

Life Insurance Industry (March 2018)

<p>Recommendation 2.1 2.80 The committee recommends that life insurance be included in the open banking regime.</p>	<p>The Government notes the recommendation.</p>
<p>Consumer protections - Recommendation 3.1 3.89 The committee recommends that:</p> <ul style="list-style-type: none"> • consumer protections for financial and non-financial services are aligned to remove current inconsistencies; • section 15 of the Insurance Contracts Act 1985 be reformed to enable consumer protections to apply to life insurance contracts, with appropriate transitional and other arrangements to accommodate the challenges observed by ASIC to exist; • consumer protections for life insurance are aligned with consumer protections for other financial services and products, including but not limited to removing the exemptions identified in Table 3.2 of this chapter; • consumer protections for life insurance uniformly cover: • all life insurance industry sectors, including direct, retail and group; • all life insurance industry participants, including but not limited to insurers, distributors, licensees, advice licensees, advisers, superannuation trustees and employees of such organisations; and • all forms of life insurance, including but not limited to life, trauma, disability, income protection; funeral insurance; and • consumer protections for general insurance are aligned with consumer protections for other financial services. 	<p>The Government notes the recommendation.</p> <p>UCT law has been extended to insurance contracts regulated by the <i>Insurance Contracts Act 1984</i> through the implementation of recommendation 4.7 of the Hayne Royal Commission.</p>
<p>Consumer protections - Recommendation 3.2 3.94 The committee recommends that ASIC engage with life insurers to begin removing unfair terms from life insurance contracts as soon as possible.</p>	<p>The Government notes the recommendation.</p>
<p>Consumer protections - Recommendation 3.3 3.98 The committee recommends that ASIC's proposed product intervention powers be amended to:</p> <ul style="list-style-type: none"> • include funeral insurance; • give ASIC the ability to make interventions in relation to remuneration; and • increase the 18 month timeframe for which product intervention orders can apply. 	<p>The Government notes the recommendation and that:</p> <ul style="list-style-type: none"> • funeral insurance is now subject to ASIC's product intervention power as a result of the implementation of recommendation 4.2 of the Financial Services Royal Commission which removed the exclusion of funeral expenses policies from the definition of 'financial product'. • A product intervention order cannot impose requirements in relation to a person's remuneration, other than so much of the remuneration as is conditional on the achievement of objectives directly related to the product. • ASIC cannot make an initial order for over 18 months however the 18 months can be extended or made permanent with the approval of the Minister.
<p>Consumer protections - Recommendation 3.4 3.102 The committee 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 life insurance and life insurers.</p>	<p>The Government notes the recommendation and the responses the Financial Services Royal Commission, in particular:</p> <ul style="list-style-type: none"> • On 4 February 2019 the Government announced it would implement recommendations 3.9, 4.12, 6.6, 6.7 and 6.8 of the Financial Services Royal Commission to extend the Banking Executive Accountability Regime (BEAR) to all APRA regulated entities and provide joint administration to ASIC as the conduct regulator. • The product design and distribution obligations and product intervention power apply to life insurance and life insurers.
