



## **ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY**

### **POLICY QUESTIONS ARISING FROM MODULE 6**

#### **WRITTEN SUBMISSIONS OF THE AUSTRALIAN INSTITUTE OF SUPERANNUATION TRUSTEES**

1. The Australian Institute of Superannuation Trustees (AIST) makes the following submissions in response to certain of the policy questions asked by Counsel Assisting arising out of the case studies considered during the Royal Commission's sixth round of hearings concerning insurance.
2. As an organisation representing the interests of profit-to-member superannuation funds, the primary focus of our responses is on life insurance, and in particular, death and disability insurance provided within superannuation. However, many of our responses are applicable to both general and life insurance.

#### **ABOUT AIST**

3. The Australian Institute of Superannuation Trustees is a national profit-to-members organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector superannuation funds.
4. As the principal advocate and peak representative body for the \$1.2 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.
5. AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

#### **APPROACH TAKEN BY AIST**

6. In responding to the policy questions, AIST has taken the following overall approach:
  - a. The case studies identified numerous problems with:
    - i. the culture within many entities, suggesting compliance is not adequately valued; and
    - ii. the level of oversight of these entities by the regulators APRA and ASIC.



- b. The case studies have shown the payment of commissions and other forms of conflicted remuneration, are not in members' best interests, and should be eliminated by legislation.
- c. The regulators should proactively investigate and prosecute misconduct in relation to insurance, and generally exercise their existing enforcement powers more effectively.
- d. Better use of existing law rather than new prescription should be the focus of the Royal Commission's recommendations.
- e. It is not possible to assess whether existing powers are sufficient, because neither regulator has extensively tested its existing regulatory toolkit.
- f. Provision of insurance within superannuation, and especially automatic default insurance, continues to provide consumers with significant benefits and is less likely to be associated with misconduct.
- g. The Insurance in Superannuation Voluntary Code of Practice sets standards that provide greater understanding, clearer accountability and consistency of insurance, and will minimise consumer detriment.

#### **DETAILED RESPONSE TO POLICY QUESTIONS**

- 7. AIST's detailed responses to the policy questions arising from Module 6 on insurance are set out in the attached table.

#### **FURTHER ASSISTANCE**

- 8. AIST is willing to provide further assistance to the Royal Commission in respect of the matters addressed in this response to the policy questions or that were other raised by the Round 6 case studies.

**Ms. Eva Scheerlinck, Chief Executive Officer**

**AUSTRALIAN INSTITUTE OF SUPERANNUATION TRUSTEES**

**25 October 2018**



**ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY  
AIST RESPONSE TO POLICY QUESTIONS ARISING FROM MODULE 6**

1.	<p>Is the current regulatory regime adequate to minimise consumer detriment? If the current regulatory regime is not adequate to achieve that purpose, what should be changed?</p>	<p>No. The regulators should proactively investigate and prosecute misconduct in relation to insurance, and generally exercise their existing enforcement powers more effectively.</p> <p>While there are some regulatory changes that are recommended in AIST's response, better use of existing law rather than new prescription should be the focus of the Royal Commission's recommendations.</p> <p>The effectiveness of regulators would be enhanced by the introduction of measures to make the regulators more accountable. Clear, transparent division of responsibility for every aspect of the regulatory regime, with no gaps, is a fundamental pillar of accountability. This response is further detailed in our response to question 36.</p>
2.	<p><b>PRODUCT DESIGN</b> Are there particular products – like accidental death and accidental injury products – which should not be sold?</p>	<p>While AIST does not have a view of the sale of such products at a retail level, they do serve a useful purpose within superannuation in some instances.</p> <p>There may be situations where a super fund trustee may not be able to obtain full death and TPD insurance cover (covering all injury and illness events) for some of their membership, either because the market cannot support providing the cover or the cover cannot be provided at a reasonable cost. Situations could include specific occupational groups, the health of members or hours worked.</p> <p>In these situations, trustees have the ability under SIS Act 68AA (3) (see below) to determine the conditions to which the provision of the death and permanent incapacity benefit is provided. If full insurance cover is not available or would be extremely costly, then insurance cover for accidents only may be a more cost-effective solution to providing that cohort of members with at least some insurance cover.</p> <p>Also, it is common in superannuation group insurance policies to provide accidental death and disability insurance cover to members who are undergoing an underwriting health assessment until the insurer has completed the assessment.</p>



