

Under Parliamentary Privilege

To the Chairperson of the Joint Parliamentary Committee on Corporations and Financial Services: inquiry into the life insurance industry.  
c/o Committee Secretary

20 December 2016

**Response to Submission 24**

In section 2 of submission 24, CMLA provides their findings as a summary of the progress on the reviews and actions taken by Comminsure (CMLA) in relation to the allegations made against it earlier in 2016. I would like to provide the committee with the missing details on: Medical files, Whistleblower practices, Outdated medical definitions, Claims assessment safeguards.

**(1) Medical Files:**

The issue of missing medical opinions given by the medical team first came to my attention in regards to the claimant . As the committee would be aware, had a severe heart attack but was denied his policy benefit based on the technicality of an outdated medical definition in his policy.

claim was sent to the medical team for a medical opinion. Dr D had provided an initial medical opinion in online file. Dr D also sent a pdf copy of the medical opinion to me via an email attachment for me to provide a second opinion. This was in view of the contentious nature of declining a claimant his policy benefit based on the technicality of an outdated medical definition.

When I tried to access online file about 36 hours later, I noted that it was a blank document. All the typed medical opinion provided by Dr D were missing, but the other administrative details of the file being opened and saved were there. Based on how the system works, it strongly suggests that someone had manually entered the online file to delete all the original typed medical opinion. The administrative details once saved cannot be altered.

When I approached the staff member (who works within CMLA's business unit) who designed the system, I was told that anyone with basic IT skills is able to enter the system to alter the information of claimant's medical opinions. I therefore sought assistance from the Bank's IT department to find out who had accessed online file in the 36 hours time period when the changes occurred. I was told that I needed approval from my manager for this IT request. Unfortunately this request was repeatedly denied and cancelled by my manager, . It was only when I filed an "incident report" (managed by a team who looked into various matters including fraud) that approved the IT request. Unfortunately, the IT department later told me that they did not have the manpower resources to comb through the data to determine who had accessed online file.

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Because I had a pdf copy of the original medical opinion, the information could be re-entered into [redacted] online file. And since the information was restored, the matter was considered "resolved" by [redacted]. I was not comfortable with this position. If one file could go missing, and it would not have been detected had I not tried to access it a few days after it was lodged, how many other medical opinions could have been altered without the medical team's knowledge? The behavior and conduct of [redacted] in trying to cover-up the issue makes one wonder what other ethical issues have been hidden from scrutiny.

When I did a preliminary review of the files of all claimants that the medical team had provided input for the preceding 2 years, I noted that two further medical opinions were blank documents. These were from Dr P who had recently resigned from CMLA. When I contacted Dr P, I was told that there were never blank medical opinions provided by Dr P. Every claimant that was reviewed by Dr P had some medical opinion typed into the claimant's file.

We now had three claimants with blank medical opinions.

Blank medical opinions were easily uncovered because it stood out. It was less easy, or impossible, to uncover medical opinions that had minor words altered. For example, if the original medical opinion was "the claimant does meet terms" (in other words the benefit should be paid), the addition of one word could result in a claimant denied his policy benefit, for example, "the claimant does not meet terms". A simple alteration could deny a claimant millions of dollars and save the company in the process.

Because of the "incident report" filed, a formal investigation was conducted. This was the "original investigation" referred by CMLA in submission 24. This investigation was headed by [redacted] who also manages the in-house legal team that defended CMLA against litigated claims and claimant disputes via Financial Ombudsman Service (FOS) and Superannuation Complaints Tribunal (SCT); the investigative team that conducts covert surveillance on claimants; and who does review of files of long term claimants to find ways to terminate the claim even on technicality. Whilst no impropriety is suggested in this instance, the investigation cannot by any measure be considered independent since it would not be in the self-interest for the investigator to uncover any fault.

The investigation by [redacted] did uncover two further blank medical documents from Dr M and one from Dr J. [redacted] apparently approached both Dr M and Dr J and asked if they had provided these blank medical opinions. Because the blank opinions were made quite some time ago both Dr M and Dr J cannot recall the cases but thought they probably might have made blank medical opinions but could not explain why. We now had six blank medical opinions with inadequate explanation of why it occurred. Potentially altered opinions were deemed too difficult and impossible to investigate.

Given the lack of robustness and inadequacies of the investigation, I find it difficult to understand how CMLA is able to assert that the investigation found no

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evidence of files being maliciously deleted or tampered with. Even setting aside the finding of six unexplained blank medical opinions, a lack of positive evidence is not the same as a positive lack of evidence. The matter should also be considered in light of the fact that the medical doctors were not infrequently approached by claims manager to alter or delete any medical opinions that may run counter to a claims strategy. It should also be considered in light of the fact that the head of claims [redacted] had previously indicated in writing that it was the claims assessors' right to cherry pick which medical doctor within the team they wanted to get an opinion from. This position of cherry picking medical opinions is further supported in an internal survey of claims assessors.