<p>Consumer protections - Recommendation 3.5 3.106 The committee recommends that the scope of the Banking Executive Accountability Regime be extended to include consumer related conduct matters and enable ASIC powers to take action on these matters.</p>	<p>The Government notes the recommendation.</p> <p>On 4 February 2019 the Government announced it would implement recommendations 3.9, 4.12, 6.6, 6.7 and 6.8 of the Financial Services Royal Commission to extend the Banking Executive Accountability Regime (BEAR) to all APRA regulated entities and provide joint administration to ASIC as the conduct regulator</p>

<p>Consumer protections - Recommendation 3.6</p> <p>3.112 The committee recommends that the penalty amounts under ASIC-administered legislation, including the life insurance industry, should be set at three times the benefits obtained for every party to the transaction, including advisers, licensees and insurers.</p>	<p>The Government notes that in making this recommendation the PJC stated it supported the changes proposed to penalties by the ASIC Enforcement Review Taskforce which included a proposal that penalties would include 3 times the benefit obtained by the person in breach. That recommendation was implemented through the <i>Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019</i>. The relevant sections do not specifically mention parties to the relevant transaction (i.e. advisers, licensees and insurers).</p>
<p>Consumer protections - Recommendation 3.7</p> <p>3.113 The committee recommends that ASIC conduct random audits of 20 per cent of the life insurance adviser population over a three year period. Where misconduct is identified, appropriate entries should be recorded on the financial advisers register, and statistics on licensees and insurers should be published, so the public can be informed. Advisers that have been reviewed must also publish the outcome on their website in a highly visible location. If necessary ASIC should be provided with additional funding to allow these random audits to occur.</p>	<p>The Government notes the recommendation.</p>
<p>Codes of practice - Recommendation 4.1</p> <p>4.52 The committee recommends that the government implement the co regulatory approach put forward in the ASIC Enforcement Review Taskforce Position Paper across the whole financial services sector, while ensuring, where possible, that there are no exemptions for any part of the life insurance industry and that codes are written in plain English.</p>	<p>The Government notes the recommendation. The Government has implemented the Financial Services Royal Commission Recommendation 1.15 Enforceable Code Provisions.</p>
<p>Codes of practice - Recommendation 4.2</p> <p>4.58 The committee recommends that ASIC be given the power to undertake enforcement action (halting misconduct, remedies and sanctions) in relation to systemic or systematic breaches of codes of practice in the financial services sector, including in the life insurance sector.</p>	<p>The Government notes the recommendation. The Government has implemented the Financial Services Royal Commission Recommendation 1.15 Enforceable Code Provisions.</p>
<p>Codes of practice - Recommendation 4.3</p> <p>4.61 The committee recommends that, in order for ASIC to approve any code of practice in the financial services sector, including life insurance, the code must apply to all relevant industry participants, without exemptions.</p>	<p>The Government notes the recommendation. As a result of the implementation of recommendations by the Financial Services Royal Commission, ASIC have the power under to approve codes of practice under section 1101AA of the Corporations Act – there is no requirement that the code must apply to all relevant industry participants before approval. Note however that ASIC also has the power to make a code mandatory under section 1101AE.</p>
<p>Codes of practice - Recommendation 4.4</p> <p>4.63 The committee recommends that, prior to seeking ASIC approval, the two codes of practice for the life insurance industry be combined into a single code of practice if possible.</p>	<p>The Government notes the recommendation.</p>
<p>Remuneration, commissions, payments and fees - Recommendation 5.2</p> <p>5.105 The committee recommends that:</p> <ul style="list-style-type: none"> • ASIC conduct a systematic review and risk assessment of all payments and benefits flowing between participants in each sector of the life insurance industry—direct, group, and retail—and inform the government of any regulatory gaps; and • the government consider further regulation of payments between life insurance industry participants following the ASIC review. 	<p>The Government notes the recommendation.</p>
<p>Remuneration, commissions, payments and fees - Recommendation 5.3</p> <p>5.108 The committee 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, including:</p> <ul style="list-style-type: none"> • current and historical payments made by life insurers to trustees or any related parties and/or by trustees to life insurers under profit-sharing, premium adjustment models, experience share arrangements or any arrangement of a similar nature; • the total premium value attributable to the existence of profit-sharing, premium adjustment models, experience share arrangements or any arrangement of a similar nature between a trustee and a life insurer; and 	<p>The Government notes the recommendation.</p>

<ul style="list-style-type: none"> • payments, including any 'soft-dollar' benefits made or that may become payable by life insurers to trustees or any related parties of trustees for any purpose, for example, subsidisation of administration costs, technology, marketing, sponsorship, hospitality, staff expenses etc. <p>5.109 The committee also recommends that the report be published by ASIC and APRA as soon as practical to ensure confidence in the compulsory superannuation system.</p>	
<p>Retail life insurance and approved product lists - Recommendation 6.1</p> <p>6.45 The committee recommends that the life insurance industry should have, as a matter of urgency, a balance of affiliated and non-affiliated products on their approved product lists, and if affiliated products are recommended, the affiliation should be disclosed, and the customer should be given a comparison with non-affiliated products. Beyond this, the committee further recommends that the industry transition to open approved product lists.</p>	The Government notes the recommendation.
