



Victorian Equal Opportunity
& Human Rights Commission

Fair-minded cover

INVESTIGATION INTO MENTAL HEALTH
DISCRIMINATION IN TRAVEL INSURANCE





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& Human Rights Commission

Fair-minded cover: Investigation into mental health discrimination in travel insurance

Published by the Victorian Equal Opportunity and Human Rights Commission,
Level 3, 204 Lygon Street, Carlton, Victoria 3053. June 2019

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Printed on Ecostar
ISBN 978-0-6480881-2-7

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INVESTIGATION INTO MENTAL HEALTH
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Acknowledgements

The Commission acknowledges the tireless work of the consumers and their advocates (including the Public Interest Advocacy Centre, Mental Health Australia, Beyond Blue and SANE) in advocating for better practices and outcomes for people with a mental health condition in the insurance industry. The work of these advocates continues to shine a light on the impact of discrimination on everyday Victorians and Australians. Giving a voice to people who have experienced discrimination can create a vehicle for change.

The Commission acknowledges the participation of insurers, peak bodies and experts and thanks them for their contribution to this investigation.

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Commissioner's foreword



Australians are known as avid and adventurous travellers. Last year we took ten million trips overseas and eight million trips interstate. For many of us, travel insurance is regarded as a 'must have' to provide financial and other types of support if things unexpectedly go wrong. However, not all Victorians have fair access to travel insurance or indemnity if they make a claim.

The difficulties that everyday Victorians can face when they buy travel insurance and make a claim because of a mental health condition was exposed in 2015 by a Victorian Civil and Administrative Tribunal decision. Ella Ingram purchased a travel insurance policy for a school trip to New York in 2011. After experiencing symptoms of depression for the first time, Ella decided not to go on the trip. QBE Insurance denied Ella's claim for the cost of the trip, relying on a blanket mental health exclusion in the travel insurance policy. Although the Tribunal found that QBE had discriminated against Ella, the insurer refused to change its discriminatory policy.

This issue is not new. Ella's experience of discrimination added weight to many years of determined advocacy by consumer groups to improve insurance industry practices for people with a mental health condition. However, despite the Tribunal's finding, the common practice of travel insurers offering policies with blanket mental health exclusions remained widespread. As Victoria's equal opportunity regulator I knew that more had to be done. Aware of the potential for far-reaching discrimination in the industry, I launched this investigation.

We know that almost half of all Australians experience a mental health condition in their lifetime and, in 2017–18, one in five Australians had a mental or behavioural condition. That equates to around 1.2 million Victorians. With the right management and support, a mental health condition is often just a part of everyday life for many people. In any one year, around one million Australians have depression and more than two million have anxiety. That's why mental health discrimination is felt deeply across Victoria and the country.

Victoria's equal opportunity law exists to protect the right to equality for all Victorians. It also ensures that organisations take proactive steps to eliminate discrimination as far as possible. Equal opportunity means treating *all* people with the dignity and respect they deserve. If we do this across our society, we stand the greatest chance of everyone achieving their full potential for the benefit of the whole community.

Community attitudes about mental health are changing. There is increasing data available on mental health to help travel insurers more accurately identify, manage and price risk for different mental health conditions. Specific guidance to assist insurers to meet their legal obligations under anti-discrimination law has also existed for over a decade. However, my investigation showed that policies and practices in the insurance industry have been slow to catch up.

My investigation found that three major travel insurers (Allianz, Suncorp and World Nomads Group) – making up over a third of the travel insurance industry – unlawfully discriminated

against people with a mental health condition. They did this by issuing policies with a blanket mental health exclusion and failing to indemnify people under those policies. These insurers also failed to meet their positive duty to eliminate discrimination.

In short, the investigation found that discrimination in the travel insurance industry was prevalent and widespread. However, it also revealed an industry that is ready to change, and which has already taken positive steps to better understand mental health conditions and improve industry policy and practice. I am encouraged by the willingness of insurers to participate in the investigation and the positive impact that the investigation has already had across the industry.

Since launching the investigation, all insurers have now removed (or are taking immediate steps to remove) blanket mental health exclusions from their travel insurance policies – changing tens of thousands of contracts of insurance being sold to consumers for the better. All insurers have agreed to address the Commission’s practical recommendations for change. And peak bodies, including the Insurance Council of Australia and the Actuaries Institute, have acknowledged their role in supporting better compliance with the law through industry education and support.

What is needed now is practical and collaborative action to drive enduring change in the travel insurance industry. The Commission’s recommendations aim to improve awareness and understanding of anti-discrimination law in the industry, support better compliance with the law, and improve industry regulation. Alongside the formal recommendations, the lessons learned from the investigation provide a strong foundation for change.

This includes:

- the need to put consumers at the heart of insurance business
- the need for better use and analysis of data to inform business decisions
- the need for stronger regulation
- the need for better education and support.

Discrimination law provides an important line in the sand. Insurers cannot discriminate against people with a mental health condition unless there is a good reason based on fact. While the business of insurance focuses on pricing risk, insurers must treat consumers fairly and lawfully. With the prevalence of mental health conditions in Victoria and nationally, a person’s mental health condition should not stop them from accessing the same services as everyone else.

The travel insurance industry has the opportunity to ensure that Ella Ingram’s lived experience of discrimination and courage to take her story to the Tribunal was not in vain. I strongly encourage the insurance industry to take note of this investigation and to seriously consider the important obligations of insurers under anti-discrimination law. These obligations are not just about compliance but about improving the lives of many Victorians who experience mental health conditions, and reducing the stigma around seeking support.

It is also my hope that all Victorians, including those with a mental health condition, will be reassured that their right to equality is protected through our laws. And that through our laws, our community expects and demands equality for everyone. The time for committed leadership from the insurance industry is now. As shown through the positive steps taken since the investigation was launched, I have every hope that the industry will continue to transform its policies and practices in line with community expectations about mental health.



