Australian Securities and Investments Commission

Office address (inc courier deliveries):
Level 5, 100 Market Street,
Sydney NSW 2000

Mail address for Sydney office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075
Fax: +61 1300 729 000

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By email only

Dear Code Owners

Insurance in Superannuation Voluntary Code of Practice

Thank you for your time on 11 September 2019 when you provided us with an update on the development of the Insurance in Superannuation Voluntary Code of Practice (Insurance in Super Code).

As discussed, ASIC is working with APRA and is actively engaging with industry, including through one-on-one meetings, to understand how insurance in superannuation products are designed and disclosed in practice and understand how effectively the implementation and coverage of the Insurance in Super Code is improving industry practice. These meetings help us identify best practices and assess areas of potential consumer harm.

The purpose of this letter is to outline some of the issues we have seen in our work relating to the Insurance in Super Code. This is not a complete list of issues. However, you may find this feedback useful in considering the development of the Insurance in Super Code.

Our observations

In meetings with a small number of early-adopter trustees we have been told about progress associated with the implementation of the Insurance in Super Code, including in relation to:

(1) the length of claims and complaints processing;

(2) the quality of communications to members; and

(3) focusing trustees' attention on how they can do better.

We have also had positive engagement with service providers indicating that the Insurance in Super Code is playing a role in achieving greater standardisation and uplift in claims handling and administration of insurance in superannuation.

We note that full code compliance is not required until 2021. We also note this is a dynamic policy environment in which the Insurance in Super Code is not the only driver of uplift in industry products and processes. We recognise several law reform initiatives are leading to significant changes in superannuation, including certain measures with direct relevance to insurance in superannuation.

Nonetheless, we feel it is appropriate to communicate now that we believe there is significant room for improvement, both in terms of the issues addressed by the Insurance in Super Code, and the pace, intensity and form of trustees' adoption of it.

A high-level suggestion is for the Code Owners to consider the potential benefit of guidance to trustees on what fairness means under the Insurance in Super Code. We also believe the Insurance in Super Code could go further in articulating a 'consumer-centric' approach to vulnerability, by acknowledging the wide range of unique needs amongst members. In terms of member communications, Key Facts Sheets and personalised disclosure may help to promote greater consumer understanding than can be achieved via traditional disclosure documents.

Some specific areas of concern based on engagement so far, include:

(1) significant variations in calculating and applying the affordability threshold;

(2) inconsistencies with the definitions and treatment of Automatic Insurance Members;

(3) default occupational classifications remaining in the heaviest risk level for some trustees; and

(4) varied methods of calculation of claims processing timeframes leading to inconsistencies in the application of the Insurance in Super Code across the industry.

Our detailed observations and comments are **attached**.

We recognise that the Government has committed to introduce legislation making industry codes enforceable by June 2020. Against this background we think it important for the Code Owners to work towards appropriate ongoing monitoring arrangements and further consider how the Insurance in Super Code could be enforced.

Finally, we believe consumer outcomes would be best served by adoption of a single code of practice for insurance in superannuation. We therefore reiterate our feedback to the FSC on 31 January 2019 (as Code Owner of both the Insurance in Super Code and the Life Insurance Code of Practice) that two codes with overlapping, but differing, obligations are likely to reduce the clarity of what is expected of market participants.

ASIC's next steps

We will continue to engage with industry stakeholders on insurance in super, including on the Insurance in Super Code, and plan to release short reports over the coming year to communicate our learnings and developing expectations. Please feel welcome to share new developments or concerns with us going forward.

While our initial engagement focused on early movers and best practice, we will now engage with a sample of trustees who have not been engaging with the Insurance in Super Code. However, we wish to note that our work is not a substitute for proper oversight of the Insurance in Super Code by a properly resourced code administrator.

We will also continue to work closely with APRA, sharing information and coordinating a response on issues of joint interest.

We expect all superannuation trustees to engage with the standards in the Insurance in Super Code as part of their commitment to achieving appropriate outcomes for members. We believe that insurance in superannuation should be a key aspect of a trustee's focus on members' best interests.

If you have any questions, please contact Sacha Vidler on (02) 9911 5004 or by email on sacha.vidler@asic.gov.au.

Yours sincerely

Alex Purvis
(Acting) Senior Executive Leader – Superannuation
Wealth Management Group

Annexure

Benefit design and account erosion

A key feature of the Insurance in Super Code is the affordability consideration. This feature requires premiums for Automatic Insured Members to be set at a level that does not exceed 1% of an estimated level of salary for the membership generally.

We have observed that trustees are using different approaches to calculating income to which this percentage is applied, including:

- based on salary data the trustee holds of its membership;
- by reference to data (e.g. taxation statistics) representative of the industry or demographic of the particular fund; and
- members' average lifetime earnings and average lifetime income.

In the last example, the calculation will have the effect of allowing a trustee to charge premiums that are potentially significantly more than 1% of members' current salary and removes any consideration about the age of its members from the affordability calculation.

