

Insurance in Superannuation Code of Practice

Legal Aid NSW submission to
Insurance in Superannuation
Working Group
October 2017

323 CASTLEREAGH ST

HAYMARKET NSW 2000 / DX 5 SYDNEY

Legal Aid
NEW SOUTH WALES 

Table of Contents

Introduction	3
Scope of the Code	3
Appropriate and affordable cover	4
<i>Premium limits</i>	4
<i>Duplicate insurance cover</i>	5
Helping members to make affordable decisions	6
Claims handling	7
Vulnerable consumers	8
Premium adjustments	9
Promoting our insurance cover and changes to cover	9
Refunds	9
Staff and Independent Service Providers	10
Enquiries and complaints	10
Governance, enforcement and sanctions	11

About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the Legal Aid Commission Act 1979 (NSW) to provide legal assistance, with a particular focus on the needs of people who are socially and economically disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 32 community legal centres and 29 Women's Domestic Violence Court Advocacy Services.

The Legal Aid NSW Civil Law Division provides legal advice, minor assistance, duty and casework services to people through the Central Sydney office and 13 regional offices. The Civil Law Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, housing, employment, social security and access to essential social services. Currently, we have over 150 civil lawyers who provide advice across all areas of civil law, and

specialist teams that assist with insurance issues affecting particularly disadvantaged clients. Consumer issues constitute the largest category of service for our Civil Law Division.

This submission draws on the casework experience of our civil lawyers in providing these services.

Legal Aid NSW welcomes the opportunity to make a submission to the Insurance in Superannuation Working Group.

Should you require any further information, please contact

Rebekah Doran
Senior Solicitor, Consumer Law
(02) 9219 5067
Rebekah.doran@legalaid.nsw.gov.au

or

Robyn Gilbert
Law Reform Solicitor,
Strategic Planning, Policy and
Community Partnerships
(02) 9213 5207
robyn.gilbert@legalaid.nsw.gov.au

Introduction

Legal Aid NSW welcomes the opportunity to provide feedback on the draft *Insurance in Superannuation Code of Practice (the Code)*. The Code is a significant step towards improving consumers' understanding and experience of insurance in superannuation; and we look forward to its adoption. Our response to specific questions affecting our clients are addressed below.

Scope of the Code

- | |
|---|
| 1. How should the Insurance in Superannuation Working Group (ISWG) ensure that all trustees are bound by the Code? |
|---|

Legal Aid NSW proposes that the Code should be registered with the Australian Securities and Investments Commission (**ASIC**) and the Australian Prudential Regulation Authority (**APRA**). ASIC will approve a code if it meets a number of criteria, including whether it

- is a comprehensive body of rules developed in consultation with stakeholders
- is enforceable against subscribers to the code
- makes adequate provisions for dispute resolution, remedies and sanctions, and
- provides for effective and independent administration, including compliance monitoring.

- | |
|--|
| 2. What are the practical implications of the transition arrangements? |
|--|

Legal Aid NSW considers this is largely a question for industry. However we note that the transition should be conducted in the most efficient way possible to ensure that consumers are not adversely affected. The transition will be assisted by a clear communication strategy to members explaining the transition arrangements and their implications for consumers.

- | |
|---|
| 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)? |
|---|

To ensure compliance with sections 7.1 – 7.3 regarding vulnerable consumers, Legal Aid NSW proposes that flags should highlight:

- risk of vulnerability (for example, elderly or non-English speaking) and

-
- where vulnerability has been identified by the trustee or consumer, such as family violence or a recent claim due to illness or injury.

Appropriate and affordable cover

Premium limits

4. Are there alternative proposals for setting maximum premium levels that the ISWG should consider?
5. For superannuation funds – how would you approach the design principles, including the premium limits? Do your current premiums fall within or outside of the maximum limits provided? (Note that this information will be treated confidentially).
6. 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?
7. To what extent will the premium limits achieve the goal of targeting inappropriate account erosion for low income earners, particularly women and younger members?
8. 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?
9. Are there particular measures of earnings that the ISWG should include in Good Practice Guidance?

Legal Aid NSW does not support the inclusion of maximum premium levels in the Code. While we applaud the objective of setting maximum premium levels to limit balance erosion, our casework experience is that premiums for automatic insurance cover are low enough that they have minimal impact on account balances.

The proposed limit on premiums to one per cent of earnings appears to be difficult to calculate, particularly for members who have inconsistent incomes from multiple sources and who hold multiple super funds. We are concerned that the cost and complexity of attempting to comply with this section of the Code may result in poorer quality and / or higher cost automatic insurance cover being provided to some of the most disadvantaged members. Although premium limits are attempting to protect this class of low income members from balance erosion, we are concerned that this class will be disproportionately affected by holding poorer quality insurance cover as a result.

