

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

POLICY QUESTIONS ARISING FROM MODULE 6

1. 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?

A. PRODUCT DESIGN

2. Are there particular products – like accidental death and accidental injury products – which should not be sold?
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?

B. DISCLOSURE

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:
 - 4.1 the purpose(s) that the product disclosure regime should serve;
 - 4.2 whether the current regime meets that purpose or those purposes; and
 - 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.)

5. 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?
6. Is there scope for insurers to make greater use of standardised definitions of key terms in insurance contracts?

C. SALES

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?
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?
9. Is banning conflicted remuneration sufficient to ensure that sales representatives do not use inappropriate sales tactics when selling financial products? Are other changes, such as further restrictions on remuneration or incentive structures, necessary?
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?
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?
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?

D. ADD-ON INSURANCE

13. Should the sale of add-on insurance by motor dealers be prohibited?
14. Alternatively, should add-on insurance only be sold via a deferred sales model? If so, what should be the features of that model?
15. Would a deferred sales model also be appropriate for any other forms of insurance? If so, which forms?

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?

E. CLAIMS HANDLING

17. 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?

Life insurance

19. 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?
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?
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?

General insurance

22. 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)?

F. INSURANCE IN SUPERANNUATION

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?
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)?
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)?
26. Should RSE Licensees be prohibited from engaging an associated entity as the fund’s group life insurer?
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?
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?

G. SCOPE OF THE *INSURANCE CONTRACTS ACT 1984* (CTH)

29. 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?

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?
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?
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)?

H. REGULATION

33. 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. Should a failure to comply with the General Insurance Code of Practice or the Life Insurance Code of Practice constitute:
 - 34.1 a failure to comply with financial services laws (for the purpose of section 912A of the *Corporations Act 2001* (Cth));
 - 34.2 a failure to comply with an Act (for example, the *Corporations Act 2001* (Cth) or the *Insurance Contracts Act 1984* (Cth))?
35. 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)? Should there be infringement notices of tiered severity?

I. COMPLIANCE AND BREACH REPORTING

36. Is there sufficient external oversight of the adequacy of the compliance systems of financial services entities? Should ASIC and APRA do more to ensure that financial services entities have adequate compliance systems? What should they do?

37. 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:
- 37.1 preventing breaches of financial services laws and other regulatory obligations;
and
 - 37.2 ensuring that any breaches that do occur are remedied in a timely fashion?
38. When a financial services entity identifies that it has a culture that does not adequately value compliance, what should it do? What role, if any, can financial services laws and regulators play in shaping the culture of financial services entities? What role should they play?
39. 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?