

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

**ROUND 6 HEARINGS – INSURANCE**

**SUBMISSIONS OF FREEDOM INSURANCE GROUP LIMITED**

**A. INTRODUCTION**

- 1 These submissions address the proposed findings set out during the closing submissions of Senior Counsel Assisting the Commission on 21 September 2018 in relation to the aspects of the business conducted by Freedom Insurance Pty Ltd (**Freedom Insurance**), a subsidiary of Freedom Insurance Group Limited (**FIG**).

**B. BACKGROUND**

- 2 Freedom Insurance was established in 2009.<sup>1</sup> Since then, it has experienced rapid growth<sup>2</sup>, particularly after FIG was listed on the Australian Stock Exchange in December 2016.
- 3 Notwithstanding continual changes in its systems and processes, Freedom Insurance acknowledges that these did not adequately keep pace with its growth.<sup>3</sup>
- 4 FIG appointed Craig Orton as the Chief Operating Officer in February 2018 to lead and achieve change management across the Freedom Insurance business, including structural, process, compliance, and operational improvements.<sup>4</sup>
- 5 Changes at Freedom Insurance began prior to the commencement of the Royal Commission and have continued throughout and after the completion of the round 6 hearings.<sup>5</sup> The changes include:
  - (a) Ceasing to pay any commissions to any of its sales and retention staff;<sup>6</sup>
  - (b) Removing non-monetary incentives based on sales or retention volumes;<sup>7</sup>
  - (c) Changing from an “opt-out” to an “opt-in” model of its 12 month free cover for the Final Expenses product;<sup>8</sup>
  - (d) Ceasing outbound sales of all products other than the Final Expenses product;<sup>9</sup>
  - (e) Targeting 100% of sales calls being subject to quality assurance (**QA**) review;<sup>10</sup>

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<sup>1</sup> Statement of Craig Francis Orton dated 24 August 2018 with Exhibit CFO-1 in response to Rubric 6-22 tendered as exhibit 6.66 (FIG.0003.0003.0001) (**Orton Rubric 6-22 Statement**), [7].

<sup>2</sup> Transcript of Proceedings, *Case Study of Freedom Insurance Group Ltd* (Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Commissioner Hayne, 11–12, September 2018) (**Transcript**), P-5439.8–9.

<sup>3</sup> Transcript, P-5503.35.

<sup>4</sup> Orton Rubric 6-22 Statement at [2]; Transcript, P-5421.32–40.

<sup>5</sup> Transcript, P-5525.18–21.

<sup>6</sup> Exhibit 6.69 (FIG.0011.0001.0001); Transcript, P-5420.7–8.

<sup>7</sup> Orton Rubric 6-22 Statement, [144]; Transcript, P-5420.9–10.

<sup>8</sup> Transcript, P-5425.16–23.

<sup>9</sup> Transcript, P-5419.13–29, P-5421.5–6.

<sup>10</sup> Orton Rubric 6-22 Statement, [92]; Transcript, P-5451.19–24.

- (f) Introducing and improving training and quality review processes for dealing with vulnerable customers, including training on the identification and handling of vulnerable customers, specific escalation processes and proactive assurance measures by the compliance team;<sup>11</sup> and
  - (g) Strengthening performance management and disciplinary processes for agents, including the implementation of the Sales Agent Performance Management and Disciplinary Policy which allows reporting and follow-up by the compliance team on actions taken in relation to agents with poor performance.<sup>12</sup>
- 6 These changes were and are intended to address the issues that are a central focus of the Royal Commission and ASIC, and the Board of Directors of FIG (**Board**) and the management team of Freedom Insurance will actively oversee adherence to these changes.
- 7 Senior Counsel Assisting has referred to the absence of documentary records of the decision to cease the outbound sales of certain products.<sup>13</sup> Mr Orton provided an explanation for this. His evidence that the changes set out at paragraph 5(d) have taken place<sup>14</sup> was not challenged.<sup>15</sup> Mr Orton's evidence should be accepted.
- 8 The appointment of Mr Orton by FIG with a specific mandate to effect change,<sup>16</sup> and the manner in which he has done so,<sup>17</sup> represents the responsible manner in which Freedom Insurance has acknowledged, addressed and continues to address the issues raised during the Royal Commission and by ASIC.
- 9 ASIC is already in the process of reviewing Freedom Insurance. Freedom Insurance continues to engage with ASIC on the matters under review. ASIC might be considered the more appropriate body to review and make final determinations regarding the past conduct of Freedom Insurance. The Commissioner may therefore be satisfied that the matter is being and / or will be sufficiently and appropriately dealt with by ASIC, and that findings and recommendations are not necessary or may be limited.<sup>18</sup>