Kristen Hilton – Victorian Equal Opportunity and Human Rights Commissioner

Executive summary

Introduction

In October 2017, the Victorian Equal Opportunity and Human Rights Commission (the Commission) launched its investigation under the *Equal Opportunity Act 2010* (Vic) into potentially unlawful discrimination against people with a mental health condition in the travel insurance industry (the Investigation). The establishment of the Investigation recognised the seriousness and reach of potential discrimination in the travel insurance industry and the importance of travel insurers complying with the law.

There is an increasing understanding and acceptance of mental health conditions and their impact in the community. Yet the Commission was concerned that potential systemic discrimination in the travel insurance industry was affecting the ability of all Victorians to benefit from the safety net provided by travel insurance. With one in five Australians experiencing a mental or behavioural condition in 2017–18, the Commission knew that discrimination in the travel insurance industry had the potential to impact on the lives of many Victorians.

The Investigation found that all three of the travel insurers who were parties to the Investigation (the party insurers) had discriminated against people with a mental health condition by including a blanket mental health exclusion in their travel insurance policies and failing to indemnify people under those policies. In practice, this means that their insurance policies included terms that refuse cover for an entire category of risk. In this case, the relevant category of risk is a mental health condition. The party insurers also failed to establish that they took sufficient steps to meet their positive duty under the Equal Opportunity Act to eliminate discrimination as far as possible.

QUICK FACTS

Australia is a nation of travellers. In 2018 Australians took more than 10 million trips overseas¹ and more than eight million trips interstate.²

Australians rely on travel insurance. In 2016–17 more than 5.7 million travel insurance contracts were issued in Australia.³

Many Australians experience a mental health condition. Almost half of all Australians (45 per cent) experience a mental health condition at some point in their lifetime.⁴ In 2017–18 alone, one in five Australians had a mental or behavioural condition. That equates to around 1.2 million Victorians.⁵

Mental health conditions are not all the same. Mental health conditions differ in type, severity, prevalence and treatment. They range from common conditions, such as anxiety and depression, to substance use disorders and serious psychosis.⁶

In response, the Commission has made formal recommendations to insurers and relevant peak bodies to:

- improve awareness and understanding of anti-discrimination law in the travel insurance industry
- drive better compliance with anti-discrimination law
- improve industry regulation
- provide clear reasons to consumers for a decision to refuse travel insurance coverage or indemnity.

Despite finding widespread discrimination against people with a mental health condition in the travel insurance industry, the Investigation revealed an industry that is ready to change, and that has already taken positive steps to better understand mental health conditions and improve industry policy and practice.

WHAT HAS ALREADY CHANGED AS A RESULT OF THE INVESTIGATION?

As a result of the Commission's Investigation:

- all party insurers have already removed, or taken immediate steps to remove, blanket mental health exclusions from their travel insurance policies
- all party insurers have agreed to take steps to address the Commission's recommendations, including in relation to the way they offer and indemnify pre-existing mental health conditions
- the Insurance Council of Australia and the Actuaries Institute have acknowledged their role in supporting better compliance with anti-discrimination law. They have agreed to progress the Commission's recommendations, including supporting better industry education.

The Commission's Investigation draws on the lived experiences of people who have faced discrimination based on a mental health condition in the travel insurance industry. The Commission emphasises the central importance of listening to consumer experience to inform policy and practice. We acknowledge the work of consumers and their advocates in bringing to light the difficulties of people with a mental health condition in accessing and enjoying the benefits of travel insurance.

WHAT DOES THE INVESTIGATION MEAN FOR CONSUMERS OF TRAVEL INSURANCE?

Following the Commission's Investigation, consumers can expect travel insurers to:

- understand and comply with anti-discrimination law when they design and issue travel insurance policies and manage insurance claims
- take proactive steps to prevent discrimination against people with a mental health condition, such as developing a strategy for compliance with anti-discrimination law
- ensure that the lived experience of consumers informs policies and practices
- design and issue travel insurance policies that are based on rigorous analysis of appropriate actuarial and statistical data, which is relevant and up to date
- develop risk profiles and appropriate coverage for different mental health conditions rather than treating different conditions as a single category
- provide transparent information to consumers about travel insurance policies, coverage for people with a mental health condition and complaints processes
- provide clear reasons for a decision to refuse cover or indemnity to a person based on a mental health condition, including the data and other relevant factors relied on to support the decision.

What is the problem?

For more than a decade, consumer advocacy groups have raised concerns about discrimination in the insurance industry in Australia.⁷ These concerns include the issues that people with a past or current mental health condition can face in relation to the design of insurance policies, purchasing insurance and making an insurance claim.

Many Australian travel insurance companies have refused cover to people with a mental health condition, by including a blanket mental health exclusion in their travel insurance policies. These exclusions have prevented a person from making a claim if they experience a mental health condition during the term of their travel insurance – in many cases regardless of whether the condition is new or pre-existing. The blanket exclusions have the effect of treating all conditions the same regardless of severity, duration and required treatment.

Where a person has disclosed a pre-existing mental health condition, many insurers have refused cover if the person makes a claim because of a mental health condition – in

many cases regardless of whether the condition was the same or different to the one disclosed to the insurer, or whether the pre-existing condition was ongoing or occurred in the past, or whether the person was being treated for the condition.

Failing to provide cover or indemnity for people with a mental health condition perpetuates the stigma surrounding mental health. It sends a damaging message that seeking mental health support may result in being denied basic services that are available to the rest of the community. Blanket mental health exclusions in travel insurance policies can exclude people without formal diagnoses who have sought support during periods of normal life stress, as well as people who have no prior history of a mental health condition, from indemnity when seeking to make a claim.

The use of blanket mental health exclusions in travel insurance policies was brought to light in the Victorian Civil and Administrative Tribunal's 2015 decision in *Ingram v QBE Insurance (Australia) Ltd (Human Rights)* [2015] VCAT 1936.

CASE STUDY: INGRAM V QBE INSURANCE (AUSTRALIA) LTD

In *Ingram v QBE Insurance (Australia) Ltd (Human Rights)* [2015] VCAT 1936 (*Ingram v QBE*), the Victorian Civil and Administrative Tribunal (VCAT) found that QBE unlawfully discriminated against Ella Ingram on the basis of a mental health condition.