<p>Retail life insurance and approved product lists - Recommendation 6.2</p> <p>6.48 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. The report of the investigation should also inform government whether the current legislation inappropriately constrains the capacity of ASIC or the ACCC to investigate anti-competitive behaviour in the financial service sector, including life insurance.</p>	The Government notes the recommendation.
<p>Group life insurance - Recommendation 7.1</p> <p>7.41 The committee recommends that trustees that 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, in summary form and in plain English, of:</p> <ul style="list-style-type: none"> • the status of their accounts; and • whether their insurance policy is still providing coverage. <p>7.42 The committee further recommends that, in addition to annual notification, trustees should be required to contact members in a timely manner when trigger points such as low balance risk are reached.</p>	The Government notes the recommendation.
<p>Group life insurance - Recommendation 7.2</p> <p>7.47 The committee recommends that superannuation funds should be required to inform the Australian Tax Office of the type and status of the insurance that is held for the benefit of the member for each of their superannuation accounts.</p>	The Government notes the recommendation.
<p>Group life insurance - Recommendation 7.3</p> <p>7.48 The committee recommends that, when it sends out individual annual tax assessments, the Australian Tax Office also provide a statement of superannuation and insurance, subject to system capacities and cost effectiveness, including information on:</p> <ul style="list-style-type: none"> • the number of superannuation accounts held; • the number of life insurance accounts held through superannuation; and • the insured's right to seek information from the superannuation trustee about the balance, and the continued coverage or otherwise of any insurance policy. 	The Government notes the recommendation.
<p>Group life insurance - Recommendation 7.4</p> <p>7.52 The committee recommends that the life insurance industry fund a prominent media advertising campaign, particularly aimed at those most vulnerable to duplicate accounts and fee erosion, to alert consumers to:</p> <ul style="list-style-type: none"> • the prevalence of duplicate life insurance accounts held within group superannuation; • the negative impacts that duplicate life insurance accounts can 	The Government notes the recommendation.

<p>have on superannuation account balances;</p> <ul style="list-style-type: none"> • the mechanisms for removing duplicate insurance policies within group superannuation; and • the importance of seeking specific advice before making changes, if you have any pre-existing conditions. 	
<p>Group life insurance - Recommendation 7.5</p> <p>7.53 The committee recommends that the government appoint the appropriate existing body to undertake an immediate review of all superannuation trustees to determine their compliance with existing obligations under the Superannuation (Industry) Supervision Act 1993, including section 52(7)(c) covenants, 'to only offer or acquire insurance of a particular kind, or at a particular level, if the cost of the insurance does not inappropriately erode the retirement income of beneficiaries'.</p>	<p>The Government notes the recommendation.</p>
<p>Group life insurance - Recommendation 7.6</p> <p>7.54 The committee recommends that, the Australian Government consider legislating to protect the retirement savings of members with low account balances and members who do not receive any value from default insurance.</p>	<p>The Government notes the recommendation.</p> <p>The <i>Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019</i> amended the <i>Superannuation Industry (Supervision) Act 1993</i> to:</p> <ul style="list-style-type: none"> • prevent trustees of superannuation funds from charging certain fees and costs exceeding 3 per cent of the balance of a MySuper or choice product annually where the balance of the account is below \$6000; and • prevent trustees from providing opt out insurance to new members aged under 25 years, members with balances below \$6000 and members with inactive MySuper or choice accounts, unless a member has directed otherwise; and <p>The <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> to:</p> <ul style="list-style-type: none"> • require the transfer of all superannuation savings with a balance below \$6000 to the Commissioner of Taxation if an account related to a MySuper or choice product has been inactive for a continuous period of 13 months; and • enable the commissioner to consolidate amounts that have been paid as unclaimed money, inactive low-balance accounts and lost member accounts into an active superannuation account where the reunited balance would be greater than \$6000.
