9 May 2017

ISWG – Project Management Office
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Dear ISWG Secretariat,

FSC response to Insurance in Superannuation Working Group (ISWG) discussion paper on Claims Handling

The Financial Services Council (FSC) has welcomed the opportunity to be part of the Insurance in Superannuation Working Group to collaboratively enhance future iterations of policy development for insurance in superannuation.

Many FSC members contributed to the Insurance in Superannuation Working Group's Discussion paper on Claims Handling. Rather than respond specifically to the key questions raised by the discussion paper, we provide recommendations in a few areas where we believe this provides further insight.

About the FSC

The FSC has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry participants represented by the FSC are 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 fourth 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.

The FSC and its members within this submission have provided recommendations to five key areas of the discussion paper.

Should you have any questions in relation to this submission, we would welcome the opportunity to discuss this further.

Yours sincerely

JESSE KRNCEVIC
Policy Manager

Introduction

The FSC as a member of the ISWG shares the view that group insurance in superannuation provided on an opt-out basis, has been a successful policy for Australia which has resulted in better risk protection for Australians. It also provides a safety net to millions of Australians who would not have otherwise chosen or would have individually been unable to take out life and disability insurance.

The FSC believes that it is important for group insurance in superannuation cover to align with member needs and be affordable, but acknowledges that some enhancements could be made to further improve the system. We are of the view that any reform should support ongoing sustainability and affordability of quality cover for members and have therefore highlighted that some of these reforms if poorly designed and implemented could conceivably have the unintended consequences of limiting access to quality insurance and increasing the cost of cover for members.

We are hopeful that our recommendations in this submission will contribute to addressing some of the key issues highlighted in the ISWG discussion paper on claims handling.

Overview

The FSC welcomes the proposed claims handling principles and standard timeframes as proposed in Sections B.1 and B.2 of the discussion paper.

We strongly support any initiatives which will reduce the end to end cycle time for claims decisions. This includes:

- superannuation funds undertaking their own assessment of a member's claim in parallel to the insurer's assessment;
- defined timeframes for superannuation funds to lodge claims with insurers after they have received the required documentation; and
- defined timeframes to notify members of the trustee's decision.

When insurers offer procedural fairness, they have typically formed a preliminary view that the member does not meet the relevant policy terms and conditions. To minimise any unnecessary delays to members, the discussion paper proposes that superannuation funds could commence their review of the insurer's decision upon receipt of the procedural fairness letter issued by the insurer. This may expedite any additional clarity or confirmation the superannuation fund needs or may in fact identify additional information that may assist the member's claim.

At the very least, it would allow the trustee to form a view as to whether or not the member's circumstances meet the terms and conditions of the policy and in the event that a member or their representative responds with additional information likely to alter the insurer's view, then the trustee would need only turn its mind to this information also (having already formed a preliminary view of a member's eligibility for a benefit when it received the initial procedural fairness letter issued by the insurer). This is likely to reduce the time needed to assess the subsequent decision of the insurer.

The FSC recommends that that this should be adopted by all superannuation funds and explicitly incorporated into the claims handling principles.

The FSC also strongly supports enhanced communication throughout the claims journey (Section B.3) as this will better set the member's expectations and should lead to lower levels of dissatisfaction and disputes. In particular, contact at the beginning of the claims process, from the moment the likelihood of a claim being lodged will be critical in improving the member experience and may also reduce the need for those claiming to seek legal representation.

In regards to Question 6 of the paper, which asks whether these should be mandatory or good practice guidance. The FSC would propose that the ISWG adopt a similar approach to the FSC in the development of the FSC Life Insurance Code of Practice. In many cases, the communication trigger is identified as well as the expected subject matter within the FSC Life Insurance Code of Practice.

The FSC Life Insurance Code also established some key timeframes for communicating to consumers during the claims process. Ensuring these are mandatory throughout the Code will create better alignment between the superannuation fund and insurer, as critical stakeholders in the claims journey.