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		<p><b>SIS Act 68AA</b></p> <p>(3) The trustees of a regulated superannuation fund may determine reasonable conditions to which the provision of:</p> <p>(a) permanent incapacity benefit; or</p> <p>(b) death benefit;</p> <p>is subject.</p>
3.	Should the requirements of the Life Insurance Code of Practice in relation to updating medical definitions be extended to products other than on-sale products?	Yes. Medical definitions should be updated on an ongoing basis, and should be subject to at least an annual review, including during contract periods. Insurers should be monitoring for significant developments such as a report of medical definitions from the World Health Organization. It is critical that these processes cover legacy products.
4.	<p>Is the current disclosure regime for financial products set out in Chapter 7 of the Corporations Act 2001 (Cth) and Division 4 of Part IV of the Insurance Contracts Act 1984 (Cth) adequately serving the interests of consumers? If not, why not, and how should it be changed? In answering these questions, address the following matters:</p> <p>4.1 the purpose(s) that the product disclosure regime should serve;</p> <p>4.2 whether the current regime meets that purpose or those purposes; and</p> <p>4.3 how financial services entities could disclose information about financial products in a way that better serves the interests of consumers. (Despite the reference to the Insurance Contracts Act 1984 (Cth), this question is not limited in scope to contracts of insurance.)</p>	<p>No, the current disclosure regime for insurance in superannuation is not adequately serving the interests of super fund members. Where a member uses disclosure documents, they should be able to understand and compare them.</p> <p>There are a range of additional disclosure measures for insurance in super that AIST proposes to better serve the interests of super fund members. These are identified below.</p> <p>The insurance sections of super fund's <b>Product Disclosure Statements</b> and Insurance Guides are detailed and lengthy wordy, reflecting the concern of super fund that they must accurately reflect the terms and conditions of the insurance policy and cannot be misconstrued. However, this also makes many of these documents cumbersome and comprehend. As a result, few super fund members read them. This does not assist with member education about the need for insurance, the way in which insurance commences, ceases, can be changed, and can be claimed.</p> <p>The complexity of the underlying contract between the super fund and their insurer adds to the disclosure problem. AIST recommends that super funds be required to simplify the contracts</p>



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		<p>they enter into with insurers, so that the consumer explanation of the contract terms can in turn be simplified.</p> <p>AIST agrees with the commentary of the Royal Commission and numerous previous inquiries that current disclosure requirements often do not serve the interests of consumers. To better serve the interests of consumers, disclosure needs to find the right balance between the details and the key messages.</p> <p>The primary focus of member insurance disclosure should be on:</p> <ul style="list-style-type: none"> <li>• When are you covered?</li> <li>• When are you not covered?</li> <li>• How much does my cover cost?</li> <li>• What are the obligations of the fund and its insurer about your cover?</li> <li>• What are your obligations?</li> <li>• And what do the various insurance terms and definitions actually mean?</li> </ul> <p>The requirement of ss.1013C(3) of the Corporations Act for superannuation PDSs to be worded in a clear, concise and effective manner has effectively been subordinated by the more detailed and specific requirements of the Act and Regulations.</p> <p>The <b>Insurance in Superannuation Voluntary Code of Practice</b> includes simplified disclosure and improved superannuation fund member communications about insurance. The Code intends that the value of life insurance cover be better understood by members, who can in turn make better choices and decisions about their life insurance and superannuation.</p> <p>The Code is itself written in plain English, and contains a chapter about <i>Helping members to make informed decisions</i> that provides details about:</p> <ul style="list-style-type: none"> <li>• How we will provide you with information (including details of a Key Fact Sheet)</li> <li>• Explaining our definitions</li> </ul>
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		<ul style="list-style-type: none"> <li>• Communication during the term of your cover (including details of annual statement requirements)</li> <li>• Lost members</li> </ul> <p>The Government introduced MySuper with the key objectives of simplicity, transparency and comparability. One way this was to be achieved was through the implementation of <b>MySuper product dashboards</b>. These dashboards are required to be published on super fund websites and contain information about their MySuper product's fees, investment performance return, target and risk. The Productivity Commission's draft report into superannuation recommended that these dashboards also be centrally published on a website (such as ASIC's Money Smart website) to aid comparability. AIST supported and continues to support this recommendation (notwithstanding reservations about underlying inconsistent methodologies).</p> <p>MySuper product dashboards do not include information about insurance. AIST recommends that there should be consistent and comparable insurance information about super fund insurance offerings, and for this <b>insurance dashboard</b> to be published on the super fund's website and at a centralised location. The Key Fact Sheet required by the Insurance Code provides for this consistent and comparable insurance information to be published on a fund website.</p> <p>However, this approach would only be truly comparable if there were consistent terms and conditions between offerings. Eligibility should be broadly comparable across the board, to ensure that a fund does not secure a cheaper price by having more restrictive eligibility or other terms.</p> <p>The Commission should also consider additional disclosure to serve the interests of super fund members. For example, super funds could be required to publish <b>premium tables</b> showing the gross premium charged for each category of member at each \$1,000 of cover at current age with a standard frequency of payment. They could also be required to publish TPD claim success rates. Both measures were recommended by the 2010 Super System Review.</p>
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		<p>Additional disclosure at a member level would also serve the interests of super fund members. The already extensive super fund reporting to the ATO could be extended to include information about insurance. This information could be used to provide people using myGov, ATO online and new online employee commencement forms with near-real time information about where they have insurance in super.</p>
5.	<p>Is the standard cover regime in Division 1 of Part V of the Insurance Contracts Act 1984 (Cth) achieving its purpose? If not, why not, and how should it be changed?</p>	<p>This part of the Insurance Contracts Act excludes life and disability insurance contracts. AIST does not understand the rationale for this exclusion and does not believe it should be maintained.</p>
6.	<p>Is there scope for insurers to make greater use of standardised definitions of key terms in insurance contracts?</p>	<p>Yes, AIST supports the standardised definitions of key insurance terms. Standardised terms provide both consumer protections and aids increased consumer understanding of their insurance cover.</p> <p>This is something being developed by the Insurance Code Transition Committee, and is a process strongly supported by AIST as a Code-owner. Having standardised terms does not necessarily imply standardised cover or eligibility for TPD, although it could a pre-condition and a first step towards such standardisation.</p> <p>AIST support the use of standardised intention statements. Plain English explanations of the intention for the offer of cover for death and terminal illness, TPD and income protection could include:</p> <ul style="list-style-type: none"> <li>• what the benefit has been designed to cover</li> <li>• a statement of the circumstances under which a benefit will be paid</li> <li>• the meaning of the terms “unlikely”, “unable” or “incapable” of carrying out an occupation</li> <li>• what constitutes an occupation that the member is suited to by education, training or experience:             <ul style="list-style-type: none"> <li>o whether that includes an occupation for which the member has the necessary education and training but not the experience</li> </ul> </li> </ul>



