

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

SIXTH ROUND OF PUBLIC HEARINGS: INSURANCE

**SUBMISSION OF NATIONAL AUSTRALIA BANK IN RESPONSE TO POLICY QUESTIONS
ARISING FROM THE SIXTH ROUND OF PUBLIC HEARINGS**

A. INTRODUCTION

- 1 This submission is made on behalf of National Australia Bank Limited (**NAB**) and NULIS Nominees (Australia) Limited (**NULIS**) in response to the Commission's invitation to respond to the policy questions arising from module 6.
- 2 NAB and NULIS have not answered each question. NAB and/or NULIS have answered those questions which relate to products or services that form part of the businesses of NAB and/or NULIS and for which NAB and/or NULIS can provide information that may assist the Commission.

Guiding principles in considering any policy reforms to life insurance and general insurance

- 3 Insurance plays an integral role within the Australian economy.¹ Approximately 12 million Australians hold insurance for life, total & permanent disability, and/or income protection through superannuation arrangements.² Insurance contributes to financial market efficiency by reducing the cost of uncertain events.³
- 4 The insurance industry is segmented between life insurance and general insurance.⁴ Life insurance and general insurance differ. The distinction between life insurance and general insurance is also reflected in there being separate Codes of Practice⁵ setting out the standards for insurers in each context.⁶
- 5 The objectives and policies which underpin the regulation of life insurance and general insurance should differ, given the differences between them. For example, general insurance and life insurance respond to different risks. Consumers have different expectations and objectives when purchasing life insurance and general insurance. The claims processes also differ – the relevant evidence and a consumer's position is different

¹ The Commission, *Background Paper 26: Some features of the general and life insurance industries*, 28 August 2018, at page 4.

² Productivity Commission, *Superannuation: Assessing efficiency and competitiveness - Draft Report*, April 2018, at page 311: https://www.pc.gov.au/data/assets/pdf_file/0003/228171/superannuation-assessment-draft.pdf.

³ The Treasury, *Background Paper 27: Reforms to general and life insurance*, 28 August 2018, at page 2.

⁴ *Ibid.* Additionally, there is the reinsurance segment of the market, offering insurance to the insurers. That segment was not examined by Round 6, and accordingly does not attract any submissions from NAB or NULIS.

⁵ *General Insurance Code of Practice 2014* (at 1 July 2014): <http://codeofpractice.com.au/>; Financial Services Council, *Life Insurance Code of Practice* (at 1 July 2017): <https://www.fsc.org.au/policy/life-insurance/code-of-practice/>.

⁶ Senior Counsel Assisting's opening address at T5274.37-43.

when claiming under a total & permanent disability insurance policy as opposed to a home & contents insurance policy.

6 NAB and NULIS consider that the following matters should inform any assessment of future policy recommendations in relation to the insurance industry in Australia:

- (a) a competitive insurance market is critical to enabling choice, innovation, entrepreneurialism and efficiency.⁷ Insurance mitigates insurable risk.⁸ By allocating risk across policyholders, insurance enables individuals and businesses to pursue economic activities, expansionary initiatives, and investments that would otherwise be cost-prohibitive;⁹
- (b) a competitive insurance market places downward pressure on insurance premiums, ensures that products perform appropriately and offers consumers different features and levels of cover;¹⁰ and
- (c) the quick and fair resolution of claims is essential to the effective functioning of the purpose of insurance.

7 In respect of insurance offered to consumers by way of their superannuation fund, NAB and NULIS consider that generally:

- (a) insurance offered through superannuation funds assists in addressing the potential issue of underinsurance in Australia by providing:
 - (i) a minimum level of insurance cover for individuals who make contributions to their superannuation fund,¹¹ providing a degree of financial support in times of need;
 - (ii) automatic cover to a cohort of members that may be considered 'high risk' (by reason of, for example, their occupation);
- (b) it is important that members presently have, and should continue to have, flexibility to select cover to meet their underlying needs;¹²

⁷ Senate Economics References Committee, *Australia's general insurance industry: sapping consumers of the will to compare*, August 2017, at page 3.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ The Treasury, *Background Paper 27: Reforms to general and life insurance*, 28 August 2018, at page 2.

¹¹ Insurance Strategy (Exhibit 6.215, Statement of Thomas Lee Garde dated 31 August 2018 in response to Rubric 6-38 (WIT.0001.0148.0001), Exhibit TLG-1, Tab 7 (NAB.005.923.0038)) at clause 3.2 ('*Insurance Strategy*').

¹² *Ibid.*; Insurance Management Procedures (Exh bit 6.215, Statement of Thomas Lee Garde dated 31 August 2018 in response to Rubric 6-38 (WIT.0001.0148.0001), Exhibit TLG-1, Tab 7 (NAB.005.923.0016)) at clause 2 ('*Insurance Management Procedures*'); Insurance Governance Policy (Exh bit 6.215, Statement of Thomas Lee Garde dated 31 August 2018 in response to Rubric 6-38 (WIT.0001.0148.0001), Exhibit TLG-1, Tab 1 (NAB.028.001.5721)) at page 4 ('*Insurance Governance Policy*').