In late 2011, Ella decided to join a school trip to New York and paid costs including a travel insurance policy issued by QBE. In January 2012, Ella experienced symptoms of depression for the first time, which resulted in the decision not to go on the trip. Ella's mother lodged a claim for the cost of the trip, which was rejected by QBE.

QBE relied on a general exclusion in the policy for claims arising from a mental health condition. QBE said that its decision was based on statistical modelling and analysis of claims arising from a range of causes, which demonstrated that there is a high risk of cancellation of travel policies due to mental health conditions.

VCAT found that QBE directly discriminated against Ella when it issued a policy that included a blanket mental health exclusion and when it refused indemnity based on the exclusion. VCAT found that QBE did not provide sufficient evidence to rely on exceptions to discrimination, including proving that the discrimination was based on actuarial or statistical data or that QBE would have suffered unjustifiable hardship if it had not included the exclusion in the policy. Ella was awarded more than \$4000 for the value of the cancelled trip and \$15,000 for hurt and humiliation.

The decision in *Ingram v QBE* was an important catalyst for the Commission's Investigation. Despite VCAT's decision, the longstanding efforts of consumer advocates and existing guidance to insurers on complying with the law, the practice of travel insurers offering policies with blanket mental health exclusions remained widespread. In recognition of the potentially far-reaching impacts of discrimination in the travel insurance industry more broadly, the Commission drew inspiration from Ella Ingram's story and the many years of consumer advocacy to investigate and shine a light on discriminatory policies and practices by travel insurers.

EXISTING GUIDANCE ON ANTI-DISCRIMINATION LAW FOR THE INSURANCE INDUSTRY

In 2016, the Australian Human Rights Commission reissued its *Guidelines for providers of insurance and superannuation under the Disability Discrimination Act 1992 (Cth) (DDA Guidelines)*. The *DDA Guidelines* support insurers to assess if they can lawfully rely on an exception to anti-discrimination law, including the factors and evidence that insurers need to take into account when making decisions.

What did the Commission investigate?

The Commission's Investigation considered whether the practices of party insurers complied with their legal obligations under the Equal Opportunity Act, including:

- the offer of travel insurance on terms that substantially limited or excluded cover for people with a mental health condition (blanket mental health exclusions)
- the refusal of indemnity under contracts of travel insurance to people who have or have had a mental health condition.

The Investigation also considered whether all participating insurers had taken sufficient steps to comply with their 'positive duty' under the Equal Opportunity Act to eliminate discrimination as far as possible in the provision of travel insurance.

Finally, the Investigation considered the impact of travel insurance policies on people with a pre-existing mental health condition.

WHICH INSURERS PARTICIPATED IN THE INVESTIGATION?

The Commission selected five insurers to participate in the Investigation, which made up more than 70 per cent of the travel insurance market in Australia at the time. This included:

- the 'party insurers', World Nomads Group (WNG), Suncorp and Allianz, which maintained blanket mental health exclusions at the time of the investigation and were asked to provide data under the Equal Opportunity Act
- the 'non-party insurers', Zurich/Cover-More and QBE, which had removed existing mental health exclusions by the time of the Investigation and were asked to voluntarily provide information to assist the Investigation.

The Commission notes that QBE declined to participate in the Investigation.

The Investigation methodology is discussed in more detail in Chapter 1.

The Commission's Investigation powers enabled it to request information from party insurers to assess whether the data exception under the Equal Opportunity Act applied to any potential discrimination against people with a mental health condition. The focus of the Investigation was to understand the

nature and quality of data relied on by insurers to claim the data exception, and to require insurers to explain *how* they relied on this information in the design, sale and indemnity of insurance. The Commission also sought voluntary information from non-party insurers to assist the Investigation.

QUICK FACTS

The Commission:

- engaged with peak bodies to seek information about the systems and practices that may assist or hinder compliance with the law by travel insurers
- requested information from travel insurers about key travel insurance policies, claims made, complaints processes and steps to meet the 'positive duty'.

In response to the Investigation, the Commission reviewed more than:

- 100 emails and formal responses from insurers and other entities
- 470 supporting documents provided by insurers, including raw claims data, reports, internal correspondence and actuarial information.

An independent actuary assisted the Investigation by assessing and providing advice on the information provided by insurers.

What does the law say?

In Victoria, the Equal Opportunity Act regulates the conduct of insurers by:

- prohibiting unlawful discrimination by insurers against people with a disability, including people with a mental health condition⁸
- including an exception for insurers if the discrimination is either:
 - lawful under federal anti-discrimination law
 - based on reasonable actuarial or statistical data and the discrimination is reasonable having regard to that data and any other relevant factors
 - where no such data is available or can be reasonably obtained, the discrimination is reasonable having regard to other relevant factors (the data exception)⁹
- requiring insurers to make reasonable adjustments for people with a disability to ensure that they can access and derive a benefit from their services¹⁰
- imposing a 'positive duty' on insurers to take reasonable and proportionate steps to eliminate discrimination in the provision of insurance as far as possible.¹¹

WHAT DOES THE POSITIVE DUTY REQUIRE FOR INSURERS?

The positive duty aims to ensure organisations take proactive steps to prevent discrimination from happening in the first place, rather than responding to complaints when things go wrong. What the positive duty requires depends on the size and nature of a particular business, the organisation's resources and priorities, and the practicability and cost of taking steps to prevent discrimination.

For insurers, the positive duty may include taking steps such as:

- assessing compliance with the Equal Opportunity Act
- developing a compliance strategy with a mechanism for regular review
- having up-to-date equal opportunity and complaints policies, and ensuring that staff are aware of and understand those policies
- organising regular equal opportunity training for executives, managers and other staff regarding anti-discrimination law and relevant guidance on the law
- ensuring that rigorous analysis of appropriate up-to-date data informs decisions about insurance coverage for people with a mental health condition.

The party insurers



The non-party insurers



What did the Commission find?