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		<ul style="list-style-type: none"> <li>o whether it includes only education, training or experience that the member has at the time of the event or education, training or experience that they could reasonably acquire</li> <li>o whether and to what extent the trustee considers education or training that the member could acquire or has acquired after the event that gave rise to the claim and in the future           <ul style="list-style-type: none"> <li>• to what extent a trustee considers health improvements that could occur after the event that gave rise to the claim and in the future, because of medical or other treatments</li> <li>• the extent to which a trustee has regard to the availability of suitable employment, either within reasonable travelling distance of the member's home or otherwise</li> <li>• whether the assessment of a claim is based only on the evidence that was available at the date of the event that gave rise to the claim, evidence that was available at the end of the waiting period or evidence that is available at the time the claim is assessed.</li> </ul> </li> </ul> <p>This process also involves the development of a dictionary of common industry terms with standard definitions that could include:</p> <ul style="list-style-type: none"> <li>• Active employment</li> <li>• At work</li> <li>• Automatic cessation/cancellation</li> <li>• Automatic insurance cover</li> <li>• Beneficiary</li> <li>• Contribution</li> <li>• New Events Cover</li> <li>• Opt-out</li> <li>• Pre-existing condition</li> <li>• Suited occupation</li> <li>• Waiting period</li> </ul>
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7.	<p><b>SALES</b></p> <p>Should monetary and non-monetary benefits given in relation to general insurance products remain exempt from the ban on conflicted remuneration in Division 4 of Part 7.7A of the Corporations Act 2001 (Cth)? If so, why?</p>	<p>AIST supports the same high standards applying to the sale of both life and general insurance. Therefore we support a ban on conflicted remuneration for general insurance. The current legislative exemption should be removed, and there should be alignment between the rules for general and life insurance.</p>
8.	<p>Should monetary benefits given in relation to life risk insurance products remain exempt from the ban on conflicted remuneration in Division 4 of Part 7.7A of the Corporations Act 2001 (Cth)?</p> <p>Why shouldn't the cap on such benefits continue to reduce to zero?</p>	<p>AIST supports a ban on conflicted remuneration for life risk insurance products. The current legislative exemption should be removed.</p>
9.	<p>Is banning conflicted remuneration sufficient to ensure that sales representatives do not use inappropriate sales tactics when selling financial products?</p> <p>Are other changes, such as further restrictions on remuneration or incentive structures, necessary?</p>	<p>Banning conflicted remuneration is not enough in itself to prevent inappropriate sales tactics. All structures that prioritise sales, sales volumes and profitability over the interests over of customers should be prohibited.</p>
10.	<p>Should the direct sale of insurance via outbound telephone calls be banned?</p> <p>If not, is the current regulatory regime governing the direct sale of insurance via outbound telephone calls adequate to avoid consumer detriment?</p> <p>If the current regulatory regime is inadequate, what should be changed?</p>	<p>AIST supports a ban on the sale of life insurance by outbound cold-calls and of legislation to support such a ban. However, we differentiate these cold-calls from calls that a super fund might make to its members in appropriate circumstances, and with appropriate controls.</p> <p>It may be in a member's best interests for them to be reminded by their super fund to consider their insurance cover in light of life event triggers. This could include reaching a particular age or be the result of the member changing their beneficiary.</p> <p>AIST submits that outbound calls about a person's insurance should be permitted where the call meets the following criteria:</p> <ul style="list-style-type: none"> <li>• It is about a product that is currently held by a member; and</li> </ul>



