

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
Canberra ACT 2600

cc: Assistant Treasurer  
The Hon. Stephen Jones

14 June 2024

Dear Sir/Madam,

**Financial Services Regulatory Framework in Relation to Financial Abuse**

The Council of Australian Life Insurers (CALI) is the trusted voice of life insurance in Australia. We support Australians to make informed choices about their future and help them live in a healthy, confident, and secure way. This includes advocating for national policy settings that expand their access to the life insurance protection that suits them when they need it most over their lifetime. Our membership comprises of 20 life insurers and reinsurers.

Our mission is to ensure Australians view life insurance and the industry as accessible, understandable, and trusted. We do this by supporting our members to deliver the protection and certainty Australians need on their best and worst days.

We welcome the Committee's inquiry into the financial services regulatory framework in relation to financial abuse. CALI and our members are committed to doing everything we can to help address this critical issue in the communities we serve.

Life insurance products are designed to give Australians peace of mind. This fundamental purpose of life insurance is at odds with any situation where a product can be used by an abuser to threaten, abuse or control a victim. Australia's life insurance industry recognises some victim-survivors have experienced financial abuse through life insurance products, and we are committed to tackling this problem with Government so we can better protect our customers in all circumstances.

In Australia life insurance products have been used by perpetrators with the intent of exercising financial abuse, coercive control and physical threats. In egregious cases, perpetrators have used the existence of life insurance to threaten someone's personal safety or life on the basis that they will be able to claim on a policy. CALI is also aware of instances where a perpetrator has committed murder and sought to claim on an insurance policy on their victim's life. Importantly, in these cases, the common law principle of forfeiture prevents a perpetrator who is criminally responsible for someone's death from receiving a financial benefit from that death, including life insurance payments.

It is clear that there are opportunities to improve practices across the industry in collaboration with Government. Action is underway to strengthen the Life Insurance Code of Practice (Life Code) along with industry guidance, which set out clear standards for life insurers in Australia, as well as uplifting individual insurers' policies and practices.

To inform our work, CALI and our members will be working with groups and individuals to better understand the experience of Australian victim-survivors of family and domestic violence and financial abuse. We believe listening to these voices is critical to identifying areas where life insurers can do better by customers who are victims or survivors of family and domestic violence.

Through the experience of CALI's members in supporting customers who are victims or survivors of family and domestic violence and financial abuse, it is clear there are features of the regulatory framework for life insurance that, in some circumstances, limit insurers' abilities to implement comprehensive protective measures.

Life insurers want to work closely with both the Government and advocates and experts on family and domestic violence and financial abuse to identify these features and work collaboratively to develop solutions that ensure victim-survivors of family and domestic violence and financial abuse are better protected by the regulatory environment.

Examples of regulatory issues we have identified include:

- Life insurance is a guaranteed renewable product and cannot be cancelled as long as premiums continue to be paid. This is in contrast to many other insurance products which are renewed on an annual basis. There is also a very limited ability for life insurers to change terms and conditions once a policy is written. As a result, life insurers are not able to withdraw products from suspected perpetrators of financial abuse (as can sometimes be done in other parts of the financial services sector);
- The law provides particular rights and protections to the policy owner of a life insurance policy. Privity of contract means that only the policy owner has the power to instruct changes to the contract (including, where available, the nomination of third-party beneficiaries), permit it to be assigned or order that it be terminated. Where there are joint policy owners, the owners must agree to any changes to, or assignment or cancellation of, the policy. A person who is insured under a contract but who is not a policy owner has no power to do these things. This can create issues in situations of financial abuse as there is no mechanism that triggers a reassessment of the policy;
- In Australia the law specifically provides that there is no requirement to have an insurable interest in the subject matter of the life insurance contract when it is entered into. There is also no statutory basis (and usually no contractual basis either) for compelling the cancellation or assignment of an insurance policy where the policy owner has ceased to have an insurable interest in the victim's life. This means when a couple shares debts and decide to take out a joint life insurance policy, if they decide to separate or divorce there is no option for one to remove themselves, split the joint policy or cancel the policy without the consent from both people;
- As financial products and insurance policies, various legislative provisions require notifications to be given to policy owners in respect of the policies that they hold. Reconciling these requirements with the need to protect a victim-survivor's location and other details from an alleged abuser, can cause particular difficulties in the case of joint and cross-policy ownership. For example, a victim-survivor and their alleged abuser may be joint policy owners and required to be notified of certain matters arising under or in relation to the policy. This can result in abusers receiving the address and other personal details of a victim-survivor from their life insurer, which is not in the best interests of the victim-survivor and does not meet community expectations.

