

INDUSTRY NEWS

Parliamentary Joint Committee on Corporations and Financial Services Life Insurance Industry Report - March 2018

[Link to Report](#)

The Parliamentary Joint Committee recently published the Life Insurance Industry Report. Below are our key findings from this report.

Area	Key Recommendations	TurksLegal Findings
Consumer Protections	<ul style="list-style-type: none"> R3.1 Amend s15 of the <i>Insurance Contracts Act</i> (ICA) to remove prohibition against Consumer Protection (CP) legislation applying to life contracts. Amend the ICA generally and <i>Corporations Law</i> (CL) to remove other existing carve outs that exempt life insurance from CP legislation. R3.2 ASIC to engage with insurers re removing unfair terms from life insurance contracts as soon as possible. R3.3 ASIC's product intervention powers extended to include funeral insurance and amended to allow intervention on remuneration and extend time frame of IO beyond 18 months. R3.4 Proposed Banking Executive Accountability Regime (BEAR), fin product design and distribution obligations and fin product intervention powers for ASIC should apply to life insurance and life insurers. R3.5 BEAR be extended to include consumer related conduct matters and allow ASIC power to act on such matters. R3.6 Increase penalties under ASIC administered legislation to equate to 3 x benefits obtained for all parties to transaction (including advisers, licensees and insurers). R3.7 ASIC to conduct random adviser audits and results published. 	<ul style="list-style-type: none"> These ICA proposals are not new. Section 15 proposal supported by the Consumer Affairs Minister in August 2017 – currently under regulatory impact assessment. It is inevitable that CPL (in some form) will eventually apply to life contracts.
Codes of Practice	<ul style="list-style-type: none"> R4.1 Implement co-regulation approach for financial services sector as recommended by ASIC Enforcement Review Taskforce. R4.2 In addition to co-regulation, ASIC be given power to undertake enforcement action for systemic breaches of Codes of Practice (COP). R4.3 COPs to apply to all of life industry participants in order to gain ASIC approval. R4.4 Combining the Life Insurance COP and Insurance in Superannuation OP as a prerequisite to ASIC approval. 	<ul style="list-style-type: none"> The current Life Insurance COP is not ASIC approved and breaches are not subject to ASIC enforcement.
Remuneration, commissions, payments and fees	<ul style="list-style-type: none"> R5.2 ASIC conduct a gap analysis of all payments and benefits flowing between participants in each sector of life industry and report findings to Government with the Government to then consider further regulation (if required). R5.3 ASIC and APRA to immediately audit all super trustees to identify nature, purpose and value of all payments that occur between life insurers and trustees and related parties in connection with default insurance to MySuper members including examination of all monies moving under profit share or like models and payments from insurers to trustees and related parties for various ancillary expenses. APRA and ASIC publish the audit report as soon as practical. 	

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Retail life insurance and approved product lists	<ul style="list-style-type: none"> ▪ R6.1 The life insurance industry have 'as a matter of urgency' a balance of affiliated and non-affiliated products on their approved product lists. ▪ Customer to be provided with information on affiliations when they are recommended an affiliated product. ▪ Customer to be provided with information that compares non-affiliated and affiliated products when they are recommended an affiliated product. ▪ Life insurance industry to transition to open approved products lists. ▪ ASIC and ACCC jointly investigate whether past use of APL's breaches anti-competitive laws. ▪ Investigation report produced by ASIC and the ACCC to inform government whether legislation inappropriately constrains capacity of either ASIC or the ACCC to investigate anti-competitive behaviour. 	
Group life insurance	<ul style="list-style-type: none"> ▪ R7.1 Trustee be given information on, and inform members of low balance and duplicate accounts and accounts at risk of losing insurance coverage. ▪ R7.2 Trustees inform ATO of insurance status of member accounts. ▪ R7.3 ATO to provide superannuation and insurance details in Notices of Assessments (subject to cost). ▪ R7.4 Life insurance industry fund media campaign aimed at lifting member awareness of pitfalls of duplicate cover and premium balance erosion. ▪ R7.5 APRA/ASIC review compliance of Funds with SIS leg on premium balance erosion - s52(7)(c). ▪ R7.6 Government consider legislation to protect low account balances from premium balance erosion. ▪ R7.7 Government consider law to require life insurers and trustees to provide regular updates on level and cost of life insurance. 	<ul style="list-style-type: none"> ▪ Series of measures aimed at increasing member awareness of the existence of life cover through super and allowing member choices to be made to halt premium balance erosion and multiple insurance coverage. Regulators to monitor Funds specifically on SIS rules re inappropriate insurance coverage.
Access to medical information	<ul style="list-style-type: none"> ▪ R8.1 FSC and RACOGP to agree on protocols for requesting and providing medical information and a uniform authority document acceptable to all life insurers on all products (including clear statements on how the information will be used and stored). ▪ R8.2 & 3 Failing agreement between the FSC and RACOGP within 6 months, request for medical information be limited to the relevant medical condition and life insurers cannot ask for clinical notes. ▪ R8.4 Absent agreement with RACOGP, fresh consent required from insured each time it seeks medical information from a treator or shares information with a third party. ▪ R8.5 Life COP be updated to reflect the above. ▪ R8.6 If CP laws are to apply to life contracts, they should apply to use of authorities ▪ R8.7 Insurers institute real time disclosure of claims progress. 	<ul style="list-style-type: none"> ▪ Strong onus on FSC to come to agreements with RACOGP on protocols for requesting information from treaters and on standard medical authorities. Absent such agreements, insurers face prospect of being prohibited from obtaining clinical notes or commentary on medical conditions beyond relevant conditions. Will also be required to obtain fresh authorisation each time they seek medical records.
Genetic information	<ul style="list-style-type: none"> ▪ R9.1 FSC and AGNDWG assess the impact of imposing a moratorium on life insurers using predictive genetic information unless consumer provides the information to show that they not at risk of developing the disease. ▪ R9.2 & 3 Predictive genetic information not be used whilst the moratorium is being considered. ▪ R9.4 If moratorium is adopted, Government consider legislation to support moratorium. 	

