



Report of the Finance and Expenditure Committee

Petition of Andrew Body: Protection of the interests of AMP Life’s policyholders

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Chairperson

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Petition of Andrew Body

Recommendation

The Finance and Expenditure Committee has considered the petition of Andrew Body—Protection of the interests of AMP Life’s policyholders—and draws to the attention of the House the suggestion of the Financial Markets Authority: that the Financial Markets (Conduct of Institutions) Amendment Bill be amended.

Request for protection of the interests of AMP Life’s policyholders

The petition was presented to the House on 19 May 2020. It requests:

That the House of Representatives urgently review the Insurance (Prudential Supervision) Act 2010 to ensure New Zealand life insurance policyholders (including AMP Life policyholders) are treated fairly and transparently in the sale and operation of life insurance businesses, through seamless supervision by the FMA and RBNZ.

The Finance and Expenditure Committee of the 52nd Parliament began considering the petition. It heard from the petitioner in person, and received two written submissions from him. The committee also heard from the Reserve Bank of New Zealand, the Financial Markets Authority (FMA), and AMP Life. In addition, the committee received written submissions from the Reserve Bank, the FMA, Resolution Life, and AMP Life.

The petitioner’s concerns

The petition was a response to the proposed sale of AMP Life Ltd to Resolution Life Group. The sale has now been approved by the Reserve Bank, and the parties have completed the transaction.

AMP Life provides life insurance to 200,000 New Zealanders. AMP Ltd, which owned AMP Life before its purchase by Resolution Life, wanted to exit the New Zealand life insurance market, citing reasons of commercial performance. Resolution Life is a Bermuda-based company that specialises in purchasing life insurance providers. This particular sale involved Resolution Life purchasing the shareholding in the New Zealand-based AMP Life from its Australian owner, AMP Ltd. AMP Life will remain the insurer of the 200,000 policyholders, but it is now owned by Resolution Life.

Life insurance policies are “high-trust” contracts

The petitioner explained to the committee that life insurance policies include “high-trust”, or “relational” contracts between the policyholder and the insurance provider. Therefore, according to the petitioner, the explicit terms of life insurance contracts do not cover all eventualities and obligations. The full extent of the rights, duties, and behaviour of the parties are determined by implicit terms, which are not prescribed in a written contract.

We heard from the petitioner that this creates a situation whereby an “unscrupulous” owner of a life insurance company could easily and legally undermine the implicit terms of a relational contract. Under normal circumstances, the owner of a life insurance company would not usually be inclined to do this. The owner might be concerned about damaging its reputation, which would inhibit its ability to attract new customers. However, the risk of an owner undermining the implicit terms of a relational contract would be heightened if the owner had an economic incentive to do so.

A “zombie” insurance provider would not be motivated to protect its reputation

AMP Life, like many of the life insurance providers purchased by Resolution Life, consists of a closed policy portfolio. AMP Life no longer intends to attract new customers to its business, and is known colloquially as a “zombie” life insurance provider.

Consequently, the value that AMP Life provides to Resolution Life will be derived entirely from existing AMP Life policyholders. Because of this, the petitioner is concerned that Resolution Life might implement an operating model designed to minimise the money paid out to the beneficiaries of AMP Life’s policies. Normally, the greatest protection against such conduct is the desire on the part of most businesses to avoid reputational damage, especially with potential customers. However, if a business has no intention of attracting new customers, there is a heightened risk of that business adopting unfair, disingenuous, or unpopular practices.

We are not suggesting that Resolution Life will implement an operating model based on minimising the money paid out to AMP Life policyholders. However, committee members are aware that such business practices are common globally. We believe the risk is heightened when the purchasing party is an offshore, private equity investor.

Many life insurance policyholders are “captured” by their insurance provider

The petitioner considers that the above risk is further exacerbated by the anti-competitive nature of the life insurance industry. Holders of life insurance policies are often “captured” by their life insurance providers, as policyholders are disincentivised to change policies from one life insurance provider to another.

Many of AMP Life’s policyholders were much younger when they initially took out their policies. It is not a viable option for them now to change to a new life insurance policy with a competitor. If they were to approach another life insurance provider, they could expect to get significantly reduced coverage at a much higher price, or be declined entirely.

In effect, these customers are now “captured” by Resolution Life. In the event of Resolution Life adopting unfair practices in its treatment of AMP Life policyholders, the anti-competitive nature of the life insurance industry would prevent many of these policyholders from simply choosing another provider. Therefore, the financial wellbeing of the beneficiaries of the policies will be determined by the extent to which Resolution Life acts in good faith as the owner of AMP Life.