These regulatory settings are in most cases important customer protections to ensure the rights of policy holders. However, given the impact they are having on people affected by financial abuse and family and domestic violence, we think it is imperative that industry and Government work together to enable life insurers to provide the appropriate protection to victim-survivors of family and domestic violence and financial abuse, while complying with the law.

Further details on the industry's approach to financial abuse and the regulatory and other issues experienced in the life insurance industry are included in Attachment A.

Thank you for the opportunity to contribute to this important inquiry. If you would like any further information, please contact Olivia Pascoe at [olivia.pascoe@cali.org.au](mailto:olivia.pascoe@cali.org.au).

Kind regards



Christine Cupitt  
Chief Executive Officer  
Council of Australian Life Insurers

## Attachment A – Financial Abuse Submission

### The life insurance industry's approach to financial abuse

The industry has developed the Life Code which establishes enforceable standards that subscribers (the life insurers) agree to uphold. The Life Code binds subscribers to promote high standards of service to consumers, provides a benchmark of consistency within the industry and establishes a framework for industry behavior and responsibilities. Compliance with the Life Code is monitored by the independent Life Code Compliance Committee (LCCC).

The Life Code includes specific commitments for customers experiencing vulnerability or financial hardship, including due to financial abuse and family and domestic violence. Life Code subscribers are required to:

- take extra care to support vulnerable customers. Vulnerability is broadly defined and includes people affected by family and domestic violence and financial abuse; and
- have publicly available policies on their websites about how they will support people if they are affected by family violence and financial abuse.

To support the Life Code requirement for subscribers to have a publicly available policy on family violence, the industry has also developed the Life Insurance and Family Violence Policy. This sets out areas that should be covered in subscribers' policies, including:

- making sure that safety is paramount for customers affected by family and domestic violence through the protection of private and confidential information. These measures include taking the customer's reasonable communication preferences into account with mechanisms to ensure adherence to these and using technology to improve customer safety;
- a commitment to the customer that their family and domestic violence situation will have no adverse effect on their claim if applicable; and
- taking family and domestic violence into consideration when designing products.

Specific steps taken by CALI members in implementing the Code include:

- mandatory training for frontline staff
- specialised FDV training for team leaders
- escalation of issues to centralised specialist teams for review
- external counseling support in partnership with organisations with expertise in family and domestic violence.

Many CALI members are reviewing their policies and continuing to explore ways they can provide more support for people affected by family violence and financial abuse.

CALI is committed to continuing to review and improve the whole industry's approach to financial abuse. In February 2024, the CALI Board instructed CALI to review and update the industry guidance on family and domestic violence. CALI members have agreed to enhance this guidance by providing more detail on the support that insurers will provide to victim-survivors, including revising definitions of financial abuse and coercive control, and expanding family and domestic violence commitments.

Key areas of focus in the guidance will include:

- **Privacy:** emphasising the protection of personal information for customers impacted by family and domestic violence and financial abuse;

- **Training:** ensuring continuous training for relevant staff to better respond to customers experiencing family and domestic violence and identify signs of abuse; and
- **Support services:** specifying employee assistance support and development programs to equip staff for handling sensitive situations.

Both the LCCC and the Financial Rights Legal Centre have recently undertaken reviews of Code subscribers' publicly available family violence policies. These reviews highlighted good practices as well as areas for improvement. CALI members are considering the findings of these reviews in relation to their own existing policies. CALI will also be considering the findings of these reviews as part of our guidance review.

In developing the industry's approach, we believe it is critical that we understand the lived experience of victim survivors of family and domestic violence and financial abuse. This will ensure we are aware of how life insurance products have been used by perpetrators of financial abuse, in particular ways that the industry does not currently know about. It will also enable us to identify any features of the design of life insurance products that present difficulties for people affected by financial abuse or are being exploited by perpetrators. CALI is engaging experts in family and domestic violence to undertake this research through surveys and focus groups with victim-survivors.

### Examples of issues experienced by victim-survivors and life insurers

CALI has identified a range of existing legislation, common law, and regulatory arrangements that can impede the ability of life insurers to prevent and respond to financial abuse and family and domestic violence.

#### *a. Policy ownership structures*

Life insurance policies are most commonly held by individuals over their own lives, although they may choose the policy to be for the benefit of their family members such as children. Alternatively, the policy may be held by the trustee of a superannuation fund of which the life insured is a member, or a business of which they are an employee. In general, in the experience of our members these ownership structures do not tend to give rise to reported issues of abuse mainly because a single person has control over the policy and it only covers themselves.

