

SUBMISSION

# FSC draft Life Insurance Code of Conduct

ISA SUBMISSION

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## ABOUT INDUSTRY SUPER AUSTRALIA

Industry Super Australia (ISA) is an umbrella organisation for the industry super movement. ISA manages collective projects on behalf of a number of Industry SuperFunds with the objective of maximising the retirement savings of five million industry super members. Please direct questions and comments to:

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# 1. INTRODUCTION

ISA welcomes the development of a Life Insurance Code of Conduct. The draft Code provides an important opportunity to address systemic deficiencies in the retail distribution of life insurance and life insurance policies themselves.

Industry SuperFunds are a significant customer of the life insurance industry through their purchase of group policies on behalf of millions of fund members.

The Code presents an opportunity to raise standards in the design and retail distribution of life insurance. This is ISA's second submission to the FSC in relation to the development of the Code. We acknowledge that the draft Code released by the FSC for public consultation reflected many aspects of ISA's previous submission. This submission makes a number of constructive recommendations for improvement. We would welcome the opportunity to discuss these with the FSC.

## 2. RECOMMENDATIONS

This submission recommends that:

- The Code should be enforceable by consumers
- The FSC should obtain ASIC approval for the Code
- The Code should address the impact of conflicted remuneration in the distribution of retail life insurance
- It should commit insurers to ensuring consumers can make a life insurance claim without assistance from a financial adviser or lawyer
- The Code should include a mechanism for regular, independent reviews of medical definitions
- It should impose a hard time frame within which insurers should be required to make a final decision about claims

### The Code should be enforceable by consumers

Section 2.15 of the draft Code states that 'The Code does not create legal or other rights between us and any person or entity other than the FSC'. This explicitly excludes the ability of a consumer to enforce the code against an insurer. This significantly limits the protection the Code will afford consumers.

The ability of consumers to enforce codes is a feature of other self-regulatory codes in the financial services industry including the ePayments Code.

ISA reiterates the recommendation made in our first submission to this process that the Code should be enforceable by consumers against insurers.

### ASIC approval

It would be appropriate for ASIC to play a key role in the oversight, development and sign off of the Code. ASIC has the power to approve financial services sector codes under s 1101A of the Corporations Act. ASIC Regulatory Guide 183 *Approval of financial sector codes of conduct* gives guidance on ASIC's approach to approving codes, including how to obtain and retain approval. ISA encourages the FSC to consider obtaining approval for the Code. This would ensure that the Code meets independently developed minimum requirements that raises standards, addresses systemic issues within the industry and delivers meaningful

content to consumers. This will also provide the life insurance industry with an opportunity to set the standards for industry codes, as the first financial services code to receive regulatory approval.

## Conflicted remuneration

The draft Code does not address the fact that insurers pay financial planners commissions to sell life insurance. ASIC Report 413 *Review of retail life insurance advice* concluded that there is a strong correlation between poor quality advice and conflicted remuneration. This finding led to the subsequent Government to focus on regulating conflicted remuneration in this industry, which in turn led to the development of the Code. The Code should acknowledge this context but is completely silent on this. At a minimum, the code should explain how insurers pay financial planners including a clear explanation of the different types of conflicted remuneration that are a feature of the industry.

## Ability to make claim without assistance from a financial planner or lawyer

Anecdotal evidence suggests that it is difficult for many consumers to make a successful claim without the assistance of an intermediary such as a financial planner or solicitor. This is problematic for consumers who do not have the resources to engage external assistance. The involvement of plaintiff lawyers in the system also contributes to delays and costs to consumers and can significantly deplete payouts to successful claims.

A consumer should be able to make a claim on their life insurance themselves, without the need for assistance. Consumers would benefit if the Code included a commitment on the part of insurers to facilitate this.

## Review and update of medical definitions

Clause 3.2 of the draft Code provides that medical definitions for benefits that are payable after a defined medical event will be reviewed at least every three years and updated where necessary in consultation with relevant specialists.

This is inadequate to address problems with insurers relying on out-of-date medical definitions to deny claims. ISA recommends that the code provide that reviews of medical definitions will also be conducted in response to relevant medical advances. In order to address problems revealed by the FourCorners program earlier this year, the Code should also provide that all regular and ad hoc reviews of medical definitions will include input from medical specialists who are independent of insurers.

## Timeframes

Section 8 of the draft Code includes a number of specific timeframes relating to claims handling including time frames for explaining the claims process (cl 8.3), informing claimants of the progress of their claim (cl 8.4), receipt of reports from third parties (cl 8.8), and informing claimants of the decision on their claim (cl 8.14). There is also a broader obligation on insurers to inform claimants of their decision within six months (cl 8.16).

However, this timeframe does not apply in exceptional circumstances (cl 8.16), which are broadly defined (cl 8.13 and 15). The effect of this is that insurers can easily avoid this obligation. Given the scrutiny of delays in resolving claims, ISA recommends that the Code should impose strict timeframes on insurers to decide claims.

### 3. Group insurance within superannuation

There is increasing focus on group life insurance within superannuation. This includes focus on system and benefit design, as well as a number of initiatives by regulators and industry. It is not feasible for any issues identified through this work to be addressed through the first iteration of the Code. However, ISA is committed to working with industry, consumer and regulator stakeholders on this work. The FSC has flagged that it is committed to undertaking a formal review of the Code after it has been in operation for 12 months. ISA supports this process.