The petitioner requests that the Reserve Bank conduct an urgent review of the Insurance (Prudential Supervision) Act

The Act does not address consumer protection issues

The Insurance (Prudential Supervision) Act 2010 (IPSA) creates a regime that is focused on prudential supervision, which ensures the stability of the insurance industry. As required by IPSA, the Reserve Bank considered the following criteria to assess the sale of AMP Life:

- whether the change of ownership would affect the solvency of the licensed insurer
- whether the sale would hamper the licensed insurer's ability to operate in a prudent manner
- the licensed insurer's incorporation and ownership structure, taking into account the size and nature of its business.

The long-term stability and security of AMP Life under its new owners has been the Reserve Bank's primary focus when considering this transaction. The Reserve Bank said that this relatively narrow consideration is consistent with IPSA's purpose and principles.

A review of the Act would protect policyholders' interests

The petitioner believes that the focus of IPSA should be expanded beyond its current narrow focus. He requests that the Reserve Bank undertake an urgent and substantial review of IPSA.

This review would recognise the potential for the interests of policyholders to be negatively affected by sale and amalgamation transactions. The petitioner suggests incorporating into IPSA a requirement for policyholder approval of such transactions. He believes that any change of ownership should occur at the point when policyholders have the maximum influence.

The petitioner suggests that the review should amend IPSA so that information held by the Reserve Bank and relevant to any such transaction must be publicly disclosed before a sale is approved. It should also amend IPSA to require the Reserve Bank to consider factors such as the conduct of potential buyers.

Finally, the suggested review should improve policyholders' ability to enforce their rights. According to the petitioner, the judicial process for policyholders is slow and expensive, and the outcome of any hearing is uncertain. Any change should make it easier for policyholders to take class actions against life insurers.

The Reserve Bank does not intend to alter the main purpose of the Act

Although the Reserve Bank already plans to conduct a review of IPSA, the intention is to make IPSA more suitable to achieve the purposes for which the Act was originally intended. The review is not an attempt to introduce new elements to the regime.

The Reserve Bank stated that it is appropriate that the conduct of insurers is regulated in a separate regime to IPSA. The Bank highlighted that many of the petitioner's requests would be better addressed within consumer protection legislation. For example, the Reserve Bank can see some merit in the petitioner's request to reform IPSA to facilitate class actions

against insurers. However, it does not think such consumer protection measures fit within an Act designed to ensure prudential supervision of insurance providers.

An interim measure would help compensate for the risk to AMP Life policyholders

The petitioner also recommends that the Reserve Bank adopt the interim measure of changing the way profits from statutory funds are split between policyholders and insurers.

Currently these profits are split at 80:20, with insurers receiving 20 percent of the profits. The petitioner suggests that a more appropriate ratio is 85:15, or 90:10. This change would “reflect the increased risk that policyholders face in dealing with the change in character and behaviour of insurers”.

According to the petitioner, this interim measure is necessary. Although the Reserve Bank plans a comprehensive review of IPSA, it will likely take several years.

The Reserve Bank maintains that the petitioner’s interim measure would not achieve the desired protection for policyholders. It noted that the interim measure would only affect life insurance providers that are incorporated in New Zealand. Most of the New Zealand life insurance market consists of insurers incorporated in Australia. This includes AMP Life. Providers incorporated in Australia are regulated by comparable Australian regulations.

The petitioner disagreed with the Reserve Bank’s view that it cannot enforce prudential supervision regulations on Australian-incorporated insurers. He maintains that the Government need only change the law to expand the regulatory functions of the Reserve Bank. Were the Government to do so, it could enforce prudential supervision regulations on Australian-incorporated insurers.

However, the Bank sees risks in arbitrarily changing the law to achieve a relatively narrow purpose. It notes that other parties in the industry, unconnected to the specific transaction in question, would be affected by the change. Such an amendment to the regulatory settings, especially if done without an adequate consultation period (as suggested by the petitioner), could have unintended consequences on those parties, and on the industry as a whole.

AMP Life has given a commitment that policyholder interests will not be affected by its sale

The Finance and Expenditure Committee of the 52nd Parliament met with AMP Life when considering the petition. AMP Life told the committee that:

New Zealand policyholders should be assured that the rigour that’s been applied to this transaction has produced better protection for them.