Over the course of the Investigation, the Commission assessed the policies and practices of insurers that maintained blanket mental health exclusions in their travel insurance policies (the party insurers), as well as insurers that had taken steps to change their practices, including providing tailored products for people with a mental health condition (the non-party insurers). The Commission made findings related to the three party insurers, Allianz, Suncorp and World Nomads Group (WNG).

The Commission notes that the Investigation considered the policies and practices of insurers during a discrete period from 1 July 2017 to 19 April 2018 (Investigation Period). The Commission's findings are therefore made with the acknowledgment that industry practice has already and continues to improve.

QUICK FACTS

During the Investigation Period all three party insurers committed to changing their practice of issuing travel insurance policies with a blanket mental health exclusion. The Commission commends this approach, which will now see the removal of blanket exclusion policies from some of the largest travel insurers in the Australian market.

ALL THREE PARTY INSURERS UNLAWFULLY DISCRIMINATED

The Commission found that the three party insurers – Allianz, Suncorp and WNG – discriminated against people with a mental health condition during the Investigation Period by issuing travel insurance policies with a blanket mental health exclusion and failing to indemnify people under those policies based on a mental health condition. These insurers were unable to establish that they could rely on the data exception under the Equal Opportunity Act to lawfully discriminate.

SNAPSHOT SUMMARY OF THE COMMISSION'S FINDINGS

- During the Investigation Period, Allianz, Suncorp and WNG issued travel insurance policies including a blanket mental health exclusion, and failed to indemnify people under those policies based on a mental health condition.
- During the Investigation Period, Allianz, Suncorp and WNG had a legal obligation under the Equal Opportunity Act to not discriminate against people with a mental health condition in the provision of travel insurance.
- The information provided to the Investigation by Allianz, Suncorp and WNG did not demonstrate a sufficient basis to claim the data exception for insurers.
- On that basis, Allianz, Suncorp and WNG unlawfully discriminated against people with a mental health condition during the Investigation Period.
- Allianz, Suncorp and WNG did not take sufficient steps to meet their positive duty under the Equal Opportunity Act to eliminate discrimination as far as possible.

ALL INSURERS FAILED TO MEET THEIR POSITIVE DUTY TO ELIMINATE DISCRIMINATION

The Commission found that all three party insurers failed to take sufficient steps to meet their positive duty to eliminate discrimination as far as possible under the Equal Opportunity Act. Critically, these insurers were unable to demonstrate that they had adequate systems in place to consider and respond to discrimination and to educate staff about their legal obligations under anti-discrimination law.

The Commission observed that, in some of their products, insurers continue to treat mental health conditions as a single category to exclude cover in relation to pre-existing conditions. The independent actuary assisting the Commission found that there was a possibility of insurers offering some form of cover to people with pre-existing conditions. This may require differentiating between different mental health conditions, rather than treating all mental health conditions as a single category. The independent actuary considered that the spectrum of risk for different conditions could be approached in the same way that insurers already approach coverage for physical conditions.

WHAT DATA OR OTHER FACTORS DID THE PARTY INSURERS RELY ON TO DISCRIMINATE?

In finding that Allianz, Suncorp and WNG had unlawfully discriminated against people with a mental health condition, the Commission considered that:

- WNG did not hold any actuarial or statistical data, or provide other relevant information or documentation, sufficient to satisfy the Commission that the use of blanket mental health exclusions was lawful. WNG argued that despite its blanket exclusion terms, it nonetheless made 'ex gratia payments'¹² to consumers with a mental health condition who made a claim, and therefore did not consider itself in breach of the law.
- Allianz held significant statistical and actuarial data, but this data did not support a sufficient basis for the use of blanket mental health exclusions. Allianz provided a large volume of documents to the Commission but many of these documents were created after the policy was already in place. In addition, Allianz's analysis fell short of the standard required by the *DDA Guidelines*, and Allianz's documents also indicate that it prioritised business imperatives over compliance with anti-discrimination laws.

- Suncorp held statistical and actuarial data in the form of an outdated 2008 report. The Commission considered that it was unreasonable for Suncorp to rely on this outdated data. Suncorp also claimed its 'conservative risk appetite' and small market share were relevant factors that made discrimination against people with a mental health condition reasonable.

While the Commission carefully considered all the party insurers' reasons, it ultimately concluded that all three insurers had unlawfully discriminated.

QUICK FACTS

Based on the data provided to the Investigation, during the Investigation Period:

- travel insurers sold more than 365,000 contracts of insurance including unlawful mental health exclusions. These contracts came from just three major travel insurers, which made up approximately 37 per cent of the Australian travel insurance market at the time, and were issued over an eight-month period
- hundreds of people had their claims relating to a mental health condition denied
- some insurers applied additional premiums to travel insurance policies or increased the excess to provide cover for mental health conditions – meaning people with a mental health condition paid more.

During the Investigation Period, it is also possible that some people decided not to purchase a travel insurance policy or to make a claim on a policy because of a blanket mental health exclusion. For this reason, the complete impact of discrimination in the travel insurance industry on consumers is unknown.

THE COMMISSION'S OBSERVATIONS ABOUT THE NON-PARTY INSURERS

The Commission did not make formal findings in relation to Zurich and Cover-More as non-party insurers. However, based on the information provided to the Investigation voluntarily, the Commission notes that, since June 2017, Zurich removed blanket mental health exclusions from all of its travel insurance policies offered through Cover-More. The Commission commends this change, which included consideration of multiple sources of data, such as internal claims data, population data, modelling of expected claims costs and data on the treatment of different mental health conditions.

The Investigation also heard about the use of a screening tool by Zurich and Cover-More to offer insurance cover to people with pre-existing mental health conditions. The purpose of a screening tool is to allow an insurer to better understand the risk of a particular event occurring and to set and price cover accordingly. The Commission observes that Zurich and Cover-More need to ensure that its screening tool is based on rigorous analysis of appropriate data. The Commission notes that if the use of the screening tools results in unfavourable outcomes for people with a mental health condition, such as different coverage or higher premiums, these practices may be discriminatory unless the insurer can lawfully rely on the data exception.

