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5 July 2018

General Manager, Policy Development
Policy and Advice Division
Australian Prudential Regulation Authority

By email: lifecclaimsdata@apra.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to the Life insurance - public reporting of claims information – response to submissions document.

Please do not hesitate to contact me and my colleagues on 02 8267 0946 or at JMennen@mauriceblackburn.com.au if we can further assist with APRA's important work.

Yours faithfully,



Josh Mennen
MAURICE BLACKBURN



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**Submission in Response
to APRA's Life Insurance –
Public Reporting of Claims
Information – Response to
Submissions.**

July 2018

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Introduction

Maurice Blackburn Pty Ltd is a plaintiff law firm with 31 permanent offices and 29 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions.

Maurice Blackburn employs over 1000 staff, including approximately 330 lawyers who provide advice and assistance to thousands of clients each year. The advice services are often provided free of charge as it is firm policy in many areas to give the first consultation for free. The firm also has a substantial social justice practice.

Our Superannuation and Insurance and Financial Advice Disputes practice has represented and assisted thousands of claimants for over 20 years. We have the largest practice of its kind in Australia and currently have approximately 125 staff nationally working in the team.

At any one time we provide legal assistance to approximately 3500 to 4000 clients. Much of this work is assisting them with the complex and challenging processes involved in making an insurance claim under their superannuation scheme membership or retail insurance policy.

On a daily basis we witness the difficulties experienced by our clients when unexpected illness or injury forces them out of the workforce, and we also see the devastating impact of unfair decision making by life insurers.

Our Submission

Maurice Blackburn applauds The Australian Prudential Regulation Authority (APRA) and Australian Securities & Investments Commission (ASIC) on their commitment to the public reporting of claims data, and the thoroughness of the consultation process.

The Response to Submissions paper¹ tells us that:

“The agencies consider that robust reporting offers the life insurance industry an opportunity to better understand and communicate claims performance to the community” (p.6).

We agree with this central point.

Maurice Blackburn also notes the objectives of the public reporting of claims information process, as spelled out in section 1.2 of the Response to Submission paper, namely:

- *To improve accountability and performance of life insurers in relation to claims; and*
- *To facilitate an informed public discussion about the performance of the life insurance industry.*

These objectives will be achieved through publication of credible, reliable and comparable data. (p.7)

¹ APRA and ASIC, Response to Submissions. Life insurance – public reporting of claims information – update on progress. 24 May 2018

We further agree with the statement in the Response to Submissions paper that:

“Enhanced transparency can help ensure that community confidence and trust in the industry reflect insurers' performance” (p.8).

Maurice Blackburn congratulates APRA and ASIC on their genuine attempts to seek and implement feedback. We are mindful of the improvements to the process which have already resulted from well intentioned feedback being accepted and adopted in earlier phases of the process.

In the spirit of the principles outlined above, Maurice Blackburn offers our input into the process via responding to the feedback questions in the discussion paper.

Responses to Feedback Questions:

Feedback Question 1.

Are there any aspects of the data tables in this paper, including in Appendix A, that could be improved for the ongoing publication of aggregated industry data? Are there any data items which should be added or removed?

Maurice Blackburn has identified a number of enhancements we would like to see APRA and ASIC adopt into the future, specific to industry data which is already being collected. These are detailed below:

- i. With reference to Table 2 – Claims outcomes by cover type:
Maurice Blackburn encourages APRA and ASIC to accompany this table with data as to *why* claims were declined.

Paragraph 10.30 of the Parliamentary Joint Committee on Corporations and Financial Services report on its inquiry into the Life Insurance Industry² tells us:

“The Committee acknowledges that APRA previously gave evidence that it was concerned that insurers do not have a sufficient understanding of declined claims data which may present a prudential risk if not rectified soon. ASIC later stated that it is working with APRA to establish a transparent public reporting regime for life insurance claims information”. (p.162)

Financial Rights Legal Centre, in its August 2017³ response to the APRA Discussion Paper for this inquiry, offered the following sensible list of possible reasons why a claim may be declined:

- the claim is outside of the policy terms and the claim entitlement is not met;
- the claim is declined due to an exclusion clause for example there is a pre-existing condition;
- the policyholder is found to have made a fraudulent non-disclosure;

²https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/LifeInsurance/Report

³ <https://www.apra.gov.au/sites/default/files/Financial-Right-Legal-Centre-Submission.pdf>

- the policyholder made an innocent non-disclosure in the first three years; or
- an allegation of a fraudulent claim.