The FSC believes that the best outcome for consumers is that any obligations developed for superannuation fund trustees should interact seamlessly with the FSC Life Insurance Code of Practice. In some cases, the communication with the person claiming may be made by the insurer and in other cases by the superannuation fund.

Standard time frames for superannuation fund claims

Table 1 in B.2 proposes standard timeframes for a number of interactions the superannuation fund has during the claim lifecycle. The FSC believes that this could be improved by considering combining the timeframes permitted for the following steps:

Action	Time Frame
Acknowledgement of receipt of the claim, assess whether the claim has been correctly completed and passing the claim to the insurer for assessment	**Within five business days of receiving the claim submission**
An initial eligibility assessment of the claim upon receipt of correctly completed submission to assess eligibility to lodge a claim based on the information that is available try this stage of the claim assessment	**Within ten business days of receiving the claim submission**

As drafted, there is a risk that a superannuation fund sends a claim to an insurer within five business days of the submission but then has up to an additional five days to do initial eligibility. This could mean an insurer commences its initial assessment and may have made initial contact with the claimant as required under Section 8.3 of the FSC Life Insurance Code of Practice and is then subsequently advised by the superannuation fund that a member is not

eligible for cover (or did not hold cover at the date of the event). This is not the best member experience.

In practice, some funds undertake this initial eligibility check. In some cases, this is outsourced to the insurer based on information the superannuation fund provides.

To avoid any risk of the fund sending a claim to the insurer and then later determining that initial eligibility was not met, these two timeframes should be aligned. Ideally these would both be completed within five business days. This should recognise that the eligibility step may be undertaken by the superannuation fund or the insurer depending on the operating model.

Procedural Fairness

The FSC is in support of initiatives that improve the fairness, timeliness and efficiency of claims handling. On page 7, the Discussion Paper states that before a claim is denied, the superannuation fund must ensure that a number of steps have been taken, including that ***the person claiming has been given a copy of all documents obtained during the course of assessment***. It is unclear whether this paragraph is intended to be qualified by the preceding paragraph, which describes the circumstances in which an insurer must provide procedural fairness when determining a claim under an opinion based clause.

To the extent that the Discussion Paper proposes that for any denied claim, the trustee must ensure that copies of all documents are provided, the FSC does not support this position as it will lead to delay and inefficiency in claims handling with no tangible consumer benefit. The FSC would support guidance on similar terms as set out paragraph 8.19 of the FSC's Life Insurance Code of Practice, which provides that claimants must be provided with the reasons for a decision, access to relevant documents if requested and information regarding rights of review.

This should also be reflected in Table 2 on page 9 of the Discussion Paper which shows the relationship between steps taken by the insurer and steps taken by or on behalf of the trustee.

Enhancing Communications through the claims journey

The FSC strongly supports proposals to enhance the quality and level of communication with members. It is important to ensure that members understand the terms and conditions of their policy and what they are and are not covered for. Whilst we understand that this will also be a key focus of a forthcoming discussion paper on enhancing member communication and engagement, we would agree that providing clear, concise information of this nature at the time a member may be looking to lodge a claim will be even more invaluable due to the context and relevance for the member.

To this end, the FSC seeks to make specific recommendations in this area of particular issues where there has been a poor member understanding of complex terms or the industry has seen a mismatch of expectations play out in complaints during the claims process:

- **Purpose/Meaning of TPD** – contextual information at the time the member notifies an intent to claim for TPD. Particularly the clarification of an ability to work and where the member has certain specifications to their cover such as rehabilitation requirements or retraining and education requirements and what that really means in order to help set expectations. We acknowledge that there a ISWG work stream focusing on TPD definitions;
- **Application of offsets** – setting clear expectations regarding how any benefit amount they may be eligible for will be reduced by other income or benefits and what sorts of things reduce it;
- **Terminal Illness periods** – providing clarity for members regarding the differences in the certification periods for terminal illness under the Superannuation Insurance (Supervision) Act and the relevant terms and conditions of the insurance policy and what this means;
- **Pre-existing Condition Clauses (and other forms of limited cover restrictions**) – clearly articulating what the terms are in the case of exclusions and restrictions and exactly what the member is covered for and not covered for; and
- **Eligibility requirements** – re-affirming the requirements of the policy for the member to be eligible for the cover in the first instance. While members should only ever be nominated for cover by the Trustee who are eligible for that cover it occurs regularly where this is not the case and the member finds out through being denied a claim.

