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INSURANCE IN SUPERANNUATION CODE OF PRACTICE

Submission to the Insurance in Superannuation
Working Group

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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INTRODUCTION

CHOICE appreciates the opportunity to provide the following comments to the Insurance in Superannuation Working Group (ISWG) consultation on its Insurance in Superannuation Code of Practice (the Code). The Code as a whole is a significant step forward in protecting consumers in the insurance in superannuation market. However, there are three main improvements the sector will need to make if the Code is going to resolve the challenges it set out to meet.

Firstly, allowing funds to drain retirement savings from inactive accounts for 13 months is excessively long and will result in substantial harm to consumers. CHOICE analysis shows that many duplicate accounts could be eroded completely if the 13 month cessation period is enacted. This would see consumers thousands of dollars worse off at retirement. Keeping in mind the limitations of the current regulatory environment, CHOICE maintains that cessation periods could be halved to seven months. This would give consumers ample time to decide if they wish to continue cover and lead to material savings for those who do not.

The second and third major issues are intertwined and need to be dealt with in combination. The Code attempts to deal with affordability by setting premium caps. While we acknowledge this is a positive first step, it needs to be followed by a more nuanced needs assessment and standard definition setting. Without these subsequent steps there is a real risk that funds will meet premium caps by simply reducing benefits and making it harder for consumers to claim on a policy.

CHOICE has made a series of recommendations which require urgent adoption if this Code is to deliver material benefits to consumers. Anything less will entrench rip-offs and leave consumers with eroded retirement savings.

Summary of recommendations

- 1. Recommendation:** That a regulatory option for the Code be developed to ensure industry wide adoption.
- 2. Recommendation:** That a regulatory option for the Code be developed to ensure industry wide adoption.
- 3. Recommendation:** That the Code provides more prescription to funds on how to model earnings data to ensure the earnings cap more accurately reflects actual earnings of relevant cohorts.
- 4. Recommendation:** That the ISWG make a public, time-bound commitment to revisit the affordability levels of the caps proposed in the Code. That industry also commit for this analysis to be done alongside a more thorough assessment of the basic need a default product is attempting to meet, along with definition standardisation.
- 5. Recommendation:** That the Code adopt a seven month cessation period with appropriately timed notices informing members of the impact of cover ceasing.
- 6. Recommendation:** That clause 4.31 is amended to direct funds to seek an ongoing permission from new and existing members to help identify duplicate accounts on an annual basis.
- 7. Recommendation:** That the ISWG investigate how principles of performance-based consumer protections can be incorporated into the Code.
- 8. Recommendation:** That a KFS include premium pricing and benefit payment information tailored to an individual member or prospective member.
- 9. Recommendation:** That the Code give funds more directions about pushing the KFS, including requiring funds to include a link to a KFS wherever an Automatic Insurance Member offer is advertised on its website.
- 10. Recommendation:** That the KFS contains information about a consumer's right to make a complaint to an internal and external dispute resolution body and contact details for such a complaint.
- 11. Recommendation:** That a consumer with contributions of \$1,800 or less over a 12 month period have cover cease after adequate warning and the opportunity to continue cover.
- 12. Recommendation:** The Code should make specific reference to ISP obligations to comply with clauses such as the one barring performance measures, remuneration and bonuses for denied or deferred claims.
- 13. Recommendation:** That the definition of Significant Breach be clarified to better explain its intent and apply to a wider set of circumstances.
- 14. Recommendation:** That members of the ISWG develop a robust plan to ensure the code administrator is properly funded to perform its functions.

Scope of the code

1. How should the ISWG ensure that all trustees are bound by the Code?
2. What are the practical implications of the transition arrangements?
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)?

Enforceability

CHOICE supports the development of an enforceable code that captures all trustees that offer insurance within an APRA-regulated superannuation fund. We acknowledge that to be effective this will require a regulatory solution. There is a threat that anything less than full market coverage for this type of consumer protection will lead to consumer misunderstanding of their rights and obligations. In considering the alternatives, industry should keep in mind that non-compliance even by a single fund is likely to reflect poorly on the reputation of the entire sector.

1. **Recommendation:** That a regulatory option for the Code be developed to ensure industry wide adoption.