The way forward: A focus on action

The Commission's Investigation established the need for the travel insurance industry to focus on practical action to drive enduring change. Along with the Commission's formal recommendations to insurers and relevant peak bodies, the lessons learned from the Investigation provide a strong foundation for change.

As set out above, during the Investigation Period the industry took encouraging steps towards eliminating discrimination for people with a mental health condition. This includes all insurers to the Investigation removing (or taking active steps to remove) blanket mental health exclusions and agreeing to address the

Commission's recommendations, as well as leading industry groups acknowledging their role in supporting industry understanding and compliance with anti-discrimination law.

In making its recommendations, the Commission acknowledges the positive steps already taken to transform policies and practice in the travel insurance industry. The Commission strongly encourages travel insurers to implement its recommendations and engage in best practice based on the lessons learned in the Investigation.

THE COMMISSION'S RECOMMENDATIONS

SNAPSHOT SUMMARY OF THE COMMISSION'S RECOMMENDATIONS

1. All insurers who participated in the Investigation should develop a strategy for compliance with the Equal Opportunity Act.
2. Allianz, Suncorp and WNG should apply rigorous actuarial analysis to the policy terms they use to offer or exclude travel insurance cover to people with a mental health condition (having regard to the *DDA Guidelines*).
3. Allianz, Suncorp and WNG should contact claimants denied indemnity or claims based on a mental health condition during the Investigation Period to notify them about the Investigation and its outcomes.
4. All insurers who participated in the Investigation should provide their staff with regular education and training on anti-discrimination law.
5. All insurers who participated in the Investigation should develop risk profiles and appropriate coverage for different mental health conditions.
6. All insurers who participated in the Investigation should provide clear reasons to travel insurance customers for refusing to offer cover or deny indemnity based on a mental health condition.
7. The Actuaries Institute and the Insurance Council of Australia should facilitate education on anti-discrimination law for actuary members and insurers respectively.
8. The Insurance Council of Australia should incorporate its Guidance on Mental Health in its revised Code of Conduct to ensure that it is mandatory and enforceable.

Action plans and agreements

As well as the Commission's formal recommendations to party insurers, the Commission invited Allianz, WNG and Suncorp to consider preparing an action plan under the Equal Opportunity Act to better comply with the Act. WNG agreed to develop an action plan and to work with the Commission to expedite compliance. At the time of writing this report, Allianz and Suncorp were considering the Commission's invitation to develop an action plan. The Commission also requested that WNG enter into an agreement with the Commission to remove discriminatory terms from its travel insurance policies. The Commission commends WNG for agreeing to develop an action plan and to enter into an agreement.

QUICK FACTS

The Equal Opportunity Act provides that an organisation can prepare an action plan that sets out the steps required to improve compliance with the Act.¹³ The Commission may provide advice about preparing and implementing action plans and set minimum requirements for action plans. An action plan is not legally binding, but a court or tribunal may consider an action plan if it is relevant to a particular matter.

After conducting an investigation, the Commission may take any action it thinks fit including entering into an agreement with a person about action required to comply with the Act.¹⁴ An agreement may be registered with VCAT.

THE LESSONS LEARNED FROM THE INVESTIGATION

The key lessons learned from the Investigation build on the Commission's formal recommendations to insurers and peak bodies to embed a proactive and collaborative approach to eliminating discrimination in the travel insurance industry.

KEY LESSONS LEARNED TO DRIVE ENDURING CHANGE

- The need to listen to consumer experience
- The need for better use and analysis of data
- The need for stronger regulation
- The need for better education and support

The need to listen to consumer experience

The Commission's Investigation highlighted the importance of putting consumers at the heart of business, and ensuring that lived experience informs future policy and practice. As well as taking proactive steps to prevent discrimination, the Investigation revealed that insurers need to provide clear and transparent information to consumers about travel insurance products, complaint processes and reasons for a decision to refuse travel insurance cover or deny indemnity. The Commission also recommends that insurers contact consumers who had their claims denied during the Investigation Period to notify them about the Investigation and its outcomes.

The need for better use and analysis of data

Data is at the centre of the exception under the Equal Opportunity Act that allows insurers to lawfully discriminate if the discrimination is based on actuarial or statistical data and other relevant factors in some circumstances (the data exception). The Commission's Investigation revealed concerning practices related to data, including the use of outdated or irrelevant data and the insufficient analysis of data.

In order to rely on the data exception, the Investigation highlighted that insurers must:

- use appropriate data that is up-to-date and relevant (part 8.3.1)
- undertake quality analysis of available data (part 8.3.2)
- consider alternatives to discrimination where risk is assessed as high (part 8.3.3)
- document the data relied on for a decision to discriminate (part 8.3.4).

Using appropriate data

The Commission heard about the challenges faced by the industry in sourcing appropriate data to inform coverage for mental health conditions. However, there is a significant opportunity for insurers to make better use of available data and better manage any data limitations. It is critical that available and emerging data about the prevalence, severity and treatment of mental health conditions meaningfully informs insurers' decisions and that insurers develop appropriate coverage for different mental health conditions in the same way as physical conditions.

Undertaking quality analysis of data

The Investigation highlighted the central role of actuaries in informing insurers' decisions about coverage and supporting insurers to meet their legal obligations. For this reason, it is essential that actuaries are aware of and understand insurers' anti-discrimination law obligations. The Actuaries Institute can support actuaries by facilitating education on the role of anti-discrimination law in the insurance industry.

Considering alternatives to discrimination

The Investigation emphasised the need for insurers to comply with anti-discrimination law despite commercial priorities. For this reason, insurers must consider alternatives to refusing to provide cover to people with a mental health condition when the risk associated with a mental health condition is assessed as high.

Documenting the use and analysis of data

The Investigation emphasised the need for insurers to document the reasons for a decision to discriminate, including the data relied on to discriminate.

The need for stronger regulation

The Investigation found that the insurance industry requires committed leadership to ensure that travel insurers comply with their anti-discrimination law obligations and achieve best practice. Although the insurance industry is regulated by a code of practice, the code does not incorporate the Insurance Council of Australia's new Guidance on Mental Health, which reflects anti-discrimination law obligations in 'best practice principles'. The Commission considers that the Guidance on Mental Health must be incorporated into the code to ensure that it is mandatory and enforceable and that insurers understand that the best practice principles reflect the law.

