

Towards a transparent public reporting regime for life insurance claims information

Legal Aid NSW submission to APRA

August 2017

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Legal Aid 
NEW SOUTH WALES

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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 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.

Legal Aid NSW welcomes the opportunity to provide a submission the Discussion Paper, *Towards a transparent public reporting regime for life insurance claims information*.

Legal Aid NSW's Civil Law Division focuses on legal problems that impact most on disadvantaged communities, such as credit, debt, insurance, employment, social security and access to essential social services. The Civil Law practice provides legal services to people through the Central Sydney office and 13 regional offices. 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.

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

Our submission addresses the questions in the Discussion Paper, following the numbering set out in the Discussion Paper.

Should you require any further information or wish to discuss this submission, please contact:

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Introduction

Legal Aid NSW welcomes APRA and ASIC's (**the agencies'**) consultation about implementing a public reporting regime for life insurance claims information.

Legal Aid NSW broadly supports the proposals to establish the reporting regime. In our view, publication of claims data is vital to understanding how the life insurance industry is performing. Consumers will be able to identify which insurers are more likely to pay a claim and which ones process claims without delay. This information will improve consumers' ability to make informed choices and will build trust and confidence in the life insurance sector.

Legal Aid NSW assists disadvantaged consumers with the life insurance claims process. In our view, it is paramount that data on life insurance is published in a way that is accessible to this vulnerable group of consumers.

Through our casework, we have identified a number of areas which reveal concerning practices within the life insurance industry. These practices include insurers encouraging consumers to withdraw claims, refusing to provide insurance to consumers with a disability, and conducting fraud investigations inappropriately. We consider that the reporting regime is an opportunity to shed light on these issues and encourage good industry practice.

Chapter 3: Overview of the process

Question 1

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| <ol style="list-style-type: none">1. The agencies welcome feedback on the overall approach to this data collection and engagement with stakeholders. |
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Legal Aid NSW broadly supports the proposed approach to data collection and engagement with stakeholders. In particular, we support the agencies' commitment to the publication of 'credible, reliable and comparable data', and to publication on an entity-level basis 'at a sufficient level of granularity to allow for meaningful comparisons of insurer performance and with sufficient context to effectively inform consumers'.¹

Periodic reviews of reporting arrangements would promote these objectives, and would allow an opportunity for adjustment of the arrangements where necessary.

¹ APRA *Towards a transparent public reporting regime for life insurance claims information* Discussion Paper, at 11.

Questions 2 and 3

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| <ol style="list-style-type: none">2. The agencies welcome feedback on the best way for insurers to provide data for Phase 2, having regard to the objectives of this data collection.3. The agencies welcome feedback on whether an alternative approach to data collection in Phase 2, such as an industry-led approach, should be considered. |
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The cost of the reporting regime should be borne by industry, and not passed on to consumers. The regulators should have a role in monitoring whether the reporting regime affects the cost of life insurance for consumers.

Legal Aid NSW notes that the reporting obligations will be determined by APRA under the *Financial Sector (Collection of Data) Act 2001*. We consider that these obligations should be enshrined in the Life Insurance Code of Practice, as well as the soon to be drafted Insurance in Superannuation Code of Practice.

If these obligations are outlined in the Codes of Practice, then the relevant Code Compliance Committee can monitor and report on compliance, identify breaches of the code and other systemic issues, and undertake its own inquiries. In our view, this approach works effectively in the general insurance industry where the monitoring and compliance of the General Insurance Code of Practice is undertaken by the Code Governance Committee.²

If data reporting obligations are not contained in the Codes of Practice, we consider that the regulators should produce a guide to industry about how compliance with these obligations will be monitored. The guide should also include information about how the regulators will address systemic issues identified as a result of data reporting and analysis.

Question 4

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| <ol style="list-style-type: none">4. The agencies welcome feedback on any matters that should be taken into account when consulting on the scope and design of publication, including feedback from data-users on their expectations regarding the content of the publications. |
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As noted above, Legal Aid NSW's clients are often the most disadvantaged consumers of life insurance products. Our clients often come from non-English speaking backgrounds, have physical or psychiatric disabilities, are from remote communities or are experiencing homelessness and severe financial hardship.

