. Parliamentary Joint Committee on Corporations and Financial Services, Parliament of Australia, *Life Insurance Industry*, Report (2018) ('PJC Report').
2. PJC Report, Chair's Foreword, xii.

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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