



1 October 2021

Financial Services Council
via email: policy@fsc.org.au

To whom it may concern

National Mental Health Commission Feedback on the draft FSC Life Insurance Code of Practice 2.0.

Thank you for the opportunity to provide feedback on the Financial Services Council's (FSC) draft Life Insurance Code of Practice 2.0 (the draft Code).

About the Commission

The National Mental Health Commission (the Commission) was established in 2012 and is an executive agency in the Australian Government Health Portfolio. The Commission is a listed entity under the Public Governance, Performance and Accountability Act 2013 with the Commission's purpose set out in clause 15 of Schedule 1 of the Public Governance, Performance and Accountability Act 2014.

The Commission's purpose is to monitor and report on investment in mental health and suicide prevention initiatives; provide evidence-based policy advice to Government; disseminate information on ways to continuously improve Australia's mental health and suicide prevention systems; and act as a catalyst for change to achieve those improvements. This includes increasing accountability and transparency in mental health through the provision of independent reports and advice to the Australian Government and the community.

The National Stigma and Discrimination Reduction Strategy

The Commission has been tasked with developing a National Stigma and Discrimination Reduction Strategy to specifically address stigma and discrimination towards people who experience mental ill-health and psychological distress and those who support them. This Strategy, which will be developed by December 2022, responds to a key recommendation of the Productivity Commission Inquiry into Mental Health. In considering the impact of stigma and discrimination on the lives of people who experience mental ill-health and psychological distress, their families and carers, the Productivity Commission also made specific reference to the need for insurance companies to improve the way they collect information about, and relate to, people who experience mental ill-health and psychological distress.

The Strategy has a particular focus on reducing structural stigma and discrimination. Structural stigma and discrimination occur when laws, policies and practices result in the unfair treatment of people who experience mental ill-health and psychological distress, their families and carers. In developing the Strategy, we are giving due consideration to actions which would support the

ABN 83 537 016 476



economic security and dignity of people who experience mental ill-health, their families and carers. Everyone should have equitable, fair and reasonable access to insurance cover, including those in our community who have experienced mental ill-health or supported someone who has.

Below we have outlined a number of areas where we believe the code could be strengthened in pursuit of these aims.

Appendix B: Supporting customers experiencing a mental health condition

The final report of the Joint Parliamentary Committee recommended the life insurance industry develop a mandatory and enforceable Code of Practice for its members in relation to mental health related life insurance claims. Elsewhere, the National Mental Health Commission has recommended¹ that the Life Insurance Code of Practice should deal expressly with mental illness related claims and provide standards for managing and assessing a mental illness related claim in a manner which is appropriate to, and which does not aggravate, the illness. During the course of the Financial Services Royal Commission, the FSC indicated that there would be 'far more granularity' in the next iteration of the Code of Practice in relation to mental health.

While Appendix B articulates the relevant sections of the Code of Practice which relate to supporting customers experiencing mental ill-health, the exclusion of the Appendix from the Code of Practice itself is unclear and potentially counterproductive. The Commission recommends the FSC reconsider the presentation and/or formal inclusion of the revised Code's approach to supporting customers experiencing mental ill-health.

Commitment to comply with anti-discrimination law

The Commission strongly supports retaining in the revised Code an explicit reference to the commitment and requirement to comply with anti-discrimination law, as is currently the case under section 5.17 of the existing Code of Practice. As well as emphasising the protections available to current and prospective consumers of insurance products, this provision makes clear to FSC members and their Authorised Representatives that there is a duty to take active steps in order to ensure against unlawful conduct, to make evidence-based decisions and ensure information relied upon remains current and relevant.

Supporting those who have experienced suicidal ideation or attempted to take their own lives

The code currently makes no reference to suicide and suicidal behaviours. Contemporary knowledge and evidence suggests that while individuals who experience mental ill-health can be at increased risk of suicide, suicidal thoughts and actions can occur independent of an experience of mental illness. There is an opportunity for the Code to outline separately the ways in which it considers contemporary understandings in relation to, and the needs of, individuals who may have a past or current experience of suicidality and/or suicidal behaviours including suicide attempts.

Considering the needs of families, carers and support people

For many people who experience mental ill-health, families, carers and other support people can play an important role in assisting them with a range of matters. From time to time, this may also extend to supporting an individual to manage their financial affairs, including contacting insurers on behalf of a claimant. The Code should make explicit references to steps taken to support not just

¹ Recommendation 8.3, Submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, National Mental Health Commission, October 2018.

the individual experiencing a mental health condition or suicidality but their families, carers and support people as well.