- (c) the precise level of insurance offered to superannuation members by a superannuation fund which is appropriate for a specific member is dependent on many and varied factors.¹³ As a result, insurance for superannuation members should be as flexible as possible;¹⁴
- (d) insurance provided in conjunction with superannuation should provide an adequate level of insurance cover, for a reasonable premium, without inappropriately eroding members' superannuation account balances, or placing an unreasonable burden on employers where the employer funds insurance premiums;¹⁵ and
- (e) a balance must be struck between the potential need for financial support before retirement due to death or disability, and the need to provide for retirement.¹⁶ A consumer must also be in a position to control the degree of insurance cover that is right for them, including opting out of certain cover.

B. DISCLOSURE

8 **Question 4:** *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:*
 - *the purpose(s) that the product disclosure regime should serve;*
 - *whether the current regime meets that purpose or those purposes; and*
 - *how financial services entities could disclose information about financial products in a way that better serves the interests of consumers.*

9 **NAB and NULIS response:** NAB and NULIS consider that the degree of disclosure required by the *Corporations Act 2001* (Cth) often ensures that disclosure is complex and voluminous. That can militate against customers readily accessing and understanding core information relevant to their insurance decisions. However, NAB and NULIS consider that any amendments to the disclosure regime for financial products must strike an appropriate balance between ensuring that members and consumers are fully informed and the length and complexity of disclosure given.

¹³ *Insurance Strategy*, above n 11, at clause 3.2.

¹⁴ *Ibid.*

¹⁵ *Ibid* at clause 3.1.

¹⁶ *Ibid* at clause 3.2.

10 The purpose of the Product Disclosure regime is to ensure that members and consumers are fully informed of the relevant financial product, including being provided with information that might reasonably be expected to have a material influence on the decision to acquire the product.¹⁷ The information required to be disclosed includes, for example:

- (a) information about any significant benefits to which the holder of the product will become entitled after its acquisition, the times at which those benefits will or may be provided, and the way in which those benefits will or may be provided;¹⁸
- (b) information about any significant risks associated with holding the product;¹⁹ and
- (c) information about:
 - (i) the cost of the product;
 - (ii) any amounts that will or may be payable by the holder of the product after its acquisition, and the times at which those amounts will or may be payable; and
 - (iii) if the amounts paid in respect of the financial product or other financial products are paid into a common fund, any amounts that will or may be deducted from the fund by way of fees, expenses or charges.²⁰

11 Under the current regime, a large amount of information is required to be disclosed. NAB and NULIS note Counsel Assisting's observation that '*... the most often cited problem with mandated disclosure documents is their length and complexity...*'.²¹ NAB and NULIS also note the evidence provided to the Commission by the Insurance Council of Australia, particularly the report titled '*Too long; didn't read*', to the effect that the '*... majority of participants [in research commissioned by the Insurance Council] (71%) agreed that PDSs are often too long or difficult for many people*'.²² The report cited research which indicates that '*retail consumers are not likely to read documents that are more than 2-3 pages in length*'.²³ The report also states that '*[a] range of studies have shown a decline in decision quality when consumers are provided with information beyond a certain level*'.²⁴

12 In those circumstances, there is a tension between concise disclosure and the purpose and requirements of the current disclosure regime which requires disclosure of all information

¹⁷ *Corporations Act 2001* (Cth), section 1013E.

¹⁸ *Corporations Act 2001* (Cth), subsection 1013D(1)(b).

¹⁹ *Corporations Act 2001* (Cth), subsection 1013D(1)(c).

²⁰ *Corporations Act 2001* (Cth), subsection 1013D(1)(d).

²¹ Robert William Whelan XXN at T6421.23-24

²² Insurance Council of Australia, *Too Long; Didn't Read: Enhancing General Insurance Disclosure*, October 2015 (Exhibit 6.404, Statement of Robert William Whelan in response to Rubric 6-61 dated 27 August 2018 (WIT.0001.0134.0001), Exhibit RW-1 (ICA.002.001.1671)) at page 17.

²³ *Ibid* at page 29 citing Committee for European Securities Regulators, *CESR's Technical Advice to the European Commission on the Format and Content of Key Information Document Disclosures for UCITS - Consultation Paper*, July 2009.

²⁴ *Ibid*; see also Robert William Whelan XXN at T6421.

that might reasonably be expected to have a material influence on a reasonable person as a retail customer who is considering whether or not to acquire a relevant product.²⁵

13 NAB and NULIS support consideration of reform that will enable simpler and shorter product disclosure, while ensuring that consumers have the information needed to make a fully informed decision. However, NAB and NULIS do not consider that – save as may be necessary to achieve this objective – the imposition of additional prescriptive regulation is the solution. Rather, the focus should be on ensuring that information provided to consumers is clear, concise and written in plain English – consistently with the requirement under section 1013C(3) of the *Corporations Act 2001* (Cth) that information included in a PDS be worded and presented in a clear, concise and effective manner.

