FSC FINANCIAL SERVICES COUNCIL

Life Insurance Code of Practice 2.0

Review of Consultation Feedback

November 2020

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1. CEO Message

I am pleased to present the Life Insurance Code of Practice Review of Consultation Feedback.

The introduction of the Life Insurance Code of Practice in 2017 by Australia's life insurers was an important step in seeking to lift consumer outcomes across the industry. The first Code introduced a broad range of reforms across all areas of interactions people have with their insurer, from how the products were designed, through to making a claim. The industry established the independent Life Code Compliance Committee to oversee the Code.

To further improve the Code for consumers, we have been working on the next iteration of the Code, 2.0, which culminated in the release of the consultation draft in November 2018.

Our consultation attracted submissions from a broad range of stakeholders – regulators, industry, consumer advocates and community organisations. We have now carefully considered all the feedback provided to the date and will make changes to the Code in response.

In the interim, we have taken several steps to address some of the gaps in the current Code, including a moratorium on the use of genetics testing and a new FSC Standard for medical consent, both binding on our life insurer members

However, since the release of the Code 2.0 consultation draft, the industry has undergone significant change, including a raft of Royal Commission reforms; increased mental health claims, exacerbated by the COVID-induced recession; and broader questions around the sustainability of the life insurance industry resulting in an intervention by the prudential regulator APRA.

As well, further legislative reforms, such as the Design and Distribution Obligations and Enforceable Codes have changed the operating environment for life insurers and the Code. Existing Code obligations will now be enforceable under law, and new obligations have been introduced which supersede the current Code.

Notwithstanding all this, life insurers remain focused on consumers. When COVID hit, life insurers committed to two significant consumer-focused pledges: the frontline healthcare workers initiative and the TPD initiative.

We are ready to do even more for Australians under Code 2.0. I welcome the revisions that will be made as a result of the industry's consultation.

Sally Loane

CEO

2. Executive Summary

The Life Insurance Code of Practice (**Code**) is the life insurance industry's commitment to consumers on how they should expect to be treated. It was developed by the industry as a commitment to improving consumer outcomes and came into effect in 2017. Since then, the life insurance industry has faced many changes including a significant program of law reform and unprecedented product interventions.

Life insurers recognise the importance of the Code and of reviewing the Code as part of a process of continual improvement. There are many lessons learnt since the Code was introduced which are incorporated in this response document. The Government will soon introduce legislation which would see certain provisions of the Code made enforceable, breaches of which would be subject to civil penalties.

The draft Code which was released for consultation in November 2018 (**draft Code**), had already undergone extensive redrafting including introducing new obligations around product design, sales practices and providing greater support to people with a mental health condition. Some of the key changes which were introduced by those reforms include:

- greater support to people with a mental health condition including:
    - taking into consideration factors such as the history and severity of the mental health condition;
    - treating people with a mental health condition as vulnerable; and
    - not checking disclosures at claim time without reasonable grounds;
- additional protections to ensure that people are not pressured into taking out life insurance they do not want; and
- including the moratorium on genetics testing in the Code to introduce independent oversight and governance through the Life Code Compliance Committee.

Following the consultation process, the FSC will make a number of additional changes which build upon the draft Code. These changes are not intended to step back from any commitments made under the draft Code, rather they are a direct response to stakeholder feedback. The revised Code will also take into account changes in the regulatory environment, including the introduction of legislation as a result of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**FSRC**).

As a result of stakeholder feedback, the FSC will make further changes to the Code, including:

- submitting the revised Code to ASIC for approval with the intention that consumers will have greater confidence in the Code. The enforceability of selected provisions will also be considered following the finalisation of legislation;
- making the Code more consumer accessible by engaging a plain English specialist to rewrite the Code for both language, structure and length;
- broadening the application of the Code to capture certain third-party distributors, to ensure that consumers can rely on the Code provisions;
- further strengthening the Code to provide additional support to vulnerable consumers;
- introducing additional protections where interviews and surveillance are used, including stopping surveillance on the advice of any medical practitioner; and
- ensuring that there is a consistent approach throughout the Code when communicating with consumers (including in relation to withdrawn TPD claims).

The Life Code Compliance Committee Charter will also be amended to reflect the increased powers of the Committee to impose sanctions on Code subscribers. This will also be reflected in the revised Code.

The revised Code will be more accessible and help improve consumer confidence and trust in their life insurer.

3. About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing $3 trillion on behalf of more than 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

4. Background

The Code outlines the commitments made by a life insurer to their customers as to how they should expect to be treated. It promotes a high level of service standards to customers across all Code subscribers.

The current iteration of the Code was fully implemented from 1 July 2017. This first iteration of the Code was developed by the industry as an important cornerstone in the relationship between the consumer and insurer, setting standards for: from buying insurance, through to making a claim and supporting those experiencing financial hardship. The Code also sets timeframes for insurers to respond to claims, complaints and requests for information.

While the first iteration of the Code was a significant step for the life insurance industry and improving consumer outcomes, the FSC recognises that the Code must continue to evolve and adapt as the operating environment changes. This is why the FSC commenced a review of the Code in 2018, with the draft Code consultation concluding in early 2019.

This document summarises the feedback received through the consultation process from 28 joint and individual submissions which saw over 650 specific items of feedback received. While it is not intended to address every single item of feedback, this document outlines the broad areas where feedback was received and the changes which will be made in the next consultation version of the Code.

The release of this review marks an important milestone in the development of the Code. Work on redrafting the Code to incorporate the feedback and to rewrite the draft Code in plain English will soon commence. The FSC will look to engage with relevant stakeholders on an issue-specific basis to discuss the practical implications of these changes.

The FSC also looks forward to the passage of relevant legislation through the parliament that will have significant implications for the draft Code, including legislation which will introduce an enforceable code provisions regime.

5. General Comments

5.1. ASIC Approval Under RG183

Background

Under the *Corporations Act 2001* (Cth) (Corporations Act), ASIC is empowered to approve codes of conduct that relate to the activities of Australian Financial Services Licensees, their representatives or issues of financial products. ASIC Regulatory Guide 183 (**RG183**) outlines the processes and relevant criteria that ASIC considers when approving an industry code.

These criteria include the statutory criteria outlined in the Corporations Act including that:

- it is not inconsistent with the Corporations Act or any other laws which ASIC has regulatory responsibility;
- the code owner is able to ensure that persons who subscribe to the code will be able to comply; and
- codes of conduct are harmonised to the greatest extent possible.

The FSC notes that the government has released draft legislation which would amend the statutory criteria for approval of a code of conduct under the Corporations Act.

ASIC may also consider additional criteria in approving an industry code including whether:

- there has been an appropriate process for developing the code;
- the code contains plain language provisions;
- the code provides for adequate dispute resolution procedures, remedies and sanctions;
- the code has effective arrangements for monitoring and reporting on compliance; and
- the code provides for regular, independent reviews.

RG183 makes clear that the standards set in an industry code must do more than simply restate the law. Rather, an industry code it should offer consumer benefits beyond those that exist in the existing laws.

Feedback

ASIC approval of the revised Code was a key issue which arose in a significant number of submissions from multiple sectors including consumer groups, Legal Aid NSW, Australian Financial Complaints Authority (**AFCA**), the Financial Planning Association (**FPA**), and the Life Code Compliance Committee (**LCCC**). The Financial Rights Legal Centre joint submission (**FRLC Joint Submission**) stated that ASIC approval would be “a signal to consumers that they can have confidence in the code”.

