



9th January 2019

Mr Nick Kirwan
Policy Manager
Financial Services Council
Level 24, 44 Market Street
SYDNEY NSW 2000

By email to policy@fsc.org.au

Dear Nick,

FSC Consultation Draft – Life Insurance Code of Practice

In brief:

AIST is concerned the revised FSC Life insurance Code may:

- Result in the removal of the 1% of salary premium cap and other specific consumer protections.
- Delay implementation of improved standards and consumer protections
- Reduce transparency of the process and outcomes
- Disrupt the collaborative efforts of the super industry in developing an effective Insurance in Super Code

Chapter 2 (incorporating part of the of the proposed Insurance in Super Code) of the proposed Life Code should be deleted, and the FSC should recommit to the existing Insurance in Super Code.

AIST is pleased to provide feedback on the Financial Services Council’s review of the Life Insurance Code of Practice Consultation Draft. AIST provided comments on the original iteration of the life code and supports efforts for its continual improvement.

Our comments are primarily directed towards the contents of Chapter 2 - *obligations your superannuation trustee has to you if your life insurance is in superannuation*.

Overview

While AIST generally supports many of the improvements set out in Chapter 1 of the FSC Consultation Code Draft, AIST does not support the so-called “incorporation” of the Insurance in Super Voluntary Code of Practice as Chapter 2 of the draft code. Chapter 2 is not the “lift and

drop” exercise the FSC has characterized. The way this is proposed by the FSC will reduce standards and remove consumer protections. This includes the removal of specific protections above and beyond the Protecting Your Super measures.

The proposed merger of the codes distracts from industry effort to lift standards and improve member outcomes through the promotion and implementation of the Insurance in Super Code. Having two different codes detracts from this effort and can only confuse consumers.

Notwithstanding the stated intention of the draft code to improve clarity and consistency, the draft code does the opposite in relation to insurance in superannuation.

Most concerningly the implementation of the draft code will stymie and delay some of the industry initiatives to lift standards for insurance in superannuation, especially limits on premiums.

Not only would the proposed FSC code reduce standards and removes consumer protections in your code, it may also result in, or increase pressure for, the reduction of standards and protections in the Insurance in Super Code.

AIST recommends that the FSC:

- *Remove Chapter 2 from the Consultation Code Draft; and*
- *Recommit its support for the existing Insurance in Super Voluntary Code of Practice in its entirety, including implementation dates and requirements;*
- *Reconfirm its support for the industry-wide co-operation that underpins the Insurance in Super Code;*
- *Reconfirm its support for the premium caps in the Insurance in Super Code.*

All of the AIST recommendations that follow should be read in the context of this primary recommendation.

Scope of Chapter 2

The manner in which the draft code is applicable to FSC members should be a matter for the FSC, but its construction raises broader policy and governance questions, as well as impacting non-FSC members.

- **Application to non-FSC members**

The application of Chapter 2 to non-FSC members is problematic. An “other industry participant” that agrees to adopt Chapter 2 of the Code will almost certainly be an industry participant already party to the Code. Consequently, this provision is confusing, especially for consumers.

AIST recommends that clause 12.1(b) be deleted.

- **Binding trustees to Chapter 2 of the Code.**

The draft code does not specify how FSC propose super fund trustees will be bound to the Code. This contrasts with the Insurance in Super Code where it is clear that *“The Parties bound by the Code are superannuation fund trustees who have adopted the Code.”*

AIST submits that any decision to adopt the Code should follow specific consideration by super fund trustees and a determination that the Code is in the best interests of their members.

We believe it would be insufficient for a parent company or a related entity to make a decision on behalf of a trustee without that trustee’s specific consideration. Neither a parent entity nor any other related entity can legally make this decision on behalf of a trustee. The trustee would need to make the decision in accordance with its fiduciary duties.

In various case studies considered by the Financial Services Royal Commission, the relationship between the super fund trustee and related entities were explored. While the Royal Commission is yet to issue its final report, we suggest it would not be prudent to institutionalise practices that circumvent or marginalise the role of trustee boards, especially in the determination of members best interests.

AIST recommends that adoption of the Insurance Code of Practice be subject to specific determination by the applicable trustee board or a duly delegated sub-committee of the trustee board in each case that the code is in members’ best interests.

Code enforcement

As an alternative to the FSC as an industry association binding its members to the code and being responsible for enforcement, *AIST recommends greater regulator involvement in the Insurance in Super Code.*

AIST supports an amended version of draft recommendation 18 (Regulator Code Taskforce) of the Productivity Commission’s Draft Report:

The Australian Government should immediately establish a joint regulator taskforce to advance the Insurance in Superannuation Voluntary Code of Practice and maximise the benefits of the code in improving member outcomes. The taskforce should:

- *monitor and report on adoption and implementation of the code by funds*
- *provide guidance on and monitor enhancements to strengthen the code, particularly implementation of standard definitions and moving to a short-form annual insurance statement for members*
- *advise the industry what further steps need to be taken for the code to progress the code*

The taskforce should annually report findings on industry progress on the code.

Both ASIC and APRA should be members of the taskforce, with ASIC taking the lead.

Commencement

The commencement date for Chapter 2 is later and less rigorous than required under the Insurance in Super Code. A party adopting Chapter 2 will not have to publicly reveal details of its compliance and transition arrangements until 30 June 2021.