Transition arrangements

To prevent consumer confusion, the code administrator should create a list of funds who have adopted the Code and the date on which their products comply with Section 4. Currently the Code states:

“The benefit design and premium limit standards in Section 4 apply to any new or updated policies after the date we adopt this Code. Any existing policies must be updated to take into account the requirements of the Code within two years of our date of adoption.”¹

This clause is likely to create uncertainty as individual consumers are unlikely to be aware of the date on which their fund adopted the Code and will therefore be unaware of what parts of the Code apply.

¹ Clause 3.10 Insurance in Superannuation Code of Practice

2. **Recommendation:** That the code administrator maintains an up-to-date list of funds who have adopted the Code and the date at which the fund will be compliant with Section 4.

Premium limits

4. Are there alternative proposals for setting maximum premium levels that the ISWG should consider?
5. Are there particular measures of earnings that the ISWG should include in Good Practice Guidance?
6. 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).
7. 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?
8. To what extent will the premium limits achieve the goal of targeting inappropriate account erosion for low income earners, particularly women and younger members?
9. 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?

Affordability/Need nexus

It is important to be clear on the purpose premium caps are attempting to serve in the Code. As a product design tool, when combined with a nuanced understanding of member incomes, they are better targeted at affordability issues. They will always be a crude tool in determining need. However, need and affordability cannot be considered in isolation if a proper balance is to be struck in product design.

CHOICE would like to see a public, time-bound commitment from the members of the ISWG to revisit the affordability levels of the caps proposed in the Code. This analysis needs to be done alongside a more thorough assessment of the basic need a default product is attempting to meet, along with definition standardisation so that policies reflect this need.

In particular, the “1% of ordinary time earnings for relevant segments of the membership, and the membership generally” test needs further refinement to ensure it solves the identified problem of a lack of affordability for low income consumers.

The Code attempts this refinement by introducing a lower cap of 0.5% for those aged under 25 and a requirement that a fund consider the impact of the cap on relevant segments of the membership. However, it leaves it to superannuation funds to decide relevant segments against which this cap may be applied. This could leave many low income earners paying premiums based on 1% of earnings of those on significantly higher incomes.

The ISWG commissioned KPMG report found that “income level has the largest effect on the impact of default insurance on retirement compared to age or gender”.² Therefore it is clear that at least one of the relevant cohorts should be based on income levels. The KPMG study used income quartiles to demonstrate this impact, finding that insurance premiums would on average wipe out 16% of the retirement savings for the portion of the population earning less than \$18,200.³ This impact is of course felt much worse when low income coincides with other factors such as age and gender. The report found the worst impacted were low income women aged 35-39, who would see 44% of their retirement savings lost to insurance.

CHOICE proposes that the ISWG undertake a more thorough analysis of the basic needs of cohorts of consumers. As the KPMG paper prepared for the ISWG states, “an appropriate default insurance benefit design is one that takes into account both the members’ broad insurance needs and their ability to pay.”⁴

There is a significant risk that introducing premium caps, without determining default need and subsequent standard definitions for cover, will simply lead to policies becoming more restrictive to meet those premium caps.

The ISWG will be in a better position to assess how individual funds are likely to interpret their obligations under the caps once it receives data in response to this consultation. However there are some immediate fixes that are likely to assist funds in getting a more accurate understanding of the affordability of premiums for members. For example, we anticipate that requiring funds to consider ‘median earnings’ rather than ‘average earnings’ will help control for outliers which would otherwise see many members paying significantly more or less than might

² KPMG, 2017, ‘Review of default group insurance in superannuation’, p. viii

³ KPMG, 2017, ‘Review of default group insurance in superannuation’

⁴ KPMG, 2017, ‘Review of default group insurance in superannuation’, p.45

otherwise be desirable. There could also be more prescription around specific income, age and gender cohorts that should be subject to affordability caps.

3. **Recommendation:** That the Code provides more prescription to funds on how to model earnings data to ensure the earnings cap more accurately reflects actual earnings of relevant cohorts.
4. **Recommendation:** That the ISWG make a public, time-bound commitment to revisit the affordability levels of the caps proposed in the Code. That industry also commit for this analysis to be done alongside a more thorough assessment of the basic need a default product is attempting to meet, along with definition standardisation.

