



27 July 2018

By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Sir/Madam,

**Questions on notice: Options for greater involvement by private sector life insurers in worker rehabilitation**

CHOICE, Financial Rights Legal Centre (**Financial Rights**) and Consumer Action Law Centre (**Consumer Action**) welcome the opportunity to provide answers to the following questions in notice from the Committee's Inquiry.

- 1. Noting the issues raised in your submission, do you have any different views on life insurers having greater involvement in rehabilitation in the following two situations:**
  - a. Where an injury/illness occurs at or due to work and people have access to relevant workers compensation and other support mechanisms; or**

We can see no case for greater involvement in rehabilitation for life insurers where someone already has cover under another scheme. Simply, this would lead to an inefficient duplication and add greater cost into the system without additional benefit. This is a view other lawyers representing claimants also share with us.

In the case of workers' compensation, there is already a sophisticated rehabilitation system with checks and balances to protect people. These protections are severely lacking from the life

insurer's proposal. In these situations, it may even lead to conflicting recommendations for treatment, which would add further confusion and distress to the person subject to the claim.

#### **b. Where an injury or illness is unrelated to work?**

More broadly, our concern with this proposal is not just that it duplicates workers compensation, but that it fails to address the root causes of rehabilitation funding shortfalls. Instead, it seeks to add a second layer of insurance, which is both lacking consumer protection and inherently conflicted.

Private health insurance and the public health system are two services uniquely adapted to the provision of rehabilitation services. They both have built in protections and a foundation on universality, through the public system and the community rating in private health insurance. We agree funding shortfalls in the public system need to be addressed. We also agree that the private health insurance sector has been allowed to run riot in the offering of junk insurance policies and significant out of pocket costs. However, the solution is not to paper over these policy failures with yet another form of insurance and hope the outcomes will be different.

We are particularly concerned about the adequacy of funding and affordability for services in mental health. However, the solutions are in addressing the shortfalls in public and private health rather than introducing a new layer of insurance. As detailed in the evidence from Private Healthcare Australia, the private sector is in the process of introducing a mental health safety net, which would allow people to upgrade their cover instantly.<sup>1</sup> So if they are on a lower level of health insurance, where they have a low level of cover for mental health, and they need to be admitted to hospital and need a higher level of cover, they are able to do that instantly without serving a waiting period. These types of measures are better adapted to addressing the shortfall in access to mental health services. We see a strong role for the Federal Government in setting tight deadlines on industry to implement these types of measures or introducing legislative change where they fail to meet those deadlines.

As outlined in our first submission, many of the gaps in the existing private health insurance system stem from the proliferation of junk insurance policies and out of pocket medical costs. Given the Minister for Health has established an expert committee to consider many of these issues, it would be duplicative to attempt to solve them through this process.

#### **Response to the Financial Services Council claims**

We remain concerned that a person's rejection of a life insurer's rehabilitation plan would be used against them in assessing their eligibility for an Income Protection (IP) or Total and Permanent Disability (TPD) claim. The industry has failed to unequivocally rule this out, with an FSC representative stating during hearings that:

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<sup>1</sup> Hansard, Private Healthcare Australia, 2018, 'Parliamentary Joint Committee on Corporations and Financial Services 19/06/2018 , Options for greater involvement by private sector life insurers in worker rehabilitation'

*"Any patient that does not wish to receive treatment under the scheme will not have their income protection and TPD insurance payments stopped."*<sup>2</sup>

The FSC did not go as far to say the claim would not be granted in the first place, simply that after payment was granted it would not subsequently be rescinded.

Evidence from Maurice Blackburn showed the need to go to court to protect a person who refused a life insurers treatment plan. The court ultimately overturned the decision to deny a benefit on grounds that it was reasonable for the person to refuse treatment in those particular circumstances. The case turned on the facts, meaning in future more people may be subjected to court action where unreasonable treatment plans are recommended by insurers. The ultimate test should not be can these actions of life insurers be knocked out after court action, but rather will this proposal lead to the best health outcomes for people.

Despite the assurances of the industry that the decision will sit with the treating medical practitioner, the reality is the provision of funding for one treatment option over another will strongly influence how these decisions are made. Medical practitioners will be placed in the unenviable position of deciding between an unfunded option which they consider superior and a funded option which may not cause harm, but ultimately not lead to the best health outcomes for the individual. This is a step back in what people expect of their health services.

The FSC's evidence raised more questions than it did answers. We are particularly concerned by its responses to questioning about the basis on which rehabilitation services would be explained to consumers, stating that:

*"The [rehabilitation] payments would be discretionary and not part of contracts with customers. Provision of these payments will not appear in product disclosure statements."*<sup>3</sup>

Not putting these payments and how they are designed to operate into contract or disclosing how they operate via a product disclosure statement does not increase our confidence in how this scheme would operate. A lack of transparency in private health insurance is part of the cause of this problem; reproducing poor transparency in life insurance will do nothing to assist consumers in making informed decisions.

There is still vital context of the need for these reforms missing from the FSC proposal. The FSC presented industry funded research of the expected benefits to consumers and savings to government, but failed to disclose the expected financial benefit to life insurers. The sector has revealed that it will lead to savings in terms of the decreased IP and TPD payments. However, it has not revealed the quantum of these savings. Without this data it is not possible to unpack

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<sup>2</sup> Hansard, FSC, 2018, 'Parliamentary Joint Committee on Corporations and Financial Services 19/06/2018 , Options for greater involvement by private sector life insurers in worker rehabilitation'

<sup>3</sup> Hansard, FSC, 2018, 'Parliamentary Joint Committee on Corporations and Financial Services 19/06/2018 , Options for greater involvement by private sector life insurers in worker rehabilitation'

where the bulk of the benefit of these proposals sits. We see this as important information to have on the public record for the committee's deliberations.

**2. Do you support greater involvement by private sector life insurers in worker rehabilitation before the life insurance industry has completed actioning the recommendations of the committee's Report?**

Given the repeated evidence before the inquiry that the industry currently lacks adequate consumer protection in how it deals with these cases, we caution against further involvement of life insurers in rehabilitation. During claim time people are particularly vulnerable, without adequate, enforceable protections in place these people are at risk of exploitation. Currently claims handling is exempt from fundamental protections, such as the best interests duty and regulatory oversight from the Australian Securities and Investments Commission (regulation 7.1.33 of the *Corporations Regulations 2001* (Cth) provides an exemption under section 766A of the *Corporations Act 2001* (Cth).

With so many critical questions left unanswered now is not the time to be experimenting with people's health outcomes.

Please contact Susan Quinn at Consumer Action Law Centre on \_\_\_\_\_ or at \_\_\_\_\_, Drew MacRae at Financial Rights Legal Centre on \_\_\_\_\_ or \_\_\_\_\_ or Xavier O'Halloran at CHOICE on \_\_\_\_\_ or \_\_\_\_\_ if you have any questions about this submission.

Yours sincerely,

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Karen Cox  
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CHOICE