14 **Question 6:** *Is there scope for insurers to make greater use of standardised definitions of key terms in insurance contracts?*

15 **NULIS response:** NULIS believes that there is scope for this. Use of standardised terminology in insurance contracts helps ensure consistency of application and assists consumers to compare insurance products. Standardisation should be promoted to the extent such use does not diminish the capacity for insurers (and superannuation trustees in negotiation with insurers) to develop definitions which meet the needs of a particular cohort of members. In this respect, NULIS refers to its response to question 23 below.

16 Standardised terminology and, where appropriate, definitions for key terms, promotes comparability of insurance products.²⁶ Coverage and key exclusions expressed in language of a uniform nature enables consumers to more meaningfully select between competing products in an informed way. Making greater use of standardised terminology is likely to assist with more simple and understandable disclosure to consumers. Standardisation also promotes the consistent application of insurance policies to similar factual situations.

C. SALES

17 **Question 7:** *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?*

18 **NAB response:** NAB considers that general insurance products should remain exempt from the ban on conflicted remuneration in Division 4 of Part 7.7A of the *Corporations Act 2001* (Cth). In NAB's view, removing the exemption is likely to reduce competition in the market for the distribution of insurance products which could lead to underinsurance.

²⁵ *Corporations Act 2001* (Cth), section 1013E.

²⁶ The Treasury, *Background Paper 27: Reforms to general and life insurance*, 28 August 2018, at [56].

19 The risk of underinsurance was a rationale for the introduction of the exemption in 2012 and, in NAB's view, that rationale remains valid. The exemption now enshrined in section 963B of the *Corporations Act 2001* (Cth) was introduced by the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (Cth). Those amendments were introduced following:

(a) an inquiry in November 2009 by the Parliamentary Joint Committee on Corporations and Financial Services into Financial Products and Services in Australia; and

(b) a 'Regulation Impact Statement' in the explanatory memorandum to the *Corporations Amendment (Future Of Financial Advice) Bill 2011* (Cth) (**Explanatory Memorandum**).

20 The Explanatory Memorandum assessed options to (among other things) '*minimise or eliminate the use of remuneration practices that distort the quality of advice and adversely affect consumer outcomes*'.²⁷ The Explanatory Memorandum identified the 'potential for underinsurance' in the following way:

*a 'ban on [conflicted remuneration] does not initially apply to risk insurance. Insurance has different features than general investment products ... [T]he potential for underinsurance should be explored in this context. In addition, more work needs to be done at a product level to facilitate a move away from commissions to fees for risk products. Further consultation with stakeholders on these issues will be undertaken before a decision is made about the ban and its application to risk insurance.'*²⁸

21 General insurance products were ultimately excluded from the ban on conflicted remuneration in subsequent legislation and regulations.²⁹

22 The risk of underinsurance identified in the Explanatory Memorandum could arise in a number of ways. Like the distribution of many products, there are costs and risks involved in distributing insurance products, and distributors bear that risk. It is very difficult to design a profitable distribution business which is entirely disconnected from the price and volume of insurance products being distributed or offered to the market. If a sufficiently profitable distribution business cannot be developed whilst complying with a ban on relevant commissions, distributors would not continue to sell insurance products.

23 Distributors exiting the market would affect consumers. For example:

²⁷ Replacement Explanatory Memorandum, *Corporations Amendment (Future Of Financial Advice) Bill 2011* (Cth), at [3.46].

²⁸ *Ibid* at [3.77].

²⁹ *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012* (Cth); *Corporations Regulations 2001* (Cth), reg 7.7A.12G.

- (a) it could lead to a reduction in competition amongst insurers and distributors of insurance which could, in turn, lead to increased premiums. Price increases would reduce demand for insurance policies which has the potential to lead to underinsurance;
- (b) insurance products would only be available directly from an insurer. Distributors of insurance products play an important role in the market for insurance products – and it is a role that insurers will not necessarily fulfil. Distributors such as NAB also have considerable infrastructure in place to supply insurance products (eg branch networks and call centres). Insurers would need to invest to develop this infrastructure if the exemption from the ban was to be removed and distributors such as NAB ceased this role; and
- (c) consumers would not necessarily be reminded of a need for insurance when, for example, financing a motor vehicle.

24 **Question 8:** *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)? Why shouldn't the cap on such benefits continue to reduce to zero?*

25 This question has been raised by the Commission in the context of the Commission's Interim Report dated 28 September 2018. A response to this question will be provided in NAB's submissions concerning that report.