Protective factors and individual circumstances

We support section [4.18(b)], which provides for taking account of individual circumstances, including the history and severity of the person's experience of a mental health condition, before deciding on an application for cover. We suggest that this consideration of individual circumstances should also include protective factors – such as social networks and other psychosocial factors. These factors are highly relevant to the consideration of risk profiles, as they can be the factors that prevent someone from becoming acutely unwell, and form an essential component of evidence-based decision making in relation to a person's future trajectory. Similar protective factors exist for individuals with a past or current experience of suicidality. An opportunity could be for insurers to develop indicators of recovery and utilise these alongside protective factors in assessing risk and a person's capacity level.

It is also important that staff entrusted with making decisions, such as claims assessors and underwriters, have the requisite level of understanding to support appropriate interpretation of individual factors alongside data and any other relevant information where mental health or suicide is a consideration. For instance, a person's history of using medication to successfully manage a mental health condition could, in many cases, be considered a protective factor, rather than something that necessarily indicates increased risk. A sound understanding of the nature of mental ill-health, suicide and the various factors involved in individual circumstances is critical to appropriate assessment and communication of reasons for claims decisions where mental health is a factor. The importance of education and training for all industry staff in relation to mental health and suicide is outlined further below.

Appropriate education, training and skills development for all relevant industry employees is critical to ensuring appropriate consideration and interpretation of data and other information that might be available in relation to a person's insurance application and/or claim that relates to mental ill-health.

The Code makes a number of welcome assurances regarding education and training for the range of roles engaged by FSC members and their Authorised Representatives.

As recommended elsewhere², we further suggest that the Code, as well as standards, guidelines and training materials, should set standards for education and training that are at least to the standard of those in the Life Insurance Framework reforms. Education and training for all staff should also include a grounding in concepts of recovery and trauma-informed approaches as well as in suicide-safe practices. These approaches could be embedded within industry codes of practices and relevant training materials.

As well as supporting generally good standards of customer service, training in recovery and trauma-informed approaches would help support engagement with all potentially vulnerable customers, including people with lived experience of mental ill-health, psychological distress or suicide and their families. Training in recovery trauma-informed care could be referenced in section [2.17] (sales) and [5.25] (claims interviews) and throughout Section [6] (in relation to people experiencing vulnerability and financial hardship).

² Recommendation 8.3, Submission to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, National Mental Health Commission, October 2018.

In relation to training for claims assessors, we suggest that section [5.39] include a specific reference to mental health related considerations, as is already the approach for other roles (e.g. section [4.22] for underwriters, and section [5.25] for claims interviewers).

We further note that the current wording of sections [2.21]-[2.23] indicates that these sections apply to instances of 'inappropriate sale' (i.e. where a sale was made), and therefore by implication do not apply to instances of concerns about sales practices where a sale was not completed. We suggest changes to the draft Code to clarify that the range of actions (including education and training) outlined in the draft Code are available in response to all concerns raised about sales practices, regardless of whether a sale was completed or not.

Consideration of language that reduces stigma

The Code refers to customers in terms of their experience of vulnerability. This language can be perceived to convey a negative meaning. We would encourage the FSC to consider using more strength-based language to describe the customers who may benefit from the measures outlined in the Code. This would particularly assist in reducing internalised (or self) stigma that may be experienced by people who experience mental ill-health or have a past or current experience of suicidality.

Summary of recommendations

In summary, we recommend that:

1. the FSC reconsider the presentation and/or formal inclusion of Appendix B as the revised Code's approach to supporting customers who experience mental ill-health
2. all components of section 5.17 of the of the existing Code of Practice be retained in the revised Code
3. Extend the code to also include reference to those who experience past or current suicidality and/or suicidal behaviours including suicide attempt
4. specific reference be included to families, carers and other support people in the Code
5. section [4.18(b)] be amended to make specific reference to 'protective factors' as part of the circumstances that will be taken into account
6. training in recovery-oriented and trauma-informed approaches be referenced specifically in section [2.17] (sales) and [5.25] (claims interviews) and throughout Section [6] (in relation to people experiencing vulnerability and financial hardship)
7. section [5.39] include a specific reference to mental health considerations, as is already the approach for other roles (e.g. section [4.22] for underwriters, and section [5.25] for claims interviewers)
8. the wording of sections [2.21]-[2.23] be amended to clarify that the range of actions outlined in the draft Code are available in response to all concerns raised about sales practices, regardless of whether a sale was completed or not.
9. consideration be given to reframing references to vulnerability.

I would welcome the opportunity to discuss any of our feedback in further detail, if that would be of assistance.

Yours sincerely,



Dr Michelle Blanchard
Special Adviser
National Stigma and Discrimination Reduction Strategy
National Mental Health Commission