



29 March 2021

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Dear David,

Improving outcomes for vulnerable super fund members: Insurance in Superannuation Voluntary Code of Practice

Thank you for the opportunity to comment on proposed new vulnerability clauses for the Insurance in Superannuation Voluntary Code of Practice. The Financial Rights Legal Centre (**Financial Rights**) has marked up a copy of the PDF outlining our suggested edits to the proposed vulnerability clauses: **Attachment A**. We summarise some of these suggestions below and addressing the questions posed in the consultation.

Suggested edits

- **Broader and more inclusive language regarding vulnerability:**

We have made a number of suggested additions to the list of vulnerabilities including incarceration; cultural background and homelessness. We have also suggested more inclusive language to capture the fullness of vulnerabilities currently listed including replacing “financial hardship with financial duress”, non-English-speaking backgrounds” with “language barriers” “disability” with “physical health conditions”.

- **Plain English:**

We have made a number of suggested edits that both cut down the number of words and simplify the language used in order to both assist readability and comprehension but also remove the presence of weasel words.

- **Employees v Staff:**

We have suggested the use of the term employees (as used in other Codes) to ensure that there is no misunderstanding that all employees including management and staff are appropriately trained. Management need to be similar trained as they will be making

decision or developing policies on these matters – it is not simply a matter for front line staff.

- **Financial hardship**

Financial hardship is a key vulnerability and the provisions need to be significantly improved to be brought up to best practice financial hardship practices expressed in other Codes including the Life Insurance Code of Practice.

Questions posed

1. ***Does the revised Code make it sufficiently clear not all disability claimants are to be regarded automatically as vulnerable? Is the line between members who are vulnerable and those who are not sufficiently clear? If no, how could this be clarified?***

All claimants experiencing some form of vulnerability should be regarded as vulnerable for the purposes of the Code. While the tone of the question suggests an attempt to exclude certain people from being considered vulnerable – as we understand it, the intention is to specific vulnerabilities that require specific support measures to be in place. While we agree with this approach – as it is the approach taken in most codes of practice - it is important to also recognise that (a) all people can be experiencing a vulnerability at any time and can be temporary and circumstantial in nature and (b) all customers – those experiencing a specific vulnerability or otherwise are deserving to be treated with sensitivity, dignity, respect and compassion. This is particularly the case in the insurance in superannuation sector since it is highly likely that a significant proportion of claimants are experiencing some form of vulnerability borne of the specific circumstances.

2. ***Do you think the vulnerable members provisions strike the right balance between the active steps to identify vulnerable members and respecting members privacy and confidentiality?***

There may be proactive measures that Super Fund Trustees may be able to take to identify vulnerabilities already existing in your databases – as some banks are currently doing. Consideration should be given to making stronger commitments to proactively identify vulnerabilities and assist people experiencing these.

3. ***How long do you estimate it will take to implement these proposed vulnerable consumer measures? What implementation timetable do you believe is appropriate for the various elements being proposed (including compliance reporting)? Should any interim measures be put in place pending full implementation?***

No comment

4. ***Do you believe any of the proposals do not go far enough in improving the support and services super funds provide to vulnerable members? Are there other services and supports that you are aware of (eg, in your fund) that are not included in the proposals? If yes, how is the success of these measured?***

See suggested amendments

5. Do you believe any of the proposals are either unclear or difficult to implement?

See suggested amendments

6. Should we consider other models for case management services? If so, what are they?

No comment

7. Should translation of key documentation reflect the prevalence of languages in the community as well as amongst a fund's membership? What topics would provide the most value to members if they were translated? Should we add questions about languages other than English spoken at home to the member enrolment process?

Yes – Super Trustees should translate key document to major language groups and provide translated versions of other language groups on request.

8. Do you plan to adopt a broader vulnerable consumer policy for all members? If so, what other or different elements should it contain? What would be the impact of taking a broader approach?

Like the General Insurance Code of Practice, the Insurance in Superannuation Code of Practice should require the development and publication of Family violence policies and include a guidance on the development of these policies.

9. How do you believe ongoing compliance should be measured for the various elements proposed?

The Insurance in Superannuation Code of Practice must become mandatory and a compliance framework be established including the development of an independent Code Compliance Committee to monitor subscribers meeting the code commitments.

10. Do you support the proposed 3-year review timeframe? If not, what review process do you propose? Should the review include industry group forums to share key learnings?

Yes.

11. Are there any other issues we should consider?

- The Insurance in Superannuation Code must become mandatory, enforceable and develop a compliance regime in line with the requirements of RG183. If moves are not made to do so we recommend that ASIC look at developing a mandatory Insurance in Superannuation Code as a priority under the new enforceable code regime.

- The development of the original Code was in essence a race to the bottom/lowest stave of the barrel approach to developing commitments. This approach needs to be changed to a best practice approach.
- The Code needs further commitments regarding mental health. The General Insurance Code provides some guidance as to the types of commitments that can be made including:

104. When developing our internal processes and procedures we will take into account those who have a past or current mental health condition by doing the following:

 - a. at a minimum, we will design and sell our products and apply their terms in compliance with the requirements of the Disability Discrimination Act 1992 and/or any relevant State or Territory anti-discrimination requirements;*
 - b. we will treat people with any past or current mental health condition fairly;*
 - c. we will only ask relevant questions when deciding whether to provide cover for a pre-existing mental health condition;*
 - d. if we cannot provide you with cover for that condition we will tell you about your right to ask us for the information relied on when assessing your application. If you ask for that information, then we will give it to you as set out in part 12 of the Code.*
- The Code needs to strengthen its limited commitments on Financial Hardship. Currently the commitment only applies if the Trustee offers it. A commitment should be made that all subscribers provide financial hardship assistance in line with best practice commitments/standards in other Codes such as the Life Insurance Code of Practice.
- Further support should be offered to members where required, for example:

Additional support may include making it easier for you to communicate with us, referring you to a financial counsellor or an appropriate community support service.

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 Financial Rights on (02) 9212 4216.

Kind Regards,



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About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers 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, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.