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Claims handling	<ul style="list-style-type: none"> ▪ R10.1 Government review Reg 7.1.33 of CL (carves out claim handling as a 'financial service') to see if the carve out inhibits ASIC's ability to oversight claim handling. ▪ R10.2 The ICA and <i>Disability Discrimination Act</i> be amended to require insurers to provide written reasons (in plain English) as to why an application for insurance or a claim has been rejected with specific reference to the medical evidence leading to the rejection. The statistical and actuarial evidence behind the rejection should also be provided on request. ▪ R10.3 Insurers must: <ul style="list-style-type: none"> - Update all definitions to reflect current medical knowledge. - Standardise all definitions across all types of policies. - Use clear and simple language in definitions. - Clearly explain whether associated conditions (arising from the initial condition) are covered by the policy. ▪ R10.4 / 10.5 Life COP and Insurance in Superannuation COP be amended to reflect definitional changes above. ▪ R10.6 The Life COP be amended to prohibit an insurer avoiding cover in relation to a pre-existing condition unless there is 'a direct medical connection between the prognosis of a pre-existing diagnosed condition' and 'the claim'. ▪ The statistical and actuarial evidence 'used to establish a pre-existing condition' as well as a plain English summary of the evidence be provided on request. ▪ R10.7 The FSC following consultation with relevant groups, establish a new COP or a dedicated part of the existing Life COP, dealing solely with mental illness claims. ▪ The consultations on the Mental Illness COP include: <ul style="list-style-type: none"> - Applications for cover revealing mental health issues are not automatically declined. - Underwriters dealing with mental health disclosures have appropriate qualifications to deal with same. - An applicant applying for cover with mental health issues being given the opportunity to withdraw the application or provide further information before an underwriting decision is made. - Mental health exclusion or loadings be accompanied by explanation as to how long such non-standard terms will apply and the process to remove such terms. ▪ R10.8 Insurers be allowed to actively promote best practice preventative health measures. ▪ R10.9 The FSC consult with other groups (including consumer groups) reamending timeframes for claims decisions in the Life COP. ▪ R10.10 The FSC consult with other groups (including consumer groups) reamending Life COP and Insurance in Superannuation COP to place upper limit on number of medical assessments that can be placed on insured. ▪ R10.11 ACCC to monitor concentration of power in the Claims Management and IME industries. ▪ R10.12 Mechanisms be established to compare draft IME reports with final versions. ▪ R10.13 Government legislate to allow rationalisation of legacy products subject to an individualised 'no disadvantage' rule. ▪ R10.14 Government conduct an inquiry before it progresses with any reforms relating to insurers funding rehab services. ▪ R10.15 FSC consults with groups on Dementia with a view to amending the Life COP to deal specifically with this condition. 	<ul style="list-style-type: none"> ▪ ASIC has called for the amendment to Reg 7.1.33 in several reports commencing with R498. ▪ PJC seems to conflate the circumstances of rejected applications for cover with rejected claims on existing cover. Rejected claims are of course always accompanied by detailed reasons and generally prior to that, procedural fairness. In the circumstances this recommendation should be seen perhaps as being restricted to rejected applications for new cover. ▪ Underwriter would need to provide detailed reasons for declines for cover and be prepared to disclose underlying data for rejection. ▪ Life COP already provides undertakings on updating medical definitions. ▪ Standardisation of 'all definitions across all policies' is obviously an impractical and imprecise recommendation. Perhaps it should be taken as meaning key insuring definitions such as 'TPD' or 'Total Disability'. ▪ This is a significant change and would involve a pivot on 150 years of the law of policy avoidance which has always permitted avoidance on the basis of actionable material non-disclosure regardless of whether the non-disclosure is related to a claim or not. Also does not address the situation of avoidance where there is no claim on the policy at all. ▪ Pre-existing conditions are determined according to the facts and the medical evidence not statistical data. PJC may again be conflating underwriting and claims issues ▪ These timeframes are already dealt with extensively in the current Life COP.