<p>Group life insurance - Recommendation 7.7</p> <p>7.55 The committee recommends that the Australian Government consider legislating to require life insurers and superannuation funds to provide regular updates to policyholders of the level, type, extent and cost of life insurance cover that they have using a standard form disclosure format, enabling them to compare with other funds or, in the case of superannuation, make them aware that they have access to life insurance.</p>	<p>The Government notes the recommendation.</p>
<p>Access to medical information - Recommendation 8.1</p> <p>8.93 The committee recommends that:</p> <ul style="list-style-type: none"> • the Financial Services Council and the Royal Australian College of General Practitioners collaborate to prepare and implement agreed protocols for requesting and providing medical information; • the Financial Services Council develop a uniform authorisation form for access to medical information at the time of application and at the time of claim that must be used by all of its members; • this uniform authorisation form explain to consumers/policyholders in clear and simple language how information will be stored and used by third parties; and • a consumer/policyholder should be able to use the same uniform authorisation form between different life insurers and different life insurance products. 	<p>The Government notes the recommendation.</p>
<p>Access to medical information - Recommendation 8.2</p> <p>8.94 If the Financial Services Council and the Royal Australian College of General Practitioners have not agreed to protocols within six months, the committee recommends that at the time of application, life insurers must only ask a consumer's General Practitioner, or other treating doctor where relevant, for a medical report specific to the consumer's relevant medical conditions. In circumstances where such a report cannot be</p>	<p>The Government notes the recommendation.</p>

prepared, life insurers cannot ask for access to clinical notes regarding the consumer/policyholder.	
Access to medical information - Recommendation 8.3 8.95 If the Financial Services Council and the Royal Australian College of General Practitioners have not agreed to protocols within six months, the committee recommends that at the time of a consumer/policyholder making a claim, life insurers can only ask a policyholder's General Practitioner, or other treating doctor where relevant, for a medical report that is specifically targeted to the subject matter of the claim. In circumstances where such a report cannot be prepared, life insurers cannot ask for access to clinical notes regarding the consumer/policyholder.	The Government notes the recommendation.
Access to medical information - Recommendation 8.4 8.96 If the Financial Services Council and the Royal Australian College of General Practitioners have not agreed to protocols within 6 months, the committee recommends that life insurers must obtain consent from a policyholder each time it intends to: <ul style="list-style-type: none"> • request a policyholder's medical records, reports or other medical information from their General Practitioner or other treating doctor; and • share a policyholder's information with a third party. 	The Government notes the recommendation.
Access to medical information - Recommendation 8.5 8.97 The committee recommends that the Financial Services Council, in discussion with the Royal Australian College of General Practitioners, update the Life Insurance Code of Practice and relevant Standards to reflect Recommendations 8.1, 8.2, 8.3, and 8.4.	The Government notes the recommendation.
Access to medical information - Recommendation 8.6 8.98 The committee recommends that if insurance contracts are to be subjected to consumer protections, including laws on unfair contract terms: <ul style="list-style-type: none"> • where the authorisation form for a life insurer to access a consumer's/policyholder's medical information is within the insurance contract, consumer protections apply, including laws on unfair contract terms; and • where the authorisation form for a life insurer to access a consumer's/policyholder's medical information is outside of the contract, authorisation forms are to be brought within the contract to allow for the application of consumer protections, including laws on unfair contract terms. 	The Government notes the recommendation. Since the recommendation, UCT law has been extended to insurance contracts regulated by the Insurance Contracts Act 1984 through the implementation of recommendation 4.7 of the Financial Services Royal Commission.
