

**Submission by the  
Financial Rights Legal Centre**

The Insurance in Superannuation Working Group

Insurance in Superannuation Code of Practice –  
Consultation Paper, September 2017

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October 2017

## About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights almost 25,000 calls for advice or assistance during the 2016/2017 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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## Introduction

Thank you for the opportunity to comment on the Insurance in Superannuation Code of Practice Consultation Paper. The Financial Rights Legal Centre (Financial Rights) has provided significant input into the development of the Code already and wishes to provide the following views and comments to the Insurance in Superannuation Working Group on the latest draft.

Financial Rights wishes to reiterate our strong expectation of four principles in developing the Insurance in Superannuation Code of Practice.

Firstly, the Insurance in Superannuation Code of Practice is a key opportunity for the industry to make best practice commitments to consumers that are beyond current legal and regulatory obligations. This will go some way to addressing the lack of trust and confidence that consumers have in the insurance and superannuation sector.

Second, the Insurance in Superannuation Code of Practice must, fills the gaps left by the Financial Services Council's (FSC) Life Insurance Code of Practice and address those issues specific to the relationship between the member and the Superannuation Trustee. The superannuation industry needs to work closely with the FSC and the life insurance industry to ensure that the Insurance in Superannuation Code of Practice works symbiotically with the Life Insurance Code of Practice to ensure a consistency in consumer experience. For example, clause 8.21 of the FSC Code in relation to the cessation of income protection benefits during a non-disclosure investigation does not apply in superannuation matters. Equivalent provisions or standards should exist in the superannuation code to assist consumers where there is a non-disclosure investigation and they risk their income protection being suspended to address the consumer harm.

Third, the Superannuation sector must seek approval of the Code of Practice in accordance with the Australian Securities and Investments Commission's (ASIC's) *Regulatory Guidance 183*.<sup>1</sup> We note that the Minister for Revenue and Financial Services, the Hon. Kelly O'Dwyer MP stated in response to the launch of the Life Insurance Code of Practice in October that:

*...she expects the FSC and life insurance industry will take the necessary steps to ensure that the Code is enforceable across the whole industry, by gaining ASIC approval of the Code.*

*ASIC should work collaboratively with the FSC and the industry to approve the Code. Once the Code is approved, the Government will give ASIC the necessary powers to enforce the Code, so as to ensure financial services licensees' compliance with the Code.*<sup>2</sup>

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<sup>1</sup> <http://download.asic.gov.au/media/1241015/rg183-published-1-march-2013.pdf>

<sup>2</sup> Minister for Revenue and Financial Services, *Media Release: Key life insurance reforms to assist consumers*, 12 October 2016 <http://kmo.ministers.treasury.gov.au/media-release/091-2016/>

Given our second expectation described above (that is, we expect the Insurance in Superannuation Code of Practice to work symbiotically with the FSC's Life Insurance Code) we expect the Superannuation sector to similarly be expected to gain approval of the Code.

Finally, we wish to state clearly that any competition issues that may arise in the development of the Insurance Superannuation Code of Practice should not be considered a barrier to making significant commitments under the Code. Similar competition issues arise in all the financial services Codes of Practice and there is a simple process largely administered by the Australian Competition and Consumer Commission (**ACCC**) that is available to ensure that all relevant competition issues are appropriately considered and approved by Government in finalising a Code. In fact competition issues have recently arisen in the development of the Life Insurance Code with respect to Funeral Insurance, Consumer Credit Insurance and medical definitions. The FSC has publicly stated that it is submitting these for approval with the ACCC.<sup>3</sup> Financial Rights recommends the Insurance in Superannuation Working Group make early contact with the ACCC and ASIC on this point to ensure that no hurdles are in the way of the sector to make significant commitments under the Code of Practice that will benefit consumers.

Financial Rights believes that much like the Life Insurance Code of Practice, this draft Code, as it stands, is a modest first step that will require much more work and improved commitments over time to deliver improved consumer protections. We believe that the ISWG and Trustees must, at the time of the launch of this Code, make a public commitment to continuous improvement of the Code with a specific work plan for the intervening period before the first review.

As a part of this, Financial Rights strongly recommends that Trustees committee to a specific program of analysis, review and reporting on the commitments made, in particular benefit design, premium limits and cessation period commitments. These should be examined to understand the actual impact of these changes, and whether the commitments are meeting their stated objectives. If they are not they should be adjusted accordingly. It will be important to know whether, say for example, the lowering of coverage at section 4.7 does not turn these policies into junk insurance. This analysis should be undertaken with an eye to feeding into the first review of the Code. Ideally this review would occur 18 months after the launch of this Code, just as the Financial Service Council committed to with the Life Insurance Code of Practice.