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		<ul style="list-style-type: none"> <li>The reason for the call meets the best interests/know your customer test.</li> </ul> <p>We emphasise that such calls should only be made by the entity with the existing relationship with the member.</p>
11.	<p>Is Recommendation 10.2 from the Productivity Commission’s report on “Competition in the Australian Financial System”, published in June 2018, sufficient to address the problems that can arise where financial products are sold under a general advice model (for example, the sale of financial products to consumers for whom those products are not appropriate)?</p> <p>If not, what additional changes are required?</p> <p>Are there some financial products that should only be sold with personal advice?</p>	<p>AIST’s position on this recommendation is that <i>unconflicted</i> general advice should not be renamed, while <i>conflicted</i> advice should be renamed.</p> <p>A consumers first approach is needed through ensuring general advice is unconflicted, conflicted advice is renamed to reflect its sales/commissions-based purpose, disclosure gaps are addressed, and that the complete chain of product manufacture and distribution is accountable for consumer outcomes.</p> <p>Unconflicted general advice is an efficient way for superannuation funds to deliver simple advice to a high volume of members facing similar issues. Profit-to-member funds have never paid commissions for general advice. If all general advice was renamed as product sales information, this would imply that all general advice was conflicted (which it is not).</p> <p>Profit-to-member funds provide a wide variety of services which are ‘general advice’: superannuation seminars, retirement planning seminars, induction seminars, workplace seminars, online calculators, newsletters and advice to individuals. General advice delivered to individuals is delivered through a variety of channels including face to face, over the phone and online. AIST’s member funds have found that members who receive general advice leads to members being more engaged with their superannuation and can lead to members seeking more comprehensive personal advice.</p> <p>Unconflicted general advice continues to play an important role in engaging with members. This is particularly needed in these times when members are wary of financial planners, a wariness which has arisen from the many scandals arising from conflicted advice by planners employed by or associated with retail superannuation funds and by bank tellers and other staff.</p> <p>As an alternate, AIST recommends:</p>



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		<ul style="list-style-type: none"> <li>o Tightening the definition of general advice to exclude advertising and sales activities.</li> <li>o Tightening the definition of general advice to exclude all activities that generate commissions as a result of grandfathering or exemptions from the ban on conflicted remuneration under FOFA (e.g. insurance and life insurance).</li> <li>o Addressing the regulatory gap which enables for-profit superannuation funds to switch members from a MySuper product to an inferior choice product under the general advice or no-advice business model.</li> </ul>
12.	Should all financial services entities that maintain an approved product list be required to comply with the obligations contained in FSC Standard No 24: Life Insurance Approved Product List Policy?	This is specific to advisers operating under an AFSL providing personal advice to retail life insurance clients, and AIST makes no comment about this.
13.	<b>D. ADD-ON INSURANCE</b> Should the sale of add-on insurance by motor dealers be prohibited?	AIST is not responding to this question beyond noting that the evidence received by the Royal Commission appears to support a view that there has been misconduct and behaviour not meeting community expectations in relation to the sale of add-on insurance.
14.	Alternatively, should add-on insurance only be sold via a deferred sales model? If so, what should be the features of that model?	AIST is not responding to this question.
15.	Would a deferred sales model also be appropriate for any other forms of insurance? If so, which forms?	AIST is not responding to this question.
16.	If the ban on conflicted remuneration is not extended to apply to general insurance products, should the payment of commissions for the sale of add-on insurance by motor dealers be limited or prohibited?	AIST is not responding to this question beyond noting AIST general opposition to the payment of commissions.
17.	<b>E. CLAIMS HANDLING</b>	Yes.



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	Should the obligations in section 912A of the Corporations Act 2001 (Cth) apply to all aspects of the provision of insurance, including the handling and settlement of insurance claims?	
18.	Should ASIC have jurisdiction in respect of the handling and settlement of insurance claims?	Yes.
19.	<p><b>Life insurance</b></p> <p>Should life insurers be prevented from denying claims based on the existence of a pre-existing condition that is unrelated to the condition that is the basis for the claim?</p>	<p>Entering into a contract in good faith and honest disclosure on the part of both the insurer and the insured is an importance cornerstone of insurance arrangements. If the nature of any non-disclosure is such that knowledge of them at the time insurance was provided would have meant that cover would not have been provided, then this may be grounds to deny a claim.</p> <p>However, unrelated conditions should not generally be used to deny claims, and insurers should be prevented from undertaking fishing expeditions aimed at uncovering unrelated conditions when a customer makes a claim.</p> <p>Another consideration in considering a claim is the recency of other matters. It will often be the case that matters that occurred 10 or 20 years ago are less relevant to the decision of an insurer whether to accept the risk. In many instances, non-disclosure issues relate to symptoms of an illness or injury that were present at the time cover commenced but diagnosis was not confirmed.</p> <p>In order to both require honest disclosure, limit inappropriate fishing and manage risks from an insurer's perspective, AIST recommend that there be an absolute requirement to disclose all relevant matters for the previous five years.</p> <p>Some non-disclosures will be innocent and may be the result of not understanding what is required to be disclosed. AIST submit that these should be examined on a case by case basis and assessed by reference to the circumstances of the case and the impact on the risk accepted by the insurer. That is, the policy should not be automatically voided as a result.</p>