Access to medical information - Recommendation 8.7 8.99 The committee recommends that it become the practice of life insurers to institute real-time disclosure that would allow consumers to track the progress of their claim.	The Government notes the recommendation.
Genetic information - Recommendation 9.1 9.98 The committee recommends that the Financial Services Council, in consultation with the Australian Genetic Non-Discrimination Working Group, assess the consumer impact of imposing a moratorium on life insurers using predictive genetic information, unless the consumer provides genetic information to a life insurer to demonstrate that they are not at risk of developing a disease.	The Government notes the recommendation.
Genetic information - Recommendation 9.2 9.99 The committee recommends that the Financial Services Council make any updates as necessary to Standard 16—Family History and the Life Insurance Code of Practice to support the recommended changes to Standard 11—Genetic Testing Policy as outlined in Recommendation 9.1.	The Government notes the recommendation.
Genetic information - Recommendation 9.3 9.100 The committee recommends that life insurers be banned from using predictive genetic information while the Financial Services Council is updating Standard 11—Genetic Testing Policy, Standard 16—Family History, and the Life Insurance Code of Practice to align with Recommendation 9.1.	The Government notes the recommendation.

<p>Genetic information - Recommendation 9.4</p> <p>9.101 The committee recommends that if the Financial Services Council and life insurers have adopted a moratorium on the use of predictive genetic information as outlined in Recommendation 9.1, the Australian Government should continue to monitor developments in genetics and predictive genetic testing to determine whether legislation or another form of regulation banning or limiting the use of predictive genetic information by the life insurance industry is required.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.1</p> <p>10.13 The committee recommends that the Australian Government review Corporations Regulation 7.1.33 to ascertain whether the exemption provided by this regulation limits in any way ASIC's ability to oversight the claims handling processes of insurance companies.</p>	<p>The Government notes the recommendation and that as per the Financial Services Royal Commission, recommendation 4.8. the handling and settling of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial service'. The effect is that ASIC now have oversight of the claims handling process for insurance companies.</p>
<p>Claims handling - Recommendation 10.2</p> <p>10.21 The committee recommends that a requirement be inserted, where necessary, into both the Insurance Contracts Act 1984 and the Disability Discrimination Act 1992 to the effect that an insurer must provide a person with written reasons when an application for insurance has been rejected or an insurance claim denied. The committee further recommends that the written reasons be provided as a plain English summary of such evidence and be targeted to the part of a person's medical history relied on by the insurer. The committee also recommends that the statistical and actuarial evidence and other material relied on by the insurer be available on request.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.3</p> <p>10.60 The committee recommends that in relation to definitions in life insurance policies, the life insurance industry must:</p> <ul style="list-style-type: none"> • regularly update all definitions in policies to align with current medical knowledge and research; • standardise definitions across all types of policies; • use clear and simple language in definitions; and • clearly explain which associated conditions that may arise from the initial condition, including mental ill health, are covered by the insurance policy. 	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.4</p> <p>10.61 The committee recommends that the Financial Services Council's Life Insurance Code of Practice be updated to reflect Recommendation 10.3.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.5</p> <p>10.62 The committee recommends that the Insurance in Superannuation Working Group's Insurance in Superannuation Code of Practice be updated to reflect Recommendation 10.3.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.6</p> <p>10.82 The committee recommends that the Financial Services Council's Life Insurance Code of Practice include explicit commitments that:</p> <ul style="list-style-type: none"> • where a pre-existing condition is to be used by an insurer as the basis for denying a claim or avoiding a contract a direct medical connection between the prognosis of a pre-existing diagnosed condition and the claim must be established; and • the statistical and actuarial evidence and any other material used to establish a pre-existing condition, as well as a written summary of the evidence in simple and plain language, be provided by the life insurer to the consumer/policyholder on request. 	<p>The Government notes the recommendation.</p>