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<sup>3</sup> [https://www.fsc.org.au/\\_entity/annotation/fe078546-30a7-e611-80c9-00155d252c17](https://www.fsc.org.au/_entity/annotation/fe078546-30a7-e611-80c9-00155d252c17) n

## B. 1 Scope of the Code

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### 1. How should the ISWG ensure that all trustees are bound by the Code?

Financial Rights also notes the current ASIC Enforcement Review Position and Consultation Paper that examines the possibility of a co-regulatory regime. Under the proposed approach approved codes would be binding on and enforceable against subscribers by contractual arrangements. All Industry participants would be required to subscribe to an ASIC approved Code. We support these proposals.

In the meantime we believe that Trustees can sign up to the Code contractually and that adherence to the Code should be a part of all individual contracts and/or terms and conditions.

Furthermore we believe that the governance committee, referred to in the current draft as the Code Administrator, should be established and functioning at least 6 months before the inception of the Code to ensure a smooth transition.

## B.2 Appropriate and affordable cover

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### Premium limits

#### 4. Are there alternative proposals for setting maximum premium levels that the ISWG should consider?

The Consultation Paper states at page 8 that

*...in order to achieve the premium limits noted above, there may need to be a reduction of cover for some segments of members in order to reduce their premiums. The ISWG welcomes feedback as to how this reduction of cover is communicated to members, and the impact if a member wishes to retain their original cover (which may not reduce their premiums, and in fact could increase their premiums). A further question remains to be worked through about whether a member who chose to retain their original cover would remain an Automatic Insurance Member.*

We note too, that section 4.7 is currently drafted to read:

*We will adjust cover levels or other factors impacting cost such as terms, conditions or definitions (subject to legislative, regulatory and Code constraints) so that we are satisfied that our automatic cover is affordable.*

It is important to ensure that any cover that is reduced in order to reduce premiums is not reduced to the point that the cover is so bad as to be useless or junk insurance. There is an important balancing act that needs to be performed in finding the sweet spot between coverage and account erosion. If cover is reduced to the point of junk, reconsideration of the cap will be required. There will need to be constant review and flexibility. This should be a matter for the committee reviewing the Code and we acknowledge this will be a difficult but necessary task.

We believe that section 4.7 may need a re-drafted commitment from Trustees to ensure that the cover will still meet minimum standards, be worthwhile, suitable and/or appropriate. There needs to be a circular process embedded in the Code to so that once an insurance product is made more affordable it's coverage needs to be assessed to ensure that it is still appropriate.

To improve outcomes and avoid consumer harm there needs to be improved transparency and disclosures embedded.

There will be a desire from consumers to understand their own premium and how it is calculated against the maximum. Insurers and trustees should be transparent with the premium pricing, and disclose.

## **Duplicate Insurance Cover**

### **11. What more could the Code do more to help members identify whether they have duplicate insurance, and determine whether this is appropriate for them?**

At section 11.1 Trustees commit to refunding premiums where there are multiple automatic insurance covers and off set provisions:

*11.1 If at claim time we identify that you have multiple automatic insurance covers in superannuation and your benefit is offset, which means that no payment is made to you under the cover you hold with us because you have been paid a benefit under another similar policy, we will refund your premiums into your account for the duration of the overlap of covers, to a maximum of six years.*

However this is only if this identified at claim time. This does not address the situation where multiple automatic insurance covers are discovered in non-claim situations.

Under section 4.31 states that

*When you become a member of our fund, we will ask your permission to help you to determine whether you have any other insurance cover in a superannuation fund. The purpose of this is to ensure you do not unintentionally pay premiums for multiple insurance covers, or for any cover on which you may be unable to claim. If we identify that you have other insurance cover, we will let you know.*

All that is committed to here is that the Trustee will let the Member know. The identification of duplication in the final sentence is also implied to occur when the consumer becomes a member. What if the situation is that the insurer or the member becomes aware of the

duplication between initiation of the coverage and any claim. It is not clear whether the final sentence applies to this situation.

It is our view that if this were to occur – ie the insurer or the member become aware of a duplication of automatic cover at a time that is neither at the time when the consumer becomes a member nor at claims time that, then some refund should also take place – if it is identified that the member was not eligible to make a claim against the cover for any event from the start of the cover, as per 11.2, or the benefit would be offset against another similar policy, as per 11.1. If this is not acceptable an alternative could be to refund 50% to reflect the risk sharing as occurs in general insurance. The Code should be more prescriptive of what should in fact occur in this situation.

We accept that this may have cost implications for Trustees and that the complexities may or may not be able to be worked out before the launch of this first iteration of the Code. If this is the case, the Trustees at the very least must commit to working on this for a resolution in a second iteration.

