Mental Health and Insurance
Policy Position Statement

Key messages: People with a current or history of mental illness should have equal access to insurance as mentally healthy people including in choice of policy, and should be able to access insurance without discrimination and with timely claims.

The current insurance system can inhibit help seeking behaviours and the process of obtaining and claiming on insurance can exacerbate symptoms and reinforce stigma.

Key policy positions:
1. Blanket mental health exclusions should be removed from all insurance products.
2. Recommendations 4.5, 4.6, and 4.7 of the Royal Commission into Misconduct by the Banking, Superannuation and Financial Services Industry report should be implemented and enforced.
3. Insurers should be required to provide transparent written explanations for rejection, denial or non-standard terms for applications.

Audience: Federal, State and Territory Governments, policymakers and program managers, PHAA members, media.

Responsibility: PHAA Mental Health Special Interest Group

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Mental Health and Insurance

Policy position statement

Definitions

1. The term ‘insurance’ within this statement refers to life insurance and insurance provided through superannuation (including income protection and total and permanent disability insurance - TPD).

PHAA affirms the following principles:

2. People with mental health conditions may face unacceptable challenges in finding affordable and appropriate insurance coverage and also being able to claim on an insurance policy.

3. The current insurance system can inhibit help seeking behaviours and the process of obtaining insurance can exacerbate symptoms of mental illness and reinforce stigma. Current insurance policies and practice are in conflict with public mental health evidence of the importance of messages to seek help, advice and treatment early.

4. Policies and practices stigmatise those living with mental issues who are open about their experience, and those who would benefit from seeking early help and advice.

5. Early intervention and professional help is important in reducing the severity of mental health distress and is also known to reduce the likelihood of reoccurrence in an individual.

6. Taking a public health prevention approach and treating mental health conditions early has large individual, population and economic benefits.

7. Despite multiple inquiries and reports and ongoing community and professional concerns raised over several years there is lack of confidence that current policies, which rely on self-regulation and codes of conduct, can meaningfully address concerns.

8. PHAA supports advocacy, in partnership with other organisations, which promotes a robust and evidence-based approach to the use of mental health related information in insurance policies so that a public health approach to treating and preventing mental health conditions is not undermined.

9. People with a current or history of a mental health condition should have equal access to insurance as mentally healthy people and should be able to access insurance without discrimination.

10. Timely insurance claims should be accessible for people with a mental illness, and/or their family members (e.g. in the loss by suicide).

11. People with a mental illness should have adequate choice of a range of insurance and not be limited for choice because of their condition.

12. Private health insurance should be based around best public health practice; including reducing inequity and supporting early intervention. Health and equity should always come above profits.
PHAA notes the following evidence:

13. In 2017-18, 1 in 5 (20.1%) of Australians experienced a mental or behavioural condition.\(^1\)

14. Information from the last comprehensive study of Australia’s mental health and wellbeing, done in 2007, is becoming increasingly invalid and irrelevant for decision making in policy making and service delivery.\(^2\)

15. Suitable support and treatment for individuals can be effective for recovering from, managing or resolving a mental health condition.\(^3\)

16. Recent private health reforms require all policy tiers to include hospital psychiatric services as part of their minimum cover. However, in the Basic, Bronze and Silver product categories, the insurer is only required to provide restricted and limited benefits to hospital psychiatric services.\(^4\)

17. Refusal of coverage, blanket mental health exclusions and high premiums are common occurrences for people with a previous or current mental health difficulty who are seeking or trying to claim insurance.\(^5\) Blanket exclusions assume that all mental health conditions are the same and do not account for the severity, duration, and prognosis of these conditions which can lead to refusal of coverage or claims, and/or being charged at non-standard rates.\(^6\)

18. Under the United Nations Convention on the Rights of Persons with Disabilities (2007), to which Australia is signatory, “State parties shall: Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner.”\(^7\)

19. The Australian Human Rights Commission Guidelines for Providers of Insurance and Superannuation under the Disability Discrimination Act 1992 (“DDA”) give guidance to insurance and superannuation providers regarding lawful compliance with the DDA.\(^8\) The Guidelines offer direction for legal provision of insurance and claims in consideration of clauses within the DDA, such as Section 46 and Section 11, which allow for some discrimination, and have previously been unreasonably relied upon by insurers.\(^9\)

20. Under Section 46 of the DDA, discrimination in some instances for the provision of insurance or superannuation in the form of refusal or offering the product on different terms is valid if it is based on actuarial or statistical data, or if there are any ‘other relevant factors” (such as the individual’s particular circumstances or commercial considerations). Ambiguity of terms and poor complaint resolution mechanisms within the industry\(^6\) have provided insurers lee-way to refuse insurance and charge higher rates, leaving the insurers unaccountable for their discrimination.