Cancellation and cessation of cover

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

The 13 month cessation period stipulated in the Code is excessively long and will see accounts unnecessarily eroded due to multiple insurances. Modelling from the Financial System Inquiry found that removing duplicate accounts could increase superannuation balances at retirement by around \$25,000 and retirement incomes by up to \$1,600 per year.⁵ About two thirds of this cost or \$16,000 was due to duplicate insurance. While cessation rules will not solve the issue of multiple accounts completely, it will cap the amount of insurance related erosion. Cessation rules are likely to have the greatest impact on preserving the superannuation balances of casual workers and women. As the ISWG commissioned KPMG study found:

“Introducing appropriate cessation rules can make a significant difference to segments of the membership that require special consideration, such as casual workers and females who are more likely to have interrupted and irregular work patterns.”⁶

As a principle CHOICE maintains that, unless making an informed decision to do so, no consumer should end up with multiple superannuation funds. However we recognise that to end duplication completely will require legislative reform. In the meantime, there are a number of

⁵ Modelling prepared for the Financial System Inquiry using Treasury models, October 2014. Based on assumptions of 37 years of work with an average of 2.5 accounts over a person’s working life, fixed fees of \$80 per account and \$140 for insurance per account per annum (in 2014 dollars)

⁶ KPMG, 2017, ‘Review of default group insurance in superannuation’, p.xi

limitations on a superannuation fund's ability to identify inactive accounts, the largest being the out-dated regulation which allows employers up to four months to make Superannuation Guarantee (SG) payments.⁷ Although outside of the scope of the Code, we see a strong need for employers to move toward monthly payment of SG. This change would require legislative reform; however, we understand that modern accounting software makes this process a relatively simple and inexpensive step for employers. Indeed it is one that many employers already follow. This change would help bring the superannuation system up-to-date with the modern economy.

Given the current limitations, a more reasonable cessation period would be within seven months of the last eligible contribution. Some funds have argued that 13 month cessation periods are necessary to protect women who may otherwise lose cover due to not receiving contributions while on maternity leave. This argument does not stand up to the barest scrutiny. Firstly, cover will only cease after a member has been sent at least two communications informing them of cessation and its implications. This will give ample warning to a member who wishes to maintain cover. Secondly, the average time taken on unpaid maternity leave (during which they are unlikely to receive an eligible contribution) is 25 weeks (approx. six months).⁸ Therefore the average women on maternity leave is unlikely to have her cover cease if a seven month period were adopted. There are also savings provisions in the Code which allow for cover recommencement without any health assessment or break in cover for those who wish to recommence within 60 days of the cessation date. For those who take longer periods of leave, there will be multiple communications warning them of the implications. Given this suite of protections it is impossible to justify excessively long 13 month cessation periods.

Cessing cover after seven months of inactivity will have a real and material impact on the savings of most Australians. We know that the bulk of inactive accounts are inactive because a member has changed jobs and set up a new account, in which they likely have a second set of insurance cover. As the average member has two superannuation accounts, many with low balances, the potential for complete erosion is very high unless cessation timeframes are tightened. As an example, REST superannuation includes default death, TPD and IP cover, for a 35 year old the premiums are \$21.60/week.⁹ Cessing cover at seven months rather than 13 months would save a member \$561.60 or potentially \$2,363.97 at retirement.¹⁰

The 13 month cessation period would give ample time for superannuation funds to completely erode many duplicate accounts. The KPMG analysis showed that 30% of superannuation

⁷ <https://www.ato.gov.au/Business/Super-for-employers/Paying-super-contributions/When-to-pay-super/>

⁸ <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4102.0Main+Features10Nov+2013>

⁹ https://www.rest.com.au/NEW-Documents-library/Guides/Member/RES0254_REST_Super-Insurance-Guide-FA_WEBSAFE.PDF

¹⁰ Assuming retirement age at 67 and a net return of 4.5% p.a.

accounts have an account balance of less than \$1,000, most of which are duplicates.¹¹ Using the REST example above, an account could be run down \$1,209.60 during a 13 month cessation period. In this example, the industry proposal would completely erode most duplicate accounts, by contrast a seven month cessation period would preserve up to half the balance of these accounts.

