



20 October 2017

Project Management Office

Email: ISWG-PMO@kpmg.com.au

Re. **Consultation Paper: *Insurance in Superannuation Code of Practice***

To Whom It May Concern,

We welcome the opportunity to provide comments on the draft *Insurance in Superannuation Code of Practice*. We congratulate the ISWG on working towards a framework that has the potential to improve the experience of consumers.

In addition to the positive work already reflected in the draft, we would encourage the working group to consider including:

- minimum-quality standards for group insurance, especially in relation to definitions that regulate when the insurer will pay
- restrictions on downgrading a member's cover once in force; and
- restrictions on underwriting at claims time.

We have provided brief answers to the questions you've raised in the consultation paper, below.

SCOPE OF THE CODE

Question 1

How should the ISWG ensure that all trustees are bound by the Code?

FPA response

One option is that ASIC requires all trustees who are AFS licensees to be subject to an ASIC-approved code of practice covering life insurance in superannuation, and that ASIC impose the requirement as a condition of the licence. However, we would caution against seeking regulatory intervention if a broad coverage of trustees will voluntarily subscribe to the Code anyway. Instead, trustees could promote their subscription to the Code and the benefits it brings. Further, a credible threat of sanction (including publicly naming and shaming funds that breach the Code) by the

independent code administrator would promote compliance with the code behaviour and build public trust in entities bound by the Code.

Question 2

What are the practical implications of the transition arrangements?

FPA response

We appreciate the benefit to trustees and insurers of transition arrangements. However, we are concerned that these arrangements won't enhance minimum standards for consumers during the transition periods.

Further, there may be a risk that the transition arrangements would incentivise insurers and trustees to actually reduce the quality and value of their insurance offerings in the short-term, to capture additional gains while available. For example, it may be beneficial to raise premiums in the short-term to capture gains before the cap on insurance premiums takes effect.

Question 3

What flags will be required to be built into a trustee's (or their administrator's) system as a result of the Code requirements (for example, whether a member is an Automatic Insurance Member, whether they have chosen to retain their cover even when not making contributions, whether they require assistance as a vulnerable consumer)?

FPA response

Flags that might need to be built include:

- whether a member is an Automatic Insurance Member
- whether a member has chosen to retain their cover even when not making contributions
- whether a member requires assistance as a vulnerable consumer
- whether member is in an occupational segment that is classified as being of higher risk
- whether member has been identified as having duplicate insurance cover
- whether member accepts having duplicate insurance
- whether member has been identified as lacking contributions
- whether member has been identified as having low or infrequent contributions

PREMIUM LIMITS

Question 4

Are there alternative proposals for setting maximum premium levels that the ISWG should consider?

FPA response

Ideally, maximum premiums would also be a function of relationship status, and number of dependants, of members in the target segment. This information could be obtained through sampling of the membership base or ABS data.

Question 5

Are there particular measures of earnings that the ISWG should include in Good Practice Guidance?

FPA response

Ideally, for each segment of members an aggregate measure of salary or wage (e.g., the upper limit of a prescribed upper decile band for the segment) would be used to determine maximum insurance level for that segment. This is because estimated insurance need would presumably be more closely correlated with salary and wages (which include overtime and bonuses), especially at lower salary and wage levels.

Using salary and wages as the measure would provide the flexibility required to better address the estimated insurance need, especially for members on lower salaries and wages. Aggregate salary and wages data for each segment of members could be obtained through employer surveys or, perhaps, ABS datasets.

The most practical income measure for working out the default level of cover for a particular member would appear to be that member's ordinary times earnings. This information is likely to be more readily available than other measures.

Question 7

What impacts are the premium limits likely to have on benefit design and premiums? Are there financial impacts that the ISWG should take into account?

FPA response

There is a risk of a flattening of relative premiums. In other words, members whose premiums are currently below the proposed limit could find their premiums increasing to compensate for loss of revenue from insurance premiums for other members. In addition, benefits could be scaled back to compensate for the overall reduction in profitability.

Question 8

To what extent will the premium limits achieve the goal of targeting inappropriate account erosion for low income earners, particularly women and younger members?

FPA response

We don't have the necessary data to properly answer this question. We merely reiterate our comments in response to question 7, that some members may end up paying more.

Question 9

What are the likely impacts of a trustee reducing cover for some segments of its membership in order to reduce premiums? How would the trustee manage a member who wanted to retain their original cover? Could this member remain an Automatic Insurance Member?