### C. RESPONSE TO PROPOSED FINDINGS OF FACTS

- 10 Freedom Insurance has four observations in relation to the factual findings that require correction.<sup>19</sup>
- 11 First, Mr Orton did not accept that Freedom Insurance's intended cessation of all insurance products except for funeral insurance and loan protection cover through outbound sales calls constituted a "significant change" to Freedom Insurance's business. Mr Orton's evidence was that the accidental death, accidental injury, trauma and term life products which Freedom Insurance intended to cease selling on outbound

<sup>11</sup> Orton Rubric 6-22 Statement, [56]–[58], [64]; Exhibit CFO-1 Tab 9 (FIG.0003.0001.0062), Tab 10 (FIG.0003.0001.0286), Tab 11 (FIG.0003.0001.0306); Transcript, P-5421.47–P-5422.2.

<sup>12</sup> Orton Rubric 6-22 Statement, [111(e)]; Transcript, P-5420.11–17, P-5463.2–3, P-5484.22–26.

<sup>13</sup> Transcript, P-5425.11–14, P-5425.30–35, P-5426.18–20, P-5426.32–P5427.6.

<sup>14</sup> Transcript, P-5425.22–38, P-5426.20–45.

<sup>15</sup> Transcript, P-5425.30–38, P-5426.34–45 and P-5427.4–8.

<sup>16</sup> Orton Rubric 6-22 Statement, [2]; Transcript, P-5421.32–40.

<sup>17</sup> Transcript, P-5505.4–6.

<sup>18</sup> Governor-General, *Letters Patent Issued to the Commissioner*, Patents No. 52, 14 December 2017 states as follows: "AND We further declare that you are not required by Our Letters Patent to inquire, or continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding."

calls, together constitute less than 15% of sales and are not a major component of Freedom Insurance's business.<sup>20</sup>

- 12 Second, Mr Orton agreed that the practice of selling accidental death policies on cancellation calls created a risk that the customer thought they were getting something like a life policy for less, but only if it is not clearly explained, but he did not acknowledge that the practice itself should not occur at all.<sup>21</sup>
- 13 Third, while Freedom Insurance accepted that its call marking guidelines were not robust, Mr Orton did not characterise the call marking guidelines as "insufficiently" robust.<sup>22</sup>
- 14 Fourth, Freedom Insurance does not employ its sales agents. They are employees of Insurance Network Services Australia Pty Ltd (**INSA**) and are "representatives" of Freedom Insurance as that term is defined in section 910A of the *Corporations Act 2001* (Cth) (**Corporations Act**).

#### **D. RESPONSE TO THE PROPOSED AVAILABLE FINDINGS OF MISCONDUCT**

##### **Proposed Finding 1**

*By selling insurance to Mr Stewart's son in circumstances where the sales agent knew or ought to have known that Mr Stewart's son did not understand what he was agreeing to, Freedom Insurance may have engaged in unconscionable conduct within the meaning of sections 12CA and 12CB of the ASIC Act.*

- 15 Freedom Insurance opposes Proposed Finding 1.
- 16 Freedom Insurance agrees that the sales agent knew or ought to have known that Mr Stewart's son did not understand what he was agreeing to.<sup>23</sup> The Board reiterates and endorses the unreserved apologies previously given on behalf of FIG and Freedom Insurance by Mr Orton to Mr Grant Stewart and his son.<sup>24</sup>
- 17 This conduct was the failure of an individual sales agent who conducted himself in an inappropriate manner<sup>25</sup> and the conduct should not be characterised as conduct of Freedom Insurance itself. The appropriate criticism ought to be directed to the historical failure to have proper measures that could reasonably have prevented this conduct from occurring, as encompassed by sections 912A(1)(a), 912A(1)(ca) or 912A(1)(f) of the Corporations Act.
- 18 The recognition of vulnerable customers is inherently complex, and an isolated incident should not be used to characterise the general conduct of the organisation.