The LCCC submitted that ASIC approval of the revised Code would “send a persuasive signal to consumers and other stakeholders of the industry’s seriousness in adopting and adhering to the Code” and provide additional confidence that the Code meets good practice standards in the Code’s ongoing development, content and oversight.

FSC Position

The FSC anticipates that ASIC RG183 will be revised as a result of legislative amendments arising from the FSRC, namely the enforceability of financial services industry codes, and would welcome any additional guidance from ASIC in the interim.

Based on the feedback, the FSC intends to submit the revised Code to ASIC for approval.

5.2. Enforceability

Background

Enforceability of an industry code is an important criteria for ASIC code approval under RG183. RG183 considers how industry codes can be enforced including by ensuring that there is an independent body to administer and enforce the Code and that consumers can seek redress for breaches of code provisions.

In addition, the draft enforceable code provisions (**ECP**) legislation created a framework for certain provisions of industry codes to be treated as enforceable code provisions. Breaches of an enforceable code provision could result in a civil penalty under the proposed framework.

These statutory enforceable code provisions can be designated by ASIC if such a provision represents:

- A commitment by a subscriber to the code to act in a particular way or in a manner consistent with attaining the objectives of the code; or
- A commitment to a person by a subscriber to the code; and

either:

- A breach of the provision could result in significant detriment to the person; or
- A breach of the provision could significantly undermine the confidence of the Australian public, or a section of the Australian public, in the provision of financial services in this jurisdiction or those who provide financial services in this jurisdiction.

It is the FSC's understanding that under this framework, ASIC approved industry codes would need to consider how the code as a whole is enforced, such as through an independent body. In addition, under the proposed ECP legislation, certain provisions within the code would be considered to be statutorily enforceable with breaches resulting in civil penalties. The FSC is continuing to work through the draft ECP legislation and expects that certain provisions within the Code would be deemed enforceable code provisions.

Feedback

Feedback was provided prior to the release of the ECP framework and the recent introduction of substantial law reforms. Most bodies provided feedback that the Code should be submitted to ASIC for approval also submitted that the Code should be binding and enforceable on FSC members.

The FRLC Joint Submission recommended that the Code should be enforced through contractual arrangements with consumers and that subscription and adherence to the Code should be compulsory for membership of the FSC.

FSC Position

The FSC intends to submit the revised Code to ASIC for approval and as such will consider mechanisms through which the Code is enforced.

As a requirement of membership of the FSC, all life insurance members must subscribe to the Code. Under the current Code, the LCCC is responsible for the independent administration and enforcement of compliance with the Code. This is in line with ASIC RG 183.25 and the example outlined in RG183.27. The FSC also notes that the draft ECP Explanatory Memorandum provides that code subscribers can

"contract with an independent person or body that has the power to administer and enforce the code" which is line with the current arrangement.

It is proposed that the LCCC will continue to monitor compliance with the revised Code and will have increased powers in line with recommendation 4.10 of the FSRC. Further details are outlined in section 12 below.

The FSC also intends to identify and submit to ASIC relevant provisions within the revised Code which the industry believes may fall under the ECP framework in line with recommendation 4.9 of the FSRC. In the absence of finalised legislation and a revised RG183, the FSC has identified a broad set of working principles which should be applied when identifying those provisions. Enforceable code provisions should be those obligations, which if breached, would cause significant detriment and for which the consumer is not able to seek redress through existing mechanisms such as internal dispute resolution, external dispute resolution or the courts. These would be obligations that would not likely be in the terms of the contract between an insurer and the consumer and there is no other mechanism to address the detriment caused by a breach. The FSC does not believe that ECP obligations should be those which have an alternative resolution mechanism. In line with the current RG183, the Code should not include provisions which duplicate existing statutory and legal obligations.

This means that while the revised Code will be regulated by the LCCC, certain provisions may be enforced by ASIC. The FSC believes that it should be clear to customers which provisions of the revised Code are statutorily enforceable. This ensures that consumers are able to correctly report to the appropriate body any potential breaches of the Code. The FSC will look to make this difference clear to consumers in the revised Code.

The FSC will also strengthen the ability of the LCCC to impose sanctions, in line with recommendation 4.10 of the FSRC. In conjunction with this change and the introduction of an enforceable code regime, the FSC does not consider it necessary that the Code should be incorporated into individual contracts with customers.

Under the enforceable code regime, breaches of certain enforceable provisions will constitute a breach of the law. These breaches can be enforced by ASIC and may be subject to statutory civil penalties. In additional, consumers can also notify the LCCC of Code breaches. Oversight by ASIC and the LCCC will ensure consistent application of the Code provisions at an industry level.

The Code reflects an industry agreement to be bound by standards in relation to the sale and administration of policies and claims. By doing so, the Code seeks to lift the standards of the industry. The Code serves a different purpose to the contract of insurance. In addition to investigating breach notifications, the LCCC also provides guidance to the industry on Code compliance. Given the LCCC's ongoing regulation and increased sanction powers, and the introduction of enforceable code provisions, the FSC does not consider it necessary or appropriate for the whole Code to be incorporated into individual contracts with consumers.

Further, the FSC notes that the *Insurance Contracts Act 1984* and *Life Insurance Act 1995* already sets out a broad range of provisions which are required to be included in a contract between an individual and a life insurer. The revised Code will set out principles and standards that build upon these requirements and aim to life the standards of the industry as a whole.

5.3. Plain English Rewrite

Background

An industry code of practice should outline the key commitments and obligations to customers on standards of practice, disclosure and principles of conduct. This means that it should be written in a way which is easily understood by a customer.

Under ASIC RG183, an industry code should contain plain language provisions that deal with the code's scopes, objectives, and core rules. ASIC guidance indicates that Codes should be in plain language to be approved.

Feedback

In addition to the feedback received on approval under ASIC RG183, additional feedback was received from across sectors that the revised Code should be written in plain English.

The FRLC Joint Submission recommended that a "comprehensive plain English re-write of the Life Code" be undertaken. Legal Aid NSW submitted that the FSC engage a "plain English drafting expert in re-drafting the Code to ensure it is accessible and useful for consumers". ASIC submitted that "a plain-English rewrite of the Draft Code is required for both clarity and consistency."

Feedback was also provided on the structure of the Code, in particular where there are provisions which may overlap or apply to multiple sections. ASIC noted that "a full rewrite of the Code would greatly assist clarity and navigation and reduce overlap in different sections".

FSC Position

While we note that the use of certain technical terms throughout the Code may be unavoidable (for example in relation to specific medical definitions and legal terms), the FSC believes that the Code should be a document for consumers and understood by consumers.

The structure of the Code will also be revised to avoid duplication of provisions across multiple sections to ensure that a consumer is more readily able to find the information that they require.

To assist with restructuring and redrafting the Code in plain English, the FSC will engage the services of a plain English specialist to assist in making the Code as accessible as possible within the constraints imposed by the draft ECP legislation, and certainty in respect of certain provisions (such as medical and legal terms).

5.4. Consumer Focus

Background

As outlined in section 5.3, feedback on the draft Code included comments that the Code should be subject to a plain English review so that it can be better understood by consumers. Ultimately, the purpose of the Code is a document which outlines the commitments and obligations to consumers which are provided by their life insurer.

Feedback

In addition to the feedback received that the Code should be in plain English so that it can be better understood by for consumers, feedback was also received on how the Code could be structured and redrafted to aid in making the revised Code as consumer friendly as possible.