The FSC would recommend that trustees are subject to similar communication obligations to those in Section 8 of the FSC Life Insurance Code of Practice, particularly paragraph 8.3 which requires insurers to explain their cover, what to expect during the claims process, any additional information required to assess the claim (and reasons why it is needed) and any waiting period which is relevant and paragraph 8.4 which required progress updates every 20 business days.

Overall, the FSC believes that by communicating relevant information at the appropriate time that this has the potential to significantly improve the member experience through a deeper understanding of entitlements and clearer expectations between all parties.

Publication of claims data by funds

The FSC acknowledges that APRA and ASIC have engaged in a project to develop a consistent public reporting regime for life insurance claims data. This was announced in October 2016 following ASIC's findings from its review of life insurance claims handling in 2016.

Once the framework for the data collection has been developed by APRA and ASIC, the industry will be working with regulators to determine what claims data should and should not be published. The claims handling data collection framework will include group insurance data.

The FSC supports increased public transparency around claims acceptance, decline and withdrawal rates and claims dispute outcomes that will promote consumer trust.

Any additional claims handling data being considered by the regulators for publication should not impact the life insurance provider's confidentiality, commerciality and competitiveness.

Also, any publication of data needs to be accompanied by appropriate education, including suitable warnings and the limitations of drawing a meaningful conclusion purely based on figures alone, as to the significance of any material that is published.

The suggested removal of the current exemption of claims handling from being considered a financial service

The proposed removal of the current claims handling exemption under 7.1.33 of the Corporations Regulation should not be considered until there has been an opportunity to understand the implication of such a change. We question whether the proposed removal of the current claims handling exemption would be necessary, as life Insurer claims handling under the Corporations Act already mandates that claims be handled in an efficient, honest and fair manner.

Additionally, amendments to the Insurance Contracts Act, which were implemented in June 2013, also extended the Australian Securities and Investments Commission's capacity to take action in relation to claims handling where an insurer has failed to act in accordance with the duty of utmost good faith provisions.

The FSC believes that removing the claims exemption regulation could result in consumers being negatively impacted by:

- Increased cost of claims handling which would be passed on to consumers;
- Impacts to premiums and licences which would be passed on to consumers;
- Highly significant costs to the industry – both operationally and financially; and
- Business uncertainty when it comes to claims assessors.

Furthermore, the FSC Life Insurance Code of Practice goes beyond the obligations set out in the Corporations Act in regards to claims handling adding the requirement to handle claims in a timely manner. The FSC Life Insurance Code of Practice commits life insurers companies to an extensive range of standards of customer service and conduct relating to the way in which claims are assessed and managed.

The FSC Life Insurance Code of Practice also provides granular detail as to how claims should be handled. For example, the FSC Life Insurance Code of Practice standards require life insurance companies to explain the cover, claims process and why information will be requested of the customer to support the claim with 10 business days of being notified that a customer wishes to make a claim.

The FSC Life Insurance Code of Practice also imposes standards of conduct on life insurance companies to avoid multiple requests for information and use of general authorities to obtain information about a claimant from other sources.

We envisage that similar consumer claims handling protections would be incorporated in the ISWG code development process.

Potential establishment of a life insurance claims assistance service

Section C.3 discusses the notion of a claims assistance service to help claimants who are having difficulty in understanding and accessing the claims process. Although the idea of an industry-funded claims assistance service has not progressed to a specific recommendation, the discussion paper requests stakeholder feedback in relation to this concept.

FSC members have mixed views on the merits and benefits of a life insurance claims assistance service should be established.