A default superannuation system needs to work for the majority of members. The cessation periods as currently designed will drain the duplicate accounts of members and are not well designed for the needs of members on maternity leave. As six million Australians have duplicate accounts it is incumbent on trustees to act in the best interests of members and cease duplicate insurance cover early and with proper notice.

- 5. Recommendation:** That the Code adopt a seven month cessation period with appropriately timed notices informing members of the impact of cover ceasing.

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?

Helping consumers identify duplicate cover they may have should be viewed as an ongoing task for funds. Currently the Code requires funds to ask permission of new members to help them identify any duplicate insurance they may have.¹² While this is a good first step it will only capture new members and should be extended to existing members. Given the prevalence of the 'gig economy' many employees now work multiple jobs over their lifetime, sometimes at the same time. Subsequent duplicate accounts would not be captured if a sweep is only done at sign up.

New and existing members should be encouraged to provide consent for regular ongoing sweeps to discover duplicate accounts. We propose that these types of checks should be conducted on an annual basis.

We contest the notion that maintaining duplicate default insurance is in the best interests of a consumer. Default cover by its nature is designed to meet the basic needs of members, if a

¹¹ KPMG, 2017, 'Review of default group insurance in superannuation', p. vii

¹² Draft Insurance in Superannuation Code of Practice, clause 4.31

member decides they require more tailored cover then funds would need to provide advice based on a consideration of many more factors, such as the member's actual need. Relying on two or more sets of default cover is more likely to lead to over or under insurance and an overall poor outcome for a member.

- 6. Recommendation:** That clause 4.31 be amended to direct funds to seek an ongoing permission from new and existing members to help identify duplicate accounts on an annual basis.

Helping members to make informed decisions

12. Which parts of the Code require particular attention for consumer testing?
13. How could the Key Facts Sheet template better assist members to understand and compare their cover?
14. Do the communication requirements in the Code achieve the right balance between prescription and trustee flexibility?
15. What further steps could be taken to engage members who are making no contributions or low or infrequent contributions?

Consumer testing should not be seen as an up-front, set-and-forget response to improved disclosure. If disclosure is to remain responsive to consumer need it has to be done in combination with consumer comprehension testing.

Performance-based consumer protection is an emerging theory which attempts to align the interests of firms with those of regulators and consumers. It places the responsibility with businesses for consumer comprehension and ensuring consumers have suitable products.¹³ The aim is to better align consumer purchases with consumer expectations. Performance-based consumer protection has the potential to incentivise firms to use their resources, such as advertising and product knowledge to ensure consumers understand and are accessing appropriate products.

For example, it is universally accepted that providing insurance cover to people who are unable to claim on that cover is unacceptable and will lead to unnecessary erosion of retirement savings. To meet product suitability requirements industry would be required to take steps to ensure no one ends up in a product they cannot claim against.

¹³ Willis, L.E., 2015, 'Performance-Based Consumer Law', *The University of Chicago Law Review*, p.1309, available at: <http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5879&context=uclev>

Currently there is a data gap which limits a fund’s ability to identify all members that fall into this category. As a solution, performance-based consumer protection could be used to set comprehension requirements on funds. For example, if an income protection policy can only be claimed against if a member is in gainful employment, a fund could be required to ensure at least 90% of members understood this restriction. Funds would be required to test their membership to ensure they are meeting comprehension standards. This approach moves beyond rigid prescription about product disclosure and places the responsibility on funds to actually ensure their members understand the products they are being sold.

- 7. Recommendation:** That the ISWG investigate how principles of performance-based consumer protections can be incorporated into the Code.

Key Facts Sheets

While we acknowledge that performance-based consumer protections are likely to lead to higher rates of consumer comprehension, in the interim there are improvements that could be made to existing disclosure requirements. Key Facts Sheets (KFS) are a large improvement on existing product disclosure statements. However, the KFS described in the Code are missing key pieces of information which consumers are likely to find highly relevant to understanding their insurance offer.

For example, the prototype KFS is lacking any premium pricing and benefit payment information. CHOICE understands this would require a degree of customisation; we also know these customisation requirements have been met in other sectors, such as a home loan KFS. The alternative to providing customised information is leaving consumers to trawl lengthy tables in product disclosure statements or insurance guides in order to determine the premium and benefit levels that apply to their cover. The Code requires that this information will be made available via a ‘welcome pack’¹⁴; it would make sense to combine the KFS with the information provided in the welcome pack to cut down on duplication and give consumers more targeted information.