<p>Claims handling - Recommendation 10.7 10.101 The committee recommends that after consultation with relevant medical professionals independent of the life insurance industry and mental health advocacy groups, the Financial Services Council establish a mandatory and enforceable Code of Practice for its members, or a dedicated part of its existing Code of Practice, specifically in relation to mental health life insurance claims and related issues.</p> <p>10.102 The committee further recommends that these consultations discuss requiring insurers to:</p> <ul style="list-style-type: none"> • ensure that applications for insurance that reveal a mental health condition or symptoms of a mental health condition are not automatically declined; • refer applications for insurance that reveal a mental health condition or symptoms of a mental health condition to an appropriately qualified underwriter; • give an applicant for insurance the opportunity to either withdraw their application or provide further information, including supporting medical documents, before declining to offer insurance or offering insurance on non-standard terms; • where an insurer offers insurance on non-standard terms, for example, with a mental health exclusion or a higher premium than a standard premium, specify: <ul style="list-style-type: none"> • how long it is intended that the exclusion/higher premium will apply to the policy; • the criteria the insured would be required to satisfy to have the exclusion removed or premium reduced; • the process for removing or amending of the exclusion/premium; and • develop, implement and maintain policies that reflect the above practices. 	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.8 10.103 The committee recommends that consideration be given to allowing insurers to more actively promote and fund evidence-based best-practice preventative health measures targeted at promoting good mental health at a general level.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.9 10.129 The committee recommends that the Financial Services Council and the Insurance in Superannuation Working Group consult with financial legal services and mental health advocacy groups to determine appropriate timeframes for claims decisions and that the Life Insurance Code of Practice and the Insurance in Superannuation Code of Practice be updated to reflect the outcome of such consultation.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.10 10.130 The committee recommends that after consultation with relevant stakeholders, including medical professionals that are independent of the life insurance industry and mental health advocacy groups, the Financial Services Council and the Insurance in Superannuation Working Group mandate through the Life Insurance Code of Practice and the Insurance in Superannuation Code of Practice an upper limit on the number of medical assessments that can be requested of a policyholder and the specific circumstances in which this upper limit could be deviated from.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.11 10.138 The committee recommends that the concentration of power in the Claims Management Industry, as well as the Independent Medical Examiner market be monitored by the Australian Competition and Consumer Commission to ensure appropriate quality assurance practices are in place and conflicts of interests are managed.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.12 10.142 The committee recommends that the government consider establishing mechanisms to ensure the appropriate bodies are able to undertake random audits of both historical and future medical reports procured by independent medical examination companies, comparing the original reports as drafted by doctors with those used by life insurance companies as the basis for the decision.</p>	<p>The Government notes the recommendation.</p>

<p>Claims handling - Recommendation 10.13</p> <p>10.183 The committee recommends that the Australian Government introduce legislation to facilitate the rationalisation of legacy products noting that such legislative change should include a no-disadvantage rule whereby:</p> <ul style="list-style-type: none"> • existing policyholders would, at a minimum, be no worse off from being transferred to a new policy; and • the determination of whether existing policyholders are no worse off should be assessed on an individual case-by-case basis and not by considering what is best for a group of policyholders who hold the same legacy product. Though this may be done on a class basis, similar to classes within schemes of arrangement under Chapter 2F of the Corporations Act 2001. 	<p>The Government notes the recommendation.</p> <p>As part of the 2021-22 Budget, the Government has announced funding for the development of a mechanism to transfer consumers from legacy life insurance products into modern products, however the proposed mechanism will assess whether consumers are no worse off at a group level.</p>
<p>Claims handling - Recommendation 10.14</p> <p>10.190 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.</p>	<p>The Government notes the recommendation.</p>
<p>Claims handling - Recommendation 10.15</p> <p>10.193 The committee recommends that the Financial Services Council, with the Royal Australian College of General Practitioners and key stakeholders, explore issues around those with dementia claiming on life insurance. Following this, the committee recommends that together they prepare and implement protocols within the Code specifically addressing the treatment by life insurers of those with dementia.</p>	<p>The Government notes the recommendation.</p>