



Patron: His Excellency General the Honourable
Sir Peter Cosgrove AK MC [Retd]

13 July 2018

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
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Parliament House
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Dear Secretary,

Thank you for the opportunity to present to the Committee at the public hearing held on 19 June 2018 for the inquiry examining *Options for greater involvement by private sector life insurers in worker rehabilitation*. Please find below *beyondblue's* responses to questions taken on notice from Committee members at the hearing.

(1) Available data to demonstrate the power imbalance between insurers and consumers

beyondblue has collected empirical evidence and consumer case studies to illustrate the power imbalance that exists between insurers and consumers who have experienced a mental health condition.

An initial consumer study in 2011 explored people's experiences and challenges with, first, obtaining insurance cover and, second, claiming against it. *beyondblue* commissioned a further consumer survey in 2017. Further information about these studies is below.

beyondblue also encourages Australians impacted by poor experiences of dealing with their insurer and/or insurance discrimination to contact us to share their story, and we have been contacted by several hundred people since 2013.

In summary, many people who live with or who have been affected by a mental health condition in the past, experience significant difficulties in obtaining and claiming on different types of insurance products compared to the rest of the population. People report poor experiences with many different insurers across the life insurance industry for products such as income protection, total and permanent disability (TPD), and life insurance, indicating that this is a systemic issue. This significantly diminishes the power of someone with a mental health condition to 'shop around' to obtain appropriate coverage, and can result in people feeling that they have no option but to accept insurance on terms they consider to be unfair.

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“Only one insurer would offer me TPD insurance. Mental health exclusion and 50% medical loading due to ‘medical history’. So I am in fact being charged extra for the very conditions that are excluded from my cover. And yet I must consider myself lucky to even have the cover as this insurance company was the only one (out of about seven or eight) who offered me any cover at all. I can understand either medical loading or exclusions, but both?” – Personal experience shared with beyondblue

“A number of years back my long-standing income protection insurer refused to increase my cover because I had a history of depression. To this day my income protection cover remains probably 15 years out of date because I had been advised by financial advisors not to give up what insurance cover I already had because I would not get cover with anyone else. What's more, despite being stable on treatment for a number of years, I was additionally told my only hope would be to come off medication and stay well for a few years - how helpful and potentially dangerous is that advice to a chronically depressed person.” – Personal experience shared with beyondblue

beyondblue and Mental Health Australia worked together to commission the *Mental Health, Discrimination and Insurance Survey of Consumer Experiences 2011*.¹ The survey involved 424 people living with or supporting someone with a mental health condition, and found that 50 per cent of respondents either agreed or strongly agreed that it was difficult for them to obtain insurance due to a mental health condition. Among those respondents who had applied for life and income protection insurance, 80 per cent either agreed or strongly agreed that it was difficult for them to obtain insurance due to a mental health condition specifically in relation to these products.

beyondblue commissioned a further consumer survey in 2017 of 1,800 people, 1,198 of whom had experienced a mental health condition and 602 people who had not ('2017 Consumer Survey'). We are finalising our analysis of the final report before making it publicly available, and would be happy to share an embargoed copy of the report with the Committee in the interim (please contact Ms Kelly Wilson at [redacted] to arrange this). Some results are reported below for the purpose of answering the Committee's question.

Poor transparency around the decisions made by insurers can contribute to consumers' feelings of frustration and powerlessness. The 2017 Consumer Survey found that people with a mental health condition were less likely to be given reasons for their application being declined, compared to people without a mental health condition (32 per cent were not given reasons compared with 13 per cent).

The power imbalance is most stark in situations where an individual pursues a complaint or appeals the decision made by an insurer. Firstly, individuals can pursue a complaint via internal dispute resolution. Many people have described to beyondblue that dealing with the insurance industry's internal dispute resolution processes as a battle. Of particular concern, some described experiencing a prolonged claims process that can span a number of years. The 2017 Consumer Survey found that 70 per cent of respondents with a mental health condition had their claim processed within three months, compared to 84 per cent of people who did not have a mental health condition. People with a mental health condition were also more likely to have to appeal a decision or provide further information to get their claim approved (20 per cent of claimants) compared to people who did not have a mental health condition (11 per cent of claimants).