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20.	Should life insurers who seek out medical information for claims handling purposes be required to limit that information to information that is relevant to the claimed condition?	Yes.
21.	Should life insurers be prevented from engaging in surveillance of an insured who has a diagnosed mental health condition or who is making a claim based on a mental health condition? If not, are the current regulatory requirements sufficient to ensure that surveillance is only used appropriately and in circumstances where the surveillance will not cause harm to the insured? If the current regulatory requirements are not sufficient, what should be changed?	Yes, surveillance of members with mental health issues is rarely if ever appropriate and may exacerbate the member's condition. Insurers should be prohibited from undertaking such surveillance except in circumstance where other (non-mental health) conditions require surveillance, and even then should be undertaken with great care.
22.	<b>General insurance</b> Should the General Insurance Code of Practice be amended to provide that, when making a decision to cash settle a claim, insurers must: 22.1 act fairly; and 22.2 ensure that the policyholder is indemnified against the loss insured (as, for example, by being able to complete all necessary repairs)?	AIST is not responding to this question.
23.	<b>F. INSURANCE IN SUPERANNUATION</b> Should universal: 23.1 minimum coverage requirements; and/or 23.2 key definitions; and/or 23.3 key exclusions, be prescribed for group life policies offered to MySuper members?	AIST supports a process of progressive standardisation of requirements, definitions and exclusions for insurance in superannuation that <i>may</i> result in the universal outcomes posited in the question. However, this is subject to ensuring that standardisation is in the interests of members.  As detailed in our response to question 6, AIST supports the standardised definitions of key insurance terms. As a project being undertaken by the Insurance Code Transition Committee, this <i>may</i> be a first step towards standardisation of definitions. However, having standardised terms does not of itself lead to standardised cover or eligibility for TPD.



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		<p>A pre-condition to consideration of standard definitions must be that a standardisation does not remove a member benefit and does not discriminate against or prejudice any cohorts of members. AIST member funds are concerned to ensure no particular group (eg, casuals or people not in gainful employment) lose cover in any move to a universal approach.</p> <p>Another pre-condition is that standardisation must not just be considered in the context of insurance policies. Legislative definitions of incapacity should also be considered, and the Government should agree that changes to legislated and regulatory definitions will be reviewed as part of any standardisation initiative.</p> <p>The Government introduced MySuper with the key objectives of simplicity, transparency and comparability. One way that this was to be achieved was through the implementation of MySuper product dashboards. The product dashboard is intended to provide key information about MySuper products, which is useful for both new and existing members, and for this information to be presented in a standardised manner to allow consumers to easily compare products and make informed choices. However, the dashboard does not include information about MySuper default insurance.</p> <p>As an important part of the superannuation product offering, simple, transparent and comparable information about insurance should also be provided. The Key Fact Sheet developed under the Insurance Code is an important first step but should be developed further and be expanded to include information about premium levels as well as details of cover.</p> <p>In order for this approach to provide meaningful information to consumers, the information in the dashboard would need to be truly comparable, and comparability requires consistent terms and conditions between offerings. Eligibility should be broadly comparable across the board, to ensure that a fund does not secure a cheaper price by having more restrictive eligibility or other terms. Further details of this approach are set out in our answer to question 4.</p> <p>AIST further supports the provision of consumer protection and comparable product information on a centralised online service.</p>
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24.	Should group life insurance policies offered to MySuper members be permitted to use a definition of “total and permanent incapacity” that derogates from the definition of “permanent incapacity” contained in regulation 1.03C of the Superannuation Industry (Supervision) Regulations 1994 (Cth)?	<p>Yes, but only in the limited and circumstances where the deviation is in members’ best interests. However, AIST also recommends that that SIS definition be amended so there can be a release of benefits to members in these circumstances.</p> <p>AIST supports the alignment of these definitions, provided there remains a capacity to provide insurance cover and benefits for people who have been unemployed for a long time or who are engaged in unpaid home duties.</p> <p>All group insurance policies that cover benefits in superannuation funds require all parts of the TPD definition to align with the SIS definition of permanent incapacity, in accordance with Regulation 4.07D of the SIS Regulations:</p> <p><b>4.07D Operating standard—permitted types of insurance</b>          (2) A trustee of a regulated superannuation fund must not provide an insured benefit in relation to a member of the fund unless the insured event is consistent with a condition of release specified in item 102, 102A, 103 or 109 of Schedule 1.</p> <p>The way this has generally been addressed is to ensure that all parts of the TPD definition within the insurance policy include the words to the effect “...unlikely that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience.”</p> <p>This ensures that where an insurer admits and pays a benefit, the super fund can release that benefit.</p> <p>Issues arise where the insurance policy definition is stricter than the permanent incapacity definition, as the insurer may decline the claim but the trustee, using the looser definition, may admit. In this case, only the account balance can be released. This generally occurs where an Activities of Daily Living (ADL) definition applies. ADL definitions are uniformly applied to categories of membership where there has been an extended period of unemployment. It is harder to assess a long-term unemployed member against the standard permanent incapacity</p>
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		<p>definition as it is difficult to assess the members employment capability around the time that the disablement occurred.</p> <p>Similarly, home duties definitions are commonly used where members not in paid employment are provided with insurance cover in a super fund. These definitions commonly determine an ability to complete typical unpaid domestic duties around the home such as cleaning and cooking. Like the ADL definition, these enable a more objective means of assessing a member who may not have been employed for many years. These definitions could be deemed harder to meet than the permanent incapacity definition as whilst someone might be unlikely to engage in gainful employment, they may still be able to complete some of the fundamental duties required to maintain a home.</p> <p>Where a member can access a benefit on these bases, however, the super fund is unable to release the benefit until another condition of release is met. AIST submits that this is unfair and that the SIS regulations should be amended to allow benefits to be released in such circumstances.</p>
25.	Should RSE Licensees be obliged to ensure that their members are defaulted to statistically appropriate rates for insurance required to be offered through the fund under section 68AA(1) of the Superannuation Industry (Supervision) Act 1993 (Cth)?	<p>Yes, AIST supports this obligation and accepts that it is a current requirement on super fund trustees under the SIS Act.</p> <p>Under the SIS Act, a super fund trustee has a duty to manage insurance with the sole aim of benefiting beneficiaries. A super fund's insurance framework is governed by APRA Superannuation Prudential Standard SPS 250 <i>Insurance in Superannuation</i> and Prudential Practice Guide SPG250 SPS 250.</p> <p>Implementation of the framework requires an insurance strategy in which the fund must demonstrate that strategic decisions relating to making insured benefits available to beneficiaries has regard to the best interests of the beneficiaries as well as to the financial interests of members with an interest in the fund.</p> <p>Super fund trustees must be able to show that understand the composition and different needs of their membership and assess and justify the premiums that are set for different parts of their</p>





