

SUBMISSION

The Treasury

Insurance Claims
Handling

Consultation Paper

2 April 2019

**The Association of Superannuation
Funds of Australia Limited**
Level 11, 77 Castlereagh Street
Sydney NSW 2000

PO Box 1485
Sydney NSW 2001

T +61 2 9264 9300
1800 812 798 (outside Sydney)

F 1300 926 484

W www.superannuation.asn.au

ABN 29 002 786 290 CAN 002 786 290

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Manager, Insurance and Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Lodged via e-mail to claimshandling@treasury.gov.au

2 April 2019

Dear Sir/Madam,

Insurance Claims Handling – consultation on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Treasury’s consultation on Insurance Claims Handling – Taking action on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission (Royal Commission).

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.7 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 15.6 million Australians with superannuation.

Should you have any queries or comments in relation to the content of our submission, please contact Byron Addison, Senior Policy Adviser on (02) 8079 – 0834 or by email at baddison@superannuation.asn.au.

Yours sincerely

Glen McCrea
Deputy Chief Executive Officer and Chief Policy Officer

General comments

ASFA supports the Government's intention to implement recommendation 4.8 of the Royal Commission so that the 'handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of financial service' under the Corporations Act.

ASFA has consistently argued that the superannuation system requires a strong regulatory framework and regulators should have appropriate powers and instruments to ensure that the system is stable, efficient and delivers on its objectives.

However we consider that insurance in superannuation needs to be viewed differently from insurance provided outside the superannuation environment. A different approach may be required for the treatment of RSE licensees to ensure that the same objectives are achieved both within and outside the superannuation system.

The first distinction is that the system is already subject to significant regulatory and statutory obligations and regulatory oversight. These existing obligations and the potential for the new measure to overlap with them need to be taken into account in determining the application of claims handling as a financial service to superannuation trustees.

The Insurance in Superannuation Code of Practice (the Code), which funds with more than 97% of MySuper members have signed up to, also imposes rigorous requirements on trustees for claims management, including communication and processing timeframes. The Code will support increasingly high standards in the future.

Another consideration is the range of business models through which insurance in superannuation is provided. While acknowledging that under the trust structure the trustee is ultimately responsible for outsourced arrangements, there is a variety of in house, partially in house, and fully outsourced models for the delivery of insurance in superannuation. The effect of changing the status of claims management needs to be applied consistently across these different business models.

Another complexity is that not all RSE licensees hold an AFSL. ASFA considers that while such licensees should be held to account in the same way as other trustees, it would be beneficial if RSE licensees were not required to obtain an AFSL for the sole purpose of satisfying this claims handling obligation.

ASFA would be happy to establish a consultation group made up of ASFA members to assist ASIC if it wishes to explore these issues further and to ensure that this reform is adapted to the superannuation environment to achieve its purpose as efficiently as possible.

Finally, ASFA acknowledges that the consultation paper has already identified this as a risk but we wish to emphasise the importance of claims handling obligations being kept separate from those related to financial, especially personal, advice. If claims handling were to be regarded as subject to the financial advice obligations, fund members would suffer increased costs and delays due to disclosure requirements and limits on the range of information that could be provided with no obvious additional benefit to the fund member.

Detailed responses

ASFA supports the proposal to implement recommendation 4.8 of the Royal Commission so that the 'handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of financial service' under the Corporations Act. However we consider that its application to the superannuation environment raises a number of issues which are detailed below and that RSE licensees may need different treatment from non-trust structures.

1.1 Existing regulatory and statutory obligations

Superannuation trustees are already subject to heavy regulatory and statutory obligations. These include the covenants under the *Superannuation Industry (Supervision) Act 1993* (SIS Act) which includes a specific insurance covenant, the APRA Prudential Standards which include an insurance standard (SPS 250), outsourcing (SPS 231), conflicts of interest (SPS 521) and the new Strategic Planning and Member Outcomes (SPS 515). There are also extensive complaints regulations which extend to claims handling and a trustee's broader equity and common law obligations.

For example, s52(2) of the SIS Act imposes statutory covenants on the trustee of a superannuation entity:

- s52(2)(a) to act **honestly** in all matters concerning the entity;
- s52(2)(c) to perform the trustee's duties and exercise the trustee's powers in the **best interests** of the beneficiaries;
- s52(2)(d)(i) where there is a conflict between the duties of the trustee to the beneficiaries, or the interests of the beneficiaries, and the duties of the trustee to any other person or the interests of the trustee or an associate of the trustee: to give priority to the duties to and interests of the beneficiaries over the duties to and interests of other persons
- s52(2)(e) to act **fairly** in dealing with classes of beneficiaries within the entity
- s52(2)(f) to act **fairly** in dealing with beneficiaries within a class

Breaches of these covenants will be an offence and have civil consequences for superannuation trustees and their directors once the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2019 becomes law.