The need for better education and support

The Investigation found that to drive better compliance with the law, it is critical that insurers, actuaries and peak bodies, including the Insurance Council of Australia and the Actuaries Institute, understand insurers' legal obligations under anti-discrimination law. The Commission considers that this can be effectively achieved through targeted education on anti-discrimination law and relevant guidance such as the *DDA Guidelines*.

Supporting enduring change in the industry is discussed in more detail in Chapter 8.

Notes

- 1 Australian Bureau of Statistics, January 2018, *Short-term Movement, Residents Returning and Visitors Arriving – Selected Countries of Residence: Seasonally adjusted, Table 8* (Catalogue No 3401.0), January 2018.
- 2 Tourism Research Australia, *National Visitor Survey 2018, Table 4 – Overnight Visitors and Visitor Nights by State/Territory Visited and State/Territory of Origin*, (December 2018), viewed 15 April 2019, <<https://www.tra.gov.au/Domestic/domestic-tourism-results>>.
- 3 Insurance Council of Australia, *General Insurance Code Governance Committee, General insurance in Australia 2016–17: Industry practice and Code compliance*, (March 2018), 65.
- 4 Australian Bureau of Statistics, 2008, *National Survey of Mental Health and Wellbeing: Summary of Results, 2007* (Catalogue No. 4326.0), October 2008. The 2007 ABS Survey into National Mental Health and Wellbeing has not been updated. More recent results from the ABS 2017–18 National Health Survey indicate that mental health conditions among Australians increased between 2014–15 and 2017–18. Australian Bureau of Statistics, 2019, *National Health Survey: First Results, 2017–18* (Catalogue no. 4364.0.55.001), December 2018.
- 5 Australian Bureau of Statistics, 2019, *National Health Survey: First Results, 2017–18, Table 21: Victoria* (Catalogue no. 4364.0.55.001), March 2019.
- 6 Australian Institute of Health and Welfare, *Mental health services in Australia in brief 2018*, (Report, March 2019).
- 7 For example, Mental Health Council of Australia (MHCA) and Beyondblue, *Mental Health Discrimination and Insurance. A Survey of Consumer Experiences*, MHCA, Canberra, 2011. See also Chapter 1.
- 8 *Equal Opportunity Act 2010* (Vic) ss 8, 9 and 44.
- 9 *Ibid* s 47.
- 10 *Ibid* s 45.
- 11 *Ibid* s 15.
- 12 The Latin term ‘ex gratia’ is commonly understood to mean “(something granted) as a favour and not because of a legal obligation”. *Macquarie Dictionary Online*, (Macquarie Dictionary Publishers, an imprint of Pan Macmillan Australia Pty Ltd, 2019) <<http://www.macquariedictionary.com.au>>.
- 13 *Equal Opportunity Act 2010* (Vic) s 152.
- 14 *Ibid* ss 139 and 140.

Conclusions and outcomes of the Investigation

Findings and recommendations

Following the Investigation, the Commission made number of findings regarding compliance under the *Equal Opportunity Act 2010* (Vic), which are catalogued below.

Importantly, to improve compliance moving forward, the Commission also made recommendations to the:

- three party insurers being investigated¹
- key industry, insurance and related organisations that assisted the investigation and were identified by the Commission as having a role to play in ensuring enduring change in discriminatory practices within the travel insurance industry.

Action plans and agreements

The Commission also specifically invited Allianz, WNG and Suncorp to prepare an action plan² to address compliance issues identified by the Commission in the Investigation and outlined in the below recommendations.

WNG confirmed it would and the Commission has agreed to work with it to establish an appropriate pathway to achieve compliance on an expedited basis. The Commission notes that Allianz and Suncorp would consider preparing an action plan and would be interested in meeting with the Commission to discuss this. The Commission confirms there remains a standing offer to assist these entities.

The Commission also separately requested that WNG enter into an agreement with the Commission to remove the identified discriminatory terms.³ The Commission acknowledges WNG's cooperation and acceptance of both the Commission's recommendations and proposed agreement in this regard.

The Commission also notes that the Insurance Council of Australia and Actuaries Institute agree to progress the Commission's recommendations and indicated that the Council of the Insurance General Code would consider the Commission's proposed changes to the Code to make mental health guidelines mandatory and enforceable.

Findings against insurers

Finding no.	Insurer	Finding
1	Allianz	<p>Within the Investigation Period (1 July 2017 – 19 April 2018), Allianz and AGA issued travel insurance policies, including the NAB Supplementary Product Disclosure Statement (SPDS) (A119163-0626) and Allianz Travel Insurance (Direct) Policy (ATID PDS):</p> <ol style="list-style-type: none"> a. on terms that excluded indemnity for any claim arising from or in any way related to depression, anxiety, stress, mental or nervous conditions b. up until 6 November 2017, which failed to indemnify people insured under such policies whose claims arose from or were in any way related to depression, anxiety, stress, mental or nervous conditions <p>(together, the Conduct).</p>
	Suncorp	<p>Within the Investigation Period (1 July 2017 – 19 April 2018), Suncorp issued travel insurance policies, including the Suncorp Holiday Travel Insurance and Annual Multi Trip Travel Insurance (PDS Issue 5 12706 and Issue 2 13579 respectively):</p> <ol style="list-style-type: none"> a. on terms that excluded indemnity for claims arising from all psychiatric, mental, nervous, emotional, personality, and behavioural disorders, including but not limited to phobias, stress, anxiety and depression ... physical, mental or emotional exhaustion, including but not limited to jet lag b. which failed to indemnify people insured under such policies whose claims arose from all psychiatric, mental, nervous, emotional, personality, and behavioural disorders, including but not limited to phobias, stress, anxiety and depression ... physical, mental or emotional exhaustion, including but not limited to jet lag <p>(together, the Conduct).</p>
	WNG	<p>Within the Investigation Period (1 July 2017 – 19 April 2018), WNG issued or provided travel insurance policies, including the World Nomads Aus/NZ PDS (WNAUS-FSG-02-01JUL2016) policy and Travel Insurance Direct policy:</p> <ol style="list-style-type: none"> a. on terms that excluded indemnity for claims arising from all psychiatric, mental, nervous, emotional, personality, and behavioural disorders, including but not limited to phobias, stress, anxiety and depression ... physical, mental or emotional exhaustion, including but not limited to jet lag b. which failed to indemnify people insured under such policies whose claims arose from all psychiatric, mental, nervous, emotional, personality, and behavioural disorders, including but not limited to phobias, stress, anxiety and depression ... physical, mental or emotional exhaustion, including but not limited to jet lag <p>(together, the Conduct).</p>