## **B.3 Helping members to make informed decisions**

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### **12. Which parts of the Code require particular attention for consumer testing?**

Any and all consumer facing material should be consumer tested to ensure that the material meets the stated objectives. This material includes:

- the new Key Fact Sheet (sections 5.12-15)
- the Welcome Packs (sections 5.16-18)
- the Annual Statements (section 5.19)
- the Product Disclosure Statements
- the insurance strategies (section 4.2)
- this Code and any websites and portals.

While ideally and where possible, the communications should be consumer tested before they are rolled out, the testing should not be used to delay the introduction of this material. Consumer testing can be conducted in the marketplace and adjusted as appropriate. The consumer communication should then be routinely reviewed and refined over time.

### **15. What further steps could be taken to engage members who are making no contributions or low or infrequent contributions**

Once the approach is finalised and instituted under the Code, there needs to be a clear media and communications strategy to raise the issue in the public's mind. Financial Rights

recommends that the Insurance in Super Code Owners and individual subscribers undertake a significant advertising campaign to promote the Code and this issue in particular.

## **B.6 Premium adjustments**

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### **21. Are the premium adjustment arrangements sufficiently transparent?**

We note that section 8.4 states that:

*“Our annual report, product disclosure statement and relevant insurance documentation will include information about our premium adjustment arrangements and policy and the members to which it applies.”*

We support this reporting requirement. We note too that Section 8.5 states that

*“We will report details of any premium adjustment made to and from our insurance reserve.”*

We support this section too however it is unclear who this is being reported to and whether this will be publicly available information.

It is important to note that whether the premium adjustment clauses are adhered to by Trustees will be a matter only known to Trustees. There will be no way for Members to independently verify or monitor these clauses.

It will therefore be a matter for the Code Administrator and code compliance measures to ensure that Trustees are meeting the requirements of the premium adjustment clauses of Section 8 . A clearer commitment therefore needs to be made by Trustees to report on premium adjustments to the Code Administrator or Code Compliance Committee under Section 8.4 to allow the Code Administrator to collect, analyse and report on premium adjustment data in their publicly available Annual Reports.

The Code Administrator will also need to be set up in advance of the Code commencement date to ensure that reporting frameworks are in place for monitoring the Code in advance of the Code commencing. This should not in any way be used as an excuse to delay implementation. Rather the establishment of the Code Administrator should be prioritised early on in the Code establishment process so as not to cause any delays in the work of the Code Administrator in advising trustees of their Code reporting obligations.

## **B.7 Promoting our insurance cover and changes to cover**

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Financial Rights notes that Trustees under the Code are committing to tell you certain information including an explanation of general risks, such as the loss of accrued benefits, where the member tells them that they are replacing existing cover:

*10.10 If you tell us that you are replacing existing cover, we will tell you that you should not cancel any existing cover until your new application is accepted, and explain the general risks of replacing existing cover, including the loss of any accrued benefits, the possibility of waiting periods to start again, and the implications of any nondisclosure on an application for cover (even where unintentional)*

We would argue that this needs to apply to not just when the Member is telling the trustee that they are ‘replacing’ existing cover but should be told when they make any change. Section 10.3 commits Trustees to let the member know “the consequences of any changes.” This may include the general risks as listed in 10.10. If it does, then this should be made more explicit.

## **Other comments**

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### **Insurance offered on an automatic basis in superannuation**

The Code is drafted to apply to all insurance in superannuation and it differentiates insurance offered on an automatic basis from other insurance. While the rationale for this is clear and appropriate, references throughout the Code to commitments being made vary between general commitments to all insurances in super and commitments to automatic insurance in super in particular. While this is appropriate, it can be confusing at times to understand which commitments apply and which do not. Also it is unclear as to why they apply only to automatic insurance and not to all insurances. For example, many Members will wonder why they will not be guaranteed a Welcome Pack if they have purposefully gained life insurance through their superannuation. We presume it is because Trustees are attempting to raise awareness of automatic insurance in superannuation to those who would be disengaged, apathetic or otherwise unaware, but it may not be instantly clear to somebody more engaged. Despite this, it is still not particularly clear why this commitment and other commitments can’t also apply to non-automatic insurance in superannuation as well.

It may therefore be worth demarcating commitments relating to automatic insurance members a little more distinctly and clearly. We recommend that the ISWG consider extending the commitments to all insurance in superannuation members, where appropriate. It may also be worth providing accompanying resources or guidance notes to explain the difference and why certain commitments are being made to different cohorts.

Finally we note that under section 3.6 that “you” is defined as only referring to Automatic Insurance Members. However we further note that “you” or “your” is also separately defined at section 3.5, section 1.2 and is defined in the definition section. This is very confusing and should be simplified.