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		<p>membership. In relation to default cover provided under a super fund's MySuper product, this will be set having regard to the needs of the collective membership. For example, a super fund would avoid applying defaults classifying members blue-collar workers in the absence of information supporting this assumption about their membership. Defaulting members into unnecessarily high cost insurance would be in breach of a fund's SIS Act obligations.</p> <p>The use of appropriate default settings is also addressed in the Insurance in Superannuation Voluntary Code of Practice:  <i>"We will not automatically include you in a division of our fund that is higher risk than the membership generally due to smoker status or occupation (where such a designation exists) without relevant evidence."</i></p> <p>In relation to members who seek additional cover, funds are required and do have regard to setting statistically appropriate rates for their members.</p>
26.	Should RSE Licensees be prohibited from engaging an associated entity as the fund's group life insurer?	No, AIST supports the alternate of placing additional requirements on the super fund trustee, as suggested in the next question.
27.	Alternatively, should RSE Licensees who engage an associated entity as the fund's group life insurer be subject to additional requirements to demonstrate that the engagement of the group life insurer is in the best interests of beneficiaries and otherwise satisfies legal and regulatory requirements, including the requirements set out in paragraphs 22 to 24 of Prudential Standard SPS 250, Insurance in Superannuation?	<p>Yes, AIST supports the view that related party insurers should be required to demonstrate that their engagement is in the best interests of beneficiaries and meets legal and regulatory requirements but notes that this is already a requirement under the SIS Act and SPS 250. For example, paragraph 23 of SPS 250 states:  <i>"An RSE licensee must be able to satisfy itself, and demonstrate to APRA, that the engagement of an insurer is conducted at arm's length and is in the best interests of beneficiaries."</i></p> <p>Our previous submissions have highlighted APRA research showing that retail funds generally pay more for external services, particularly where those services are provided by other entities within the same corporate group. APRA researchers have also specifically identified instances of higher insurance costs when retail funds used related entity providers for group insurance. This was</p>



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		<p>particularly evident in cases where the trust deed stipulated use of a related-party for group insurance<sup>1</sup>. AIST supports greater regulatory scrutiny of such arrangements.</p>
28.	<p>Are the terms set out in the Insurance in Superannuation Voluntary Code of Practice sufficient to protect the interests of fund members? If not, what additional protections are necessary?</p>	<p>Yes, the Insurance Code will protect the interests of super fund members and should be the primary focus for lifting standards in insurance in superannuation. AIST agrees that additional protections can be provided.</p> <p>The Insurance Code is being implemented by the superannuation industry with the support of industry associations and more than 92% of MySuper members will be covered by the Code. AIST is one of the three industry associations that owns the Code and is actively advocating both within the industry and publicly for the Code to improve insurance in superannuation.</p> <p>AIST is committed to continuous improvement of the Code and to lifting standards in insurance in superannuation. There are improvements that can be made and further protections that can be provided, and proposals for these are contained in the following paragraphs.</p> <p>The Productivity Commission's draft report Superannuation: Assessing Competitiveness and Efficiency recommended increased regulator involvement in the Insurance Code in the form of a Joint Regulator Taskforce. As the focus should be on improving member outcomes, AIST agrees with this recommendation, and has submitted that ASIC should take the lead.</p> <p>The Productivity Commission also made a draft recommendation that the taskforce should monitor and report on adoption and implementation of the Code by super funds. AIST submit that this is another reason why there is no pressing need for the Code to become mandatory. This is a 'co-regulatory' approach that harnesses the co-operative and productive initiatives of the superannuation industry to the independence, rigor and authority of the regulators to deliver consumer benefits.</p> <p>As a Code-owner, AIST would welcome the regulators' guidance about enhancements to strengthen the Code, particularly implementation of standard definitions and moving to a short</p>