21. Claims lodgement and assessment processes can cause distress and contribute to a person’s experience of mental illness.\(^10\)

22. The responsibility is on individuals to pursue their rights of obtaining insurance which can be time consuming, confusing and adversarial, adding significant financial and emotional burden.\(^11\)
23. The recommendations of the Royal Banking Commission into Misconduct of Banking, Superannuation, Insurance and Financial Services Industry 2019 include:

4.5. “Duty to take reasonable care not to make a misrepresentation to an insurer.” This regards to people wanting to obtain insurance not misleading insurers to believe that they do not have a mental health condition. However;

- Applicants for insurance may not feel it is necessary to disclose their mental health condition (past or present) if it is not relevant to the policy.
- Applicants may not have been formally diagnosed with a mental health condition and still get penalised for misrepresentation. For example, if a person has sought mental health help from a GP, such as through a mental health plan, but never used it and/or not been formally diagnosed with a mental health condition.
- Inconsistent use of medical terms referring to mental illness used by regular people and doctors/health professionals may lead to misrepresentation. Insurers may also examine a person’s circumstances, such as feeling low after a job loss, and group them in with other mental illnesses such as depression and anxiety, despite never being medically diagnosed.

4.6. “Section 29(3) of the Insurance Contracts Act 1984 should be amended so that an insurer may only avoid a contract of life insurance on the basis of non-disclosure or misrepresentation if it can show that it would not have entered into a contract on any terms.”

- This is in reference to the exclusions that insurers have used to cancel policies for non-disclosure of a history of mental illness in instances where that history has been completely irrelevant to the illness that is subject of the insurance claim.
- Section 29 of the ICA has given insurers substantial power to decline policies if the policy holder did not make adequate disclosures at the time of application.
- However, even if an insurer is entitled to decline providing a policy, Section 46 of the DDA would still require the insurer to have actuarial or statistical data that would justify such a decision.

4.7. Application of unfair contract terms provisions to insurance contracts

- 2010 Unfair Contract Terms (UCT) were introduced (inside the ASIC Act 2001) to apply to all sectors of the economy and to all business operating in those sectors who use standard form controls in their dealing with consumers
- UCT do not apply to insurance contracts regulated under the ICA 1984 due to section 15 which inhibits consumer protections such as UCT. Insurers currently regulate their own customer protection clauses.

24. Implementing this policy would contribute towards the achievement of UN Sustainable Development Goals 3 – Good Health and Wellbeing.
PHAA seeks the following actions:

25. Blanket mental health exclusions should be removed from all insurance products, and insurers should use standard mental health definitions. Applications should be assessed on an individual basis.

26. Recommendations 4.5, 4.6, and 4.7 of the Royal Commission into Misconduct by the Banking, Superannuation and Financial Services Industry report should be implemented and enforced.

27. An independent study should be commissioned to collate up-to-date mental health prevalence, prognosis and pricing data to enable insurers to make decisions based on actuarial data, as defined as an obligation in the DDA.

28. The Insurance Contracts Act 1984 and the Disability Discrimination Act 1992 should be adapted to require insurers to provide transparent written explanations for when applications are rejected, denied, or provided on non-standard terms. Written explanations would need to provide statistical and actuarial data for the reasons of these decisions, as in line with section 46 of the DDA.

29. An independent body, such as the Australian Human Rights Commission, should conduct investigations into the refusal and provision of non-standard terms of applications and also handling insurance claims complaints to reduce delays of resolutions.

30. Neutral and impartial panels should be considered to assess applicants with a potential or existing mental health condition to discuss treatment options and provide an agreed decision on the medical aspects of the claim.

31. Insurance claims should be processed in a timely way for those with a mental health condition and/or their family members.

PHAA resolves to:

32. Advocate for the above steps to be taken based on the principles in this position statement.

33. Support bodies such as the Public Interest Advocacy Council, Equally Well, and SANE Australia to continue advocacy in this area.

ADOPTED September 2019
(First adopted 2014)
References