Finding no.	Insurer	Finding
2	Allianz	During the Investigation Period, Allianz and AGA had obligations under section 44 of the Equal Opportunity Act to not discriminate in the provision of travel insurance against people with a mental health condition (being a disability under the Equal Opportunity Act).
	Suncorp	During the Investigation Period, Suncorp had obligations under section 44 of the Equal Opportunity Act to not discriminate in the provision of travel insurance against people with a mental health condition (being a disability under the Equal Opportunity Act).
	WNG	During the Investigation Period, WNG had obligations under section 44 of the Equal Opportunity Act to not discriminate in the provision of travel insurance against people with a mental health condition (being a disability under the Equal Opportunity Act).
3	Allianz	In the Commission's opinion, the information provided to the Investigation by Allianz and AGA did not demonstrate a sufficient basis to claim the exception under section 47 of the Equal Opportunity Act with respect to the Conduct.
	Suncorp	In the Commission's opinion, the information provided to the Investigation by Suncorp did not demonstrate a sufficient basis to claim the exception under section 47 of the Equal Opportunity Act with respect to the Conduct.
	WNG	In the Commission's opinion, the information provided to the Investigation by WNG did not demonstrate a sufficient basis to claim the exception under section 47 of the Equal Opportunity Act with respect to the Conduct.
4	Allianz	In the Commission's opinion, by reason of the Conduct outlined in Finding 1, Allianz and AGA contravened section 44 of the Equal Opportunity Act.
	Suncorp	In the Commission's opinion, by reason of the Conduct outlined in Finding 1, Suncorp contravened section 44 of the Equal Opportunity Act.
	WNG	In the Commission's opinion, by reason of the Conduct outlined in Finding 1, WNG contravened section 44 of the Equal Opportunity Act.

Finding no.	Insurer	Finding
5	Allianz	In the Commission’s opinion, Allianz and AGA did not take reasonable and proportionate measures to eliminate discrimination as far as possible in accordance with their duty under section 15 of the Equal Opportunity Act during the Investigation Period.
	Suncorp	In the Commission’s opinion, Suncorp did not take reasonable and proportionate measures to eliminate discrimination as far as possible in accordance with its duty under section 15 of the Equal Opportunity Act during the Investigation Period.
	WNG	In the Commission’s opinion, WNG did not take reasonable and proportionate measures to eliminate discrimination as far as possible in accordance with its duty under section 15 of the Equal Opportunity Act during the Investigation Period.

Insurer recommendations

Each recommendation is made with respect to the Commission's investigation into potential unlawful discrimination in the travel insurance industry.

Rec no.	Insurer	Recommendation
1	Allianz	<p>Allianz and AGA develop a strategy for compliance with the Equal Opportunity Act in respect of their travel insurance products and services, which:</p> <ul style="list-style-type: none"> • includes creating processes and policies to ensure the regular monitoring and updating of actuarial and statistical data on which insurance terms are based • provides for continuous improvement and regular review of policy terms to ensure it is compliant with anti-discrimination law and that it considers the continual advances in relevant medical knowledge • ensures any third party it uses to collect data or provide assessment for cover complies with relevant anti-discrimination laws • incorporates a process for the strategy's regular review.
	Suncorp	<p>Suncorp develop a strategy for compliance with the Equal Opportunity Act in respect of its travel insurance products and services, which:</p> <ul style="list-style-type: none"> • includes creating processes and policies to ensure the regular monitoring and updating of actuarial and statistical data on which insurance terms are based • provides for continuous improvement and regular review of policy terms to ensure it is compliant with anti-discrimination law and that it considers the continual advances in relevant medical knowledge • ensures any third party it uses to collect data or provide assessment for insurance cover complies with relevant anti-discrimination laws • incorporates a process for the strategy's regular review.
	WNG	<p>WNG develop a strategy for compliance with the Equal Opportunity Act in respect of its travel insurance products and services, which:</p> <ul style="list-style-type: none"> • includes creating and documenting processes and policies to ensure the regular monitoring and updating of actuarial and statistical data on which insurance terms are based • provides for continuous improvement and regular review of policy terms to ensure it is compliant with anti-discrimination law and that it considers the continual advancements in relevant medical knowledge • ensures any third party it uses to collect data or provide assessment for cover complies with relevant anti-discrimination laws • incorporates a process for the strategy's regular review.

Rec no.	Insurer	Recommendation
1	Zurich/ Cover-More	<p>If Zurich and Cover-More have not done so already, develop a strategy for compliance with the Equal Opportunity Act in respect of its travel insurance products and services, which:</p> <ul style="list-style-type: none"> • includes creating processes and policies to ensure the regular monitoring and updating of actuarial and statistical data on which insurance terms are based • provides for continuous improvement and regular review of policy terms to ensure it is compliant with anti-discrimination law and that it considers the continual advances in relevant medical knowledge • ensures any third party they use to collect data or provide assessment for cover complies with relevant anti-discrimination laws • incorporates a process for the strategy's regular review.
2	Allianz	<p>Allianz and AGA should apply rigorous statistical and actuarial analysis to all policy terms it is using to offer or exclude travel insurance coverage to people with a mental health condition. Allianz and AGA should have regard to the Australian Human Rights Commission's <i>Guidelines for providers of insurance and superannuation under the Disability Discrimination Act 1992 (Cth)</i>, including that:</p> <ul style="list-style-type: none"> • actuarial or statistical data relied upon be up to date • actuarial or statistical data relied upon be relevant to the particular health condition of the prospective insured • if relevant data is available it must not be ignored • they consider whether there are less discriminatory options available in the development of policies.
	Suncorp	<p>Suncorp should apply rigorous statistical and actuarial analysis to all policy terms it is using to offer or exclude travel insurance coverage to people with a mental health condition. Suncorp should have regard to the Australian Human Rights Commission's <i>Guidelines for providers of insurance and superannuation under the Disability Discrimination Act 1992 (Cth)</i>, including that:</p> <ul style="list-style-type: none"> • actuarial or statistical data relied upon be up to date • actuarial or statistical data relied upon be relevant to the particular health condition of the prospective insured • if relevant data is available it must not be ignored • it considers whether there are less discriminatory options available in the development of policies.