A comparison of the codes reveals the deficiencies of the Chapter 2 arrangements:

Insurance in Super Code	FSC Chapter 2	Deficiencies of FSC Code
The Code starts on 1 July 2018, and we will state on our website by 31 March 2018 our intention to adopt the Code.	Chapter 2 starts on 1 July 2019. By then we must notify the FSC and the Life CCC of the date on which we will transition to adopt Chapter 2.	<ul style="list-style-type: none"> • Chapter 2 starts 6 months later than the insurance in Super Code. • There is no requirement in Chapter 2 to publicly publish an intention to adopt the Code.
By 31 December 2018, we will publish on our website our transition plan for how our funds will become compliant with the standards of the Code.	[no corresponding requirement]	<ul style="list-style-type: none"> • There is no requirement in Chapter 2 for a transition plan to be prepared. • There is no requirement in Chapter 2 to publicly publish a plan to transition to the code.
Our transition plan will include when and how we will comply with the following sections (which can have different dates of compliance): a) benefit design and premiums (sections 4.1 to 4.17) b) automatic cessation of cover and reinstatement (sections 4.25(e) and (f), 4.27, 4.28 and 4.29) c) the rest of the Code.	[no corresponding requirement]	<ul style="list-style-type: none"> • There is no requirement in Chapter 2 to detail specific compliance arrangements.

We will comply with the Code as early as we can, and no later than 30 June 2021, to allow for our existing contractual arrangements to be adjusted.	We will comply with Chapter 2 as early as we can, but not later than 30 June 2021	• Requirements mirrored.
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Section 12.5 of the revised FSC Life insurance Code provides that: *“For applications for insurance, claims or complaints that already exist on the date a fund transitions to Chapter 2, if Chapter 2 commits the fund to do something within a specified timeframe, that the timeframe begins on the super fund’s date of transition.”*

Assuming a fund committed to Chapter 2 on or after 1 July 2019 (ie, the proposed commencement date of Chapter 2), the fund should be required to honour commitments to insurance applications, claims, complaints by timeframes previously abided by especially if they had already subscribed to the Insurance in Super Code. If this is not explicitly required, it is another example of the revised code reducing consumer protections.

AIST calls on the FSC to re-commit to the transparency requirements of the Insurance in Super Code, including website disclosures, preparation of transition plans and other mechanisms to encourage early adoption of higher standards in insurance.

Premium cap

The Consultation Code Draft positions the FSC to stop supporting the 1% of estimated salary premium cap. It is understood that the FSC is seeking legal advice of the impact of competition law on this requirement. However, it is noted that the FSC had previously accepted the premium cap for the Insurance in Super Code.

The premium cap is an important measure to address the erosion of superannuation account balances. The removal of the premium cap will (rightly) be seen as a significant watering-down of the code, and will send the wrong message to the Government and consumer groups about the commitment of the industry.

AIST calls on the FSC to revert to the premium cap provisions of the Insurance in Super Code in the applicable section of the Consultation Draft Code.

Protecting Your Super package

Parts of Chapter 2, and specifically sections 13.22 to 13.24 purport to reflect the insurance provisions of the Protecting Your Super Bill despite the passage of the legislation not being

assured, either with or without amendments. The legislation may not be passed during the life of the current parliament.

The FSC appeared to recognise this environment at the 13 December 2018 workshop on the draft code, and stated that these sections would revert to the corresponding sections in the Insurance in Super Code. This is also stated on the cover pages of the Consultation Draft. However, no revised version of the draft code has been produced.

In the event legislation impacting on the Insurance in Super Code becomes law, AIST is committed to reviewing the Code in an efficient and thorough manner, and to work cooperatively with other Code-owners to achieve this.

In the meantime, AIST recommends the FSC reissue the Consultation Code Draft to the pre-Protecting Your Super version and extend the consultation process so industry participants can gauge the extent to which it mirrors the Insurance in Super Code.

Additionally, the revised FSC code makes other changes in relation to the proposed legislation that both remove consumer protections or are confusing. It is unclear if these issues would be resolved if the draft reverted to the pre-Protecting Your Super version.

Section 13.22 and section 14.18 (b) in the FSC draft have been reworded only to require funds to communicate to members where contributions have not been received for 13 months or if account falls below \$6,000. The FSC draft has removed details on when and how often communication will occur before the 13 months of no contributions. This is a poorer experience for members compared to the current Insurance in Super Code where funds would initially communicate to members when no contributions have been received for 6 months. This yet another example of the revised code reducing consumer protections.

Other matters

Section 13.24 of the FSC draft (compared to sections 4.28, 4.29 and 4.30 in the Insurance in Super Code) has removed the 60 day reinstatement period in its entirety. This is a worse outcome for members, as not all funds will be required to commit to a 60 day reinstatement period.

Section 14.17 of the FSC draft (compared to clause 5.17 (i) the Insurance in Super Code) has removed an explanation of the cessation rules for insurance from the annual statement to be provided to members. The Protecting Your Super legislation is not the only reason for cessation of insurance. Thus, this clause should remain.

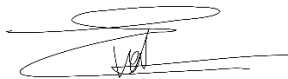
Each of these aspects of the revised FSC code would result in reduced industry standards and lower consumer protections.

AIST calls on the FSC to revert to higher protections in the Insurance in Super Code in the applicable sections of the Consultation Draft Code.

It would be far more preferable however for Chapter 2 (incorporating part of the of the proposed Insurance in Super Code) of the proposed Life Code to be deleted, and for the FSC to recommit to the existing Insurance in Super Code.

For further information regarding our submission, please contact David Haynes at 03 8677 3800 or at DHaynes@aist.asn.au

Yours sincerely,



Eva Scheerlinck
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$1.3 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.