² The role of the Code Governance Committee is set out at Clause 13 of the General Insurance Code of Practice.

To ensure the reporting regime assists consumers to make more informed choices when purchasing or claiming on life insurance, it is important that data is published in a way that is accessible to every consumer, particularly vulnerable and disadvantaged consumers. This could be achieved if the regulators engage in a process of consumer user-testing, prior to publication of data, and at regular intervals in the future.

We consider that the publication of data should, at a minimum:

- be tailored to the interests and needs of consumers, identified during a process of user-testing and market research with consumers
- be in plain English, with publication of resources in key foreign languages
- use best practice communication techniques, such as including infographics and worked examples of how consumers could use the data
- be presented in multiple formats to allow people with different levels of literacy to engage with the information, and
- be coupled with a targeted campaign educating consumers about the aims and outputs of the reporting regime.

We recommend that the regulators consider how Australian and overseas ombudsman schemes report data to inform a best practice approach to publication. For example, Ombudsman Services, which handles complaints about the energy, communications, property and copyright sectors in the UK, publishes quarterly statistics about the complaints it accepts and resolves in the energy sector. Ombudsman Services also provides a breakdown for the largest energy companies (based on number of consumers) about complaints received and resolved. Some Australian Ombudsman schemes, like the Financial Ombudsman Service (**FOS**) and the Telecommunications Industry Ombudsman, publish complaints data annually, usually in their annual report. To mirror the Ombudsman Services approach, we recommend that trader-specific complaint data be published regularly as part of the reporting regime.

Chapter 4: Initial Phase 1 data request in detail

Question 5

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| <p>5. The agencies welcome feedback on whether the proposed data items adequately address the objectives of the data collection and whether there are any additional data items which would assist in meeting those obligations.</p> |
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Legal Aid NSW supports insurers reporting on the proposed data items. In particular, we support the inclusion of data regarding claims that are withdrawn. Some consumers have reported to us that they withdraw their claims due to the complex and lengthy claims process or upon insurers' advice that their claims will likely be denied. In many cases, our clients are not advised of their dispute resolution rights, and are not provided with formal correspondence from the insurer to confirm the withdrawal of their claim. We are

concerned that there are many more consumers that do not seek legal advice, but simply withdraw their claim.

We consider that the proposed data items will improve the regulators' oversight of what we see are systemic issues regarding unresolved disputes and withdrawn claims in insurance.

However, we note that this data will not capture information about consumers who are persuaded not to claim at all. We are aware of practices, particularly in relation to total and permanent disability insurance, where customers will not be provided with a claim form until the super fund or underlying insurer is satisfied that a claim will be permitted to be made.

In the general insurance industry, this practice led to a specific amendment at Clause 7.8 of the General Insurance Code of Conduct that insurers will not discourage customers from lodging a claim.

We recommend that the following additional data items be included in the reporting regime to better address the objectives of the data collection process. In making these suggestions, we recognise that increasing data items necessarily places a greater reporting burden on industry. However, we consider that the marginal cost is outweighed by the benefits to the community of reporting on this data.

Systemic issues and serious misconduct reporting

While undertaking data collection, insurers may become aware of matters that raise systemic issues and even serious misconduct. Insurers should be required to report these matters to the regulator. This would promote good industry practice, contribute to improving the customer experience, and help to avoid disputes and the need for litigation and compensation.

This data should include the matters that are identified by FOS as raising systemic issues and serious misconduct and referred back to the insurer under clause 11.2 and 11.3 of the FOS Terms of Reference. We note that this data is already reported to ASIC by FOS, but we consider that it should also be available to consumers and others via the public reporting regime.

The terms 'systemic issues' and 'serious misconduct' should be defined as they are in Regulatory Guide 139. In our view, reporting on serious misconduct will improve industry standards and may help many consumers affected by poor practice to obtain compensation through intervention by the regulators.