As ASIC determines how it will conduct its claims handling supervision and enforcement activities and how this will fit into the existing regulatory and statutory framework it is important that duplication and jurisdictional overlap be avoided in the new regulatory environment.

ASFA recommends that the existing combination of regulatory and statutory obligations which apply to trustees be taken into account in developing the monitoring and enforcement regime for claims handling, and that the potential for overlap or duplication with the new obligations be avoided or minimised.

1.2 Impact on different business models

Clarification is needed for how the removal of the existing exemption would affect and apply to trustees and their outsourced service providers such as insurers and administrators. There is a variety of in house, partially in house, and fully outsourced arrangements for claims management of policies held in superannuation. Clarity and consistency are required for the obligations that classifying claims management as a financial service would impose.

Where a trustee outsources part or all of claims management, the delineation of responsibility needs to be clearly marked and applied consistently for all the different claims management business models.

ASFA members would also like further information about the expected implementation timeframes given the volume of other reform so that they can incorporate this into their business and strategic planning activities.

ASFA considers that further clarity is required for how the classification of claims management as a financial service would apply to different claims handling/management business models so that it can be applied consistently.

1.3 The Insurance in Superannuation Code of Practice (the Code)

The Code, which now covers trustees who represent more than 97% of MySuper members, imposes significant obligations on trustees for claims management. These requirements cover areas such as member communication specifications, member contact and processing deadlines, medical assessment protocols and disclosure requirements. It is important that duplication and jurisdictional overlap with the Code be taken into account in any new regime for the monitoring and enforcement of 'claims handling'.

ASFA envisages that ASIC and APRA will have increasing involvement in the monitoring and enforcement of the Code over time.

The Royal Commission's recommendation 4.9 proposed that *'the Insurance Council of Australia and ASIC should take all necessary steps, by 30 June 2021, to have the provisions of those codes [such as the Code] that govern the terms of the contract made or to be made between the insurer and the policyholder designated as 'enforceable code provisions'*.

While it is not certain how this recommendation will be applied and which sections of the Code will be made enforceable in this way, it is important to keep this in mind while the scope of the new definition of 'financial services' is being considered. If overlap between the new definition and enforceable sections of the Code were to occur, how would the inconsistency be dealt with?

ASFA recommends that duplication and jurisdictional overlap with the Code be taken into account in developing the monitoring and enforcement protocols for 'claims handling' as a financial service, especially where it overlaps with provisions that have been made contractually enforceable.

1.4 The treatment of trustees who do not have an AFSL

Another area where RSE licensees may encounter difficulty in accommodating the proposal is where the RSE licensee does not already hold an AFSL. We consider that requiring such RSE licensees to apply for an AFSL for the sole purpose of having to comply with the requirements for claims handling as a financial service is potentially costly and administratively burdensome.

There is currently no evidence of member detriment arising from these RSE licensees not having an AFSL. However, to ensure consistent treatment across all RSE licensees, we recommend that alternatives to an AFSL be explored, such as the new obligations being imposed in cooperation with APRA through the RSE licence.

ASFA considers that options be explored so that trustees without an AFSL should not be required to apply for an AFSL to comply with the proposed claims handling requirements. One option is the use of the existing RSE licence to impose the new requirements.

1.5 Further consultation

ASFA considers that it may be beneficial for the interaction of the proposal and the specific features of the trust environment to be explored further through a broad based working or consultation group. ASFA would be happy to seek expressions of interest from ASFA members, who represent all parts of the industry, to participate in such a group to assist Treasury and ASIC in the development of an approach for claims handling that is suited to the particular features of the statutory and regulatory framework within which superannuation trustees operate and that ensures they are treated consistently with non-trust providers.

1.6 Claims handling should not be linked to financial advice disclosure and other obligations

ASFA acknowledges that the consultation paper's two-pronged approach which proposes that the removal of the current exemption be matched with a new definition of claims management is in part driven by awareness of the need to keep claims management from being regarded as financial advice.

However, ASFA members remain concerned that there is a risk that claims management could get caught up in the financial advice obligations, which would be detrimental to members. Were this to occur compliance costs would rise due to increased disclosure requirements, claims management may slow down, members may not receive advice which would support their claim due to a perception that such advice may be seen as financial advice and require disclosure and a statement of advice, and any such constraints on advice may be confusing for the claimants themselves.

It should also be noted that this proposal will be implemented in the context of rising premium costs for fund members due to the pricing impact of the *Protecting your Super* package. Estimates of premium increases for the original package, which included some measures which have been delayed, were between 10 and 26 per cent. While there are no revised figures available there is no question that the amended package will have a significant impact on premium costs.

ASFA recommends that, in removing the current exemption for claims handling from the definition of a financial service, every effort be made to distinguish it from financial advice and the heavy obligations which attach to the provision of advice.