<sup>1</sup> Liu, K. and Arnold B., 2012, 'Superannuation and insurance: Related parties and member cost', Working Paper 2012, APRA



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		<p>form annual insurance statement for members. These are both matters under consideration by the Code-owners for the next stage of the Insurance Code.</p> <p>The Code is another mechanism for improving standards in superannuation, and AIST anticipates that APRA would approach funds about compliance with the overall code and its specific provisions on an 'if not, why not' basis.</p> <p>AIST also agrees that the taskforce should annually report findings on industry progress on the Code, and further suggest that it report on joint-industry-regulator initiatives to improve consumer outcomes.</p> <p>AIST also supports the Productivity Commission's recommendation that funds should be required to articulate and quantify the balance erosion trade off determination they have made for their members in relation to group insurance. This is similar to the existing requirements imposed on fund trustees by the general and specific insurance covenants of section 52 of the SIS Act.</p> <p>In particular, s.52(7)(b) requires trustees to consider the cost to beneficiaries of offering insurance and s.52(7)(c) only permits them to offer insurance if the cost of the insurance does not inappropriately erode retirement savings. APRA Prudential Standard SPS 520 Insurance in Superannuation further establishes insurance requirements for funds and explicitly requires a fund's insurance management framework to include those required under section 52(7). AIST supports the requirement for this statement to be more explicitly stated in SPS 250 and for it to be made available on fund websites.</p> <p>A statement about the trade-off should also be accompanied by a simple explanation of the benefits of insurance in super and include reference to the unfortunately large number of people who make a death, TPD or income protection claim against their policy. As the commission itself acknowledges, TPD cover contributes to retirement income in that it insures against the risk a member's accumulation phase is cut short.</p>
29.	<b>G. SCOPE OF THE INSURANCE CONTRACTS ACT 1984 (CTH)</b>	AIST agrees that unfair contract terms protections should be extended to insurance contracts. We are not aware of any reason why insurers should receive an exemption from having to provide



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	Is there any reason why unfair contract terms protections should not be applied to insurance contracts in the manner proposed in “Extending Unfair Contract Terms Protections to Insurance Contracts”, published by the Australian Government in June 2018?	protections that apply in most consumer markets. While this may result in some additional costs for insurers
30.	Does the duty of utmost good faith in section 13 of the Insurance Contracts Act 1984 (Cth) apply to the way that an insurer interacts with an external dispute resolution body in relation to a dispute arising under a contract of insurance? Should it?	No, this duty does not extend to the relationship with an EDR in relation to an insurance dispute. AIST recommends that it should.
31.	Have the 2013 amendments to section 29 of the Insurance Contracts Act 1984 (Cth) resulted in an “avoidance” regime that is unfairly weighted in favour of insurers? If so, what reform is needed?	Yes, the application of this section can result in an insurer being able to avoid a policy as a consequence of innocent non-disclosure or misrepresentation. AIST submits that this is unfair and should be remedied.
32.	Does the duty of disclosure in section 21 of the Insurance Contracts Act 1984 (Cth) continue to serve an important purpose? If so, what is that purpose? Would the purpose be better served by a duty to take reasonable care not to make a misrepresentation to an insurer, as has been introduced in the United Kingdom by section 2 of the Consumer Insurance (Disclosure and Representations) Act 2012 (UK)?	Yes. AIST reiterates our comments made in response to questions 4 and 19.  Insurance contracts are agreements made in the utmost good faith, and the insured’s duty of disclosure (section 21) and the requirement on the insurer to inform the insured of the duty of disclosure (section 22) should remain an important part of insurance arrangements. The principle of utmost good faith obliges all parties to reveal all important information to the others.  Notwithstanding this, an insurer should not be to avoid a policy because of innocent non-disclosure or misrepresentation
33.	<b>H. REGULATION</b>	AIST is not responding to this question.