In its written submission AMP Life told the committee that several safeguards have been designed that will:

ensure that the interests of New Zealand policyholders are protected in the context of a sale transaction [referring to the sale of AMP Life to Resolution Life].

In addition, AMP Life told the committee that it would maintain a commitment to customer support. If policyholders had concerns over the treatment they were receiving from AMP Life, they would be able to complain directly to its customer service team.

The committee was pleased to hear AMP Life give such a strong commitment to ensure that policyholders' interests will not be degraded. The commitments given by AMP Life are unambiguous. Taken at face value, the commitments made by AMP Life should be sufficient to assuage the petitioner's concerns.

However, if it turned out that the interests of policyholders were not protected, we would consider this a serious breach of the commitments made by AMP Life. Were some or all of the petitioner's concerns realised, we believe that this would amount to a significant misdirection on behalf of AMP Life. It may also indicate that the regulatory settings governing the insurance industry need to be further amended in order to better protect policyholders.

The Reserve Bank's approval of the transaction was conditional on extra safeguards over policyholders' interests

AMP Life explained that it has been working with the Reserve Bank to establish bespoke safeguards which will help protect the interests of policyholders. When AMP Life referred to the "rigour" that has been applied to this transaction, it was referring to these safeguards. We heard from the Reserve Bank that these "special arrangements" were necessary in part because of the closed nature of AMP Life's policy portfolio.

The additional safeguards that have been applied to the transaction are as follows:

- A new company, Resolution Life New Zealand Ltd, has been incorporated in New Zealand. The new company will be licensed by the Reserve Bank under IPISA. It is required to have a majority of independent, New Zealand resident directors on its board.
- A trust fund model has been established. According to the Reserve Bank, the trust will hold capital and assets in New Zealand. The model will ensure that equity is secure for all New Zealand policyholders. Assets and capital held in the trust will be managed by Resolution Life New Zealand Ltd.
- AMP Life has established a policyholder advisory committee. The advisory committee will consider matters relevant to the interests of AMP Life policyholders. The advisory committee is a subcommittee of the AMP Life board, and consists of Resolution Life New Zealand's independent directors.

It was explained that the advisory committee will be the crucial body tasked with protecting policyholders' interests. Customers should still approach AMP Life in the first instance with any concerns they may have. However, if their concerns could not be satisfactorily resolved by AMP Life, customers would be encouraged to raise the concerns directly with the advisory committee.

The advisory committee will provide advice and recommendations to the AMP Life board. If the board is still not happy with AMP Life's conduct, it can report to the Reserve Bank. The advisory committee will be empowered to question AMP Life around issues such as premiums and the payment of bonuses.

AMP Life stated that the independence of the advisory committee is guaranteed by its charter. This charter has been approved by the Reserve Bank, and the Bank will have the ability to uphold it.

The petitioner does not believe these additional safeguards will sufficiently protect policyholders

The petitioner is concerned that the policyholder advisory committee is not sufficiently independent from Resolution Life. The advisory committee will operate underneath the board of AMP Life. Members of the advisory committee are appointed by the AMP Life board. The petitioner fears that the membership will not include anyone who is “demonstrably independent of mind from Resolution Life”.

According to the petitioner, policyholders will not have a representative on the advisory committee. Policyholders have also not been given the opportunity to view, or provide input into, the governing charter of the advisory committee.

The position of the Reserve Bank of New Zealand

All the rights and duties of the relevant parties, and their obligations, remain as they were before

The Reserve Bank told the committee that the sale of AMP Life to Resolution Life is a change of control. A change of control occurs when the shareholder of an insurance provider changes from one owner to another. A distinguishing feature of a change of control is that, for policyholders, the insurer remains the same.

A change of control only requires the Reserve Bank to consider the narrower question of whether such a change would alter the owners’ ongoing licence eligibility. Insurers would need to show that they can continue to meet obligations in relation to solvency, risk management, and governance.

The assumption is that when a change of control has occurred, all of the rights, duties, and obligations owed to policyholders will continue as they were before the transaction occurred. Obviously the petitioner disagrees with this assumption, and he is fearful that the new owners of AMP Life will establish an operating model that is designed to minimise entitlements.

“One’s got to be careful not to assume that everything is designed to be adverse to policyholders”

The petitioner’s requests would give policyholders “maximum influence” at the point of sale. The petitioner wants a change in regulatory settings that would require the Reserve Bank to consider “conduct and enforcement” when approving the sale of insurance policy portfolios. This would be in addition to the current consideration of whether the purchasing party meets capital adequacy requirements.

