

AIST

Quality of Advice Review Conflicted Remuneration Consultation Paper

Australian Institute of Superannuation Trustees response

14 November 2022

Appendix 1: Consultation template

Name/Organisation: **Australian Institute of Superannuation Trustees (AIST)**

General Insurance and consumer credit insurance (Proposal 1)

1. Do you support Proposal 1, which requires financial advisers or insurance brokers to obtain informed consent from their clients in order to be able to receive a commission from a product issuer for the sale of a general insurance product or consumer credit insurance?

a) If you do not support this proposal, please state your reasons

No. AIST does not support the proposal to retain commissions on any insurance product, including general insurance product or consumer credit insurance, regardless of whether informed consent is provided from clients.

AIST is of the view that the exemptions to the ban on conflicted remuneration throughout financial services should be removed as soon as possible. Therefore, AIST submits that the exemptions to the ban on conflicted remuneration for general insurance, and consumer credit insurance (as well as for life risk insurance products) should be removed as soon as possible.

The Financial Services Royal Commission, the Financial System Inquiry and ASIC reports (eg, [Report 413: Review of retail life insurance](#)) have found a relationship between commissions and poor consumer outcomes. The FSRC recommendations and the subsequent implementation of many were partial but important steps to remove conflicts and align incentives.

The Government's changes to life insurance adviser commissions were a partial response to the known systemic problems with commissions in life insurance advice. Prior to these changes, ASIC's Report 413 found widespread poor quality and non-compliant advice, with 96% of non-compliant advice given by advisers paid a commission. ASIC concluded that commissions have a 'statistically significant bearing' on the likelihood of an adviser giving poor advice.

The data cited in the Quality of Advice Review proposals paper compares compliance with the best interest duty before and after implementation of the LIF reforms show some improvement in the quality of insurance advice and some improved compliance. However, 58% compliance with the best interests duty *only* looks good as a trending improvement on pre-LIF compliance rates of 37%, but it is a manifestly inadequate level of compliance.

The Financial System Inquiry concluded (p.220) that:

At this stage, the Inquiry does not recommend removing all commissions, as some consumers may not purchase life insurance if the advice involves an upfront fee. However, if level commission structures do not address the issues in life insurance, Government should revisit banning commissions.

As almost half of the post-LIF life insurance advice files sampled by the LIF Review were not compliant, it is clear that the reforms have not worked to protect consumers, and the Government should now move to ban commissions for life insurance advice, in line with the approach advocated by the FSRC.

Life risk insurance product (Proposal 2)

2. Do you support Proposal 2, which requires financial advisers to obtain informed consent from their clients in order to be able to receive a commission from a product issuer for the sale of a life risk insurance product?

a) If you do not support this proposal, please state your reasons

No. AIST does not support the proposal to retain commissions on any insurance product, including life risk insurance products, regardless of whether informed consent is provided from clients.

The exemption for life risk insurance products has been used to circumvent the ban on conflicted remuneration in superannuation, and consumers can be sold into insurance arrangements that pay commissions, even though they might hold insurance through group life arrangements.

While grandfathered conflicted remuneration for financial advisers ended on 1 January 2021, this did not ban conflicted remuneration for life risk insurance products, general insurance, and consumer credit insurance.

AIST repeats and reiterates the relevant parts of the submission we made in our 2019 submission on [Ending Grandfathered Conflicted Remuneration for Financial Advisers](#):

We note that the ED is set to cover grandfathered commissions from investment products, but not risk insurance products. Recommendation 2.5 of the Royal Commission recommended that the cap on commissions for life risk insurance products be reduced to zero, unless a clear justification could be found to retain those commissions. We are not yet aware that such a justification has been found and would recommend that a deadline be given to the industry to provide one.

The continued exemption of risk insurance commissions highlights the existence of risk-only superannuation products which still pay large commissions to financial planners. The proceeds of rollovers from clients' other superannuation accounts at other funds to pay insurance premiums are routinely marketed to financial planners as an easy way to fund additional sales of these products and these recurring rollovers from members' main funds (via SuperStream)

materially erodes members' retirement savings each year. Given the bans on conflicted remuneration that already apply to most insurance in superannuation in other places, practices such as these appear to be obvious attempts to circumvent such bans and arbitrage regulatory restrictions.