CMLA indicated that the Board committee commissioned an additional independent review into the allegations of file tampering in the Medical Officer Referrals Database in April 2016. The methodology of this review and its terms of reference are unknown. It is therefore difficult to accept the conclusion that there was no evidence to substantiate the allegation of tampering or maliciously deleting medical opinions from the database. How was this additional review able to determine that no medical opinions were edited with minor alterations? Furthermore, the reasons for the six blank medical documents have not been adequately addressed.

### (2) Whistleblower practices:

CMLA states that my employment was not terminated for raising concerns but rather for the technicality of breaches of Commonwealth Bank policies of sending customers' medical information to my personal email account. What CMLA failed to mention in its submission was that my manager had given me permission to do so within the first week of my employment at CMLA. This was for the purpose of maintaining work productivity when I was outside of my base office at Homebush Bay; given the technology limitations of my work laptop.

[redacted] acknowledged during her investigation into the matter that the permission was indeed given. [redacted] also acknowledged that the client medical information was used solely for work purposes for CMLA's benefit.

CMLA failed to mention that [redacted] was also aware that other staff members were also sending claimant's medical information outside the company to personal email accounts. For example, [redacted] was previously specifically made aware that [redacted] was sending claimant's medical files with their treating doctor's handwriting to a personal friend/relative for the notes to be transcribed. This friend/relative was an allied health worker who did not have any formal contract or direct relationship with CMLA and did not sign any confidentiality agreements. The client medical files were sent to this person's personal email account. CMLA was also aware that various medical doctors and lawyer contractors who assisted CMLA over the years were sent claimants' medical and financial files through these contractors' personal emails. A contractor doctor has also been forwarding his orally dictated medical opinions to a third party transcriber who would email claimant's transcribed medical files via her personal email back to CMLA. Such practice of sending client medical and financial files to personal email accounts is common practice at CMLA and has

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been so for at least 10 years. I am unaware that any other staff member has had their emails surveyed and/or employment terminated for breaching Commonwealth Bank policies. I am also unaware that any staff had sought formal approval from their manager beforehand.

is not an independent arbitrator in determining the termination of my employment. Because had accessed all the emails that I have sent, she would have read the information, protected under the Life Insurance Act, which I have provided to the Board in confidence as part of the whistleblower process. This confidential information included my expression to the Board of my dismay of judgment in dismissing my ethical concerns of what had been occurring in CMLA when it was initially raised to her attention.

#### (3) Outdated medical definition:

CMLA indicated that it had accelerated a planned update of definitions related to heart attack in its retail advice products. The updated definitions were backdated to May 2014. CMLA claimed that it had originally planned to launch the definitions later in 2016. It is an established fact that the medical definition is at least 10 years out of date.

CMLA failed to mention that the outdated medical definition of heart attack was first brought to senior managements' attention prior to an APRA review in 2014. The position taken by CMLA was that any upgrade and changes to the medical definitions must not have a negative claims impact (i.e. it should not result in more claims being paid). Because to update the medical definition for heart attack to make sure it is consistent with real world application would result in more claims being paid, this was not done. Furthermore, due to the poor claims experience and poor financial performance of the retail advice products CMLA had been having, the medical definition would unlikely be updated in the foreseeable future, certainly not in 2016.

CMLA was aware through a limited review that I had conducted and presented to senior management that significant past heart attack claims may have been unfairly declined based on the technicality of an outdated definition. Despite this, none of these past claimants were "proactively" contacted to have their claims paid. The 17 claimants that were retrospectively paid their claims occurred only after the media exposed the matter. I find it difficult to accept CMLA's submission that it "proactively" identified declined cases.

#### (4) Claims assessment safeguards:

CMLA indicated that it established a Claims Review Panel to provide an "objective and independent" assessment of the merits of a claim as an extra layer of assurance in ensuring that claims outcomes are fair, consistent and balanced. The Panel included who is with MDA National Insurance. What CMLA did not disclose was that a member of CMLA's Board, is also on the Board of MDA National Insurance (<http://www.infomedia.com.au/investors/board-of-directors/>). MDA is also my

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medical indemnity insurance provider who managed my original defence against CMLA in the employment termination matter.

Finally, CMLA stated that the Claims Review Panel also included its Managing Director, . Given the events that have occurred, many would doubt her inclusion as "objective and independent".

I hope the added information provided in this letter is useful for the Committee.

Dr Benjamin Koh