- 8. Recommendation:** That a KFS include premium pricing and benefit payment information tailored to an individual member or prospective member.

¹⁴ Draft Insurance in Superannuation Code of Practice, clause 5.18

There is also minimal direction to ensure a consumer actually sees a KFS, the only requirement being that it will be published on a website.¹⁵ Other sectors have provided more prescription to ensure KFS are less likely to be missed by consumers. For example in the telecommunications sector KFS equivalents are required to be included as a link wherever an offer is advertised on the supplier's website.¹⁶ A study into the use of the KFS for home loan products found they effectively enhanced a consumer's ability to identify the cheapest loan package from among several alternatives.¹⁷ Although the study demonstrated low levels of awareness among consumers of the existence of the KFS, it showed that this was likely due to poor levels of information provision and staff training. Shadow shopping exercises indicated consumers were unlikely to receive a KFS unless they specifically asked for a 'Key Fact Sheet', even where they requested information for the same purpose. Therefore the Code should provide further prescription on how the KFS will be made available.

- 9. Recommendation:** That the Code give funds more directions about pushing the KFS, including requiring funds to include a link to a KFS wherever an Automatic Insurance Member offer is advertised on its website.

The KFS is also lacking information about how consumers can make escalated complaints if required. A solid consumer protection framework requires consumers to be aware of their complaint rights. The sample KFS directs consumers to contact their fund to 'learn more', but does not inform them of their internal or external rights to make a complaint.

- 10. Recommendation:** That the KFS contains information about a consumer's right to make a complaint to an internal and external dispute resolution body and contact details for such a complaint.

Member engagement about the impact of low or infrequent contributions

CHOICE is concerned that on the existing evidence, communications on low or infrequent contributions is unlikely to be acted upon by consumers. The Code requires funds to contact members with general information about the impact of insurance premiums on retirement savings at least once a year if contributions are below \$1,800.¹⁸ We are aware of significant

¹⁵ Draft Insurance in Superannuation Code of Practice, clause 5.12

¹⁶ Telecommunications Consumer Protection Code

¹⁷ Skelton, R.A., 2015, 'The Impact of Home Loan Key Facts Sheets on Borrowers' Comparisons of Loan Costs', QUT, available at: http://eprints.qut.edu.au/91053/4/Ross_Skelton_Thesis.pdf

¹⁸ Draft Insurance in Superannuation Code of Practice, clause 5.28

internal research by a major superannuation fund which tested the impact of sending messages of fund erosion on subsequent consumer action. The intervention was found to have next to no impact on driving consumer action when compared to a control group. Therefore we have no faith in the proposed communication method actually preventing undue account erosion.

The objective of insurance in superannuation is to support the purpose of superannuation by providing a measure of financial support to members and/or their families if the member is prevented from working, either temporarily or permanently, to retirement age by death, terminal illness, injury or ill-health.¹⁹ For low income earners there is already a form of universal insurance cover in the form of the social security system. This system, while inadequate at replacing incomes of high earners, is more than adept at replacing incomes of those in the lowest income quartile (\$18,200).

In all but the rarest cases these consumers are likely to be better served by the social security safety net. For example, the maximum payment rate for the Disability Support Pension (DSP) for a single person aged 21 and over is \$894.40 a fortnight or \$23,254.40 a year.²⁰ Therefore the DSP would more than replace the income of a person with earning \$18,200 and below at a rate over 100%, greater than any default IP policy. Payment of an insurance benefit for consumers at this income level is likely to be a windfall, well above income replacement levels.

More concerning is the cost of providing insurance to consumers on low incomes, as the KPMG study found, this group is the most impacted by erosion of retirement savings due to premiums, with low income women aged 34-39 standing to lose 44% of their retirement incomes. Given the combined impact on retirement savings for low income consumers and what we know about the ineffectiveness of written member communications, the ISWG needs to develop a more suited intervention.

CHOICE's preferred approach is that consumers with contributions of \$1,800 or less over a 12 month period have cover cease after adequate warning and the opportunity to continue cover.

