COMMONWEALTH OF AUSTRALIA

Royal Commissions Act 1902

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

INDUSTRY SUPER AUSTRALIA PTY LTD'S SUBMISSIONS IN RESPONSE TO ROUND 6 OF THE HEARINGS

A. Introduction

1 This submission is made by Industry Super Australia (**ISA**) in relation to the policy issues arising from round 6 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

B. Insurance sales

2 ISA submits that the law should be reformed to improve how insurance is sold.

3 First, commissions and conflicted remuneration structures should be banned from all insurance arrangements. The round 6 hearings identified numerous instances where sales based commissions that insurers paid to their staff incentivised those staff to engage in aggressive and inappropriate sales tactics and prioritise sales over compliance.[1] This included:

(a) the sale of products clearly not in the customer's best interests;

(b) unsolicited sales in breach of the anti-hawking provisions of the ***Corporations Act 2001*** (Cth) (**Corporations Act**);[2]

(c) unconscionable, unfair, manipulative and high pressure sales tactics;[3]

(d) misleading conduct by sales representatives, including about what customers were committing to purchase, payment arrangements, and financial liability;[4] and

(e) heavy-handed retention strategies which made it very difficult for policyholders to cancel policies they did not want or need.[5]

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[1] See e.g. T6462 and T6467.
[2] T6461 16–32.
[3] T6461 35.
[4] T6461 37-44.
[5] T6470.

4 Banning conflicted remuneration in insurance would help reduce such conduct in the future, and address the "***overarching theme*** [of] ***a sell at all costs approach***"[6] - which the round 6 hearings uncovered in the insurance industry. ASIC's 2014 review into Australia's retail life insurance advice industry also demonstrates why commissions should be banned in insurance. As part of that review, ASIC concluded:

(a) Commission payments are the predominant remuneration structure in the industry.[7]

(b) Upfront commission models correlated to advice that failed to comply with the law, with 96% of the poor advice given by advisers paid under commission models.[8]

(c) A remuneration arrangement tied to a product sale creates an incentive for the adviser to make a sale, rather than provide non-product-specific advice or strategic advice for which the adviser may not be paid.[9]

(d) Dependence on upfront commission remuneration arrangements has a material effect on the type of advice given.[10]

(e) In the case of pre-FoFA advice, there was no reasonable basis for much of the advice. In the case of post-FoFA advice, the advice did not comply with the "best interests" duty and related obligations and failed to leave the client in a 'better position'.[11]

5 Second, only advisers with an obligation to act in their client's best interests should be permitted to give advice in relation to insurance products. This will help ensure that consumers are treated honestly and fairly, and that the insurance products being recommended are fit for purpose (i.e. meet a genuine insurance need), are competitively priced, and contain appropriate and transparent policy terms.

6 ISA does not agree that the term "general advice" should be renamed. The inappropriate conduct identified in round 6 occurred because sales based commissions incentivised that conduct, not because "general advice" was provided. General advice provided by Industry Super Funds, for example, is a valuable information and education resource for

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[6] T6462 25.
[7] Australian Securities and Investments Commission, REP 413 ***Review of retail life insurance advice***, October 2014, 13.
[8] Ibid 42.
[9] Ibid 43.
[10] Ibid 44.
[11] Ibid 43.

members and prospective members. A key reason for this is because advisers do not stand to benefit financially from clients acting on their advice.

C. Claims handling

7 The round 6 hearings have shown that, too often, claimants are not treated with professionalism, compassion and respect by the persons handling their claims, and that insurers impede, rather than facilitate, those claims. In ISA's submission, the following changes to the law would be appropriate.

8 First, the obligations in section 912A of the ***Corporations Act*** should apply to all aspects of the provision of insurance, including the handling and settlement of claims. Importantly, this will require, among other things, claims to be handled and settled in a fair, honest and efficient manner.[12]

9 Second, insurers should be prohibited from requesting any information concerning the claimant unless it would be reasonable to conclude that it is more likely than not that the information is material to the assessment of the claim – for example, they should not request information about an unrelated pre-existing medical condition.