ASIC's submission noted that the structure of the draft Code is unclear and difficult for consumers to navigate. ASIC also noted that the Code was lengthy and complex as "there are many provisions that simply restate obligations that are already contained in legislation or in ASIC regulatory guides". The LCCC noted that "some sections appear to provide information, rather than outline an obligation or expected behaviour" and that the Code should be "easy for the consumer to read and understand" rather than a "step-by-step process of how a subscriber will conduct its business".

Other feedback disagreed with this general view and suggested that the revised Code should outline the specific steps or processes that insurers should comply with. The PIAC submission states that the Code "should establish processes for life insurers to adhere to when considering life insurance applications that reveal a mental health condition". Other feedback suggested additional steps or processes to the existing provisions in the Code which insurers should be required to perform.

Some feedback also noted the inconsistencies between the provisions relating to Chapter 1, which are obligations on life insurers, and Chapter 2 which incorporated the current Insurance in Super Voluntary Code of Practice (**ISVCOP**) obligations on superannuation trustees. Subsequent feedback on the Code recommended that Chapter 2 be removed.

FSC Position

The FSC believes that it is important that the Code is designed and written for the consumer. The Code should strike a balance between providing sufficient detail but also not be so lengthy that a consumer does not engage with this important document.

In response to the feedback, the Code will be restructured to remove duplication of provisions where they may apply in multiple sections of the Code and the language redrafted as part of the plain English rewrite. In addition, the length of the Code will be shortened by removing provisions in the Code which simply restate existing law or ASIC regulatory guidance. This is in line with ASIC RG183, stakeholder feedback provided on the Code, and the draft ECP legislation. By removing provisions which duplicate existing obligations, the Code will be able to focus on those obligations which go above and beyond the law.

Since the draft Code was released, there has been a Royal Commission and subsequent legislative reform. The introduction of these reforms will overtake significant portions of the Code, by either legislating existing Code provisions or providing additional protections to consumers. As a result, and in line with the principle of not duplicating the law, such provisions will be removed from the revised Code. Some of the legislative reforms that mirror or supersede sections of the Code include:

- design and distribution obligations for financial products;
- anti-hawking of insurance products;
- deferred sales model for add-on insurance;
- duty to take reasonable care not to make a misrepresentation;
- limiting avoidance of life insurance contracts;
- claims handling as a financial service; and
- extending the unfair contract terms regime to insurance contracts.

To reduce the length of the Code and confusion between the Code and the ISVCOP, Chapter 2 (which applies to insurance in superannuation) of the draft consultation[1] will be removed from the revised Code.

5.5. Communicating with Consumers

Background

Throughout the Code, there are various obligations relating to insurers' communications with consumers, such as keeping them informed during the claims process or informing them of how to make a complaint.

Feedback

A number of submissions recommended that certain obligations and clauses concerning communications with the consumer should be in writing. Some of these situations include:

- each time consent is used when accessing a customer's health information;
- where a consumer might dispute the facts in an application;
- where an insurer might seek further information from a consumer; and
- when an insurer provides a decision about a claim.

FSC Position

The FSC agrees that the revised Code should be clear as to when certain communications are to be in writing. However, it will not always be appropriate or necessary for all communications to be in writing. For example, claims are made by consumers suffering from disablement and who may be in some distress. Often personal contact through a telephone call is more compassionate or appropriate for minor communications and this affords the customer an immediate chance to offer feedback. At times where a Code provision does not explicitly state that communication is to be in writing, the FSC believes that there should still be a consistent approach to communications that applies to the Code as a whole rather than on specific obligations. As such, a new section of the Code will be introduced which will outline the methods by which insurers should communicate with their customers.

The FSC believes that consumers should be provided choice in how they interact with their insurer. For example, a customer may have moved and not updated their address so their preferred communication may be email. Other customers may have accessibility requirements and may prefer an alternative form of communication.

The revised Code will ensure that communication between insurer Code subscribers and their customers is consistent and done in the manner agreed with the customer where practical or except where an obligation explicitly states that it must be done in writing.

[1] The ISVCOP is currently co-owned by the FSC, the Association of Superannuation Funds Australia, and the Australian Institute of Superannuation Trustees, future work on this will be progressed separately by the co-owners.

6. Product Design

6.1. Product Design

Background

The current Code requires insurers to take certain steps when designing and reviewing policies. At the time of the 2018 consultation of the draft Code, the design and distribution obligations (**DDO**) regime had not yet been finalised, and it did not consider the implications of this legislation. The DDO received Royal Assent in April 2019.

Feedback

ASIC noted that there are some "gaps between the proposed [DDO] Bill and the Draft Code's approach to the design and distribution of products" and that a consistent approach should be taken following the passage of the DDO.

The FRLC Joint Submission also noted that the sections on product design should be reviewed following the introduction of the DDO regime.

PIAC submitted that when designing products the Code should align with the wording under the Disability Discrimination Act (**DDA**) so that "the terms are based on up to date, relevant and reasonable actuarial or statistical data, and where such data is not available that the terms of policies are based on other relevant factors".

FSC Position

In line with the general principles and rationale outlined in section 5, the Code will not seek to restate obligations under the law. As such, the FSC's position is that the Code should instead focus on obligations subscribers should comply with to fill in the gaps around their existing legal obligations when designing policies.

Both the existing Code and consultation draft of the Code contain provisions which have largely now been superseded by requirements under the DDO. The DDO:

- requires that insurers determine who is in the appropriate target market for a product through a target market determination (TMD);
- not engage in retail product distribution without a TMD or where a TMD may no longer be appropriate;
- take reasonable steps so that the distribution of insurance products is in accordance with the TMD; and
- review the TMD to ensure that it remains appropriate.

Finally, those provisions which duplicate obligations under the DDA will also be removed, in line with the aim of not duplicating provisions within the Code that exist in legislation.

6.2. Standard Definitions

Feedback

Feedback included submissions that the Code should place additional obligations on insurers to develop and review definitions as appropriate. The PIAC submission stated that "reviews of medical

definitions at least every three years, or 'otherwise whenever we become aware that a medical definition may no longer be current'".

The AFCA submission on medical definitions recommended that: definitions are clear and easy to understand, new standard for definitions should apply to all policies, and definitions should be kept up to date with community expectations.

Maurice Blackburn and the FRLC Joint Submission noted that the Code should require that updates to medical definitions be extended to all products instead of just on-sale products and to consider if there is scope in the Code for more standardised definitions.

The FRLC Joint Submission also recommended that the Code require insurers to ensure that all definitions across all types of policies are standardised and that clear and simple language is used in the creation of these definitions.

FSC Position

The FSC recognises the importance of standard medical definitions to consumers, not only in ensuring that any definitions used are in line with the latest medical practices but also for ease of comparison of medical definitions available on the market.

The Code requires that any medical definitions be updated at least every three years for on-sale policies. In 2017, the FSC developed the minimum standard trauma definitions (Appendix 1 of the current Code) which details the minimum definitions for cancer, heart attack and stroke. The revised Code will incorporate this appendix within the current definitions.

By their very nature, the medical definitions must be written using the appropriate medical terminology. Unfortunately, this means that the definitions cannot be in plain language that may be easier for consumers to understand. Rather, the purpose of these definitions is to ensure that a benefit can be paid if a policyholder has met the specified medical criteria.

However, the FSC believes that the revised Code can provide clarity to consumers on what is covered through the clear use of plain language headings.