11. Recommendation: That a consumer with contributions of \$1,800 or less over a 12 month period have cover cease after adequate warning and the opportunity to continue cover.

¹⁹ ISWG, 2017, 'ISWG Consultation Paper – September 2017 Insurance in Superannuation Code of Practice', p.1

²⁰ ADHS, 2017, 'Payment rates for Disability Support Pension', available at: <https://www.humanservices.gov.au/individuals/enablers/payment-rates-disability-support-pension>

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

CHOICE is encouraged to see a commitment to clear claims handling timeframes and improved member communication. Claims handling has been a source of serious concern as highlighted by a number of organisations representing consumers during insurance claims.²¹ As CHOICE does not have claims handling function for complex insurance matters, we will leave detailed commentary of these provisions to consumer organisations that operate in this space.

Vulnerable members

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

As stated above, we maintain the Code could do more to address the account erosion of low income consumers. It is unreasonable that those in the lowest income quartile are likely to have a significant portion of their superannuation contributions eroded by insurance premiums. Especially given that for many of these consumers the social security system is capable of covering lost income if they were no longer able to work due to disability.

²¹ FRLC, 2016, 'Inquiry into the Life Insurance Industry'; PIAC, 2016, 'Submission to the Parliamentary: Joint Committee on Corporations and Financial Services: Inquiry into the Life Insurance Industry'; ALA, 2016, 'Inquiry into the Life Insurance Industry'.

As discussed in more detail below, CHOICE would expect to see the industry develop more detailed guidance on assisting vulnerable consumers as it iterates on the current version of the Code.

Premium adjustments

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

CHOICE is pleased to see strong transparency measures around premium adjustments. The commitment to ensure premium adjustments are only passed on to insured members through adjustments to future premiums is a good one.

Promoting our insurance cover and changes to cover

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

CHOICE is particularly pleased to see the Code direct a fund to consider the appropriateness of additional cover for segments of its membership before promoting that cover. Promoting over-insurance, unaffordable or poor value cover causes significant levels of distrust among consumers. Consumers are often in a poor position to adequately assess their own needs when deciding to purchase insurance, it is therefore incumbent on insurers and funds to be honest brokers and only act in the best interests of consumers when helping to determine appropriate levels of cover.

We are also encouraged to see these consumer protections around the promotion of insurance cover extended to a financial advisor or dealer group who recommends or promotes insurance cover on behalf of the fund. Third party sales channels are a significant source of reputational risk, so it is good to see the industry commit to ensuring a level playing field of protections across the sector.

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?

CHOICE has consistently maintained that providing refunds for members who are ineligible or would have their benefit entirely offset by other cover is baseline good practice. It is important that the refund settings not only provide fairness for the individuals impacted, but send a signal to funds that they need to be more proactive in helping members identify if they have duplicate cover or cover they are ineligible to claim against. Mandating a refund requirement helps in a small way to create a financial incentive for funds to play a more active role in providing this assistance to members or face high refund obligations at claims time.

We await feedback from funds about the cost implications of this refund structure, but maintain that any watering down of the proposals in the draft Code will dilute the good will and positive incentives established.

Staff and independent service providers

27. Do the standards for training and monitoring staff require further detail?
28. What are the practical implications of requiring trustees to ensure Independent Service Providers comply with the Code?

The standards for training and monitoring staff in the Code provide good principles to ensure staff are equipped with the right skills for assisting consumers. We expect these principles would be expanded upon through good practice guidance to give further detail on important aspects, such as best practice for assisting vulnerable consumers.

For example, the Australian Bankers' Association (ABA) has produced a financial hardship package in consultation with Financial Counselling Australia (FCA) so they can better meet the needs of their customers. We would expect the superannuation industry to undertake similar work as it refines the Code in the future.

However, CHOICE is concerned that the standards set for Independent Service Providers (ISP) do not match those set for internal staff. We maintain that members should receive a consistent standard of service regardless of whether a fund has outsourced aspects of its service provision. For example the Code states that for internal claims handling staff:

“Performance measures, remuneration and entitlements to bonuses will not be based on declined claims or deferrals of decisions.”²²

An equivalent standard for staff of an ISP is not clearly mandated in the Code. Instead the Code only requires that an ISP “comply with the relevant standards of the Code”. To avoid doubt the Code should make specific reference to ISP obligations to comply with clauses such as the one barring performance measures, remuneration and bonuses for denied or deferred claims. We are concerned that without this clarification the current drafting may lead to funds outsourcing components of their customer service in order to avoid fundamental consumer protections.