These results are also supported by the findings of the Australian Securities and Investment Commission (ASIC) in their 2016 review of life insurance claims.² ASIC found that policy holders with a mental health condition face a challenging burden to establish their condition entitles them to make a valid claim. The proportion of disputes about the evidence required for mental health claims was twice as high as the proportion of disputes about evidence required for all claims (51 per cent compared to 25 per cent).

External dispute resolution, including pursuing a complaint under the *Disability Discrimination Act 1992 (Cth)*, can inadvertently disadvantage complainants as the process is often considered complicated and intimidating to individuals. The current approach places the burden on individuals to invest considerable time, money and effort into pursuing a complaint when they have been, or suspect they have been, unlawfully discriminated against by an insurer. The costs of bringing proceedings in a Court or Tribunal are often prohibitive for an individual. In the time that it takes to pursue a complaint, an individual may be uninsured and unprotected, or suffer financially. As noted by ASIC:

“For consumers, the intrinsic value of an insurance product is in the ability to make a successful claim when an insured event occurs. Not being able to successfully claim on life insurance in these circumstances can be financially devastating for the consumer and/or their family”.³

Furthermore, the claims process or pursuing a complaint can be very stressful and be detrimental to a person’s mental health. Indeed, 50 per cent of people with a mental health condition who had made a claim on their total and permanent disability policy, and 40 per cent who had made a claim on their income protection policy, reported in the 2017 Consumer Survey that the claims process had a negative impact on their mental health.

(2) Suggested alternative approaches and models

As outlined in our original written submission and evidence given to the Committee, *beyondblue* has concerns about the Financial Services Council (FSC) proposal for life insurers to take on a greater role in worker rehabilitation, focused upon paying for treatment. This includes concern that the person on claim may feel pressured by their insurer to undertake a particular course of rehabilitation or treatment if they believe their claim benefits depended on this, or feel pressured to return to work earlier than is appropriate.

Therefore, although *beyondblue* is not opposed to the idea of insurers *funding* medical treatment and rehabilitation, we are concerned about how the *administration* of these claim benefits by insurers could operate in practice to negatively affect the mental health of consumers.

We welcome the FSC’s clarifying statement at the public hearing on 19 June 2018 that its proposal would leave choice and control about medical treatment in the hands of the person and their treating team, and that this would not have any bearing on the person’s claim benefits:

“...They [medical treatment payments] would only be offered on a discretionary basis, when the treatment is cost effective for both the customer and the insurer. Additional medical care would always be arranged through the customer's treating physician, and would be dependent on the customer's agreement and participation. No consumer will be forced to receive treatment they don't want under this proposal, or that their doctor doesn't support. Any patient that does not wish to receive treatment under the scheme will not have their income protection and TPD insurance payments stopped. Further, we would envisage that the identification of an opportunity for early intervention payments may equally be generated from the customer themselves, with the support of their medical practitioner. In other words, the customer will have ultimate choice, and they will be the ones that have the whip hand...”⁴

The architecture, implementation, enforcement and monitoring of such a scheme would need careful design, in genuine partnership with consumer representatives and experts.

Moreover, in light of the findings and recommendations of the Committee’s recent inquiry into the life insurance industry, *beyondblue* is not confident that self-regulation would safeguard this intended design.

These concerns may be significantly addressed through the design of a model that structurally separates payment and administration functions. For example, life insurers could contribute funds to an independent entity who would triage claims, facilitate evidence-based treatment and rehabilitation and administer the payments to policy holders.

The model must ensure access to safe, effective, evidenced-based rehabilitation, psychosocial support and medical treatments. The establishment of a central entity with access to current information on effective treatments and rehabilitation programs also has the advantage of being able to facilitate the development of a consistent approach across the industry.

For example, WorkCover Victoria and the Transport Accident Commission have developed a Clinical Framework which operates on the following principles:⁵

- Measurement and demonstration of the effectiveness of treatment
- Adoption of a biopsychosocial approach
- Empowering the injured person to manage their injury
- Implementing goals focused on optimising function, participation and/or return to work, and
- Basing treatment on the best available research evidence.