We understand that in the initial stages of drafting the Insurance in Super Code, the Code Owners considered a standardised approach to setting the maximum premium level of automatic cover. Proposed methodologies included:

- a percentage of employer contributions;
- a percentage of salary or of average weekly earnings; and
- a percentage of account balance.

We strongly encourage the Code Owners to:

- reconsider providing a standardised approach to the calculation of the 1% cap for consistency; and/or
- require trustees to be more transparent about their approach to the salary cap calculation by making it available on their website and in their Key Facts Sheet.

We also encourage the Code Owners to provide a clear statement which aligns the Insurance in Super Code with the philosophy of the Design and Distribution Obligations regime by encouraging trustees to:

- develop appropriate insurance cover for their members;
- create distribution processes and controls that reduce the chance of providing inappropriate insurance cover to members based on their needs and financial situations; and
- create a dynamic and responsive process where insurance design and distribution are reviewed and improved in response to claims experience and other feedback.

Automatic Insurance Members

Certain protections of the Insurance in Super Code (such as the types and levels of automatic cover provided and when cover starts and stops, and more importantly, the protection to provide automatic insurance that is appropriate and affordable for members) are provided to Automatic Insurance Members (AIM), with non-AIM classification carved out of those same protections.

We have observed inconsistencies with the definitions and treatment of AIM. The risk is that if the definition of AIM is interpreted too narrowly, a significant proportion of members lose important protections provided by the Insurance in Super Code. For example, trustees have in some cases classified a member as non-AIM if:

- a member indicates to the trustee that they wish to maintain their automatic insurance cover; or
- if their employer pays for their insurance cover.

We note some trustees have ignored the delineation of AIM and non-AIM and have instead opted to provide the protections of the Insurance in Super Code to all their members. We believe this is the best approach and strongly recommend the Code Owners to consider adopting this approach in the Insurance in Super Code.

Default Employment Classifications

We believe it is a positive step that the Insurance in Super Code explicitly requires trustees not to default any member into a higher risk classification than the general membership without any relevant evidence.

In ASIC's REP 591 *Insurance in Superannuation*, we identified that some trustees automatically classify members as blue collar unless specific information to the contrary is provided. We believe it is important for trustees to assess and understand the composition and different needs of their membership, to determine whether any default settings applied are appropriate and in the best interests of that membership.

However, we continue to see:

- some trustees having a number of occupational classifications, with the default being the heaviest and most expensive setting; and
- some trustees defaulting their members into the heaviest classification and giving it a generic label such as "standard".

In the above examples, the default setting remains the heaviest classification. In the second example it is often unclear that trustees are defaulting members to more expensive options over other available alternatives that may have a more neutral impact on the fund and minimise erosion of a member's superannuation balance.

We encourage the Insurance in Super Code to provide further guidance ensuring:

- trustees turn their minds to their default insurance design, and explain why a particular default setting is appropriate for their fund based on its particular membership; and
- disclosures and communications to members about any default settings are clear and effective. For example, making apparent in any communications with members (including in Key Facts Sheets) the existence and impact of any default settings, and how a member can notify the trustee of their actual occupation and work duties.

We continue to conduct targeted surveillances on entities who we believe may apply unjust occupational defaults.

Timeframes

We have observed that the Insurance in Super Code has driven a substantial increase in the prevalence of target timeframes – applying to trustees, insurers and other service providers – for various aspects of claims processing, resulting in some improvements to members' experience.

These timeframes are meant to ensure members receive responses or outcomes within a reasonable period, consistent across the industry. However, we have observed some trustees setting timeframes only as a matter of form. Some trustees have taken to calculating time in unique ways that, in our view, undermines the effectiveness of setting standard timeframes.

One common variation is around when the clock starts. For example, the Insurance in Super Code requires trustees review an adverse decision from insurers within fifteen (15) business days:

- Trustee A reviews the insurer's decision within fifteen (15) days from receiving the adverse decision from the insurer (best practice).
- On the other hand, Trustee B calculates the fifteen (15) days from when its own Claims Review Committee (CRC) meets.

The problem in the last example is the degree of variation of when these CRC meetings occur for each fund. Some funds have weekly meetings; some quarterly. Depending on the CRC timing, there can be a significant delay from when the insurers' decision is made to when the member is contacted following the trustee's review of the adverse decision.

These inconsistencies around the implementation of timeframes lead to substantial differences in the claims process between trustees and, in our view, could lead to trustees inaccurately reporting compliance with the Insurance in Super Code.

We suggest reinforcing the purpose of these timeframes and having clearer directions (e.g. as to when time starts) to ensure trustees are complying with the intention of the Insurance in Super Code.

We wish to emphasise that the timeframes set in the Insurance in Super Code are the minimum requirements. We expect trustees to do better in designing systems and processes that are focused on delivering good outcomes for their members.

Key Facts Sheet

The Insurance in Super Code looks to the provision of a Key Facts Sheet to help members better understand their insurance cover and allow them to compare their insurance cover across different superannuation funds.