From an industry perspective, it would be useful to have statistics on the number or percentage of claims denied across these reasons for denial.

Maurice Blackburn submits that reporting on declined claims could also include a breakdown of instances where either surveillance was conducted or an expert witness report was obtained/relied upon by the insurer together with a reference to the general nature of the condition involved (eg orthopaedic, chronic illness, mental health etc).

The controversial use of surveillance and the allegations of 'doctor shopping' have been the subject of controversy for the insurance industry in recent years⁴, with concerns that such heavy handed claims assessment tactics can wear claimants down and exacerbate their illnesses⁵.

- ii. With reference to Table 4 - claims processing duration:
Maurice Blackburn encourages APRA and ASIC to explore ways that this table might delineate between:

- Delay caused by dispute;
- Delay caused by insurer inertia; or
- Delay caused by outstanding requirements of the insurer.

In our day to day practice, we see consumers suffer from often unnecessary delays in claims processing, particularly where insurers seek information in a piecemeal order or impose burdensome requirements on claimants to provide documentation⁶.

The delineation of claim duration data at the industry level to reflect this would be useful in our work as representatives and consumer advocates and would, for example, enable superannuation funds and insurers to observe the extent to which claimants are withdrawing their claims due to the administrative burden and associated stressors.

- iii. With reference to dispute type:
The information on pages 10 and 11 of the Response to Submissions paper indicates that APRA is collecting data on dispute type (internal, external or litigated). This does not appear to be reflected in the tables of industry data in Appendix A. Maurice Blackburn suggests that this information would be useful to be displayed:
- As an adjunct to table A 10 as industry data in Appendix A, and/or
 - As consumer data in Appendix B.

⁴ See for example: <https://www.smh.com.au/business/banking-and-finance/doorknock-insurers-must-be-stopped-20160311-gngy5x.html>; <http://www.abc.net.au/news/2016-03-17/insurance-investigators-accused-of-bullying-and-intimidation/7255262>; <http://www.abc.net.au/radionational/programs/backgroundbriefing/2016-11-27/8054972>

⁵ <https://www.smh.com.au/national/nsw/life-insurance-claims-often-more-stressful-than-original-injury-20151112-gkwzib.html>

⁶ See for example our written submissions to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry relating to the 700 prima facie delay breaches reported to the Life Insurance Code of Practice administrator: <https://www.mauriceblackburn.com.au/about/media-centre/media-statements/2018/royal-commission-must-scrutinise-life-insurance-industry-codes-of-practice-after-700-insurer-breaches-reported-in-six-months/>

- iv. With reference to undetermined claims, as featured in several tables: Maurice Blackburn submits that it would be useful to know how many of the undetermined claims reported at the end of one reporting cycle are still undetermined at the end of the next – so what percentage of the undetermined claims are “newly undetermined”.

In relation to potentially useful data which may form the basis of future additions to the data collection scheme, Maurice Blackburn suggests the following:

- i. **Payout Data**
It is our experience that the degree to which an insurer is likely to dispute a claim is related to the size of the potential payout. It would be useful to monitor and report industry data comparing “declined” claims by “the dollar range of the payout”, across product types. A new table could show payout ranges by:
 - \$0-20k
 - \$20-50k
 - \$50-100k
 - \$100-300k
 - \$300k +
- ii. **Reinsurer Data**
Over time, the publication of industry data grouped by re-insurer would be useful in terms of detecting trends. It may become evident that there is a relationship, for example, between a particular reinsurer and insurers’ propensity to deny claims.
- iii. **Superannuation Fund Data**
Most Australians get their life insurance under a group policy owned by their superannuation fund. Indeed, insurance through superannuation amounts to 71% of total death sums insured and 88% TPD sums insured⁷.

Many if not most Australians would not know the identity of their super fund’s group life insurer. Hence the publication of insurer data, without reference to the super funds they underwrite, will mean little to a substantial portion of the public. For this reason, over time, industry data should identify the relevant super fund associated with each insurer, with a discrete breakdown of claims statistics.

Feedback Question 2.

Are there any aspects of the proposed Claims Data Reporting Standards which require modification? If so why?

No response to this feedback question.

⁷ “The experience of individuals with insurance through superannuation”, September 2017, Ross Clare, ASFA Research and Resource Centre.
www.superannuation.asn.au/ArticleDocuments/359/1709_Insurance_through_superannuation.pdf.aspx?Embed=Y

Feedback Question 3.