However, to a lesser extent, policies may be jointly owned (for instance, two members of a couple are joint policy owners of a policy under which one or both of their lives are insured), or cross-owned (where one person owns a policy over the life of another person), or owned by the trustee of an SMSF over the lives of one or more of the SMSF's members. There are a number of reasons why such ownership structures may be selected.

Where the policy is to protect against a liability arising to the policy owner if the life insured dies, it may be appropriate for the policy owner to have all rights, title, and interest in the policy.	For example, a business owner who may become solely liable for their business's debts if their business partner dies, thus chooses to own and pay for a policy over their business partner's life for their own financial protection.
Joint ownership means that changes to or disposal of the policy cannot occur without the consent of both parties, which may give an additional degree of control and security by preventing unilateral decisions by one party which may be adverse to one party.	For example, joint mortgagors (or a mortgagor and a guarantor of the mortgagor) decide to jointly own a policy, so that any decisions to change or cancel the policy which could leave the other party exposed to a liability must be made together.
Where life insurance is structured through a self-managed superannuation fund (SMSF), the policy	For example, a husband and wife are members of a SMSF. A life insurance policy may be taken out

will be owned by the trustee(s) of the SMSF, who is/are the members of the fund (or in the case of a corporate trustee, the members are directors of the corporate trustee).	over their lives by the fund; the trustee(s) of the SMSF will be the policy owner. In this case both the husband and the wife as trustees of the fund, if they are authorised to act on the fund's behalf, would be equally treated as policy holders.
--	--

These arrangements will generally require the consent and cooperation of the policy owner(s) and life or lives insureds when the policy is first set up. All policy owners need to execute an application for the policy to be issued to them, and lives insured typically need to participate in underwriting questionnaires or assessments (or at least provide their personal information where no underwriting is necessary). Issues typically arise when the relationship between the parties breaks down, including in cases of domestic and family violence.

In these cases, one party (generally the victim-survivor) wishes to be removed as a life insured or policy owner, or for the policy to be cancelled, or transferred to be held solely in one party's name, but cannot do this without the consent and cooperation of the other policy owner (generally the alleged abuser). This may be because:

- to remove a life insurance or to cancel the policy, the policy owner (in the case of cross-ownership), or the other policy owner (in the case of joint ownership), or all trustees/directors of the corporate trustee (in the case of SMSF trustee ownership) must agree to and authorise the cancellation; or
- to change the ownership of the policy, section 200 of the *Life Insurance Act 1995* (Cth) requires that ownership may only be assigned at law by the outgoing and incoming policy owner(s) signing a memorandum of transfer.

The victim-survivor may be unwilling to approach the alleged abuser to request this cooperation and authorisation, and indeed it may be unsafe to do so; and the alleged abuser may choose to withhold their consent, including as a means of abusing the victim-survivor as there is no legislative mechanism that triggers a reassessment of the policy.

The victim-survivor can seek a negotiated resolution with the alleged abuser through intermediaries, or approach the Court for orders compelling a change to the policy for instance, the Court may make orders compelling one party to assign ownership of the policy to the other pursuant to the *Family Law Act 1975* (Cth) s 79 for married couples, or s 90SM for de facto couples). However, these avenues can be costly, time-consuming and stressful.

Another complicating factor with this is that the exception to the hawking regime for offering replacement products (*Corporations Regulations 2001* (Cth) reg 7.8.21A(1)(j)) applies only where the offeree was the original holder (i.e. policy owner) of the original product. This means an insurer can't rely on this to offer the victim-survivor a replacement product; rather, the victim-survivor must specifically request this, but may not know that they need to do this in order for the insurer to be able to offer another product to them.

#### *b. Premium payments*

Most life insurance policies in Australia require the ongoing payment of a premium for cover to continue. Failure to pay the premium will cause the policy to lapse and cover under it to cease.

A person with control over the account from which premiums are being funded can therefore withdraw the payment authority, with the intention of causing the policy to fall into arrears and be cancelled.

For example, if two people jointly own a life insurance policy, and the premium is being debited from a joint bank account that both parties may unilaterally give payments instructions for, one party can withdraw the payment authority without the prior consent of the other.

This may be done to cause distress to a victim-survivor and force them to find alternative payment methods to keep the policy on foot, which may also cause them financial difficulty. As victim-survivors are often already facing financial difficulties following the breakdown of a relationship, these acts can aggravate an already precarious financial situation and significantly exacerbate the victim-survivor's distress.

### *c. Threats*

As life insurance primarily covers death and injury to the insured person, it may be used by perpetrators of abuse to threaten victims.