However, we suggest that you consider broadening the use of the Key Facts Sheet to also include a section that highlights which members the product is suitable for and for whom it is not. We would like to see Key Facts Sheets drawing attention to unusual or noteworthy limitations of the policy.

For example, the Key Facts Sheet may:

- identify that the product is suitable for blue collar workers but not suitable for those working in hazardous occupations; or
- highlight difficulties for members with mental health disabilities to claim under certain Total and Permanent Disability definitions (i.e. Activities of Daily Living or Activities of Daily Work).

We have only observed a small number of trustees publishing their Key Facts Sheet on their websites. Making these Key Facts Sheets more widely available would be beneficial, particularly for consumers comparing products.

We strongly urge trustees to use Key Facts Sheets and to consider the role that personalised disclosure can play in reducing reliance upon traditional disclosure documents.

Vulnerable members

One of ASIC's regulatory priorities for 2019/20 is protecting vulnerable consumers (see ASIC Corporate Plan 2019-23). Consequently, we are interested in how the Insurance in Super Code is uplifting industry standards in recognising the unique needs of some members when it comes to accessing insurance, making an enquiry, claiming on their cover, or making a complaint.

The Insurance in Super Code identifies the following classes of people as being an example of a vulnerable member:

- older persons;
- people with mental health conditions;
- people with disability;
- people from non-English speaking backgrounds;
- people with low levels of literacy;
- people in financial distress; and
- Indigenous Australians.

While the Insurance in Super Code acknowledges the wide range of unique needs among members, we believe it should be clearer in recognising different types of vulnerability.

When we ask trustees to identify groups of 'vulnerable members', a common response is "*we treat all members as vulnerable*". This approach emphasises situational vulnerability (e.g. exposure to a traumatic or stressful life event), which may be relevant as insurance claims may be triggered by such events. However, this approach does not recognise that certain cohorts may face structural vulnerability (e.g. low socio-economic or culturally and linguistically diverse backgrounds) and are more exposed to harm or have unique needs that require added support.

In our engagement with industry, we note meaningful policies for vulnerable members are not commonplace, and where they exist, are often not well defined. Throughout our conversations with trustees, we have noted a consistent reluctance to have a systematic engagement with vulnerable members and have observed a lack of ability by trustees to demonstrate they know their membership with necessary detail.

We highlight some of our observations in more detail in Table 1, below. We believe it is a positive step that the Insurance in Super Code recognises different needs and has explicitly recommended:

- a flexible approach to verification and identification in line with AUSTRAC guidance;
- considerations for people living in remote and regional communities having limited access to services; and
- access to interpreters and having insurance information translated in other languages.

We suggest industry use the Insurance in Super Code as an opportunity to go further to establish a consumer-centric approach to vulnerability. We acknowledge the wide range of unique needs amongst members, but there are certain areas where superannuation trustees can start addressing these unique needs.

Understanding membership and the extent of vulnerability is an important step for superannuation trustees to make to create products and services that enable members to have a good claims experience and empower them to be able to make better choices for their circumstances.

As an ASIC priority, we are committed in protecting vulnerable consumers and we will continue to focus on trying to drive positive changes in industry conduct. We reiterate our desire to see greater prescription and detail in the Insurance in Super Code about the requirements for trustees around dealing with vulnerable members and to see an increase in the effective promotion of support services for vulnerable members.

Table 1 Observations on vulnerable consumers:

Observations	Concerns
We found that most trustees have no reference or links in their website in relation to offering support services (i.e. translating and interpreting services for non-English speakers, assistance to sight and hearing-impaired members).	Although we note some trustees do offer several support services for their vulnerable members, they are not being utilised because their availability is not clear for those members who may need it.
We found an over-reliance by superannuation trustees on their call centre agents to act as interpreters.	We believe in harnessing the advantages of having a diverse workplace. However, we caution over-reliance on staff members as it limits the support for vulnerable members to staff availability.
We found an over-reliance by superannuation trustees on members self-identifying as 'vulnerable'.	It is worth noting that not all vulnerable people self-define as vulnerable. They may not even realise they are considered vulnerable.
We found an over-reliance by superannuation trustees on vulnerable members authorising third-parties to act on their behalf.	Our concern here is about the potential for financial abuse, particularly for older people, who often depend on family members and other people for support.

Fairness

Trustees subscribing to the Insurance in Super Code are required to meet their commitments in a "*transparent, fair, respectful, honest, and timely*" way.

However, we note that the provisions in the Insurance in Super Code (in its current iteration) appear to solely focus on procedural or process-driven commitments with no articulation of how the commitments are to be carried out 'fairly'.

We strongly encourage the Code Owners to articulate what fairness means under the Insurance in Super Code and to provide guidance to superannuation trustees on how fairness should be assessed, disclosed and applied to members.

We believe that fairness means doing what's right; it's the quality of being reasonable and just. This involves not just of even handedness in dealing with consumers but also the concept of sound ethical values and judgment in matters relevant to a consumer's affairs (You can read more about it in The fairness imperative, 27 March 2019).