What would be the potential benefit to the public of the proposed determination that all data collected under the Reporting Standard is non-confidential?

Maurice Blackburn endorses APRA's proposal to determine under section 57 of the APRA Act that all data collected under the Reporting Standard be non-confidential.

We agree with the evidence supplied in the Response to Submissions paper that the publication of data collected is in the public interest.

Maurice Blackburn also endorses APRA's proposal that data which APRA determines to be non-confidential will identify individual insurers but will not identify individual claimants or breach the privacy of individuals.

Maurice Blackburn also endorses APRA's stated view that:

"...all data collected under the Reporting Standard be determined to be non-confidential because on balance, the benefit to the public from the disclosure would outweigh the detriment to the commercial interests that the disclosure might cause".

Maurice Blackburn submits that in order to achieve the stated objectives of the data collection process, namely to:

- improve accountability and performance of life insurers in relation to claims; and
- facilitate an informed public discussion about the performance of the life insurance industry⁸

it is necessary to ensure that the data collected and reported is deemed non-confidential. To do otherwise negates the central purpose of the exercise.

Feedback Question 4.

Would potential detriment to commercial interests arise from disclosure of data collected under the Reporting Standard? Submissions that seek to have the data remain confidential should:

- *specify which data items should remain confidential; and*
- *include specific information on how the disclosure of that information would cause detriment to commercial interests, and the extent to which that could occur.*

As mentioned above, Maurice Blackburn endorses APRA's stated view that:

"...all data collected under the Reporting Standard be determined to be non-confidential because on balance, the benefit to the public from the disclosure would outweigh the detriment to the commercial interests that the disclosure might cause".⁹

To our understanding, the purpose of data collection and publication is to assist consumers in making an informed decision in relation to the purchase of insurance products.

⁸ Ibid, section 1.2: p.7

⁹ Refer page 28 of the Response to Submissions paper

Transparency and competition, by their nature, ensure that those with the weakest or least competitive products will risk detriment to their commercial interests. This we see as a good thing.

The Parliamentary Joint Committee on Corporations and Financial Services, in their report on their inquiry into the Life Insurance Industry noted the following:

10.28 The committee recognises that with three different distribution channels operating in life insurance—retail, direct, and group—a consistent and publicly available reporting regime regarding claims data, outcomes, timeframes and disputes across policy types is of vital importance.¹⁰

Maurice Blackburn encourages APRA to consider the potentially detrimental impacts of failing to adopt a non-confidential approach. Lack of certainty leads to unhealthy speculation – both at the industry and consumer level.

This was made starkly evident in October 2016 when ASIC decided that it was unable to reveal, whilst giving evidence to a Parliamentary Standing Committee, which of the country's biggest life insurers was denying as many as one in three claims¹¹.

This demonstrates how the de-identification of insurers would cause confusion among industry stakeholders including super funds, employers and the broader public.

Maurice Blackburn submits that this case, plus the inevitable media investigation and exposure of which company was at the centre of the furore, did nothing to enhance the trustworthiness of the industry in the eyes of consumers¹².

Maurice Blackburn further submits that de-identification of insurers would also have a stifling effect on competition within the insurance sector through a diminished incentive for insurers to demonstrate themselves to be the 'best in show'.

Feedback Question 5.

Are there any aspects of publication principles which could be improved?

Maurice Blackburn agrees with the stated principles of publication, as stated in section 4.4 of the Response to Submissions document, namely that the reporting provide:

- *credible, reliable, comparable data;*
- *coverage of all direct writers of included insurance products;*
- *industry-aggregate and insurer level publication allowing for comparisons;*
- *sufficient granularity to allow for meaningful comparisons;*
- *accessible to the community, including consumers; and*
- *sufficient context to effectively inform the community. (p.30)*

¹⁰https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/LifeInsurance/Report. p.162. Our highlighting.

¹¹ <https://www.smh.com.au/business/banking-and-finance/asic-gagged-from-naming-insurers-that-reject-claims-pay-knockback-bonuses-20161014-gs21vu.html>

¹² <https://www.theaustralian.com.au/business/westpac-rejected-37pc-of-insurance-claims/news-story/5de39419d72dc4c0cd3be721e40a785a>

Maurice Blackburn notes that the industry data will be of particular interest to academia and the media, and consideration should be given to how the data can be made readily available and useable for those purposes.