12. Recommendation: The Code should make specific reference to ISP obligations to comply with clauses such as the one barring performance measures, remuneration and bonuses for denied or deferred claims.

Enquiries and complaints

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

One of the central communications pieces under the Code is the provision of Key Facts Sheets. As mentioned above, at present the KFS does not contain information for consumers about where to make internal and escalated complaints. CHOICE reiterates our recommendation that the KFS should contain details of the appropriate internal and external dispute resolution process and the circumstances in which complaints can be escalated.

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?

CHOICE is encouraged to see the governance framework adopt a number of ASIC’s requirements for approval of a Code. We expect the regulator will be able to provide more detailed feedback on the Code’s alignment with Regulatory Guide 183 and keep our feedback limited to some key features of the framework which need further work.

Much of the framework hinges upon a finding of ‘Significant Breach’. For example,

²² Draft Insurance in Superannuation Code of Practice, clause 12.3

- a fund is required to report a Significant Breach to the code administrator,
- the code administrator will report any Significant Breach to the relevant regulator, and
- in determining any sanctions to be imposed the code administrator will consider whether the breach is significant.

According to the Code:

“Significant Breach means a breach that is reasonably determined by us to be significant by reference to:

- a) the number and frequency of similar previous breaches;*
- b) the impact of the breach on our ability to provide our services;*
- c) the extent to which the breach indicates that our arrangements to ensure compliance with Code obligations are inadequate; or*
- d) the actual or potential financial loss caused by the breach.”*

The elements of a Significant Breach in the Code are unclear and should include a wider set of circumstances. For example, it is unclear why a fund having reference to the impact of the breach on its ability to deliver its services is a relevant consideration. Further wording is needed to explain the application and intent of this clause.

Secondly, the required consideration of “the number and frequency of similar previous breaches” seems unnecessarily restrictive. For example, this clause could be interpreted to mean breaches would need to be both *similar* and *previous* to be considered significant. However, a number of similar *or* previous breaches are likely to be cause for significant breach, as well as:

- A number of *present* breaches.
- A number of *dissimilar* breaches.

All of these scenarios could be indicative of systemic poor code compliance of the kind warranting a finding of significant breach. The intention of the clause appears to be that evidence of a series of breaches, no matter the size, may amount to a significant breach. CHOICE maintains the definition should be altered to reflect this intention.

13. Recommendation: That the definition of Significant Breach be clarified to better explain its intent and apply to a wider set of circumstances.

Adequate resourcing for the code administrator

The code administrator has significant responsibilities under the code. For example, its responsibilities include:

- Data collection,
- Monitoring compliance,
- Ensuring that the staff of funds are appropriately trained in the Code,
- Receiving and investigating allegations about breaches,
- Reporting breaches to the regulator,
- Issuing and monitoring the implementation of remedies,
- Recommending code reviews,
- Providing regular reports on compliance and weaknesses of the Code

While the code administrator may outsource its functions, except its power to sanction, to an appropriate body²³, there is no indication as to how the performance of these functions will be resourced. The code administrator has many and varied important tasks, which are likely to require a significant quantum of funding to be performed properly. CHOICE would like to see the ISWG develop a robust plan to ensure the code administrator is properly funded to perform its functions.

It is also proposed that the code administrator will provide:

“regular reports to the Insurance in Super Code Owners, with recommendations on any Code improvements and industry issues, including where non-compliance with any standards of the Code indicates an industry issue or highlights weaknesses in the Code.”²⁴

For transparency it is important that these reports are made publically available. This will build trust with consumers that the industry is devoted to constant improvement and is proactively identifying problems as well as solutions to improve the code and compliance.

14. Recommendation: That members of the ISWG develop a robust plan to ensure the code administrator is properly funded to perform its functions.

²³ Draft Insurance in Superannuation Code of Practice, clause 14.5

²⁴ Draft Insurance in Superannuation Code of Practice, clause 14.4