Over the last two decades, life insurance has become much more accessible to consumers. For example, rather than needing to sit down before a financial adviser and complete a paper application form, consumers can now apply quickly and simply online, directly with many insurers.

This accessibility is also open to the potential for abuse. An abuser can impersonate a victim-survivor by entering their details and completing the purchase process in their name. In one example, an abuser appeared to have impersonated their ex-partner and completed an online quote for a funeral insurance policy in their name, causing the victim to be mailed a funeral insurance policy quote, which they perceived as a threat.

CALI members have also heard from victim-survivors who are deeply distressed by the prospect that an abusive partner or ex-partner might seek to kill or injure them, and then receive the benefit of a life insurance policy over their life.

The common law provides that a person who is criminally culpable for the death of the life insured shall not have the benefit of the policy (this is known as the forfeiture rule – recent Australian precedents include *Swiss Re Life & Health Australia Ltd v Public Trustee of Queensland (No 3)* [2018] FCA 1918 and *Westpac Life Insurance Services Limited v Mahoney (No 3)* [2020] FCA 285), and there are procedures in the *Life Insurance Act* for life insurers to pay the money into the Court and not to the criminally culpable party in such circumstances.

Nonetheless, in our members' experience assuring a victim of this rule does not alleviate their distress or desire to be removed from a policy, or prevent an abuser from seeking to wield control over a victim through the fact of having a policy over their life.

#### *d. Notification requirements*

As financial products and insurance policies, a raft of legislative provisions require notifications to be given to policy owners in respect of the policies that they hold. These include notifications under ss 1017B and 1017F of the *Corporations Act 2001* (Cth), section 59 of the *Insurance Contracts Act 1984* (Cth), and s 210 of the *Life Insurance Act 1995* (Cth).

Life insurers face operational difficulties in reconciling these requirements with the need to protect a victim-survivor's location and other information – such as whether a monetary amount is being paid under the policy – from an alleged abuser, particularly in the case of joint and cross-policy ownership.

The Australian Securities and Investments Commission has acted to provide limited relief from the requirement to provide a transaction confirmation to the policy owner (*ASIC (Cash Settlement Fact Sheet and Confirming Transactions) Instrument 2022/809*). Insurers can rely on this relief where they reasonably believe the provision of the confirmation would pose an “unacceptable risk” of a person experiencing family violence, provided certain other conditions are met. However, in practice, measuring an unacceptable (as opposed to acceptable) risk of a person experiencing family violence is problematic and difficult to implement having regard to issues such as the necessary threshold of evidence, and the appropriate level of training for staff.

#### *e. Other issues*

Life insurers face other more general difficulties in assisting victim-survivors.

Because victim-survivors generally seek solutions to issues which are highly dependent on their financial situation, objectives and needs, any advice provided to them by the insurer may amount to personal financial product advice. The licensing, conduct and administrative obligations (such as the need to provide a Statement of Advice) often prevents insurers from providing the most useful advice that would likely be in the best interests of the victim-survivor, because it would necessarily take their situation into account and this amount to personal advice.

Section 13 of the *Insurance Contracts Act 1984* (Cth) implies a provision into each insurance contract requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to a contract, with the utmost good faith. An insurer's breach of this condition is subject to a civil penalty of 5,000 penalty units. Where a victim-survivor alleges abuse or violence by a party to the policy, but that party cannot hear those allegations or respond to them (for example because to raise them may compromise the victim-survivor's safety), the insurer is placed in a difficult position. It is generally accepted that such allegations should be treated as true and arrangements made to accommodate whatever relief or assistance it is possible to provide to the victim-survivor; however, this sits uneasily with the insurer's duty of utmost good faith to the subject of those allegations.

### **Consultation on appropriate measures to address these issues**

We believe that the current regulatory framework makes it too difficult for victim-survivors to obtain the outcomes they want, or for life insurers to provide the level of assistance that victim-survivors should receive. We are also cautious that inappropriate responses to the issues set out in this submission could inadvertently dilute consumer protections, and at worst could open new avenues for committing abuse through life insurance products.

CALI therefore believes it would be appropriate for the Government to consult on appropriate measures to address the issues discussed in this submission, and to seek input from a wide range of stakeholders, including victim-survivors with lived experience, their advisers and family members, community advocacy groups, life insurers, lawyers and legal bodies. We believe a consultative approach is necessary to ensure that any changes to policy settings and regulatory reforms are safe for victim-survivors, do not introduce



new risks of harm, are fair and afford due process, and preserve the financial security that life insurance provides.

CALI would be pleased to contribute further to this important inquiry and to collaborate with all interested stakeholders in discussing solutions to these issues. Thank you for considering our submission