Feedback Question 6.

What educational material would help people to understand and interpret the results?

Maurice Blackburn believes that consumers would benefit from comparative data:

- At the point of sale;
- Via a centralised website (eg, on the APRA and/or ASIC websites); and
- By having the data included in insurer product description literature (PDS or Key Facts Sheets).

As noted above, in relation to group insurance, most people would be more familiar with the identity of their superannuation provider than who the respective insurer is. We ask that APRA consider ensuring that support information and comparative data for group insurance products be expressed by superannuation fund, as well as by insurer.

In considering how to best make information available to consumers, Maurice Blackburn suggests the Committee refer to the learnings from the Productivity Commission's inquiry into Competition in the Australian Financial System¹³. In the section of their report on "Advice and Information", their notes include the following:

- *Information provision is a key step to improving weakly competitive markets. It is also crucial to helping consumers help themselves.*
- *Faced with an overwhelming volume of often irrelevant material that is difficult to digest, consumers may:*
 - *base their choices on trust (such as, a known brand);*
 - *accept the default option; or*
 - *narrow the decision making criteria to one feature, such as price*

completely normal strategies given the information haze, but ones that do not promote competition.

- *There is a great abundance of 'information' about financial products. But less complex, more targeted and strongly reliable information is in short supply.*
- *21st century information disclosure should:*
 - *take full advantage of the benefits of digital technology in conveying information to consumers*
 - *exploit the depth of information held by banks and insurers by requiring the publication and release of pertinent information in digital formats*
 - *use actual information on prices currently paid for your product*
 - *show the trade-off between price and risk*
 - *facilitate comparisons across products and providers.*

¹³ <https://www.pc.gov.au/inquiries/current/financial-system/draft/financial-system-draft.pdf>

- *The ultimate aim of enhanced information disclosure is to improve consumer outcomes. Therefore, new information provision should be tested both before policies are introduced and after to ensure consumers do benefit, and that well-meaning policies do not result in unintended outcomes for consumers and competition more generally.* (p.351)

Feedback Question 7.

Are there any aspects of the proposed insurer level publication in Appendix B which could be improved? Should the assumptions for insurer level publication be changed? If so, why?

Maurice Blackburn agrees with the view expressed as paragraph 10.19 of the PJC's report on its inquiry into the Life Insurance Industry¹⁴:

"The committee recognises the importance of transparent processes in enabling consumers to understand how the decisions made by life insurers have been reached". (p.160)

Maurice Blackburn believes that developing the capacity for the provision of valid, contemporary data to consumers is one of the major benefits of this project.

As mentioned earlier, Maurice Blackburn believes that consumers would benefit from comparative data:

- At the point of sale;
- Via a centralised website (eg, on the APRA and/or ASIC websites); and
- By having the data included in insurer product description literature (PDS or Key Facts Sheets).

Maurice Blackburn believes that the comparative data displayed in the table in Appendix B is a very good start.

Maurice Blackburn submits that ideally, consumer-focused comparative data:

- Would maintain the current contents of the table displayed in Appendix B;
- Would explicitly name the Insurers;
- Would show comparisons for each product across like policies; and
- Would show comparisons to industry averages.

In addition to what's currently there, and in order for the consumer to make informed choices, Maurice Blackburn suggests that consumers would also benefit from comparative data about:

- Premiums charged;
- Claims payment method – lump sum or instalments. This is especially important in TPD claims;
- The value proposition – premium paid versus average payout;
- Statistics comparing an insurer's legacy products to current offerings; and

¹⁴https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/LifeInsurance/Report

- Statistics referencing prima facie breaches of the Life Insurance Code of Practice especially with respect to the delay provisions at clauses 8.16 and 8.17, and with respect to the monitoring, enforcement and sanctions of the Code.

Maurice Blackburn submits that the above could be adopted by APRA and ASIC as potential future data collection options.

Maurice Blackburn notes the provisions detailed on page 31 of the Response to Submissions paper in relation to imposing a minimum threshold on claims reporting, in order to ensure statistical credibility of the data. We ask the Committee to consider any unintended consequences which may arise from this, including insurers deliberately delaying claims decisions in order to avoid reaching the minimum threshold for a particular product.

To this end, we submit that claims delay data should not be subjected to minimum thresholds, and should instead be reported with an appropriate disclaimer noting potential statistical invalidity.