We see no reasons why risk insurance products should be exempted from this measure and note that further delays in the removal of commissions on all financial products will continue to unnecessarily complicate financial arrangements, cost consumers money, skew financial advice and distort pricing.

While we suggested a deadline for the removal of life insurance commissions in 2019, the time for a deadline has now long passed.

AIST supports the view expressed by the Reviewer that financial advisers and insurance brokers can have a role in giving consumers access to financial product advice about life risk insurance products, and that the quality of the advice provided by the adviser is better if they are paid a fee by the client for their advice. However - and as the Reviewer acknowledges - these benefits create a conflict for the adviser if a commission is paid by a product issuer for the sale of a life risk insurance product.

The comment by the Reviewer that these risks are reduced by various recently introduced consumer protections* does not provide any justification for *maintaining the misalignment* between an adviser and their clients that commissions represent. For example, the lure of a commission may incentivise an adviser to recommend an individual life insurance policy over insurance available within superannuation – even if the insurance in super represents better value.

* Although the anti-hawking rules relate to products rather than services, so an adviser can 'hawk' their advice services, and from there, recommend commission-based life insurance.

Time-sharing schemes (Proposal 3)

3. Do you support Proposal 3, which recommends that the Government conduct a separate holistic review of time-sharing schemes and the way they are promoted?

a) If you do not support this proposal, please state your reasons

While the focus of our submission is on commissions paid in relation to life insurance, AIST is of the view that the exemptions to the ban on conflicted remuneration throughout financial services should be removed as soon as possible.

Other Conflicted Remuneration exemptions (Proposals 4-7)

4. Do you support Proposals 4 -7, which remove or modify the existing exemptions to the ban on conflicted remuneration?

- a) If you do not support any of these proposals, please state your reasons
- b) Do you consider there to be any unintended consequences related to the implementation of Proposals 4 -7?

While the focus of our submission is on commissions paid in relation to life insurance, AIST is of the view that the exemptions to the ban on conflicted remuneration throughout financial services should be removed as soon as possible.

We do not object to the removal of redundant provisions, or the removal of inconsistencies, provided any inconsistency is resolved in favour of the best consumer outcome.

General

5. Do you have any other comments or feedback on the Quality of Advice Review Conflicted Remuneration Consultation Paper?

The Quality of Advice Review should clearly and explicitly fulfill its terms of reference and meet the expectations of the Financial Services Royal Commission recommendation 2.5 by recommending that caps on life insurance commissions be reduced to zero.

The Terms of Reference requires the Reviewer to address recommendations 2.5 and 2.6 of the FSRC, which involves considering the legislative framework for:

- the life insurance remuneration reforms, and the impact of the reforms on the levels of insurance coverage; and
- the remaining exemptions to the ban on conflicted remuneration, including in life and general insurance.

The Quality of Advice review proposals paper incompletely records FSRC recommendation 2.5 by omitting the last and critical sentence of the recommendation in its record and discussion of recommendation 2.5.

Recommendation 2.5 of the FSRC (Life risk insurance commissions) is that:

*When ASIC conducts its review of conflicted remuneration relating to life risk insurance products and the operation of the ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, ASIC should consider further reducing the cap on commissions in respect of life risk insurance products. **Unless there is a clear justification for retaining those commissions, the cap should ultimately be reduced to zero.***

Because the last sentence is not recorded in the proposals paper, the proposals paper has not specifically responded to the high bar set by Justice Hayne for the retention of life insurance commissions – a bar the LIF Review clearly demonstrated has not been reached. Clear justification for retaining commissions is not provided by only 58% of insurance advice being compliant.

6. Do you have any other comments on the regulation of conflicted remuneration under Chapter 7 of the Corporations Act?

We have no further comments to this question.