There are significant challenges in extending new definitions to products which are no longer on sale. Firstly, any changes to definitions could result in pricing increases for existing customers. Life insurance contracts are written on a long-term basis, and unlike general insurance contracts, these legacy products are not renewed on a yearly basis. Furthermore, there remain legislative restrictions on life insurers which limits the ability for these older products to be updated. The FSC will continue to campaign for legislative changes around product modernisation, including appropriate rationalisation mechanisms, however until such changes are made, it is not feasible to include such obligations in the revised Code.

Standardising terms in insurance is a significant project which requires detailed consideration and consultation and should not be rushed. Furthermore, the Government consulted on universal terms for insurance within MySuper in 2019. The FSC noted in our submission to the Government consultation that consumer-tested, standard labels would help improve consumer understanding, however any standard industry definitions would need to ensure that they are consistent with the outcomes of the Government's review. The development of the Code should not be delayed while this work is being consulted on.

6.3. Funeral Insurance

Feedback

A broad range of stakeholder feedback was received on the sections of the Code relating to funeral insurance. Much of this feedback was on how funeral insurance products are sold, who they should be allowed to be sold or marketed to, disclosure requirements and premium structures.

Feedback was provided from a broad range of stakeholders including ASIC, the FLRC Joint Submission, Legal Aid NSW, Legal Aid Queensland, and Slater and Gordon around the use of level and stepped premiums. Submitters recommended that it should be made clearer that premiums are either fixed over the term of a funeral policy, or that there should be increased disclosure regarding how premiums might increase over time.

There was also a wide range of views on the target market for promotion of funeral insurance, including a minimum age of consumers to which funeral insurance products could be promoted. This feedback ranged from no minimum age through to increasing the targeted age to 60.

Submitters including Legal Aid Queensland and the FRLC Joint Submission also provided feedback on how a product should be marketed including limitations on the target markets and additional obligations where a product has been sold in an unsolicited manner.

FSC Position

The FSC recognises that it is important for customers to understand how much their life insurance will cost at the outset and how the cost might change into the future. The Code will require this to be clearly explained in the product literature.

The FSC believes that the changes introduced by the DDO regime have overtaken many of the requirements outlined in the Code and the recommendations contained in the feedback to the draft Code. As outlined in section 6.1, the DDO regime introduces requirements around the identification of a target market and ensuring that products are distributed in accordance with the target market, substantially reducing the risk that products are mis-sold. This obligation would apply to all products, not just funeral insurance.

Furthermore, the introduction of the anti-hawking legislation will prohibit the sale of financial products where the offer is made in an unsolicited manner. Under the proposed legislation, insurers will not be allowed to make an offer to sell or issue a financial product which is made in the course of, or because of, unsolicited contact. Under the draft proposal, unsolicited contact is any contact which is not in response to a consumer request. A consumer must provide a positive, clear and informed request to the insurer relating specifically to a product which the consumer has requested.

The DDO regime, along with the proposed anti-hawking legislation, provides protections above and beyond many of those offered by the Code and as such the FSC does not intend to restate these obligations in the revised Code. Given these changes the FSC does not consider that further changes are required to the minimum age, or the marketing of, funeral insurance.

7. Sales and Distribution

7.1. Advertisement and Marketing

Feedback

The draft Code outlines obligations by insurers when advertising and marketing products to consumers. Feedback included submissions that short-term consumer incentives should be prohibited. Legal Aid NSW supported the introduction of restrictions on short term consumer incentives where they are not part of the life insurance policy but recommended that they be prohibited. The FLRC Joint Submission also recommended that short term incentives be prohibited.

APRA recommended that further guidance is provided on the use of the phrases such as “free” and “guaranteed” to ensure that these are not likely to mislead.

FSC Position

The FSC believes that many provisions of the Code relating to advertising and marketing have been, or will be, overtaken by legislation. For example, the introduction of the anti-hawking legislation will introduce new provisions on unsolicited sales.

The DDO will support the appropriate distribution of products by promoting the distribution of products consistent with the target market determination for the product.

The FSC considers that the current approach on short term incentives in the draft Code remains appropriate and is in accordance with recommendation 5 of ASIC REP 587 that states “firms should be cautious when engaging with consumers to ensure that the sales environment enables informed decision making and does not encourage consumers to base decisions on irrelevant factors, such as promotional gifts.”

7.2. Application of the Code to Distributors

Feedback

The Code makes subscribers accountable for the conduct of staff and authorised representatives however imposes different obligations in relation to the conduct of distributors. In its submission, AFCA “considers that the Life Code should hold subscribers accountable for the distribution of their product and ensuring distributors and third-party agents comply with the code.”

Likewise, the LCCC noted that the additional obligations included in the draft Code in relation to distributors “does not go far enough and recommend that further thought be given to how subscribers can ensure that distributors can, indirectly, be bound, by the Code standards, and to capturing this in the updated Code.”

The LCCC, FRLC and Legal Aid NSW also noted that distributors should be contractually bound by the Code through requiring subscribers to establish a contractual obligation with distributors to comply with the relevant requirements of the Code. It was proposed that this would be monitored by the LCCC.

FSC Position

In certain circumstances where the insurer has engaged or partnered with a third party distributor who is acting on behalf of the insurer, or under an arrangement with the insurer, the FSC supports an obligation which would make Code subscribers accountable for the distribution of their products. The FSC believes that this is an important consumer protection. Consumers should still be able to rely on

the Code provisions even in circumstances where the insurer has entered an arrangement with a distributor to act on the insurer's behalf.

However, where a customer has used a third party distributor who is acting on their behalf (that is, where there is a best interest duty to the customer such as where an independent financial advisor provides personal advice), the FSC does not believe that the Code obligations should extend to these distributors. Independent financial advisors operate under their own AFSL and are subject to specific statutory requirements such as a financial advisor's duty to act in the best interests of their client. They are also subject to their own mandatory Financial Advisor's Code of Ethics.

7.3. Conflicted Remuneration

Feedback

The LCCC recommended "the inclusion of a general obligation on the subscriber to ensure all staff are remunerated based on behaviour which is consistent with good customer outcomes and is compliant with the law, rather than drafting specific obligations to capture a sub-set of staff".

ASIC noted a preference to see "a separate section that covers remuneration and incentives across multiple teams, including sales, retention and claims."

Legal Aid NSW and the FLRC Joint Submission recommended that "all forms of conflicted remuneration" be prohibited, not just in sales but also in other areas of the customer's interaction with the insurer.

FRLC also recommended that the ban on conflicted remuneration is extended to third party distributors.

FSC Position

The FSC agrees that inappropriate remuneration practices which conflict with good consumer outcomes should be prohibited.[2] The draft Code introduced an obligation to ensure that sales and claims staff were remunerated in accordance with good customer outcomes and with the core principles of the Code. The revised Code will bring these provisions forward in the Code in a separate section and apply them to those staff that interact with consumers, including sales, underwriting and claims teams.

As outlined in section 7.2, the Code obligations are binding on subscribers. In line with bringing certain third party distributors under the Code, these obligations will also apply to these parties.

7.4. Pressure Selling

Submissions

In its submission, ASIC recommended that the Code provide greater clarity on what pressure selling is, and "what insurers will and won't do, to ensure that consumers are sufficiently protected from being pressured to buy a product they may not want, cannot afford, or that does not meet their needs."

Legal Aid NSW provided feedback that there should be a stand-alone provision which prohibits pressure selling.

[2] The FSC supports the Life Insurance Framework and does not consider that this remuneration is inappropriate nor would be prohibited in the Code.