26 **Question 10:** *Should the direct sale of insurance via outbound telephone calls be banned? If not, is the current regulatory regime governing the direct sale of insurance via outbound telephone calls adequate to avoid consumer detriment? If the current regulatory regime is inadequate, what should be changed?*

27 **NAB and NULIS response:** NAB and NULIS support a prohibition on the direct sale of insurance products by way of **unsolicited** outbound telephone calls to customers who are **not** existing customers of the relevant business.

28 NAB and NULIS do not, however, support a ban on the direct sale of insurance products by way of:

- (a) **unsolicited** outbound telephone calls to **existing** customers. If an institution has an **existing** relationship with a customer, the institution should be able to contact that customer (provided the customer has not elected to be placed on the institution's 'do not call' register). For example, if the institution contacted the customer (who is not listed on the institution's 'do not call' register) concerning a product unrelated to insurance (for example, the customer's home loan or the customer's superannuation fund), the institution or the customer may identify that a relevant risk is uninsured. In those

circumstances, the institution should be able to discuss insurance with the customer, including providing to the customer information about products (including full disclosure regarding terms and conditions) which are designed to insure the customer's uninsured risk. Institutions should also have the ability to contact customers to provide customers with useful information (eg information about the effect on insurance of recent changes proposed in the Federal Budget).³⁰

Institutions have registers of customers who have consented to such contact, and customers can be asked to be removed from that register. Contacting existing customers was not the subject of a case study during the Commission's Round 6 hearings. NAB and NULIS also believe existing laws, such as Division 2 of Part 2 of the *Australian Securities and Investments Commission Act 2001* (Cth) and section 992A of the *Corporations Act 2001* (Cth), if enforced and complied with, are adequate to provide protection to customers who have not yet asked to be listed on a 'do not call register', and to avoid customer detriment resulting from unsolicited contact. The former broadly prohibits unconscionable conduct and misleading and deceptive conduct in relation to 'financial services'. Section 992A(1) prohibits a person:

'... mak[ing] an offer to issue or sell a financial product in the course of, or because of ... an unsolicited telephone call to [an offeree,] ... or an unsolicited contact with [an offeree] in another way that is prescribed by the regulations ... unless the [offeree] has been':

- (i) *'contacted only during the hours prescribed by the regulations and only if the person is not listed on the "No Contact/No Call" register in relation to the person making the contact'; and*
- (ii) *'given an opportunity to':*
 - (A) *'register on a "No Contact/No Call" register maintained by the person making the contact at no cost to that person'; and*
 - (B) *'select the time and frequency of any future contacts'; and*
- (iii) *'given a Product Disclosure Statement before becoming bound to acquire a financial product'; and*

³⁰ The 2018 – 2019 Budget proposes to remove groups of members from default/minimum insurance cover e.g. members with low balances of less than \$6,000, members under the age of 25 years and members whose accounts have not received a contribution in 13 months and are inactive. See Australian Government, *Budget Paper No. 2: Budget Measures 2018-19*, 8 May 2018 at page 36: https://www.budget.gov.au/2018-19/content/bp2/download/bp2_combined.pdf.

(iv) *'clearly informed of the importance of using the information in the Product Disclosure Statement when making a decision to acquire a financial product';*
and

(v) *'given the option of having the information in the Product Disclosure Statement read out to that person';*

(b) **solicited** outbound telephone calls made to a customer in response to a request from the customer, or arising from a referral from, for example, an adviser, with the customer's consent, or an online inquiry or an inquiry from a member participating or considering participating in a superannuation plan. These communications are necessarily directed to assisting customers' access to relevant insurance products and related information, in circumstances where they have initiated or sought out the provision of that information.

29 **Question 11:** *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)? If not, what additional changes are required? Are there some financial products that should only be sold with personal advice?*

30 **NAB AND NULIS response:** NAB and NULIS support the proposed renaming of the term 'general advice' insofar as it is directed at improving customer understanding.³¹ However, NAB and NULIS do not believe consumers should be required to obtain (and pay for) personal advice in order to buy life insurance, consumer credit insurance, home and contents insurance, motor insurance and travel insurance.³²

31 Recommendation 10.2 proposes that:

'[g]eneral advice, as defined in the Corporations Act 2001 (Cth), is a misleading term and should be renamed. Any replacement must ensure that the term 'advice' can only be used in association with 'personal advice' — that is, advice that takes into consideration personal circumstances.

Consumer testing of alternative terminology is required to ensure that misinterpretation and excessive reliance on this type of information is minimised.

³¹ The existing provisions in the *Corporations Act 2001 (Cth)* require authorised representatives providing general advice to warn the client that the advice does not take into account the client's objectives, financial situation or needs (*Corporations Act 2001 (Cth)*, section 949A). A financial services licensee is also required to take reasonable steps to ensure that the authorised representative of the licensee does so (*Corporations Act 2001 (Cth)*, subsection 949A(5)).

³² NAB is not involved in the provision of less common types of insurance such as Tyre and Rim, GAP, etc. Therefore NAB does not propose to make any comments on these types of insurance product, and NAB's comments should not be read as doing so.

