

DISCUSSION PAPER:

MEMBER COMMUNICATION AND ENGAGEMENT

Submission to the Insurance in Superannuation
Working Group

2 June 2017

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence. While maintaining our plaintiff common law focus, our advocacy has since expanded to criminal and administrative law, in line with our dedication to justice, freedom and rights.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the issues raised by the discussion paper *Member communication and engagement*. This submission makes some general comments and answers all of the feedback questions in Section B 'Proposals'.

General comments

- The ALA agrees that there is broad public disengagement with superannuation generally, including insurance in superannuation.
- The ALA agrees that this disengagement can be improved through clearer communications in the ways suggested, including via consistent, simple language.
- The ALA acknowledges the merit of several of the proposals discussed by the ISWG.
- However, it is inevitable that there will always be high levels of apathy among the public and many will not benefit from improved communication. That is why the first priority must be to get the structure of insurance in superannuation right so that disengaged members' interests are protected.
- The ALA has concerns in regard to communication in practice as discussed below.

B.1 Feedback questions: Incorporate plain language and consumer testing

1. Yes.
2. Yes.

3. A more detailed information source should be made available (including the relevant group insurance policy itself) for those members interested in drilling down to such detail. However, such further detailed information should not be relied upon by the industry to assert that members at large were aware of such information in the event of a dispute about a member's rights or benefits under a policy. That is, for the purposes of determining what disclosures were made, the industry should rely only on the Product Disclosure Statement and Key Facts Sheet (KFS).
4. The ALA agrees in principle with consumer testing but would like to see detail proposed by CHOICE.

B.2 Feedback questions: Develop a standard Key Facts Sheet

5. Yes.
6. Yes.
7. The proposals identified such as simplification will help, but **paragraph 3 above** is repeated. It is hoped that consumer testing will deliver greater insight into this issue.
8. Communication of insurance in superannuation in KFS and other mediums should contextualise the price and product offerings as follows:
 - a. Price: the premium cost should be compared to equivalent cover available in an independent benchmarked retail product for insured of the same demographic as the member;
 - b. Product: a rating of definitions should be developed with tiering total and permanent disablement (TPD) definition classes to ensure a like for like comparison. For example, definitions that are consistent with the

superannuation early release provisions² could be a Tier 1 policy and the use of 'unable' definitions is a Tier 2, a retraining clause is a Tier 3, pre-existing exclusion clause being Tier 4, Activities of Daily Living (ADL) being Tier 5, and so on. A member could then clearly see where their TPD cover sits within that comparison.

This should be done consistently across the industry.

Appendix C proposed to disclose whether limited cover applies. Limited cover has different implications from one fund to another. For example, in some funds limited cover is cover under a standard definition but excluding claims arising from pre-existing conditions. In others, it only allows for assessment on an ADL test. The KFS should clarify what it means by 'limited cover' in this context.

As to the proposed question in Appendix C regarding work status affecting cover as at date of injury/illness, the KFS should confirm what the member's current work status is (that is, whether they meet the minimum hours worked per week at the time of the time of the KFS being issued) based available data so the member knows what cover they actually have instead of having to be retrospectively underwritten at the time of claim. For further discussion **see paragraphs 13 and 14 of the ALA submissions to the ISWG dated 7 April 2017.**³

KFS should clearly notify members of the function of any auto-consolidation or auto-cessation which may affect them. That should include practical information as to the risks of losing cover, and clear instructions as to their rights and how they can opt out of any such automated event. We caution against funds or insurers providing

² Reg. 103C of the *Superannuation Industry (Supervision) Regulations 1994*.

³ Australian Lawyers Alliance, Submission to The ISWG's discussion paper *Account balance erosion due to insurance premiums* (7 April 2017)
<https://www.lawyersalliance.com.au/documents/item/878>.

any information to members that could be construed as an opinion or recommendation of a personal advice nature.

KFS should clearly explain the role of the trustee including in the event of claim as being one of fiduciary obligations to the member base as a whole and not as a true advocate for an individual. For example, the trustee should clarify:

- whether it would commence court proceedings on behalf of the member in the event that it disagreed with an insurer's decision;
- whether its involvement in making a claim would end at denial stage;
- that information provided to it by the member is not subject to legal professional privilege and may be obtained by the insurer; and
- whether there is any profit sharing arrangement in place between the trustee and insurer.

For further discussion **see paragraph 33 of the ALA submissions to the ISWG dated 10 May 2017.**⁴

KFS should inform members that they have the option of retaining independent legal representation in the event of a claim. Appendix C only states that a lawyer is not needed. For further discussion **see paragraph 45 of the ALA submissions to the ISWG dated 10 May 2017.**⁵

⁴ Australian Lawyers Alliance, Submission to The ISWG's discussion paper Claims handling (10 May 2017) <https://www.lawyersalliance.com.au/documents/item/879>.

⁵ Australian Lawyers Alliance, Submission to The ISWG's discussion paper Claims handling (10 May 2017) <https://www.lawyersalliance.com.au/documents/item/879>.

KFS should set claim timeframe expectations, and inform of and make available the relevant Code of Practice.

9. Member-specific where appropriate – see **paragraph 8 above**.

B.3 Feedback questions: Introduction of an insurance welcome pack

10. Yes.
11. With, but no strong preference.
12. Depending on their demographic and technological literacy and preference.
13. Ask them and have flexible options available.

B.4 Feedback questions: Introduction of standardised language and terminology

14. Yes. See **paragraph 8 above**.
15. Yes.
16. Use fewer acronyms.
17. As soon as reasonably practicable once the changes have been settled upon. It is up to the industry to first estimate how much time they will need and why.
18. A consistent approach across the board is preferable.

B.5 Feedback questions: Develop a member education website and/or develop minimum education requirements for superannuation fund websites

19. Yes, in principle.
20. An appropriately qualified and funded independent body should be responsible for the development and maintenance of this resource. The Australian Securities and Investment Commission (ASIC) could potentially fulfil such a role.
21. Industry statistics such as:
 - a. Decline rates with a breakdown of bases for denial for example, medical assessment, not on risk, and so on;
 - b. Claims that are accepted by the fund/insurer after initial rejection;
 - c. Claims that are discontinued;
 - d. Claims where medical examinations are required;
 - e. Rates of claims admitted where the insurer initially decided to decline but the fund disagreed;
 - f. Claims that go to internal dispute resolution;
 - g. Average and maximum times that the time-specific steps in the claims process should take; and
 - h. Claim rates where interest is paid.

The information set out at **paragraph 8 above**, with a login function to access member-specific data as is done with the MyGov Portal.

B.6 Feedback questions: Develop standard *event based* communications

22. Yes.

23. The events listed are appropriate, plus also change of employer making the contributions, variance in the amount of superannuation guarantee received which indicates a change in pay/hours.

24. Yes, but they are surmountable. For example, the cost of implementing automated systems to monitor and action events may be a challenge, but one that is necessary to meet in the interests of fairness.

25. The ALA supports minimum standards that reference the need to cater for variations in demographic, technological literacy and preference.