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Manager
Financial System Division
Markets Group
Treasury
Langton Cres
Parkes ACT 2600

By email: InsuranceConsultations@treasury.gov.au

Dear Treasury,

AFA Submission: Extending Unfair Contract Terms to Insurance Contracts

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 70 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are currently practicing financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

In responding to this consultation, we have limited our feedback to Life Insurance.

Introduction

The AFA is broadly supportive of this legislation, however we are very conscious of some potential risks and implementation issues.

We start from the perspective of emphasising the important role that financial advisers play in assisting clients to understand the issues with respect to their life insurance cover and to recommend policies and life insurers that best meet their needs. Expert financial advisers are aware of the product offerings that might present disadvantages related to contract terms for consumers. Financial advisers also have a role in providing feedback to insurers with respect to any terms and

conditions that they disagree with. This is one source of information that is useful for life insurers to facilitate making product changes.

Accordingly, in our view the benefit of this legislation will be mostly in terms of the direct life insurance channel, although this is a much smaller channel and one that is declining as a result of the focus it experienced during the Royal Commission. Our other key area of concern is with the group insurance market, where life insurers and super fund trustees often renegotiate contracts every three years, and this can result in the members of the fund experiencing significant changes in their contract terms with no ability to influence this process. We believe that this is the biggest consumer protection issue in life insurance, and it will not be addressed by this legislation as group insurance arrangements for super funds do not involve consumers or small businesses as a party to the contract, and will therefore not be impacted by this legislative change. We would like to see greater clarity as to the applicability of this legislation for individual members of a group super schemes who are individually underwritten as a result of seeking insurance above the Automatic Acceptance Limits.

The primary concern that we have is the potential impact of this reform on the cost of life insurance. At this point the potential impact is, in our view, unclear. The draft Regulation Impact Statement openly states that it is unclear how material, any price impact, will be. We would have a greater concern if the impact was expected to cause anything other than a very minor price increase.

As mentioned above, we note that it is only contracts with consumers or small businesses, that are covered by the Unfair Contract Terms (UCT) legislation and that this will typically exclude Group Life policies that are negotiated between life insurers and superannuation funds. We are conscious that this will create an unlevel playing field, in that those people who get their life insurance through individual contracts will be covered under the UCT provisions and those who get their life insurance through a Group Super insurance policy, will not be covered. If the application of the UCT regime to individual policies was likely to have a material impact upon the cost of life insurance and that this increase did not equally apply to Group Insurance, then we would have an increased concern. It is more typically these group policies that give greater concern with respect to unfair contract terms and the ability for the superfund (and life insurer) to change the terms of the cover on a unilateral basis.

It is notable that very few examples or explanations in the draft Explanatory Memorandum or the Regulation Impact Statement refer to life insurance. They are predominantly focussed upon general insurance. It would be preferable to see some specific examples in the Explanatory Memorandum that might apply directly to life insurance. We do not feel that either document adequately sets out the specific points of concern that are caused by the current exclusion of Unfair Contract Terms for life insurance, or therefore the justification for change. We recommend that further background is provided to further support this change.

We note that the Parliamentary Joint Committee on Corporations and Financial Services report on the Life Insurance Industry that was released in March 2018, recommended that ASIC start working with life insurers, to begin removing Unfair Contract Terms from life insurance contracts as soon as possible. As part of the consultation on this draft Bill, it would be useful to include a status update on the progress of that activity.

AFA Response to the Exposure Draft Legislation

The AFA supports this draft legislation, subject to our concerns expressed above about the potential for premium increases and the inability to address the issue of Unfair Contract Terms for the Group Insurance marketplace.

We note the discussion in the Regulation Impact Statement with respect to the options of a broad definition of main subject or a narrow definition of main subject. We appreciate that the Government is recommending a narrow definition, as this will deliver greater consumer protections.

One very important part of life insurance is the issue of life companies being able to exclude certain conditions from the cover offered to clients. This is an important mechanism, as it enables clients to access insurance at a reasonable price, where a pre-existing medical condition may have otherwise meant that life insurance would not be available, or that it would have been excessively expensive. This ability to exclude certain medical conditions is critical. We understand that this will not be prevented, as these exclusions are not considered part of the standard contract terms.

To the extent that this legislation will provide consumers with access to Unfair Contract Terms protections, we support the fact that it is proposed that this would be extended to beneficiaries.

We are not aware of any further issues with the legislation that has been proposed and believe that this should achieve the intended objective.

We note the 18 month implementation period after the obtainment of Royal Assent, which we consider to be fair in these circumstances. Further, we appreciate that it will not impact existing life insurance contracts, until they are renewed or varied after the commencement of the legislation. An 18 month delay in implementation is very sensible, particularly in the context of the problems that have arisen as a result of recent superannuation law reform, such as the Protecting Your Super Package, where industry really only had less than three months to prepare. The proposed Putting Members Interest First legislation also included totally unreasonable and unachievable timeframes. The Government should consider setting out standard guidelines for sensible implementation timeframes that involve material industry changes. We have always argued that it should never be less than 12 months, and often much greater where more material industry restructuring is required.

Regulation Impact Statement

We acknowledge the inclusion of a draft Regulation Impact Statement and that unlike the Banning Grandfathered Commissions legislation, the Government did not try to suggest that the Banking Royal Commission was equivalent to a Regulation Impact Statement (RIS). The Banking Royal Commission did not consider the implications of their recommendations and could therefore never be considered to be a Regulation Impact Statement. The RIS does a good job setting out the background and the options considered. It is disappointing that there is no informed discussion on the likely impact on the cost of life insurance premiums as a result of the extension of Unfair Contract Terms to life insurance. In our view this is one of the key considerations.

Concluding Remarks

The AFA supports this legislation, however we would prefer to have an informed opinion on what impact it is expected to have on the cost of life insurance. We also encourage the Government to consider how greater consumer protections can be provided to those Australians who get their life insurance through Group Insurance arrangements within their superannuation fund.

The AFA welcomes further consultation with Treasury should it require clarification with respect to this submission. If required, please contact us on (02) 9267 4003.

Yours faithfully,

Phil Anderson
General Manager Policy and Professionalism
Association of Financial Advisers Ltd