The FRLC Joint Submission supported the addition of a definition of pressure selling but recommended that the definition should be broadened.

FSC Position

The FSC believes that the sales process should be driven by the customer. The Code will outline that pressure selling is not permitted and outline the key characteristics of a good sales process.

7.5. Outbound Sales

Feedback

Feedback was received on direct outbound sales of life insurance from ASIC, Legal Aid NSW, the FRLC Joint Submission, and Maurice Blackburn supporting ASIC's intention to prohibit outbound sales calls for life and funeral insurance projects.

FSC Position

The FSC believes that this section of the Code has been overtaken by ASIC's ban on unsolicited telephone sales of direct life insurance and the proposed anti-hawking and deferred sales model legislation. As such, the FSC does not intend to include provisions restating these obligations in the Code.

7.6. Consumer Credit Insurance

Feedback

Feedback was received on the sale of consumer credit insurance (CCI) as an add-on product. The FRLC Joint Submission recommended that the obligations are strengthened when CCI is sold to ensure that consumers are provided with sufficient material to allow them to make an informed decision.

The ALA recommended that wherever CCI is sold in an unsolicited manner, that the contract does not commence until the customer opts-in.

ANZ Wealth and the FRLC Joint Submission recommended that the wording of the sale of CCI products through digital channels be updated to match the Banking Code of Practice.

FSC Position

The FSC believes that the proposed deferred sales model and the anti-hawking provisions have overtaken the obligations in the Code and does not intend to restate these obligations.

The introduction of a deferred sales model for add-on insurance addresses the concerns raised by submitters during the feedback period. Under the proposed legislation, the sale of CCI as an add-on product will be subject to a four-day deferred sales period in which the CCI cannot be purchased. Furthermore, the deferred sales model imposes restrictions on how the insurer may communicate with the consumer during and after the deferral period.

8. Buying insurance

8.1. Applications for Insurance

Feedback

The current draft Code requires insurers to provide customers with a copy of their answers used by the insurer to assess their application for life insurance if requested by the customer.

The FRLC Joint Submission recommended that insurers commit "to automatically providing in every case, the answers the insurer used to assess an application."

FSC Position

The FSC agrees that it is good practice for insurers to provide customers with a summary of their answers they provided when applying for cover and note that many insurers do this already. Depending on the method of distribution, consumers may already automatically receive copies or summaries of the answers they have supplied for example where they complete an online application process. In other instances, such as over the telephone, summaries of the information they have provided may be supplied at a later stage.

The Code will ensure that consumers are provided with this information irrespective of the way in which they have bought insurance.

8.2. Family History

Feedback

The draft Code introduced protections for consumers around the use of family history when applying for insurance. These provisions limit what insurers can ask consumers about their family histories.

The ALA submitted that "an additional sub-clause should be included to expressly ban FSC members from seeking family history information relating to events that occurred more than five years prior to the policy inception. It is submitted that information outside that period is not likely to be of sufficient relevance to warrant the burden of the request to the consumer."

FSC Position

The introduction of the genetic moratorium already places limits on the information that can be sought, and it is the FSC's intention to include the genetic moratorium in the revised Code. Information on family history in relation to events more than five years prior to policy inception is particularly important to life insurance risk assessment, including when determining if there is a genetic predisposition to certain conditions.

For these reasons, the FSC believes that the approach introduced in the draft Code remains appropriate.

8.3. Medical Consent

Background

Where insurers require information from third parties (such as doctors) to access information about a consumer's health, the current Code requires that consent from the customer is sought. The draft Code

expands this obligation to require that a standard form of words (agreed between the FSC and the Royal Australian College of General Practitioners (**RACGP**)) is used.

PIAC submitted that where additional information or reports from a third party are required, that "insurer should provide clear written information to the consumer as soon as practical precisely identifying what further information is required, and why".

Likewise, the FRLC Joint Submission noted that "every consumer should be informed in writing of their consent being used, in order to maintain a "paper trail" with respect to the use of consents." And that consumers should be given a choice as to their preferred means of contact.

FSC Position

In 2019, the FSC introduced *Standard 26 – Consent for Accessing Health Information* (**Standard 26**) to come into effect from 1 July 2020 with the deadline for full compliance has been deferred until 2021 as a result of the COVID-19 pandemic.

The purpose of Standard 26 is to ensure that, when obtaining information from health practitioners about customers, FSC Members use a standardised consent wording, developed in agreement with the RACGP, as well as a process to inform customers as to when this consent will be used. Standard 26 addresses the recommendations of the Parliamentary Joint Committee Inquiry into Life Insurance (**PJC Inquiry**) that a standard consent is developed in conjunction with the RACGP.

FSC Standards are binding on FSC Members and are enforced by the FSC's Standards Oversight and Development Committee. Standard 26 was developed to ensure that consumers were provided with additional protections while the Code was being reviewed.

In accordance with the general principles around communication outlined in section 5.5, the method of communication will be that which has been agreed to by the consumer and the insurer unless otherwise specified.

8.4. Supporting Customers to Buy Insurance

Feedback

Where life insurance is offered with revised terms such as a higher premium or exclusions, an insurer is obliged to tell the consumer what these revised terms are so that the consumer can decide if they want to buy the policy. If the policy is bought, this will be taken as agreement to the revised terms. PIAC recommended that this automatic agreement clause be removed.

The FRLC Joint Submission recommended that there should be an explicit commitment to the use of interpreters when asking questions during the application process and that the Code should be "amended to committing to explaining the question in simple terms and plain English" instead of repeating a question to someone who does not understand.

FSC Position

Where an insurer intends to offer insurance on revised terms such as a higher premium or with an exclusion clause, the revised Code will require the insurer to clearly inform the consumer of these revised terms. The revised Code will make clear that only if the consumer agrees to buy the policy after the provision of the revised terms, that this will be taken as acceptance of the contract of insurance on the revised terms.

The Code contemplates that non-English speakers may be vulnerable and require additional support. The FSC has committed to bolstering the protections for vulnerable consumers, details of which are outlined further in section 10 below. There are some practical limitations in providing translation services which must be considered including translation of terms which may not exist in other languages and how many languages an insurer must offer a translation service for.

8.5. PJC Recommendations on Mental Health

Background

The PJC report made a number of recommendations for changes to the Code for mental health claims and related issues, including Recommendation 10.7:

> *The committee recommends that after consultation with relevant medical professionals independent of the life insurance industry and mental health advocacy groups, the Financial Services Council establish a mandatory and enforceable Code of Practice for its members, or a dedicated part of its existing Code of Practice, specifically in relation to mental health life insurance claims and related issues.*
>
> *The committee further recommends that these consultations discuss requiring insurers to:*
>
> - *ensure that applications for insurance that reveal a mental health condition or symptoms of a mental health condition are not automatically declined;*
> - *refer applications for insurance that reveal a mental health condition or symptoms of a mental health condition to an appropriately qualified underwriter;*
> - *give an applicant for insurance the opportunity to either withdraw their application or provide further information, including supporting medical documents, before declining to offer insurance or offering insurance on non-standard terms;*
> - *where an insurer offers insurance on non-standard terms, for example, with a mental health exclusion or a higher premium than a standard premium, specify:*
>   - *how long it is intended that the exclusion/higher premium will apply to the policy;*
>   - *the criteria the insured would be required to satisfy to have the exclusion removed or premium reduced;*
>   - *the process for removing or amending of the exclusion/premium; and*
>   - *develop, implement and maintain policies that reflect the above practices.*

Feedback

PIAC submitted that the Code "should specifically set out what information insurers should provide consumers in circumstances where they are offered an insurance policy on non-standard terms" in accordance with Recommendation 10.7 of the PJC. The PIAC submission also noted that the Code should include the additional commitments:

- refer applications for insurance that reveal a mental health condition or symptoms of a mental health condition to an appropriately qualified underwriter;
- give an applicant for insurance the opportunity to either withdraw their application or provide further information, including supporting medical documents, before declining to offer insurance or offering insurance on non-standard terms;
- where an insurer offers insurance on non-standard terms, for example, with a mental health exclusion or a higher premium than a standard premium, specify:
  - how long it is intended that the exclusion/higher premium will apply to the policy;
  - the criteria the insured would be required to satisfy to have the exclusion removed or premium reduced;
  - the process for removing or amending of the exclusion/premium; and

- develop, implement and maintain policies that reflect the above practices.