FPA response

Reduced cover may expose members to greater hardship, or increase the drain on the public purse, should they suffer an insurable event. Although we appreciate that there is a need to strike a balance between, on the one hand, the level and quality of insurance cover and, on the other, the level of retirement benefits, we have concerns about substantial reductions to an individual's existing level or quality of cover without the member's consent.

We would recommend that, at the very least, members be informed of any changes to their cover and be warned of the risks of underinsurance and under-saving. Should a member wish to retain their existing level of cover, they should be able to do so quickly and easily. We appreciate that retention of cover raises an adverse selection problem. However, given the potential difficulty for members to obtain alternative cover, we would recommend that group cover redesigned in order to comply with the Code includes a transitional underwriting concession to allow members who want to retain their existing level of cover to do so subject to minimal underwriting.

Our position on the transitional arrangements should not be taken as an endorsement of underwriting at claims time. Upfront underwriting is preferred. The FPA advocates against underwriting at claims time.

CANCELLATION AND CESSATION OF COVER

Question 10

What are your views on the proposed cessation and reinstatement mechanisms?

FPA response

We are generally comfortable with the proposed cessation and reinstatement mechanisms. Although obvious, it may be worth clarifying that trustees may not be able to communicate with members whose contact details are not up-to-date.

DUPLICATE INSURANCE COVER

Question 11

What more could the Code do more to help members identify whether they have duplicate insurance, and determine whether this is appropriate for them?

FPA response

We think the mechanism for helping members identify whether they have duplicate insurance are sufficient. Deciding whether having duplicate insurance is appropriate can be a very complex matter. Although it may be appropriate for the Code to require that members are provided with general information to help them make this decision, it is more important that the Code requires

that members are made aware of the importance of professional financial advice (and are referred to a financial planner where appropriate).

HELPING MEMBERS TO MAKE INFORMED DECISIONS

Question 12

Which parts of the Code require particular attention for consumer testing?

FPA response

We'd recommend that the following areas be given particular attention for consumer testing:

- paragraphs [4.20] – [4.31], which cover cancellation, cessation, reinstatement, recommencement and duplication of cover
- paragraphs [5.19] – [5.29], which cover communications to the member during their term of cover
- paragraphs [6.1] - [6.37], which cover claims handling
- paragraphs [8.1] – [8.5], which cover premium adjustments
- paragraphs [9.1] – [9.4], which cover the promotion of insurance
- paragraphs [10.1] – [10.17], which cover changes to cover
- paragraphs [11.1] – [11.3], which cover refunds
- paragraphs [12.1] – [12.11], which cover staff and independent service providers
- paragraphs [13.1] – [13.21], which cover enquiries and complaints
- paragraphs [15.1] – [15.13], which cover enforcement and sanctions; and
- section 16, definitions

These parts of the Code are likely to be of greatest practical use to members and their beneficiaries trying to establish their options.

Question 13

How could the Key Facts Sheet template better assist members to understand and compare their cover?

FPA response

The Key Facts template should include a section explaining that members and their beneficiaries can seek advice from a financial planner.

Question 14

Do the communication requirements in the Code achieve the right balance between prescription and trustee flexibility?

FPA response

We believe they do.

Question 15

What further steps could be taken to engage members who are making no contributions or low or infrequent contributions?

FPA response

We believe the proposed steps are appropriate and sufficient.

CLAIMS HANDLING

Question 16

What are the practical implications of the obligations that are placed on trustees? How can any practical difficulties be overcome in a way that improves members' experience of the claims process?

FPA response

We support the setting of maximum timeframes. However, we are concerned that the need to meet those deadlines, especially the deadline for review of claims denied by the insurer, for complex cases may result in longer time being taken to decide, act and communicate in respect of relatively easier cases. This flattening effect seems to be inevitable unless the definition of exceptional cases covers unusually complex cases, thereby allowing the review timeframe to be unilaterally extended by the trustee in such cases.

Question 17

Will the requirements at section 6.28 of the Code to provide a person claiming with information about a decline (including all documents obtained during the assessment) and the ability to provide further information in all cases cause delays and/or cost to the claims process? If there are concerns with these requirements, can specific examples be provided of the difficulties these requirements cause?

FPA response

These requirements clearly have the potential to cause delays or increased costs, especially given the reliance by the trustee on third-parties for information. Further, as discussed above, the need to meet the deadline in complex cases may cause delays for relatively easier cases.

We also note that robust arrangements should be in place for sharing member's personal information. This means access to the information will be restricted, which may tend to place pressure on trustees to meet the prescribed timeframes.

