

Mr Nick Kirwan
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30 January 2019

Dear Mr Kirwan

Life Insurance Code of Practice - Consultation Draft

I am writing to provide feedback to the revised Life Insurance Code of Practice Consultation Draft, which I'll refer to here as "LICOP2", or for the Life Insurance Code of Practice generally, just the "Code".

My name is Stephen Hitchcock, and I'm a consultant working for and submitting this feedback on behalf of my client, ACBF Group Holdings Pty Ltd ("ACBF"). If you have any questions about this feedback, please contact me in the first instance.

ACBF is not a member of the FSC, nor is it affiliated with or working for any company that is a member of the FSC. This is unlikely to change in the near term. Consequently, our feedback is for information purposes, as ACBF would not be bound by the Code.

ACBF primarily serves Indigenous Australians, with products and service that are tailored to their needs. ACBF well understands their culture, communities and communication style, and the consequences of lower average incomes and higher mortality rates than non-Indigenous Australians. ACBF itself has recently been bought by a group who are 50% Aboriginal.

It seems from some of the clauses proposed in LICOP2 that certain unnamed companies have been the focus with the LICOP2 changes, presumably in response to the Financial Services Royal Commission. We have reason to believe that ACBF may intentionally or unintentionally be one of those companies.

The FSC has sought feedback to the Funeral Insurance changes in section 3.6. However, before looking at that section, let's start with section 2.7(e):

Section 2.7(e) 'Funeral Expense Insurance'

While funeral insurance is caught under the Life Act 1995, we would like to rationalise why Funeral Expense Insurance is not. The subtle difference is to whom benefits are paid. Under the former, they are paid to the beneficiary of the insurance policy, while under the latter, they are paid to the provider of the funeral service (or reimbursed to a nominee) for actual funeral services provided.

In NSW (for example), Funeral Expense products are sold under the Funeral Funds Act, Part I, section 4, which defines funeral benefits as meaning:

(a) *the supply of any funeral service, with or without the supply of goods connected with that service, or*

(b) *the payment of money, upon the death of a person, for the purpose of meeting the whole or a part of the expenses of and incidental to the funeral of that person.*

By contrast, under the Life Act 1995, section 11(3)(e), life insurance business specifically excludes products that match the above definition, the second limb of which corresponds to Funeral Expense Insurance type policies.

And in addition, in the Insurance Act 1973, section 3, insurance business, clause (g), is defined as specifically excluding products that match the above definition, the second limb of which corresponds to Funeral Expense Insurance type policies.

You may also be aware that under Section 765A(w) of the Corporations Act 2001, the list of specific things that are not financial products includes funeral benefits, which is defined similarly as meaning 'a benefit that consists of the provision of funeral, burial or cremation services, with or without the supply of goods connected with such services'.

We submit therefore that Funeral Expenses Insurance cannot be included in a Life Insurance Code of Practice, as by definition, it is not a life insurance policy. Indeed, as Funeral Expense Insurance is neither life insurance nor general insurance, it is arguable as to whether it should be called insurance at all.

For this reason, ACBF does not refer to its products as insurance products.

Section 3.6(d) 'minimum age'

We do not believe a minimum age should exist for the promotion of funeral insurance, for the following reasons:

- The funeral industry as a whole does not have a lower age limit to whom it can promote their products and services, and neither should the funeral insurance industry.
- Life insurance has no minimum age. Funeral insurance is a form of life insurance. It makes no sense to create a minimum age for funeral insurance but not for life insurance. People die at all ages.
- We don't believe it's appropriate for the industry to ignore 'high risk' individuals just because of an age limit. High risk individuals may have chronic illnesses or multiple conditions, which puts them out of reach of most life insurance products. As an industry, we should be able to market to all ages, healthy or sick, if we have a product which would suit their needs.
- Age discrimination is disallowed in other areas of Australian society, we should minimise all forms of discrimination in our industry.

We submit that this section (d) should be deleted. Funeral insurance, like all insurances, should be marketed and sold to all adults.

Of course, companies should not be promoting insurance products to children. However, that doesn't preclude companies from selling family policies to parents (and other adult relatives) to potentially include children in their care. Regrettably, children also die, and their deaths also invoke funeral costs.

Australian Institute of Health and Welfare 2018

Indigenous children were 2.1 times as likely to die during early childhood as non-Indigenous children.

Section 3.6(e) 'appropriateness depends on a number of factors'

Assuming section (d) is deleted, then there is no need for this clause. However, it remains troublesome in its own right.

This clause appears to separate customers between those under age 40 and those above age 40 into two categories:

- Under age 40, who need to be engaged in conversations about these 4 factors, which could be perceived as personal advice by the customer.
- Over age 40, who don't need to be engaged in conversations about these factors, so can remain under a general advice model.

The funeral insurance industry universally uses a general advice model today. I have recapped the general advice definition in the box below, from which one can conclude that discussion of these factors could easily be interpreted by the customer as personal advice.

We imagine there would be no appetite to sell some of their products under certain parameters under a personal advice model.

However, I do believe there is merit in a wider discussion about relaxing the meaning of general advice, so that some basic questions can be asked to all direct-to-consumer sales, without worrying about breaching the general advice definition. Note that even the simple question of affordability could be interpreted as taking a customer's financial situation into account.

I would be happy to expand further on this discussion point to the FSC is so requested.

We confirm that clauses 3.6 (f) and (g) are satisfactory.

General Advice

The meaning of general advice is set out in section 766B(3) and 766B(4) of the Corporations Act 2001.

General advice is financial product advice that is not personal advice. Personal advice is financial product advice that is given or directed to a person where the provider of the advice has considered one or more of the person's objectives, financial situation and needs.

Under 766B(3)(b), the definition of personal advice is considered met if a reasonable person might expect the provider to have considered one or more of those matters.

So clearly the fourth factor 'financial objectives' in LICOP2 3.6(e) falls squarely into this definition.

Section 3.6(i)iii Illustrations

We seek clarification from the FSC as to whether the intent of this clause is to show:

- (a) an illustration of how the customer's actual premiums will increase, assuming that premium rates remain unchanged and at a suitable CPI rate, or
- (b) an illustration of how a typical customer's premiums might increase, assuming that premium rates remain unchanged and at a suitable CPI rate.

In other words, does the FSC expect (a) tailored illustrations for every customer, or is it sufficient to (b) show a generic illustration that can be used for all customers?

We have no other feedback or queries about the rest of LICOIP2. Please do keep us informed of any subsequent changes to the Code and expected go-live date, if it moves out from 1 July 2019.

As mentioned at the start of this letter, if you have any questions about its, or any related matter, please call or email me in the first instance.

Yours sincerely

A handwritten signature in blue ink that reads "S. A. Hitchcock". The signature is written in a cursive, slightly slanted style.

Steve Hitchcock
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