The FRLC Joint Submission reflected the comments made by PIAC.

Mental Health Australia recommended that the Code "should include the insurer taking into account duration of the mental health condition. And it should include that the insurer will take into account actuarial or statistical data about the condition – to pick up on Section 46 of the Disability Discrimination Act."

FSC Position

Having regard to the general principles outlined in section 5.4 above, the FSC believes that the Code should not restate existing obligations in legislation such as the Disability Discrimination Act. However, the FSC believes that the issues raised in the PJC report are important not just to those with a mental health condition, but to all consumers.

In the draft Code, the FSC has included sections specifically in relation to mental health recognising mental health as a category of vulnerability.

In line with Recommendation 10.7 of the PJC Report, the draft Code also includes a new provision to ensure that where a consumer has told an insurer about a mental health condition that they have, or have had in the past. In such instances, the insurer must not automatically decline the application for insurance, but should have regard for factors such as the history and severity of a mental health condition in making a decision to provide insurance and if so, the terms that may be offered.

The PJC Report recommended that applications for cover which reveal a mental health condition or symptom of a health condition be referred to an appropriately qualified underwriter. The Code requires insurers to ensure that all their underwriters are appropriately skilled and trained and demonstrate a technical competency of the law, Code and FSC Standards and Guidance. This includes ensuring that the underwriter is appropriately skilled and trained to deal with customers who reveal a mental health condition.

Further, the PJC report also recommended that a consumer should have the option to withdraw their application or provide further information before an insurer declines an application for insurance or offers insurance on non-standard terms. Under the terms of the draft Code, if an insurer cannot offer insurance, or offers insurance on non-standard terms, then the customer must be told the reasons for this decision. If the customer disagrees, or believes that the information is out of date, they can request that the decision is reviewed and provide further information. A customer also has the right to ask for the information that has been relied upon to make a decision and this will be provided within 10 business days of the customer requesting it, in accordance with the access to information provisions.

Finally, the PJC Report recommended that where insurance is offered on non-standard terms, that policies and processes are put in place which specify how long that the non-standard term will apply for and the criteria to have it removed. The draft Code requires insurers to explain the circumstances under which these terms can be reviewed and how to do so.

The FSC believes that the consultation Code incorporates recommendation 10.7 of the PJC Report.

8.6. Methodology for Assessing Mental Health Applications

Feedback

The Finder submission recommended that "the FSC and its members to publicly commit to a clear and consistent methodology for assessing the severity and type of mental health conditions, as well as the resulting impact on their ability to obtain cover."

FSC Position

The consultation Code has introduced new protections for consumers who have, or have had in the past, a mental health condition by requiring insurers to take into account individual circumstances including the history and the severity of the condition. The FSC believes that the purpose of the Code is to inform consumers of an insurer's obligations to a consumer, rather than outlining the methodology or procedures which insurers follow to comply with those obligations.

8.7. Choice of Medical Practitioner

Background

During the process of applying for insurance, an insurer may require that a customer attend a medical examination. The consultation Code allows the customer to request their medical examiner be of a specific gender.

Feedback

The ALA recommended that the Code should provide a "list of three independent service providers, from which the consumer may nominate one". The PIAC submission supported the ALA submission.

The FRLC Joint Submission provided feedback that "where possible" be removed and that the choice of gender should "should simply be automatically provided to all consumers and not place the onus on potentially vulnerable consumers to do the asking".

FSC Position

The FSC believes that consumers should have choice under the Code in selecting their preferred gender of medical examiner. However, there are some practical limitations to the recommendations. In some instances, the insurer may wish to send a customer to a specific independent service provider such as one which the customer might have attended in the past or one which has specialist medical knowledge. Furthermore, there may be limitations on being able to provide three independent service providers in remote and regional areas. A similar limitation applies to providing a customer with a choice of gender where there may only be one available in remote and regional areas.

However, the FSC recognises that some consumers may not realise that they have the option to choose a medical practitioner of their own gender. Therefore, the Code will oblige insurers to inform consumers of their right to a medical practitioner of their own preferred gender and this request will be fulfilled where it is practicable.

8.8. Medical Reports and Clinical Notes

Feedback

The Code currently requires that if a customer attends a medical assessment by an independent service provider, the insurer will ask them to provide their report within ten business days. ALUCA submitted that the Code should clarify from when the 10 days commences.

SuperFriend recommended that the Code make explicit that medical reports can be provided to the treating doctor and to the customer.

The FLRC Joint Submission recommended that the Code commit insurers to "not accepting clinical notes or returning them if sent unread" or to establish a protocol with the RACGP.

FSC Position

The FSC will clarify in the Code that the 10 business days commences from the date of attendance at the medical assessment by the customer.

Under the current Code, a customer is always able to request information that an insurer holds about them under the relevant provisions in the Access to Information provisions of the Code. The FSC notes that the Privacy Act would apply in relation to the provision of records to treating doctors.

As set out in section 8.3 above, the FSC introduced Standard 26 with effect from 1 July 2020. Standard 26 developed in agreement with the RACGP establishes a process whereby the insurer must seek consent for the release of information. The customer may choose not to provide consent to release their clinical notes. Consistent with Standard 26, the FSC also believes the Code should not limit the ability for health practitioners to provide clinical notes where they believe that this is appropriate. For example, during the COVID-19 pandemic, health practitioners are under extreme pressure and may not have the capacity to produce reports, which could otherwise delayed consideration of a claim.

9. Claims

9.1. Withdrawn Claims

Feedback

ASIC Report 633 into TPD insurance claims found that “Insurers do not have sufficient understanding of the reasons for withdrawn claims”. ASIC also identified factors which it believed were, or led to, frictions that could cause harm to consumers in the claims process including the communication practices of insurers. Report 633 recommended that the Code be updated to include additional or enhanced obligations for proactive communication with consumers during their claim.

The FRLC Joint Submission also recommended that the Code should require insurers to record the reasons for when a claim is withdrawn or “closed” and that this should be done in a consistent manner.

FSC Position

The FSC notes the recommendations in Report 633 relating to TPD claims and is working to implement the recommendation to collect additional information on withdrawn TPD claims. Broadly, this will collect information in two categories:

- Actively withdrawn – where the insurer has been informed by the consumer that they do not wish to proceed with a lodged claims; and
- Passively withdrawn – where the insurer is unable to contact the consumer for the purposes of seeking additional clarification or information in regards to a lodged claim.

Within each of these categories, there may be multiple reasons that a claim is withdrawn. These reasons will be aligned with APRA data collection requirements.