Question 18

What are the implications of the requirements on trustees to oversee and review ongoing income protection payments?

FPA response

We would expect that typically this requirement would increase costs for trustees. Still, we support the proposal that trustees take on this oversight and review role.

VULNERABLE MEMBERS

Question 19

Does the Code require more prescription as to how trustees will support vulnerable consumers?

FPA response

It is impossible to prescribe a rule that requires virtually no interpretation that applies to the broad range of situations involving vulnerable members. We recommend that instead the Code:

- sets a standard of behaviour for trustees in respect of vulnerable consumers; and
- includes guidance which provides examples of how the standard applies in different situations.

Question 20

What more can be done to ensure that members who are granted release of funds for terminal illness do not lose their insurance cover?

FPA response

We believe that paragraph 7.12 should be limited to an obligation on trustees to provide information (or access to personal advice) about the consequences of failing to leave sufficient funds in the member's account to pay the premiums of cover.

PREMIUM ADJUSTMENTS

Question 21

Are the premium adjustment arrangements sufficiently transparent?

FPA response

We believe the premium adjustment arrangements are not sufficiently transparent. As discussed below, more detail should be provided.

Question 22

What further detail could the Code include?

FPA response

We believe the adjustment arrangements should require trustees to:

- publicly disclose, within a reasonable time of becoming aware of a premium surplus or deficit, the total amount of the associated change in insurance reserves
- publicly disclose, within a reasonable time of becoming aware of a premium surplus or deficit, the associated adjustment to premium rates
- continue to publicly disclose premium adjustment information for a prescribed period from the time of becoming aware of the associated surplus or deficit

PROMOTING OUR INSURANCE COVER AND CHANGES TO COVER

Question 23

What are the practical implications of the Code obligations for trustees?

FPA response

We are concerned that, in practice, trustees will resolve disputes without ensuring that the member receives proper advice. We recommend that the trustee should inform the member to strongly consider obtaining advice from a financial planner who is independent of the trustee and insurer, before accepting the trustee's proposed remedy.

REFUNDS

Question 24

What are the practical and administrative implications of the refund requirements provided?

FPA response

We don't have data to inform a response to this question. We merely note that the refund requirements may add significantly to the administrative cost of claims.

Question 25

Are there any issues with the maximum time limits for the duration of refunds?

FPA response

We have no comment.

Question 26

For superannuation funds – what are your current practices for refunding premiums, and the duration of any refunds?

FPA response

We have no comment.

STAFF AND INDEPENDENT SERVICE PROVIDERS**Question 27**

Do the standards for training and monitoring staff require further detail?

FPA response

The standards set positive obligations on trustees. This means that trustees must address the matters mentioned in section 12 of the Code. We do not believe this section requires further detail; trustees need flexibility to meet the positive obligations in a way that suits their particular business.

Question 28

What are the practical implications of requiring trustees to ensure Independent Service Providers comply with the Code?

FPA response

Trustees will need to ensure their agreements with Independent Service Providers (ISPs) require them to have measures in place to ensure compliance with the Code. For example, frontline staff of the ISPs might be required to follow checklists; and their supervisors required to monitor compliance with the checklists and the Code. Further, trustees will need to audit ISPs to ensure compliance with these agreements.

ENQUIRIES AND COMPLAINTS**Question 29**

Do the processes for making enquiries and making complaints require further detail?

FPA response

In our view, these processes don't require further detail. However, we recommend that for complaints involving financial planners, the processes require the member to seek to resolve the dispute directly with the planner or their dealer group before initiating a formal complaint with the

trustee, and where the member is a member of a professional association, that the complaint is referred to that body.

GOVERNANCE, ENFORCEMENT AND SANCTIONS

Question 30

Is the governance framework appropriate, taking into account ASIC's requirements for approval of the Code, and the governance provided by existing financial services codes?

FPA response

The governance framework has positive elements. For example:

- the code administrator being required to actively monitor compliance with the Code; and
- the threat of the code administrator taking enforcement action promotes compliance with the Code.

However, we would encourage the drafters of the Code to require staff of trustees, and require ISPs, to have policies and procedures in place to promote compliance with the Code. This requirement would go beyond the requirements of the current version of section 12 of the Code, and also include compliance checklists for frontline staff and oversight measures for their supervisors and managers. We note that the FPA has significant experience in the ASIC Code approval process and are available to discuss appropriate governance arrangements with the working group.

Again, we congratulate the ISWG on their work. If the working group has any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

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Policy Manager

Financial Planning Association of Australia¹

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 - In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
 - We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
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