### **Reinstatement and recommencement of cover**

Financial Rights notes that the Code includes the following section with respect to reinstatement and recommencement of cover:

4.28 If **your** cover has ceased due to a lack of contributions in accordance with section 4.25,<sup>7</sup> it can be reinstated in the following circumstances without any health assessment being required or break in cover, provided **you** are capable of active employment and **your** account has adequate funds to pay the premium owed for the intervening period:

- a) if **you** tell **us** **you** want to reinstate **your** cover within 60 calendar days of the cessation date; or
- b) if sufficient **eligible contributions** are made within 60 calendar days of the cessation date.

We commend the ISWG for including this and support its intention. We however think some clarity is required.

On our reading of the above, if an accident/injury occurs during the 60 day period after cessation due to a lack of contributions and subsections (a) and (b) are met then cover is reinstated and any claim would be paid. However it is not clear what happens in the case of an accident/injury occurring during this period and because of the serious nature of the injuries, the member has failed to make contact with the Trustee to seek reinstatement. It is clear that in these rare but tragic cases that some flexibility or discretion should be held by the Trustees. We believe a guidance note or Code wording may be required here.

### Explaining our definitions

Section 5.9 lists the standard headings as relevant to total and permanent disability cover:

- a) *Total and permanent disability – unable or unlikely to do a suited occupation ever again;*
- b) *Total and permanent disability – unable or unlikely to do your own occupation ever again;*
- c) *Total and permanent disability – unable or unlikely to look after yourself ever again;*
- d) *Total and permanent disability – unable or unlikely to do basic activities associated with work ever again;*
- e) *Total and permanent disability – permanent loss of intellectual capacity;*
- f) *Total and permanent disability – loss of limbs and/or sight;*
- g) *Total and permanent disability – suffering a specifically defined medical condition and permanently unable to work because of it; and*
- h) *Total and permanent disability – significant impairment to your whole body*

Financial Rights supports the development of standard headings. We also believe that Trustees must make a further commitment to work on standard definitions for the above list of terms. We understand that this may be too much work and too complex a task to complete before the inception of this iteration of the Code, but believe that Trustees should be able to commit to working on these definitions following the launch of this Code with an eye to developing the definitions for inclusion in the second code or earlier. We note that the Financial Services Council similarly committed to the development of Standard Medical Definitions following the launch of their Code and have already included these in the current

Life Insurance Code. We again acknowledge that this work will require liaising with and gaining ACCC approval but believe that this is a straightforward process.

## How to Make a Complaint

Financial Rights notes the inclusion of section 13.15 committing Trustees to:

*provide a final response to your complaint in writing within 45 calendar days of receiving your complaint. In exceptional cases, we will need additional time to investigate and respond to your complaint. In these cases, we will tell you that we need more time, and will clearly communicate our revised expected timeframe, which will not exceed 90 calendar days.*

Financial Rights commends the ISWG for the inclusion of this. It is an improvement to the current status quo of 90days, which will only be allowed in exceptional cases.

## Communication of Code

Financial Rights notes at section 14.6 that Trustees will:

*promote the Code and make it accessible, which will include providing information about the Code on our website, in insurance welcome packs and in relevant marketing documents.*

It is important that the Code be made available on websites but that this should be done so in a prominent and easily accessible manner.

We also believe that the Code should commit to the creation of Code Administrator website that houses the Code of practice, guidelines or any other relevant information related to the work of the Code Administrator and the Code. As noted above, we recommend the Code Administrator being appointed and resourced prior to the commencement date of the obligation on the trustee to enable the administrator to take steps to ensure this occurs with the Code commencement date.

## Exceptional Cases

Financial Rights is concerned that a number of the exceptional cases elements are too broad.

Subsection (c) states

*the insurer has not provided information to us that we require to make a decision about a claim or complaint*

This needs to be tightened as the Member may be trapped in overlong process because of a recalcitrant insurer.

Subsection (e) states:

*there are difficulties communicating with you;*

This wording is incredibly broad and could include anything from the fact that the Trustee needed to use an interpreter, or the Member level of English was low, to the fact that the Trustee has too few staff. These are circumstances that should not be deemed exceptional.

Subsection (g)

*we or the insurer suspect the claim is fraudulent*

Financial Rights notes that the Life Insurance Code refers to the insurer must “reasonably suspect” the claim is fraudulent. The word reasonably should be included in definition in this Code.

Financial Rights also recommends that the Code commits Trustees to tell it’s members which exceptional circumstance they are relying on when an exceptional circumstance is claimed.

Finally Financial Rights wishes to reiterate our central concern with insurance in superannuation is the lengthy and unreasonable claims delays faced by members. We are concerned that the use of exceptional cases will continue the delays. We believe reporting and monitoring on the use of exceptional circumstances should be committed to by Trustees to feed into the first review and next iteration of the Code.

## Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



**Karen Cox**  
Coordinator  
Financial Rights Legal Centre  
Direct: (02) 8204 1340  
E-mail: [Karen.Cox@financialrights.org.au](mailto:Karen.Cox@financialrights.org.au)