To determine if a claim has been passively withdrawn, the revised Code will oblige insurers to make at least two attempts to contact the customer, using different methods of communication (if details have been provided), before determining that a customer cannot be contacted and closing the claim. The revised Code will also ensure that a claim will not be closed within four weeks of the last attempted contact with the customer.

While this applies to TPD claims, the FSC supports, in principle, the extension of data collection to other forms of claims, however further work needs to be done on ensuring that there is a consistent method of data collection across the industry and between regulators and other bodies such as AFCA and the LCCC. This involves not only insurers but also other stakeholders including trustees.

9.2. Customer Engagement

Feedback

The draft Code requires an insurer to seek the customer’s consent on each occasion that a new claim is made, and to provide the reason for the requested information if asked. The LCCC recommended that the Code should require insurers to inform the consumer, as part of the claim, the information that is being requested.

The FRLC Joint Submission noted that “contact with a consumer should also be done in writing (to provide a trail) and in their preferred mode or medium”.

The FRLC Joint Submission also submitted that insurers should have to ask for information from the customer or third parties within a hard timeframe rather than “as soon as possible” which is subjective.

FSC Position

The FSC will continue to enforce the obligations of Standard 26 as outlined in section 8.3 above. This will require that insurers seek consent with each new claim. Insurer’s must inform a customer (or their representative) each time their consent is used.

The FSC believes that customers should be provided a choice of preferred communication method unless there are specific obligations for a communication to be provided in writing. Some customers may prefer email, text message updates or phone calls. In some instances, it may be more efficient for the customer to provide the information to the insurer over the phone. Additionally, customers may also miss written communication, for example, if they have changed address. The Code should not place a limit on or restrict the methods that an insurer may use to communicate with their customers. The FSC’s position on communicating with customers is outlined in section 5.5 above.

The FSC believes that a hard deadline for requesting information is not necessary in light of the introduction of the legislation removing the exemption of claims handling as a financial service regulated by ASIC. It is often difficult to know at the beginning of a claim all of the information that will be necessary, and the requirement for certain information will vary on a case by case basis. The proposed legislation will make claims handling a financial service and require that claims are handled efficiently, honestly and fairly. The FSC believes that these obligations will increase consumer protections under the law. This legislation is in addition to the other hard timeframes which the Code imposes on insurers.

9.3. Medical Examinations

Feedback

Similar to the feedback received on medical examinations when consumers are applying for insurance, submitters recommended that a choice of medical practitioner and choice of gender be provided.

Slater & Gordon noted in their submission the PJC Report recommendation that there should be a limit on the number of independent medical examinations that can be requested. The ALA recommended that the insurer should only be entitled to send the customer back to the original independent medical examiner.

FSC Position

The FSC position on the use of medical examiners during the application process is outlined in section 8.3 above. The use of medical examiners during the claims process will be made consistent with these changes, including informing consumers of their right to choose a doctor of a specific gender where practical. The FSC reiterates that there are many practical limitations that may restrict the ability to provide multiple doctors of each gender, as outlined above, and believes that the revised Code strikes an appropriate balance.

The FSC believes that placing a limit on the number of medical examiners or on the specific medical examiner that a customer should attend is not practical. Insurers will often have a specific reason to send a customer to another medical including requiring a doctor with specific specialist knowledge or the original medical examiner not having availability. Subsequent medical examinations and reports may reveal matters which require further understanding.

9.4. Use of Interviews

Feedback

PIAC and Slater & Gordon submitted that an information sheet should be provided to the customer in advance of the interview.

The FRLC Joint Submission recommended that following an interview, a copy of the recording of the interview should be automatically provided.

Slater & Gordon submitted that they "consider it appropriate to add a clause that the claimant will not be obliged to sign a copy of the recording or any statement derived from the interview".

The FRLC Joint Submission noted that "rather than an offer of a 5 minute break, a 5 minute break should be automatic and mandatory".

FSC Position

The FSC agrees that interviewees should be provided with the appropriate information before the interview is conducted. The revised Code will now ensure that an information sheet is provided in advance of the interview. The Code will also require the interviewer to identify who they are and why the interview taking place at the outset of the interview and before asking any questions.

The FSC agrees that interviewees should be provided with a record or summary of the interview and, where possible, in a form requested by the interviewee. While this could be a recording, the interviewee may wish to request a record of the conversation in another format such as a transcript or a summary of the key points. The Code will now require that the information sheet state that an interviewee can request a record or summary of the conversation, and if requested the insurer must provide a record of the interview.

The FSC does not agree that the Code should prohibit insurers from asking customers to sign a copy of the recording or statement. The FSC believes that it is an important protection that a consumer is able to review and to disagree with any information which has been recorded by the interviewer.

The FSC believes that a 5 minute break during the interview should be offered rather than automatically provided. It should be up to the consumer to choose if they wish to take a break or not.

9.5. Use of Surveillance

Feedback

SuperFriend submitted that where surveillance is used, family or friends should be added to the list of people to whom the investigator cannot communicate with in ways which might directly or indirectly reveal that surveillance is being, will be or has been conducted.

The draft Code currently requires an insurer to stop surveillance if they receive evidence from an independent medical practitioner that the surveillance is negatively impacting the customer's health. The LCCC recommended that this be expanded so that it is on the advice of any medical practitioner including the customer's treating practitioner.

Under the current Code, there are a number of restrictions around the use of surveillance. The ALA recommended that the Code should place additional obligations on insurers to prohibit the use of surveillance where there is a person who has a mental health condition or unless insurers reasonably believe that there is an inconsistency.

FSC Position

The FSC agrees with SuperFriend's recommendation that where the investigator knows persons are family or friends of the customer, the investigator should not communicate with them in ways which might directly or indirectly reveal the surveillance is being, will be, or has been conducted.

The FSC also agrees with the recommendation by the LCCC that the insurer should be obliged to stop surveillance if they receive evidence from any medical practitioner that the surveillance is negatively impacting the customer's health, this includes the customer's treating medical practitioner.

Under the current draft Code, insurers must already have a reason to believe that there are inconsistencies before conducting surveillance. While we recognise that consumers with mental ill health are vulnerable, the FSC does not believe that the Code should create different standards for customers experiencing different vulnerabilities. Therefore, we believe that it is not appropriate for the Code to only address areas of concern for those with mental health, but rather protections should, where possible, apply to all vulnerable consumers. The FSC believes that the current protections on surveillance strike an appropriate balance.

9.6. Financial Advice

Feedback

The FRLC Joint Submission noted that "the floor of $50,000 has been imposed on the current commitment to lump sum payments" where an insurer should suggest that a customer seeks financial advice.

FSC Position

The FSC believes that it is appropriate that there be a threshold on the value of a lump sum payment before an insurer suggests that financial advice is sought. This is because certain insurance payments are low value or where an insurer may pay a number of payments in advance before closing a low value claim. For these low value claims, the cost of the advice may be a significant portion of the lump sum payment, reducing the customer's overall net payment which may be needed for immediate expenses such as the cost of a funeral. The FSC believes that $50,000 is an appropriate limit before insurers recommend that consumers seek financial advice.

The revised Code will also introduce a new exception to this rule where the money is paid to the trustee of a fund. It would not be appropriate to recommend in these circumstances that the trustee seek financial advice.

9.7. Conflicted Remuneration

Feedback

The ALA recommended that the Code be revised so that the remuneration of claims assessors will not be directly or *indirectly* tied to financial or other targets for declined claims or deferrals of decisions.