##### **Proposed Finding 2**

*In respect of the other four instances of misconduct relating to the sale of insurance policies to vulnerable consumers which were the subject of Freedom Insurance's recent breach notification to ASIC, Freedom Insurance may also have engaged in unconscionable conduct within the meaning of sections 12CA and 12CB of the ASIC Act.*

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<sup>20</sup> Transcript, P-5425.35–P-5427.20.

<sup>21</sup> Transcript, P-5436.41–45.

<sup>22</sup> Transcript, P-5474.16–P-5476.36.

<sup>23</sup> Transcript, P-5446.40–43.

<sup>24</sup> Orton Rubric 6-22 Statement, [208]; Exhibit 6.64 Tab 12 (FIG.0001.0001.0236); Transcript, P-5415.15–20.

<sup>25</sup> Transcript, P-5446.35–38.

- 19 One of the four instances relied on did not involve a vulnerable customer, but involved an insufficient identification of the type of cover purchased.<sup>26</sup>
- 20 Freedom Insurance opposes Proposed Finding 2 insofar as it relates to sections 12CA and 12CB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and repeats the submissions made above in relation to Proposed Finding 1.
- 21 The subject matter of Proposed Findings 1 and 2 is being dealt with by ASIC.<sup>27</sup> The Board and Freedom Insurance acknowledge, deeply regret and apologise for these instances of misconduct by its staff and are engaged with the ongoing review by ASIC.

### **Proposed Finding 3**

*As accepted by Freedom in its breach notification, the conduct of Freedom Insurance sales agents demonstrated in connection with the five vulnerable consumers may have constituted a breach of sections 912A(1)(a), (1)(ca) and (1)(f) of the Corporations Act.*

- 22 Freedom Insurance opposes Proposed Finding 3, to the extent only that one of the instances of misconduct did not involve a vulnerable customer. See paragraph 19 above.

### **Proposed Finding 4**

*Freedom Insurance failed until July this year to appropriately frame its call marking guidelines to ensure that serious misconduct, including legislative breaches, constituted a quality assurance fail. By failing to have in place an adequate process to deter legislative breaches in the sales process, Freedom Insurance failed to take reasonable steps to ensure that its representatives complied with financial services laws for the purposes of section 912A(1)(ca) of the Corporations Act or to have in place adequate risk management systems in contravention of section 912A(1)(h) of the Act.*

- 23 Freedom Insurance opposes Proposed Finding 4.
- 24 Freedom Insurance has always required a percentage of all calls to be subject to a QA check by a team of QA officers who assessed sales calls against a set of business process and compliance criteria.<sup>28</sup> The level of QA has increased over time<sup>29</sup> and marking guidelines have progressively become more comprehensive.<sup>30</sup> The June 2016 QA Guidelines did include QA fails for certain types of serious misconduct.<sup>31</sup> Freedom Insurance accepts that these guidelines should have included additional QA fails.<sup>32</sup> This was addressed by July 2018.<sup>33</sup>
- 25 The marking guidelines have gone through multiple iterations,<sup>34</sup> including updates in February 2017 to expand the list of conduct breaches (e.g. pressure to purchase and intimidating behaviour).<sup>35</sup> In addition, Freedom Insurance also implemented a process whereby agents lost all or part of their commissions for breaches of financial services laws<sup>36</sup>, including as determined by QA review.<sup>37</sup>

<sup>26</sup> Exhibit 6.72 (RCD.0001.0089.0022); Exhibit 6.74 (ASIC.0073.0001.0001); Transcript, P-5452.15–39.

<sup>27</sup> Exhibit 6.74 (ASIC.0073.0001.0001); Transcript, P-5453.28–34.

<sup>28</sup> For example, see Orton Rubric 6-22 Statement, [196].

<sup>29</sup> Transcript, P-5451.17–23, P-5451.30–39.

<sup>30</sup> Exhibit 6.82 (FIG.0002.0004.0333); Exhibit 6.83 (FIG.0002.0004.0181); Exhibit 6.84 (FIG.0002.0004.0210); Transcript, P-5479.11–14, P-5479.31–33.