Given the limited impact that automatic insurance premiums generally have on account balances, Legal Aid NSW suggests that the benefits of the proposal to limit premiums do not outweigh the risks for the class of consumers it is attempting to protect. In our view, avoiding unnecessary balance erosion will be more effectively dealt with by quality communication with members with low or infrequent contributions as required by sections

5.27 and 5.28 of the Code. In this respect we note our comments about the importance of quality communication at Questions 10 – 15.

If the ISWG determines that premiums limits should be included, we suggest that they would be better placed in a Good Practice Guideline to ensure maximum flexibility. They should also be accompanied by Guidance about the consequent minimum standards of cover to ensure satisfactory levels of cover are provided to those on lower incomes.

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

Legal Aid NSW does not support the proposal for automatic cessation of insurance cover where no eligible contributions have been received for 13 months. While we acknowledge there is a difficult balance to be reached between limiting balance erosion and ensuring that insurance cover remains available to the members, the actuarial basis for this proposal has not been established.

In our casework experience, ongoing fund management fees have a far greater impact on account balances than insurance premiums. In circumstances where these management fees are still being incurred, particularly for low balance accounts, insurance cover can provide the only tangible benefit for many consumers holding these accounts. In our view, the lost member provisions of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth) provide a sufficient protection for balance erosion of very small amounts.

If automatic cessation of insurance cover is to occur, it is critical that every possible step is taken to notify the member. We note that the Code requires contact with the member at least twice, and requires communication through the member's preferred communication method or through at least two different communication methods if possible (section 5.25). Legal Aid NSW proposes that section 5.25 should be strengthened by requiring that communication must be attempted at least twice by all methods of contact available. This is particularly important for disadvantaged members who are highly mobile and letters sent by post are often ineffective means of communication.

Duplicate insurance cover

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?

Legal Aid NSW supports the requirement in section 4.31 of the Code for funds bound by the Code to ask new members for permission to help them identify duplicate insurance, and does not propose any further obligations in this regard.

Helping members to make affordable decisions

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

To ensure that as many consumers are able to understand the proposed Code as possible, Legal Aid NSW suggests that the following sections should be a focus for consumer testing:

- appropriate and affordable cover
- income protection claims
- how to make a complaint and external determination of a complaint, and
- Key Facts Sheets in Annexure A

These are complex topics and are likely to have the most significant impact on members. Given the impact on the consumer of losing insurance cover and premium erosion, we also suggest that sample communications should be annexed to the Code and consumer tested to assist trustees to communicate with members under sections 5.24 and 5.27.

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

The Key Facts Sheets as currently drafted are a significant step forward in assisting members to understand their insurance cover. We suggest that the critical information “What automatic insurance cover is included?” would be better placed on a single page with a larger heading to emphasise its content. However, Legal Aid NSW suggests that consumer testing will be necessary to assess the effectiveness of the Key Facts Sheets.

In addition to the Key Facts Sheets, Legal Aid NSW suggests that the ISWG consider alternative, innovative ways to convey critical information to members, such as interactive digital platforms with questions and answers to confirm consumer understanding. In particular, we draw the ISWG’s attention to the extensive research of the Insurance Council of Australia which found significant shortcomings in consumer understanding of general insurance products.¹ This research demonstrates the importance of engaging with consumers, using plain language and providing accessible information to achieve a higher level of consumer understanding.

¹Insurance Council of Australia *Consumer Research on General Insurance Product Disclosures* (2017)

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

Legal Aid NSW considers this to be a question for industry.

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

Communication with the member must be meaningful and genuinely attempt to engage them on the issue of low or infrequent contributions. As noted at Question 10, posting a letter will not be sufficient to reach many low income and disadvantaged members with housing instability or unreliable access to mail. We also refer to our suggestion at Question 12 that sample communications should be annexed to the Code which would assist trustees to communicate with their members pursuant to section 5.27.

Claims handling

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?

The claims handling obligations placed on trustees are likely to improve members' claims experiences because the Code sets out positive obligations to assist and encourage members through the claims process, and to respond to claimants in a timely fashion. These obligations are largely in line with the General Insurance and Life Insurance Codes of Conduct, which in our experience work reasonably well to establish an effective and positive claims experience for consumers.

In our experience working with vulnerable consumers, the proposed claims handling procedures should be a significant step towards making insurance accessible. In particular, Legal Aid NSW supports section 6.12 which requires the entity to provide claims forms within one day of being advised that the consumer wishes to make a claim. This is a significant improvement on the experience of many of our clients who have been required to provide preliminary claims information before the fund will consider providing claims forms. This creates a barrier to access, especially for consumers who already experience barriers in navigating the claims process.