Including time for consumer testing and a transition period to enable industry training and adjustment, a new term should be in effect by mid-2020.³³

32 NAB and NULIS agree that a replacement for the term ‘general advice’ is appropriate, and the term ‘advice’ should only be used in association with ‘personal advice’ — that is, advice that takes into consideration personal circumstances. NAB and NULIS also agree that a term which replaces the phrase ‘general advice’ should be the subject of consumer testing to ensure the replacement term addresses the issue set out above by the Productivity Commission.

33 However, in NAB and NULIS’s view, the present ‘general advice’ model provides an important service for consumers. While NAB and NULIS recognise that ensuring consumers receive appropriate financial advice is an important (and complex) issue, for the following reasons, NAB and NULIS do not consider that personal advice is always required:

- (a) many consumers purchase insurance products online or by way of application forms (including forms from, for example, superannuation funds).³⁴ Requiring personal advice in these channels would, in effect, remove a consumer’s ability to purchase insurance directly by way of the internet, or as part of their superannuation offering;
- (b) a requirement to sell insurance products only with personal advice would increase the cost to consumers for two reasons:
 - (i) consumers would need to directly or indirectly bear the cost of receiving personal advice; and
 - (ii) there is a portion of the relevant market which is unwilling³⁵ or unable³⁶ to pay for personal advice.³⁷ There are also consumers who will not have ready access to personal advice, such as consumers who reside in remote areas. A potential unintended consequence which has not been explored in evidence before the Commission is that, as a result, fewer people would purchase insurance, which would, in turn, lead to an increase in the price of premiums as there would be less economies of scale for insurers;

³³ Productivity Commission, *Competition in the Australian Financial System*, June 2018, at page 47: <https://www.pc.gov.au/inquiries/completed/financial-system/report/financial-system.pdf>.

³⁴ Exh bit 6.14, Statement of Ross Andrew Barnwell dated 3 September 2018 in response to Parts C, D and E of Rubric 6-62 (WIT.0001.0140.0001) at [17]. In the context of life insurance policies sold through the direct distribution channel, see The Commission, *Background Paper 26: Some features of the general and life insurance industries*, 28 August 2018, at pages 19-20.

³⁵ Ian Enright et al, *Background Paper 28: Group life insurance*, 28 August 2018, at page 1.

³⁶ The Treasury, *Financial System Inquiry – Interim Report*, July 2014, at pages 3-67 and 3-70.

³⁷ ‘[P]ublic information indicates that [only] between 20% to 40% of the Australian adult population use, or have used, a financial planner or adviser’: The Commission, *Background Paper 6 (Part A): Some Features of the Australian Financial Planning Industry*, 5 April 2018, at page 4 citing The Australian Securities and Investments Commission, *Report 224: Access to Financial Advice in Australia*, December 2010, at pages 7–10: <http://download.asic.gov.au/media/1343546/rep224.pdf>; and Australian Transaction Reports and Analysis Centre, *Australia’s Financial Planning Sector: Money Laundering and Terrorism Financing Risk Assessment*, December 2016, at page 2: <http://www.austrac.gov.au/sites/default/files/financial-planning-sector-risk-assessment-WEB.pdf>.

(c) the evidence tendered in round 6 of the Commission's hearings did not address whether or not any increase in cost to consumers caused by a requirement that insurance be sold with personal advice would provide commensurate value to consumers. For example, not infrequently a consumer may obtain personal advice from one provider, and subsequently seek to purchase certain financial products, including insurance products, from a different provider. In those circumstances, there is the potential for a duplication of (or inconsistencies in) advice and duplication of costs, without necessarily any additional benefit to the consumer;

(d) there is insufficient evidence to conclude that general advice is of itself a contributing factor to inappropriate conduct. A comparison with the evidence in round 2 of the Commission's hearings is apposite. The case studies in round 2 demonstrated that misconduct can occur when products are accompanied by personal advice.

34 In view of the above, NAB and NULIS believe that the risks inherent in the sale of insurance products can be managed by way of alternative measures, including renaming 'general advice' and ensuring the disclosures provided to customers are accurate and effective.

D. ADD-ON INSURANCE

35 **Question 14:** *Alternatively [to question 13], should add-on insurance only be sold via a deferred sales model? If so, what should be the features of that model?*

36 **Question 15:** *Would a deferred sales model also be appropriate for any other forms of insurance? If so, which forms?*

37 **NAB response:** Questions 14 and 15 are answered together below.