<sup>31</sup> Exhibit 6.82 (FIG.0002.0004.0333).

<sup>32</sup> Transcript, P-5475.3–P-5476.40.

<sup>33</sup> Exhibit 6.84 (FIG.0002.0004.0210); Transcript, P-5479.5–42.

<sup>34</sup> Exhibit 6.82 (FIG.0002.0004.0333); Exhibit 6.83 (FIG.0002.0004.0181); Exhibit 6.84 (FIG.0002.0004.0210).

<sup>35</sup> Exhibit 6.83 (FIG.0002.0004.0181).

<sup>36</sup> Transcript, P-5462.26–37.

26 Freedom Insurance has made decisions and has introduced additional policies and training materials across all areas of the business in its effort to manage risks. These include:

- (a) the Guidelines for Dealing with Vulnerable Customers from February 2017 onwards;<sup>38</sup>
- (b) the induction training programme including compliance, company culture, mental health awareness and vulnerable customers;<sup>39</sup>
- (c) the ongoing development and refresher training modules;<sup>40</sup>
- (d) the Sales Agent Performance Management and Disciplinary Policy from August 2018;<sup>41</sup>
- (e) the Freedom Protection Plan Marking Guidelines dated 24 July 2018;<sup>42</sup>
- (f) the sales and retention agent remuneration changes from 1 October 2018;<sup>43</sup> and
- (g) amendments to the Code of Conduct in June 2018.<sup>44</sup>

27 Freedom Insurance submits that the steps taken as set out at paragraphs 5(e) to (g) and 24 to 26 were reasonable steps to meet its obligation to ensure that its representatives comply with the financial services laws, as required under section 912A(1)(ca) of the Corporations Act and to ensure there were adequate risk management systems in place, in compliance with section 912A(1)(h) of the Corporations Act.

### **Proposed Finding 5**

*In accordance with the acknowledgement contained in Freedom Insurance's breach notice, Freedom Insurance may have breached section 963E of the Corporations Act in respect of the variable component of its sales agent remuneration. Freedom Insurance also failed to have in place adequate arrangements for the management of conflicts of interest that arose between its employees and its policyholders in this regard in breach of section 912A(1)(aa) of the Corporations Act.*

28 Freedom Insurance has acknowledged that there may have been a potential breach of section 963E of the Corporations Act in relation to the variable remuneration commission structures up until May 2018, as disclosed in the breach notice submitted to ASIC on 7 September 2018.<sup>45</sup>

29 Freedom Insurance has, however, eliminated any possible breach by ceasing to make available any commissions to its sales and retention personnel.<sup>46</sup>

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<sup>37</sup> Transcript, P-5455.33–35, P-5461.

<sup>38</sup> Orton Rubric 6-22 Statement, [56]–[58]; Exhibit CFO-1 Tab 9 (FIG.0003.0001.0062), Tab 10 (FIG.0003.0001.0286), Tab 11 (FIG.0003.0001.0306).

<sup>39</sup> Orton Rubric 6-22 Statement, [50]–[58]; Exhibit CFO-1 Tab 1 (FIG.0003.0001.0079), Tab 2 (FIG.0003.0001.0110), Tab 3 (FIG.0003.0001.0125), Tab 4 (FIG.0003.0001.0145), Tab 5 (FIG.0003.0001.0227), Tab 6 (FIG.0003.0001.0001), Tab 7 (FIG.0003.0001.0004), Tab 8 (FIG.0003.0001.0022), Tab 9 (FIG.0003.0001.0062), Tab 10 (FIG.0003.0001.0286), Tab 11 (FIG.0003.0001.0306), Tab 12 (FIG.0003.0001.0334).

<sup>40</sup> Orton Rubric 6-22 Statement, [59]–[60], [64].

<sup>41</sup> Orton Rubric 6-22 Statement, [111(e)]; Exhibit 6.69 (FIG.0011.0001.0001).

<sup>42</sup> Exhibit 6.84 (FIG.0002.0004.0210); Transcript, P-5479.5–14.

<sup>43</sup> Exhibit 6.69 (FIG.0011.0001.0001); Transcript, P-5420.6–8.

<sup>44</sup> Exhibit 6.69 (FIG.0011.0001.0001).