The Reserve Bank disagrees with the petitioner. The Bank does not think that such a change is necessary to protect policyholders’ interests. It highlighted that policyholders may exert their influence on the basis of nothing more concrete than their fears and assumptions.

The Deputy Governor stated that “one’s got to be careful not to assume that everything is designed to be adverse to policyholders”.

The Reserve Bank told the committee that such a change in regulatory settings could potentially affect the ongoing provision of life insurance in New Zealand. The Reserve Bank explained that changes of control within the insurance industry happen frequently, and are an important part of the industry. It believes it should not be obliged by regulatory settings to continually make decisions that favour policyholders at the point of sale. Were the law to require the Reserve Bank to favour policyholders, as the petitioner requests, it could have a chilling effect on the life insurance industry.

Instead, the Reserve Bank would prefer regulatory settings that protect policyholders’ interests over the lifetime of a policy. Both the Reserve Bank and the Financial Markets Authority pointed to the Financial Markets (Conduct of Institutions) Amendment Bill, which was considered by the Finance and Expenditure Committee of the 52nd Parliament. The bill is currently awaiting its second reading. We discuss later in the report how the Reserve Bank and the FMA would expect the legislation to protect policyholders’ interests if it passes into law. (See “The position of the Financial Markets Authority”.)

Information held by the Reserve Bank is confidential

The petitioner points out that AMP Life policyholders were neither consulted about the proposed sale, nor provided sufficient information to make necessary decisions in response to the sale. He noted that the Reserve Bank had been provided information by the relevant parties so it could perform its mandated functions as set out in IPSA. The petitioner requests that this information be made available to policyholders so they can make informed decisions that protect their interests.

The Reserve Bank points out that it is required to hold this information confidentially. Although this requirement could be removed or amended as a part of the upcoming review of IPSA, the Reserve Bank would be reluctant to do so. The information has been candidly given to the Bank by the relevant parties on the presumption of confidentiality. Because this information is commercially sensitive, it would not be in the best interests of relevant parties to release it to the Reserve Bank were it not for the confidentiality requirement.

The Reserve Bank believes its ability to effectively regulate these transactions is dependent on its ability to gather accurate and comprehensive information. If parties to such transactions become reluctant to provide information for fear of it becoming publicly available, it would compromise the Bank’s ability to act as an effective regulator.

The Reserve Bank maintains that it “supports active and on-going communications between AMP Life and its policyholders”. Notwithstanding this, it recommends that the protections of confidentiality not be removed or mitigated.

The position of the Financial Markets Authority

The committee also heard from the Financial Markets Authority (the FMA), which is New Zealand’s principal conduct regulator of financial markets.

The FMA agreed with the petitioner that there is a legislative gap in the rules governing the life insurance industry. Currently, insurers are not regulated in relation to their overall conduct as insurers. As discussed above, the existing law largely focuses on the narrower question of prudential oversight.

The FMA said that the legislative gap has created several problems. The FMA referred to such problems as the high cost for policyholders to sever their relationship with their provider, and the information imbalance between policyholders and insurers. These issues were also raised by the petitioner.

However, the FMA stressed the importance of allowing free and open financial markets, a position it shares with the Reserve Bank. It said that allowing the control of financial institutions to change is a necessary component of a free and open market.

The Conduct of Institutions Bill would ensure that insurers comply with a principle of fair conduct

To help address the petitioner's concerns, the FMA pointed to the Financial Markets (Conduct of Institutions) Amendment Bill. The bill was introduced to the House during the previous term of Parliament, and will likely receive Royal assent during the current parliamentary term.

The FMA said that the bill would address several of the issues raised by the petitioner. Financial institutions, including life insurers, would need to hold both a conduct licence and a prudential licence to operate in New Zealand. As a result, insurers could be regulated in relation to their overall conduct.

For example, AMP Life would be required to develop and implement a fair conduct programme. AMP Life would be required to have its conduct programme approved by the FMA. The FMA would then be tasked with ensuring that AMP Life is complying with its programme.

The conduct programmes would specifically require insurers to pay due regard to the interests of their consumers. If the beneficiary of an AMP Life policy had not been paid what they believed they were owed, AMP could be in breach of its fair conduct programme. The beneficiary could then bring a proceeding under the Financial Markets Conduct Act 2013.

The FMA would then have a responsive and graduated set of tools to enforce AMP Life's compliance with its conduct obligations.