38 NAB understands that a deferred sales model involves a mandatory time delay in the sales process, to separate in time the purchase of the 'primary' product from the 'add-on' products. Such a model is provided for in the part of the new Australian Banking Association 'Banking Code of Practice' which concerns consumer credit insurance.³⁸ NAB has complied with that part of the Code since 30 June 2018 in accordance with a commitment between ASIC and the Australian Bankers' Association. The Code provides for a deferred sales model in the sale of credit card cover and personal loan cover through banker-assisted channels in the following way:

'[i]f [a relevant bank] offer[s] [consumer credit insurance (CCI)] for credit cards and personal loans through a branch or over the phone, then [the bank] will not offer that product to [a customer] until at least four days after [the customer has] applied for the

³⁸ Australian Banking Association, *Banking Code of Practice* (at September 2018): https://www.ausbanking.org.au/images/uploads/Banking_Code_of_Practice_2019_web.pdf.

credit product. This is known as a 'deferred sales period'. [The bank] can still provide factual information on CCI for [the customer] to consider during the deferred sales period'.³⁹

- 39 Consistently with this provision in the 2019 Code, NAB considers that all add-on **life** insurance (i.e. consumer credit insurance) sold via banker-assisted channels (i.e. where the sale process involves services provided by a relevant provider, such as a banker) should be subject to a deferral period after the consumer's application for the primary loan.
- 40 In NAB's view, a deferred sales model can serve an additional purpose for life insurance products that are linked to an underlying credit product (such as a loan). For those products, the deferral period reiterates to a customer that the purchase of a life insurance product does not affect the assessment of a loan application, and that the optional 'add-on' insurance product is entirely separate from the relevant loan.
- 41 NAB considers however that a deferred sales model should **not** apply to 'standard' **general** insurance products, such as home & contents insurance, motor insurance and travel insurance. NAB takes steps (such as implementing telephone scripts etc.) which aim to ensure that customers are aware of the terms and conditions for any add-on insurance product and that purchasing such a product is optional. Whilst these general insurance products may be related to an underlying credit product (e.g. where a customer borrows money for the purchase of a car and also purchases car insurance), NAB also considers requiring a deferral period between the purchase of the loan and the purchase of the insurance in these circumstances could place the customer at risk of not being insured for a period of time. For example, if a customer finances the purchase of a car, the customer's application for a loan can be approved and the funds disbursed on the same day. If there was a deferral period between the approval of the loan and the purchase of motor vehicle insurance, the motor vehicle purchased will as a result be uninsured until the end of the deferral period (assuming the consumer does not purchase insurance from a different provider during the deferral period).

E. CLAIMS HANDLING

- 42 **Question 18:** *Should ASIC have jurisdiction in respect of the handling and settlement of insurance claims?*
- 43 **NULIS response:** NULIS's present view is that the question whether ASIC's jurisdiction should be extended to handling and settlement of insurance claims should be further considered after the Australian Financial Complaints Authority (**AFCA**) has commenced operations (which is due to occur on 1 November 2018) and been allowed a period of time

³⁹ Ibid at [67].

to respond to complaints. AFCA has been established to provide an inexpensive and consumer-focussed forum for the resolution of disputes, including concerning insurance benefits.⁴⁰ An understanding of AFCA's operations will better enable the identification of any areas that may require conferral of jurisdiction on ASIC.

44 **Question 19:** *Should life insurers be prevented from denying claims based on the existence of pre-existing condition that is unrelated to the condition that is the basis for the claim?*

45 **NULIS response:** NULIS considers this measure should be implemented. An explicit prohibition on insurers denying claims on the basis of a pre-existing condition that is unrelated to the condition that is the basis for the claim would simplify claims assessment and reduce the prevalence of disputes between members and insurers.

F. INSURANCE IN SUPERANNUATION

46 **Question 23:** *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?

47 **NULIS response:** NULIS supports prescribing universal minimum coverage requirements for group life policies offered to MySuper members, provided members have the right to opt-out.

48 NULIS supports the use of standardised terminology used in definitions (see paragraphs 14 to 16 above in response to question 6). By way of example, some terms that may be considered to have similar meanings are often defined differently by different insurers (e.g. 'salary continuance' and 'income protection'). Standard definitions of terms such as these would assist members to understand the operation of their insurance and would also assist consumers more readily compare different insurance offerings.

49 NULIS does not however support universal key definitions prescribed by legislation **to the extent** they impede RSE licensees from developing for members non-standard definitions which provide members with more appropriate cover. Legislating standardised definitions without appropriate exceptions could result in RSE Licensees having to provide to members policy wordings which do not provide the right cover for a particular cohort of members. For

⁴⁰ See e.g. Australian Financial Complaints Authority Complaint Resolution Scheme Rules (at 1 November 2018), section B.2.1, and the Australian Financial Complaints Authority Operational Guidelines and Rules.

example, RSE Licensees should be able to negotiate with several insurers a new non-standard definition of 'permanent incapacity', and contract with the insurer which offers the definition (including a non-standard definition) most beneficial to the RSE Licensee's members. Such competitive tension may not exist if RSE Licensees are required to offer one, universal type of policy wording which it is not possible to derogate from.