<sup>45</sup> Exhibit 6.74 (ASIC.0073.0001.0001); Transcript, P-5465.20–26.

<sup>46</sup> Transcript, P-5464.20–39.

- 30 Freedom Insurance opposes Proposed Finding 5 to the extent that it relates to a failure to have adequate arrangements in place for the management of conflicts of interest in breach of section 912A(1)(aa) of the Corporations Act in respect of variable remuneration commission structures.
- 31 Freedom Insurance had an arrangement for managing potential conflicts of interest, including a balanced scorecard approach to variable remuneration. The balanced scorecard included compliance and quality assurance criteria used to determine the entitlement and calculation of variable remuneration. This was designed to avoid a commission structure that fell within the definition of conflicted remuneration.<sup>47</sup>

### **Proposed Finding 6**

*In accordance with the acknowledgement made by Freedom Insurance to ASIC, Freedom Insurance may have breached section 963 of the Corporations Act in respect of the non-monetary benefits that it provided to its representatives between January and April this year. Again, it may follow from this that Freedom Insurance failed to have in place adequate arrangements for the management of conflicts of interest that arose between its employees and its policyholders in breach of section 912A(1)(aa) of the Corporations Act.*

- 32 Freedom Insurance does not oppose Proposed Finding 6.
- 33 Freedom Insurance wishes to clarify that while there were no specific QA criteria for participation in the non-monetary incentive programs,<sup>48</sup> sales calls made before, during and after the timing of the programs by agents were still subject to QA processes. Any poor quality sales calls would put commissions and jobs at risk for those agents.<sup>49</sup>
- 34 As noted above at paragraph 5(b), Freedom Insurance no longer offers or makes available any non-monetary incentives based on sales or retention volumes.<sup>50</sup>

### **Proposed Finding 7**

*Freedom Insurance acknowledged certain breaches of the anti-hawking provisions in the Corporations Act to both the Commission and to ASIC.*

- 35 Freedom Insurance does not oppose Proposed Finding 7 in relation to the telemarketing data lead generation channel, which was the subject of the breach notice to ASIC dated 2 August 2018.<sup>51</sup> Freedom Insurance will work with ASIC to address any issues.

## **E. RESPONSE TO PROPOSED AVAILABLE FINDINGS OF CONDUCT THAT FELL BELOW COMMUNITY STANDARDS AND EXPECTATIONS**

### **Proposed Finding 3**

*In its submission to the Commission, Freedom acknowledged three additional instances of conduct that fell below community standards and expectations relating to its treatment of vulnerable customers which were not picked up in its breach notification to ASIC.*

- 36 Freedom Insurance does not disagree that the three additional instances fell below community standards.

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<sup>47</sup> Orton Rubric 6-22 Statement, [88]–[91]; Exhibit CFO-1 Tab 24 (FIG.0002.0005.0034), Tab 25 (FIG.0002.0005.0038), Tab 26 (FIG.0002.0005.0036); Exhibit 6.74 (ASIC.0073.0001.0001); Transcript, P-5465.1–16.

<sup>48</sup> Orton Rubric 6-22 Statement, [144].

<sup>49</sup> Transcript, P-5455.33–35 and P-5461.

<sup>50</sup> Exhibit 6.74 (ASIC.0073.0001.0001); Transcript, P-5420.9–10, P-5471.38–46.

<sup>51</sup> Transcript, P-5525.1–2.

37 Freedom Insurance did not include these three instances in its breach notice to ASIC on 7 September 2018 because it regarded them as constituting conduct falling below community standards rather than misconduct.

#### **F. THE WAY FORWARD**

38 Going forward, Freedom Insurance and the Board have committed to a strategic review of options for the company<sup>52</sup> and will evolve the business to address regulator and community concerns. In particular, the Board has directed the engagement of external advisers including LimeBridge Consulting, Arnold Bloch Leibler and Deloitte to assist with the strategic review and the consideration of appropriate customer remediation. Freedom Insurance will focus on evaluating its historical distribution model and business practices to develop a viable and customer-centric business<sup>53</sup> which meets the expectations of stakeholders including its customers, business partners and shareholders.

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<sup>52</sup> Transcript, P-5525.10–21.

<sup>53</sup> Transcript, P-5503.34–35.