FSC Position

The FSC agrees that conflicted remuneration should be banned and that the remuneration of claims assessors should not be *directly* tied to financial or other targets. The FSC considers that the use of the term "indirectly" would limit the ability of firms to reward employees for the performance of the business as a whole rather than their individual or immediate team's financial performance, noting it is common practice in most industries to incorporate remuneration packages with a salary and performance

component (typically subject to balanced scorecard approaches). In line with section 7.3 above, the revised Code will consolidate the obligations around conflicted remuneration to capture sales, claims and retention staff.

10. Protecting vulnerable consumers

Feedback

A number of submissions were made in relation to how the Code can support people experiencing financial hardship or who are vulnerable.

Some feedback recommended that the sections of the Code on supporting vulnerable customers and financial hardship were either linked or amalgamated to make them easier for the consumer to find.

Other submissions on vulnerability recommended that the Code specify that staff should undertake training to be able to better identify and provide additional support to vulnerable consumers or that there should be guidance produced as part of the development of the Code to address specific sectors of vulnerability such as in situations of family violence and indigenous customers.

FSC Position

The FSC recognises that consumers experiencing vulnerability have unique needs when accessing their insurance and, in these circumstances, they might require extra support. The draft Code recognised additional categories of people who require additional support including those experiencing family violence or people with a mental health condition. The draft Code also added an obligation to take a flexible approach to identification, recognising that some groups such as non-English speaking backgrounds or indigenous communities, may require additional flexibility.

However, the FSC notes the submissions made on how the Code could improve protections for vulnerable consumers and how to provide additional support for vulnerable consumers. A number of industry codes have made advancements in protections for vulnerable consumers including the proposed General Insurance Code of Practice (**GICOP**) (2020).

The FSC will carefully consider the work of other industry codes, and where it is appropriate in the context of life insurance, seek to better align the Code to ensure greater consistency for consumers.

11. Governance

Feedback

SuperFriend submitted that the LCCC should have two consumer representatives and it should be made clear in the Charter that the number of industry and consumer representatives should be equal.

The FRLC Joint Submission recommended than an independent committee should be established to provide advice on resourcing for the LCCC.

FSC Position

Under the current Charter, the LCCC is comprised of three members: an independent chair, a consumer representative and an independent industry representative. The Charter provides detail on how these positions are appointed. The FSC believes that this composition remains appropriate and has reviewed the composition of other code compliance committees to ensure that the LCCC does not differ in this regard.

The FSC recognises the important role that the LCCC performs in monitoring and enforcing the Code and believes that it should be appropriately funded. The FSC notes this recommendation and will engage with the LCCC to better understand the resourcing needs of the Committee and how that might be determined in the future. However, the funding of the LCCC is an administrative matter and not an obligation by insurers to their customers and not appropriate to include in the Code.

12. Sanctions

Background

Under the current Code, sanctions may be imposed on a subscriber who fails to correct a breach of the Code. Commissioner Hayne in the FSRC noted that “the sanctions power in the General and Life Insurance Codes of Practice should not be limited in this way”. Recommendation 4.10 of the FSRC stated that the Code should be amended to empower the LCCC to impose sanctions on a subscriber that has breached the Code.

Feedback

Submissions to the consultation draft from PIAC, the FRLC Joint Submission and the FPA reiterated the recommendation of the FSRC.

Legal Aid Queensland recommended additional “sanctions for insurers that do not treat a person with a mental health condition fairly and appropriately”.

The FRLC Joint Submission noted that “all compliance cases [should] be published and reported in an identified manner in the Annual Report and on the website”.

The LCCC recommended that sections of the Code, which restate the Charter, be removed and be updated to better reflect the role of the LCCC. This would allow the Charter to be updated, where required, independently of the Code, remove duplication and improve readability.

FSC Position

The FSC will amend the Code and the Charter in line with recommendation 4.10 of the FSRC so that the LCCC may impose a sanction on a subscriber in the event of a significant breach of the Code.

In respect of sanctions for treatment of persons with mental health conditions, the FSC does not agree that conduct involving a single community of vulnerable customers should have different sanctions to treatment of other customers or members of vulnerable communities. While recognising that certain members of the community are vulnerable and require extra support, the FSC does not believe that it is appropriate or equitable to create a tiered regime of sanctions.

The FSC does not agree that all compliance cases should be published and reported in an identified manner. Under the current Code, the LCCC is able to require publication of non-compliance as a potential sanction. Brand reputation is extremely important to all Code subscribers and all subscribers take their obligations under the Code very seriously. The LCCC will now also be empowered to impose sanctions on certain breaches rather than failure to correct a breach. Publication of compliance cases where the LCCC has determined that the subscriber has not breached the Code could cause disproportionate reputational damage. Therefore, it is appropriate that publication of non-compliance remain one of the sanctions available to the LCCC. The FSC believes that change to the sanctions powers strike an appropriate balance between providing customers with transparency and ensuring that subscribers are sanctioned where it is appropriate.

The FSC agrees with the LCCC that the Code should not unnecessarily repeat obligations or clauses of the Charter. The relevant sections will be updated to better reflect the new sanctions power of the LCCC and the role of the LCCC.

13. Access to information

Feedback

The FRLC Joint Submission noted that the section "regarding a consumer's right to access information has been kept in the Code Governance Chapter. We would suggest this structure be reconsidered as it does not necessarily relate to Code Governance solely".

Further, the FRLC Joint Submission noted that the previous wording of "you can access the information" of the current Code should be restored as the use of "you can ask us" diminishes the commitment. Legal Aid NSW restated this noting that "the new clause diminishes the current obligation as it does not require the insurer to act on a request for information".

FSC Position

The FSC agrees that there should be a consistent approach for when customers wish to access their information, regardless of whether that is during the application process or when making a claim or complaint. The FSC recognizes that duplicative references to when a consumer can access their information may be confusing and will consolidate the relevant provisions in the revised Code into a single section.

The FSC does not believe that the draft Code wording diminishes the obligation, rather it is striking a balance between making clear that a customer is able to access information and setting expectations that in some circumstances they may not be able to be met such as if there are limitations under the Privacy Act. Where such limitations do not apply, such as when a customer requests a copy of their policy documents, the Code will make clear that a customer will be provided these.

14. Appendix

We would like to thank the following stakeholders for their submission to the consultation of the Life Code 2.0:

- Aboriginal Community Benefit Fund (via Hitchcock Management)
- Actuaries Institute
- AFRM Claims Advocacy
- ANZ Bank
- Association of Financial Advisers
- Australasian Life Underwriting and Claims Association
- Australian Financial Complaints Authority
- Australian Genetics Non-Discrimination Working Group
- Australian Genomics Health Alliance
- Australian Institute of Superannuation Trustees
- Australian Lawyers Alliance
- Australian Prudential Regulation Authority
- Australian Securities and Investments Commission
- Financial Planning Association
- Financial Rights Legal Centre, Financial Counselling Australia and Redfern Legal Centre Joint Submission
- Finder
- Greenstone Financial Services
- Legal Aid NSW
- Legal Aid QLD
- Life Code Compliance Committee
- Maurice Blackburn
- Mental Health Australia
- Michael Molesworth, Individual Submission
- National Australia Bank
- NobleOak
- Patrick Cowley, Individual Submission
- Public Interest Advocacy Centre
- Royal Australian and New Zealand College of Psychiatrists
- Slater & Gordon
- SuperFriend

Links to publicly available submissions can be found on the Life Code of Practice page on the FSC website: https://fsc.org.au/policy/life-insurance/code-of-practice/code-2-0