The bill would protect policyholder interests right up until the time their policies are realised, and not just at the point of sale. Importantly, from the perspective of the FMA and the Reserve Bank, the protection afforded to policyholders by the bill would not hamper the efficient functioning of the life insurance market.

The petitioner doubts that the Financial Markets (Conduct of Institutions) Amendment Bill will provide any practical protection

The petitioner stated that the FMA is merely seeking to co-opt his petition to provide support for the bill. He believes that neither the FMA nor the Reserve Bank identified the relevant problems within the life insurance industry when the bill was written. For example, the bill

was not developed with regard to the closed portfolio trend in the life insurance industry. The petitioner believes it is only a matter of “sheer coincidence” that the bill could be useful in addressing the issues he has raised.

Moreover, the petitioner doubts the efficacy of the bill. He cited the substantial opposition the bill received from some sectors of the finance industry as the reason for his scepticism.

The FMA firmly responded to this criticism of the bill. It noted that, although the bill is not a direct response to the particular issues raised by the petitioner, the fair treatment of life insurance policyholders is within the bill’s scope. It said the bill was designed to address the kind of issues raised by the petitioner. The FMA expects that the bill would address the specific risk of new, offshore owners hoping to make a quick profit from New Zealand consumers.

Should the Financial Markets (Conduct of Institutions) Amendment Bill empower the FMA in respect of a change of ownership?

The FMA conceded that the bill could be better at protecting policyholders’ interests. It acknowledged that the petition raises the question of whether there should be a process that takes into account conduct considerations at the point of sale. Under this change, transactions would be subject to a conduct assessment by the FMA.

The conduct assessment could involve consideration of the institution’s proposed operating model post-sale, and whether this operating model will protect policyholders’ interests.

The FMA said it has discussed amending the bill to include a conduct assessment at the point of sale. The Ministry of Business, Innovation and Employment, which developed the bill, apparently sees the merit in such a change, which would require a supplementary order paper (SOP) to amend the bill. Any amendments would need to occur at the Committee of the Whole House stage, as the bill had already been reported back to the House by the Finance and Expenditure Committee during the previous parliamentary term. Alternatively, such a change could be considered in future reviews of the consequent Act.

Our response to the petition

We share many of the concerns the petitioner has expressed about the life insurance industry. We believe that New Zealand law does not satisfactorily protect the customers of financial institutions. This is particularly true for the customers of life insurance providers, who, for the reasons detailed by the petitioner, are vulnerable to potential misconduct by their insurance providers.

We agree that there is a gap in the legislation governing financial institutions. However, we are confident that the Financial Markets (Conduct of Institutions) Amendment Bill would largely address this gap. Once it becomes law, and has been implemented into the day-to-day practice of financial institutions, there would be an official mechanism to fix egregious conduct by life insurers. The bill would do this by targeting actual unfair conduct by financial institutions. It would not place undue restrictions on financial institutions based on perceptions of future behaviour; that is, the perception that new owners would engage in unfair conduct.

We acknowledge the FMA's position that the bill could go further in addressing the problems raised by the petitioner, and that it could provide better protection for the customers of financial institutions where an institution has been the subject of a sale to a new owner. The National and ACT Party recommends that this be addressed by an SOP in the Committee of the Whole House.

Such an amendment to the bill would ensure that the conduct of a potential new owner could be considered before the point of sale. The new owner's successful licence application would be dependent on them establishing to the FMA that they would operate a business model which would protect policyholders' interests.

Appendix

Committee procedure

The petition was referred to the Finance and Expenditure Committee of the 52nd Parliament on 19 May 2020. It met between 20 May and 29 July 2020 to consider it. The committee received written submissions from the petitioner, the Reserve Bank of New Zealand, the Financial Markets Authority, Resolution Life, and AMP Life. The committee heard oral evidence from the petitioner, the Reserve Bank of New Zealand, the Financial Markets Authority, and AMP Life.

On 26 November 2020 the petition was reinstated with the Finance and Expenditure Committee of the 53rd Parliament. We met between 29 January and 7 April 2021 to consider it.

Committee members

Dr Duncan Webb (Chairperson)
Andrew Bayly
Barbara Edmonds
Ingrid Leary
Anna Lorck
Greg O'Connor
Damien Smith
Chlöe Swarbrick
Helen White
Nicola Willis
Hon Michael Woodhouse

Evidence received

The documents we received as evidence in relation to this petition are available on the Parliament website, www.parliament.nz.