In order for members to benefit from the proposed claims handling processes, Legal Aid NSW proposes that the Code should include an additional term requiring an entity, when made aware that a member has ceased work, or is suffering from illness or injury, to advise them of their total and permanent disability and income protection benefits. Given many consumers are unaware that they hold automatic insurance cover, it essential that consumers are notified of their available policies. This would be consistent with the

requirement that funds make potential beneficiaries aware of death benefits and would be a significant step forward in ensuring members can access their insurance entitlements.

We do not consider that these obligations would pose practical difficulties for trustees. The trustee should be able to model their processes and procedures on mechanisms in place within general and life insurance.

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?

Legal Aid NSW supports section 6.28 of the Code and obligations it places on trustees. We also note that providing a claimant with advice about why a claim has been declined may result in the matter being resolved at that point rather than through litigation.

Aside from these comments, this question is largely directed towards trustees.

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

Legal Aid NSW supports the obligations that have been placed on trustees with respect to income protection claims set out in sections 6.33 to 6.37, including the requirement for a trustee to review an insurer's decision within five business days.

Vulnerable consumers

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

Legal Aid NSW recommends that each fund make their policy in relation to vulnerable customers readily available online, and in printed form if requested. If an entity becomes aware that a member is vulnerable, the entity should provide the member with information about the specific assistance available.

We further recommend that section 7.3 of the Code should be amended to include circumstances where the staff member has identified the member's vulnerability; rather than placing the obligation on the client to request assistance.

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?

The form of this communication will be important for ensuring its effectiveness. A sample communication could be annexed to the Code and user tested along with the Key Facts Sheets and other critical communication to members.

Premium adjustments

21. Are the premium adjustment arrangements sufficiently transparent?
22. What further detail could the Code include?

In relation to premium adjustments, clear communication is critical to ensure transparency and facilitate member understanding. We refer generally to our comments at Questions 10–15 but do not have specific suggestions in relation to premium adjustments that should be included in the Code.

Promoting our insurance cover and changes to cover

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

Legal Aid NSW supports the proposed sections as drafted in the Code and has no further comment.

Refunds

24. What are the practical and administrative implications of the refund requirements provided?
25. Are there any issues with the maximum time limits for the duration of refunds?
26. For superannuation funds – what are your current practices for refunding premiums, and the duration of any refunds?

Legal Aid NSW considers that these questions are directed to industry.

Staff and Independent Service Providers

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

Yes. Training and monitoring of staff will be critical to the successful implementation of the Code. In our view, the commitment at section 12.1 that staff training ‘will include training on their responsibilities under the Code’ does not go far enough to ensure that all staff, particularly client-facing staff, understand and can implement their responsibilities under the Code. We propose that the Code should set out a timeframe—for example, one year from the date of implementation—by which all staff will participate in training about the Code. Further standards should be included requiring trustees to provide training about the Code to new staff as they are inducted and refresher training for ongoing staff. Trustees should also be required to measure and monitor the effectiveness of training, and report on these outcomes to the Code Administrator.

Successful implementation of the Code also requires compliance to be monitored. Trustees should have processes in place for monitoring their compliance with the obligations set out in the Code, with reporting obligations to the Code Administrator. The processes should include monitoring of complaints and claims outcomes, and assessing whether automatic insurance cover meets members’ likely insurance needs as required by section 4.1 of the Code.

Legal Aid NSW supports the introduction of design and distribution obligations on the issuers and distributors of all financial products, including insurance provided through superannuation.² This would require issuers to periodically review their products to ensure that their target market receives a benefit from their product and their product is being appropriately distributed.

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

Legal Aid NSW has no comment on these matters.

Enquiries and complaints

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

Legal Aid NSW supports the processes and procedures set out in these sections.

² See further Legal Aid NSW submission to Treasury *Design and Distribution Obligations and Product Intervention Power* March 2017

Legal Aid NSW considers that a standard release authority should be developed and adopted across all super funds adhering to this Code, in accordance with Australian Privacy Principles. In our experience every super fund currently interprets the Privacy Principles differently and there is no uniform approach as to what information and documents need to be provided to release information about a member's account.

In one case, it took Legal Aid NSW over 18 months to obtain information and documents relating to a member's account. We are also aware that a member's licence was rejected as a form of identification even where the fund did not have a copy of the member's signature.

It has also come to the attention of Legal Aid NSW that some funds have attempted to charge clients for copies of their policy documents. We consider that policy documents should be provided to members free of charge.

Governance, enforcement and sanctions

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?
--

Legal Aid NSW does not have any comments in relation to this section.