10 Third, the law should reflect that video surveillance of a claimant should only occur if:

(a) there is a reasonable basis for believing that the claimant has, in making an application to claim benefits, acted fraudulently or dishonestly; and

(b) the video surveillance is required to prove the fraud or dishonesty (ie. surveillance should not be deployed as part of a "fishing expedition"); and

(c) it is unlikely to cause harm to or exacerbate the insured's illness or injury.

11 Fourth, the ***Insurance in Superannuation Voluntary Code of Practice*** (**Code**) contains certain claims handling obligations[13] that should be legal requirements in relevant legislation across the insurance industry – in particular, the obligation:

(a) not to discourage claims being made;

(b) to proactively engage with other parties in the claims process and minimise delays;

(c) to have in place appropriate governance arrangements for claims handling; and

[12] Consistent with ***Corporations Act*** 2001 (Cth) s 912A(a).
[13] Under cl 1.2 these obligations only apply to superannuation fund trustees that have adopted the Code.

(d) to collaborate with doctors, other healthcare providers and employers (where applicable).

12 The above measures would assist in preventing a variety of conduct of the kind identified during the round 6 hearings, including:

(a) Claims being denied without a proper basis[14] and without procedural fairness.[15]

(b) Claims handlers on "fishing expeditions" to avoid payment under policies,[16] including seeking medical information that extended well beyond the claimed condition.[17]

(c) "Highly intrusive" and "deeply inappropriate" surveillance practices.[18]

(d) A lack of empathy and sensitivity, particularly when communicating denial of insurance cover.[19]

(e) Bullying tactics and offensive communications.[20]

(f) Lengthy inexplicable delays in the claims handling process.[21]

D. Insurance in superannuation

13 Life insurance provided through superannuation is a public and private good that provides security to millions of Australians and their families. By purchasing group policies and spreading the insurable risk across the fund membership, superannuation funds provide many members with access to life insurance they would otherwise not be able to afford[22] or obtain, particularly members engaged in high-risk occupations.

14 Superannuation trustees are obliged to ensure that insurance arrangements offered by the fund are in the best interests of the membership as a whole, consistent with the "best interests" and other obligations in section 52(2) of the ***Superannuation Industry (Supervision) Act 1993***, the specific insurance covenants in section 52(7), and the

[14] T6471–6476.
[15] T6483 12.
[16] T6477 19.
[17] See, e.g., T6479 and T6482.
[18] T6478 23.
[19] T6480 4–5.
[20] T6481 46.
[21] T6486 36–46.
[22] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Group Life Insurance Background Paper, Dr Ian Enright et al, 1.

minimum requirements for superannuation arrangements in APRA Prudential Standard SPS 250 (**SPS 250**).

15 Trustees should have discretion to appropriately tailor insurance coverage to the fund's size, demographic and risk profile, consistent with these obligations. For example, trustees should ensure that the default settings of member insurance policies are statistically appropriate. The conduct identified in the round 6 hearings demonstrates that fund members being defaulted into statistically inappropriate categories (for example, smoking[23]) results in inflated insurance premiums, to the detriment of those members.

16 Trustees should also be required to demonstrate that the engagement of any associated entity as the fund's group life insurer is in the best interests of beneficiaries. The obligations should include those set out in paragraphs 22 to 24 of SPS 250 - in particular, proper due diligence and selection processes to ensure the appropriateness of the insurer's premiums, cover, exclusions, and claims philosophy. That process should not be limited to only those entities associated with the trustee.

17 ISA has advocated for prohibiting commissions on life insurance policies paid for out of superannuation.[24] As part of ASIC's 2014 review, ASIC identified numerous instances of conflicted remuneration distorting the nature of the advice given, and substantially and unnecessarily eroding superannuation savings. This included:

(a) Advisers recommending policies with unaffordable premiums to be paid out of superannuation – in some cases more than 100% of a client's annual contributions – without any justification.

(b) Advisers recommending clients switch products, or new insurance be purchased outside existing default arrangements, with little rationale and no consideration of the client's existing product.

(c) Advisers receiving substantial upfront commission payments significantly above the cost of a comprehensive financial plan.

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[23] T6490.

[24] Industry Super Network, Submission to the Joint Parliamenary Committee on Corporations and Financial Services, ***Inquiry into Corporations Amendment (Future of Financial Advice Bill) 2011***, 29 February 2012.