The model should also incorporate the recommendations from the Committee's life insurance inquiry in relation to claims handling as well as existing evidence on best practice in managing psychological claims. For example, SuperFriend has undertaken a comprehensive evidence review in consultation with stakeholders and published a best practice, action focussed framework for the management of psychological claims.⁶

Reform in this area must be person-led, not insurer-led. Therefore, we recommend that the design of such a scheme incorporates strong consumer co-design to ensure that this is achieved.

(3) Suggestions for how life insurers could pay for medical treatment and rehabilitation which falls outside the workers' compensation system

It is *beyondblue's* understanding that the FSC proposal would apply to people who are claiming on their income protection or TPD insurance outside of the workers' compensation system (i.e. for illnesses or injuries that are sustained outside of the workplace). Therefore, our response provided in (2) above outlines a suggested model which falls outside of the workers' compensation system.

In addition to the questions taken on notice, *beyondblue* would also like to take the opportunity to comment on the below question which was asked during the public hearing but not specifically responded to by *beyondblue*.

(4) The conflict of interest and how this differs to the conflict that exists within Australia's workers' compensation systems

beyondblue notes in our original submission that "a conflict of interest arises when the person who is funding medical treatment or rehabilitation (the insurer) has a vested interest in returning a policy holder to work, potentially before they are medically and psychologically fit to do so." We recognise that such a conflict of interest can also exist within workers' compensation insurance, which currently covers both income replacement benefits and payment of medical expenses. In both situations, it is in the interests of the insurer to return a claimant to work as soon as safely possible, to reduce their liability.

Similar issues were raised within a workers' compensation context within the 2017 *First review of the workers' compensation scheme* by the NSW Legislative Council Standing Committee on Law and Justice.⁷ In this review, stakeholders raised concerns that insurers were using rehabilitation and other treatments only

to support work capacity decisions, rather than to support an injured worker's return to health and work more broadly.

Given the similarity in conflict of interest issues, *beyondblue* recommends that any proposed legal and regulatory reform is informed by an examination of the current situation under the workers' compensation system, any safeguards that have been introduced to manage the conflict of interest, and whether these would be applicable within a life insurance context.

Thank you again for the opportunity to contribute to this Inquiry. If you would like to discuss any of the issues raised in the submission, please contact me on _____ or call _____

Yours sincerely

Georgie Harman
Chief Executive Officer

¹ Mental Health Council of Australia and *beyondblue* (2011). *Mental health, discrimination and insurance: a survey of consumer experiences 2011*. Accessed online 6 July 2018: <https://www.beyondblue.org.au/docs/default-source/default-document-library/bw0129-report-mental-health-discrimination-and-insurance.pdf?sfvrsn=2>.

² Australian Securities and Investments Commission (2016). *Report 498. Life Insurance claims: an industry review*. Accessed online 6 July 2018: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-498-life-insurance-claims-an-industry-review/>.

³ Australian Securities and Investments Commission (2016). *Report 498. Life Insurance claims: an industry review*. Accessed online 6 July 2018: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-498-life-insurance-claims-an-industry-review/>.

⁴ Proof Hansard transcript of evidence for the Committee's public hearing held on Tuesday, 19 June 2018: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3Dld%3A%22committees%2Fcommjnt%2F49094fee-6d97-4fb3-b5b2-18e6f649e791%2F0000%22>

⁵ Transport Accident Commission and WorkSafe Victoria (2012). *Clinical Framework for the Delivery of Health Services*. Accessed online 5 July 2018: https://www.tac.vic.gov.au/_data/assets/pdf_file/0010/27595/clinical-framework-single.pdf

⁶ SuperFriend (2015). *Taking Action – A Best Practice Framework for the Management of Psychological Claims*. Accessed 5 July 2018: <https://www.superfriend.com.au/app/uploads/2016/10/TAKING-ACTION-Best-Practice-Framework-for-the-Management-of-Psychological-Claims.pdf>

⁷ NSW Legislative Council Standing Committee on Law and Justice (2017). *First review of the workers' compensation scheme*. Accessed online 5 July 2018. <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2414/Report%20-%20First%20review%20of%20the%20workers%20compensation%20scheme.pdf>. Pages 51-55.