Rec no.	Insurer	Recommendation
2	WNG	<p>WNG should apply rigorous statistical and actuarial analysis to all policy terms it is using to offer or exclude travel insurance to people with a mental health condition. WNG should have regard to the Australian Human Rights Commission's <i>Guidelines for providers of insurance and superannuation under the Disability Discrimination Act 1992 (Cth)</i>, including that:</p> <ul style="list-style-type: none"> • actuarial or statistical data relied upon be up to date • actuarial or statistical data relied upon be relevant to the particular health condition of the prospective insured • if relevant data is available it must not be ignored • it considers whether there are less discriminatory options available in the development of policies.
3	Allianz	Allianz and AGA contact travel insurance claimants denied an indemnity or claims based on a mental health condition during the Investigation Period and provide a copy of the Investigation Report and Outcome Notice for their consideration.
	Suncorp	Suncorp contact travel insurance claimants denied indemnity or claims based on a mental health condition during the Investigation Period and provide a copy of the Investigation Report and Outcome Notice for their consideration.
	WNG	WNG contact travel insurance claimants denied indemnity or claims based on a mental health condition during the Investigation Period and provide a copy of the Investigation Report and Outcome Notice for their consideration.
4	Allianz	Allianz and AGA undertake to provide their staff, including senior managers, underwriters, executive teams and any person involved in the drafting of policy terms and conditions, with regular education and training regarding applicable anti-discrimination laws.
	Suncorp	Suncorp undertake to provide its staff, including senior managers, underwriters, executive teams and any person involved in the drafting of policy terms and conditions, with regular education and training regarding applicable anti-discrimination laws.
	WNG	WNG undertakes to provide its staff, including senior managers, underwriters, executive teams and any person involved in the drafting of policy terms and conditions, with regular education and training regarding applicable anti-discrimination laws.
	Zurich/ Cover- More [Note Rec 2 for Zurich/ Cover- More]	If Zurich and Cover-More have not done so already, undertake to provide their staff, including senior managers, underwriters, executive teams and any person involved in the drafting of policy terms and conditions, with regular education and training regarding applicable anti-discrimination laws.

Rec no.	Insurer	Recommendation
5	Allianz	Allianz and AGA develop risk profiles and appropriate coverage for differing mental health conditions within its travel insurance policies, as it does with differing physical conditions.
	Suncorp	Suncorp develop risk profiles and appropriate coverage for differing mental health conditions within its travel insurance policies, as it does with differing physical conditions.
	WNG	WNG develops risk profiles and appropriate coverage for differing mental health conditions within its travel insurance policies, as it does with differing physical conditions.
	Zurich/ Cover-More [Note Rec 3 for Zurich/ Cover-More]	If Zurich and Cover-More have not done so already, ensure that risk profiles and appropriate coverage are developed for differing mental health conditions (as they do with differing physical conditions).
6	Allianz	Allianz and AGA provide clear reasons to travel insurance consumers regarding any refusal to offer cover or denial of an indemnity based on or relating to a mental health condition.
	Suncorp	Suncorp provides clear reasons to travel insurance consumers regarding any refusal to offer cover or denial of an indemnity based on or relating to a mental health condition.
	WNG	WNG provides clear reasons to travel insurance consumers regarding any refusal to offer cover or denial of an indemnity based on or relating to a mental health condition.
	Zurich/ Cover-More [note Rec 4 for Zurich/ Cover-More]	If Zurich and Cover-More do not do so already, they should provide clear reasons to travel insurance consumers regarding any refusal to offer cover or denial of an indemnity based on or relating to a mental health condition.

Other recommendations

Rec No.	Entity	Recommendation
1	Actuaries Institute (AI)	<p>The Actuaries Institute should develop a strategy for educating members regarding anti-discrimination laws, which:</p> <ul style="list-style-type: none"> • outlines insurers' obligations regarding anti-discrimination laws • outlines actuaries' role and obligations to comply with these laws as part of their professional obligations • provides guidance on the standards of actuarial analysis required, having regard to the Australian Human Rights Commission's <i>Guidelines for providers of insurance and superannuation under the Disability Discrimination Act 1992 (Cth)</i>.
1	Insurance Council of Australia (ICA)	<p>Regarding the Insurance Council of Australia Code of Practice:</p> <ul style="list-style-type: none"> • The Insurance Council of Australia should incorporate the Guidance on Mental Health as mandatory matters within the Code, rather than 'best practice' standards. • The Insurance Council of Australia should not submit the Code to Australian Securities and Investments Commission for consumer accreditation without stronger and enforceable mental health guidelines which reflect anti-discrimination law requirements. • The Code Governance Committee should publish information and reasons regarding investigation outcomes of serious breaches of the Code against parties on its website as well as in Annual Reports.
2	Insurance Council of Australia (ICA)	<p>The Insurance Council of Australia develop an education program to inform insurers about their legal obligations under anti-discrimination law (or arrange for appropriate training to be provided).</p>

Notes

- 1 Allianz and AGA, Suncorp and World Nomads Group (WNG).
- 2 Pursuant to Pursuant to *Equal Opportunity Act 2010* (Vic) s 152.
- 3 Ibid s 139(2)(b).