Refusal of insurance

Legal Aid NSW assists consumers who have been refused insurance because of their existing health conditions. The Public Interest Advocacy Centre has similar casework experience where consumers have been denied insurance because of episodes of mental

illness.³ This issue has also been raised by mental health organisations such as Beyond Blue and the Mental Health Council of Australia.⁴

We are concerned that insurers refuse to provide insurance to consumers with existing mental health and other health conditions, without reference to actuarial data. Legal Aid NSW welcomes the increasing attention that FOS is paying to this issue in the area of General Insurance.⁵

We consider that the data reporting regime is an opportunity for the regulators and community to gain further insight into this issue. Insurers should be required to report on the number of applications for insurance that they refuse. Of this number, the insurer should also report on the number of refusals made on the basis of a consumer's disability or health condition. We note that in our submission to the Insurance Council of Australia's Review of the General Insurance Code of Practice, we proposed that the Code should include certain obligations on an insurer who refuses insurance on the basis of disability. These should include an obligation to provide details of any actuarial or statistical data relied upon, or if that data is not available, reasons why the decision to refuse insurance on the grounds of disability is reasonable.⁶

Fraud investigations

We have concerns that, in some cases, fraud investigations are being carried out inappropriately by insurers. Our casework experience indicates that consumers have been subject to bullying and unethical interview practices, such as refusing to allow a support person to be present and conducting interviews for several hours without breaks. Financial Rights Legal Centre's March 2016 report, 'Guilty until proven innocent' mirrors our concerns.⁷

Legal Aid NSW recommends that insurers be required to report on the number of claims which they consider give rise to fraud and prompt a fraud investigation from the insurer. Again, we consider that reporting on this issue is an opportunity for the regulators to gain a greater understanding of an issue which is of concern to consumer advocates.

³ Public Interest Advocacy Centre website <http://www.piac.asn.au/project-highlight/mental-health-and-insurance/> (accessed 20 July 2017).

⁴ See Georgina Dent, *The sting of being priced out of life insurance*, Sydney Morning Herald, 6 August 2017, available at <http://www.smh.com.au/business/good-finance-advice/the-sting-of-being-priced-out-of-life-insurance-20170803-gxos9i.html> (accessed 8 August 2017).

⁵ See for example FOS decision 428120. In this case, the consumer did not have a pre-existing condition, but FOS found that the decision to exclude claims arising from mental conditions was not based on actuarial or statistical data that it is reasonable to rely upon.

⁶ Legal Aid NSW submission to Insurance Council Australia, *Review of the General Insurance Code of Practice*, April 2017, 7-8.

⁷ Financial Rights Legal Centre website <http://financialrights.org.au/wp-content/uploads/2016/03/Guilty-until-proven-innocent.pdf> (accessed 20 July 2017).

Funeral insurance products

Legal Aid NSW does not consider that ‘funeral business’ should be excluded from the scope of the initial Phase 1 collection or from the public reporting regime. While funeral insurance is not life insurance, it is defined in a similar way and raises very similar issues. In each case, consumers must pay premiums each year and receive a lump sum in the event of death. Premiums increase with age and if premiums are discontinued, there is no payout. Accidental death insurance (a form of life insurance) is often sold alongside funeral insurance.

There are significant problems in the funeral business industry, which sells to some of the most disadvantaged and vulnerable consumers in our community. The public reporting regime is an ideal opportunity to gain important information about this industry.

The Legal Aid NSW Civil Law Service for Aboriginal Communities raises the following recurring issues with funeral insurance products, based on its casework with Aboriginal communities:

- Funeral insurance products are often purchased by vulnerable consumers who cannot afford them.
- Policies are terminated after years of contributing, and payouts are not made because payments have been missed due to financial hardship.
- Products offered by insurers are said to be tailored to a consumer’s financial needs. However, many consumers believe that they are accessing a savings product, rather than an insurance product that lapses if payments are not made.

ASIC’s report on funeral insurance noted that there is a company that markets directly to Aboriginal consumers.⁸ The company relies on the exemption for ‘funeral expenses only’ products that exists in insurance and corporations legislation. Given the concerns outlined in ASIC’s report, it is important that funeral expenses only insurance products are covered by new data laws, so as to increase transparency and provide some protections to vulnerable Aboriginal consumers.

⁸ ASIC, Report 454: Funeral insurance: A snapshot (October 2015).