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	Should the Life Insurance Code of Practice and the General Insurance Code of Practice apply to all insurers in respect of the relevant categories of business?	
34.	<p>Should a failure to comply with the General Insurance Code of Practice or the Life Insurance Code of Practice constitute:</p> <p>34.1 a failure to comply with financial services laws (for the purpose of section 912A of the Corporations Act 2001 (Cth));</p> <p>34.2 a failure to comply with an Act (for example, the Corporations Act 2001 (Cth) or the Insurance Contracts Act 1984 (Cth))?</p>	<p>AIST is not responding to this question in detail.</p> <p>Codes developed by an industry may be able to improve consumer outcomes and be able to meet changing market circumstances. However, the evidence received by the Royal Commission suggests that these codes have not fulfilled these objectives.</p> <p>Notwithstanding this, changing the status of a code developed on one basis to another basis runs the risk of unintended consequences. Any change in the status or enforcement regime for a code should be preceded by the comprehensive review of the code to ensure the objectives of the code are maintained to ameliorate any unintended consequences.</p>
35.	<p>What is the purpose of infringement notices? Would that purpose be better achieved by increasing the applicable number of penalty units in section 12GXC of the Australian Securities and Investments Commission Act 2001 (Cth)?</p> <p>Should there be infringement notices of tiered severity?</p>	AIST is not responding to this question.
36.	<p><b>I. COMPLIANCE AND BREACH REPORTING</b></p> <p>Is there sufficient external oversight of the adequacy of the compliance systems of financial services entities?</p> <p>Should ASIC and APRA do more to ensure that financial services entities have adequate compliance systems?</p> <p>What should they do?</p>	<p>No, the evidence received by the Royal Commission in the insurance round identified numerous shortcomings in the oversight of entities by regulators. In particular, it appears that regulators did not act quickly on issues of apparent misconduct.</p> <p>AIST submit that our comments about deterrence and insights made in response to the questions posed following the superannuation round of hearings are equally applicable in relation to insurance. Specifically:</p>



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		<p><i>“Government should create new Statements of Expectations setting out the mandate of each financial services regulator.</i></p> <p><i>Each Statement should make it clear that the role of the regulator is to proactively investigate instances of misconduct and potential misconduct and undertake enforcement activity promptly to punish and deter such conduct.</i></p> <p><i>The Statement should also make clear that remediation programs cannot be relied upon by regulators as the primary response to misconduct.</i></p> <p><i>The regulators should exercise their enforcement powers rather than relying on negotiated outcomes as a primary response to misconduct. Allowing perpetrators of misconduct to negotiate the consequences of their misconduct does not deliver adequate punishment, specific or general deterrence, may not adequately compensate members and does not meet community standards and expectations.</i></p> <p><i>Each regulator should be required to report publicly on outcomes achieved against each Statement of Expectations”.</i></p> <p>This process should include the pro-active review of the compliance systems of entities, especially in circumstances where the regulator has a reasonable concern about the adequacy of those systems.</p>
37.	<p>Should there be greater consequences for financial services entities that fail to design, maintain and resource their compliance systems in a way that ensures they are effective in:</p> <p>37.1 preventing breaches of financial services laws and other regulatory obligations; and</p> <p>37.2 ensuring that any breaches that do occur are remedied in a timely fashion?</p>	<p>Yes, these consequences should flow from the effective and public use of the existing regulatory tools at the disposal of ASIC and APRA. The regulators have extensive existing regulatory powers and can act to address failures in compliance systems, including in relation to insurance. AIST strongly recommends that effective enforcement by regulators be enhanced by measures to make regulators more accountable.</p> <p>Amongst other things, ASIC can investigate suspected breaches of the law, and take further action (including commence prosecutions, seek penalties, ban and disqualify individuals); stop the issue of financial products; and accept and enforce undertakings.</p>



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		<p>APRA can investigate regulated entities; issues directions; issue, vary and revoke licences; create and enforce prudential standards; and accept and enforce undertakings.</p> <p>It is not possible to assess whether these powers are sufficient, because neither regulator has extensively tested its existing regulatory toolkit.</p> <p>Even though APRA already has extensive powers enabling it to identify misconduct and undertake enforcement activity, AIST supports proposals to expand its powers through the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017 which is currently before the Parliament.</p>
38.	<p>When a financial services entity identifies that it has a culture that does not adequately value compliance, what should it do?</p> <p>What role, if any, can financial services laws and regulators play in shaping the culture of financial services entities?</p> <p>What role should they play?</p>	<p>The culture of an organisation is a function of the values and behaviour of the Board and senior management, accountability of staff throughout the organisation and the alignment of incentives with the interests of the organisation's customers. Evidence received by the Royal Commission in the insurance round identified numerous problems in each of these areas, suggesting lack of alignment and compliance being inadequately valued.</p>
39.	<p>Are there any recommendations in the "ASIC Enforcement Review Taskforce Report", published by the Australian Government in December 2017, that should be supplemented or modified?</p>	<p>AIST supports the Insurance in Superannuation Voluntary Code of Practice as the primary tool for improving standards in insurance in superannuation. While we note the Taskforce's support for industry led solutions, we submit that it is prudent to firstly and implement the Insurance Code before implementing other measures.</p>