50 In these circumstances, any standardisation of key definitions and exclusions by way of legislation should contain appropriate exceptions. Those exceptions should enable insurers and superannuation trustees to continue to develop definitions which derogate from a standard definition and, as a result, provide the right cover for members. The aim should be to provide prospective superannuation fund members with clear information regarding the insurance cover available from superannuation funds. Members should be appropriately positioned to select the insurance cover that the member considers is in his or her best interests.

51 **Question 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)?*

52 **NULIS response:** NULIS considers group life insurance policies offered to MySuper members should be permitted to use a definition of 'total and permanent incapacity' that derogates from the definition in regulation 1.03C of the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.

53 Regulation 1.03C of the *Superannuation Industry (Supervision) Regulations 1994 (Cth)* relevantly provides that:

'a member of a superannuation fund ... is taken to be suffering permanent incapacity if a trustee of the fund is reasonably satisfied that the member's ill-health (whether physical or mental) makes it unlikely that the member will engage in gainful employment for which the member is reasonably qualified by education, training or experience'.

54 In NULIS's view, it is important that superannuation trustees retain the flexibility to derogate from prescribed definitions where it is appropriate to do so. Superannuation trustees need to be able to work with and negotiate different definitions in order to provide appropriate cover to a particular cohort of members, including cohorts of members that may be considered 'high risk' (by reason of, for example, their occupation). Otherwise, insurance cover may either not be provided or may be provided at a cost that will inappropriately erode the member's superannuation.

55 **Question 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)?*

56 **NULIS response:** In responding to this question, NULIS has proceeded on the basis that this question has been prompted by a particular matter identified in the AMP case study during the round 6 hearings, referred to as follows by Counsel Assisting on 21 September 2018:

'Mr Sainsbury [of AMP] said that he was familiar with ASIC report 529 entitled 'member experience of superannuation', in which ASIC expressed the view that only 14.5 per cent of adults were daily smokers and that in these circumstances it was statistically appropriate to assume that a person is not a smoker in the absence of other information about that member or the group of members. Mr Sainsbury was not aware of the trustees taking any step to implement that view.

...

'[I]t is open to find that the causes of the misconduct and the conduct falling below community standards and expectations included AMP[']s culture and systems which failed to promote the best interests of members in various ways, including by failing to ensure that members were provided with default insurance cover on a statistically appropriate basis ...'.⁴¹

57 NULIS does not consider RSE Licensees should have an additional obligation to ensure that their members are defaulted to statistically appropriate rates for insurance.

58 RSE Licensees have existing obligations which address this type of issue. For example, an RSE Licensee has an obligation to perform its duties and exercise its powers in the best interests of the beneficiaries.⁴² RSE Licensees also have an obligation:

'... to formulate, review regularly and give effect to an insurance strategy for the benefit of beneficiaries of the entity that includes provisions addressing ... the basis for the decision to offer or acquire [certain] insurance[,] ... with cover at [a certain] level or levels, having regard to the demographic composition of the beneficiaries of the entity'.⁴³

59 In these circumstances, when designing default cover, the starting point for providing insurance to members is appropriately pricing insurance to reflect the risk associated with a cohort of members. In undertaking that pricing process, where information about a member

⁴¹ Counsel Assisting's submissions at T6491 and T6494.

⁴² *Superannuation Industry (Supervision) Act 1993* (Cth), subsection 52(2)(c).

⁴³ *Superannuation Industry (Supervision) Act 1993* (Cth), subsection 52(7)(a)(iii).

or group of members is not available, it may be appropriate to make assumptions, and those assumptions should be based on evidence, including statistically valid evidence.

60 **Question 26:** *Should RSE Licensees be prohibited from engaging an associated entity as the fund's group life insurer?*

61 **NULIS response:** NULIS does not consider that RSE Licensees should be prohibited from engaging an associated entity as the fund's insurer, for the following reasons:

- (a) a prohibition on the range of entities permitted to provide life insurance to members necessarily restricts the number of potential insurers and hence insurance products available to members. Such a restriction may have the effect of preventing members from accessing a particular insurer which may best meet their underlying needs;⁴⁴ and
- (b) where an RSE Licensee engages an associated entity as the fund's group life insurer, factors which may be thought to possibly adversely affect member benefits can be adequately managed by an appropriate insurance management framework.⁴⁵ Such factors include, for example, ensuring negotiations between an RSE Licensee and an associated group life insurer are conducted on an arm's length basis (as to which, see paragraph 65 below), and other matters addressed in *Superannuation (Prudential Standard) determination number 5 of 2012 (Cth)* (more commonly referred to as **SPS 250**);
- (c) an RSE Licensee has an existing obligation to manage conflicts which may arise in negotiations between an RSE Licensee and a group life insurer. SPS 250 requires an RSE Licensee to document or implement:
 - (i) *'policies and procedures of the RSE licensee relevant to making insured benefits available to beneficiaries, that cover but are not limited to: ... the process for monitoring and reviewing the administration of insurance; ... underwriting; and claims assessment'*;⁴⁶
 - (ii) *'processes for monitoring, reviewing and renewing the insured benefits made available to beneficiaries'*;⁴⁷
 - (iii) *'the RSE licensee's approach, as outlined in its conflicts management framework, to conflicts that may arise through making available insured benefits to beneficiaries'*;⁴⁸
 and

⁴⁴ For the aim of the NULIS insurance strategy, see Exh bit 6.215, Statement of Thomas Lee Garde dated 31 August 2018 in response to Rubric 6-38 (WIT.0001.0148.0001) at [33].

⁴⁵ APRA, Prudential Standard SPS250: Insurance in Superannuation at [8].

⁴⁶ *Ibid* at [12].

⁴⁷ *Ibid* at [17].

(iv) processes to enable the RSE Licensee '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'.⁴⁹

62 **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?*

63 **NULIS response:** NULIS accepts that, if an RSE Licensee engages an associated entity as a fund's group life insurer, the RSE Licensee should be subject to additional requirements to ensure that the engagement 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.

64 However, such additional requirements may be addressed by an RSE Licensee's existing statutory obligations. In these circumstances, further legislation may not be necessary.

65 For example:

- (a) RSE Licensees have an existing obligation to act in the best interests of members;⁵⁰
- (b) RSE Licensees who engage an associated entity as the fund's group life insurer should implement arrangements to ensure any association between an RSE Licensee and a group life insurer has no adverse impact on the insurance provided to members. This is consistent with the requirement under section 52(2)(d) of the *Superannuation Industry (Supervision) Act 1993* (Cth). NULIS has governance arrangements in place for this purpose. These include arrangements related to managing related party conflicts, as required by paragraphs 22 to 24 of SPS 250;
- (c) in order to comply with several matters set out in SPS 250, NULIS ensures that the Trustee's approval of a new or reappointed insurer is provided on an 'arm's length basis'.⁵¹ Several factors are also considered when appointing or reappointing an insurer and these matters are set out in the insurance management framework and insurance strategy required by SPS 250. For example, these factors include:
 - (i) conducting independent actuarial review of insurance pricing to ensure that this is within reasonable ranges. For the associated insurer, this includes a review of

⁴⁸ Ibid.

⁴⁹ Ibid at [23].

⁵⁰ *Superannuation Industry (Supervision) Act 1993* (Cth), section 52.

⁵¹ *Insurance Management Procedures*, above n 12, at clause 3.1.

underlying pricing components to ensure that pricing is reasonable and consistent with the product's claims experience;⁵²

- (ii) conducting an independent review of benefit design and terms and conditions to ensure arrangements are market competitive, appropriate for the product's membership and do not inappropriately erode retirement benefits;⁵³
- (iii) the carrying out of insurance tenders for some larger sub-plans which provide further testing of pricing and terms and conditions in the market; and
- (iv) a review of the engagement of any group life insurer, irrespective of whether that insurer is an associated entity or non-associated entity.⁵⁴ A review of this type is undertaken on an ongoing basis and at least every 3 years. When each review is scheduled the Trustee will assess internal management resources and expertise required to undertake any due diligence reviews and whether further external expert assistance is required.⁵⁵

66 **Question 28:** *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?*

67 **NULIS response:** NULIS's present view is the terms set out in the Insurance in Superannuation Voluntary Code of Practice are a good starting point to protect the interests of fund members. Whether or not the Code requires any additional protections should be reviewed after the implications of the recent Federal Budget changes,⁵⁶ and the implementation of the Code, have been understood. An understanding of those implications will better enable the identification of any areas for further improvements.

68 NULIS supports the positive outcomes that the Insurance in Superannuation Voluntary Code of Practice and the positive outcomes it is expected to deliver. The Code provides additional protections for members, particularly in improving communication and standardising terminology and the format of communications. NULIS intends to adopt the Code,⁵⁷ and its administrator, National Wealth Management Services Limited, is currently developing a plan for approval by NULIS to implement the Code as soon as practicable, in accordance with

⁵² Ibid.

⁵³ Ibid at clause 3.2.

⁵⁴ *Insurance Strategy*, above n 11, at cl 3.6.

⁵⁵ Ibid.

⁵⁶ The 2018 – 2019 Budget proposes to remove groups of members from default/minimum insurance cover e.g. members with low balances of less than \$6,000, members under the age of 25 years and members whose accounts have not received a contribution in 13 months and are inactive. See Australian Government, *Budget Paper No. 2: Budget Measures 2018-19*, 8 May 2018 at page 36: https://www.budget.gov.au/2018-19/content/bp2/download/bp2_combined.pdf.

⁵⁷ Exh bit 6.215, Statement of Thomas Lee Garde dated 31 August 2018 in response to Rubric 6-38 (WIT.0001.0148.0001) at [73].

the transition period contemplated by the Code. NULIS expects to publish its plan later in 2018.

25 OCTOBER 2018

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