



Submission by the

**Consumer Action Law Centre
and
Financial Rights Legal Centre**

Financial Services Council

Draft Life Insurance Code of Practice – Second Public
Consultation

September 2016

About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

About the Financial Rights Legal Centre

The Financial Rights Legal Centre (Financial Rights) is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2014/2015 financial year.

Introduction and key recommendations

Thank you for the opportunity for Consumer Action Legal Centre (**Consumer Action**) and the Financial Rights Legal Centre (**Financial Rights**) to comment on the Financial Services Council's (**FSC's**) Draft Life Insurance Code of Practice (**Code**). Our organisations thank you too for the opportunity over previous months to provide input into the drafting of the Code.

We particularly welcome the FSC opening up this process to public consultation process and are confident that this will provide the FSC with a more comprehensive picture of how the Code will operate and the improvements required to transform it into a valuable document for consumers.

This Code follows the industry-commissioned Trowbridge report on retail life insurance advice¹ which recommended a life insurance code of practice be developed, 'modelled on the General Insurance Code of Practice, aimed at setting standards of best practice for life insurers, licensees and advisers for the delivery of effective life insurance outcomes for consumers'.²

We are pleased that the FSC has committed to instituting a Code of Practice and believe that this will be of great benefit to both consumers and the industry. We are particularly pleased with some of the steps taken during the development of the Code. Benefits to consumers arising out of the current draft of the Code include commitments moving beyond the law, relating to investigations, surveillance, product suitability, the review of medical definitions and financial hardship.

However, we hold significant ongoing concerns with numerous elements of the Code as it stands. Financial Rights and Consumer Action recommend the following changes to the Code. These changes would go towards ensuring that consumers see benefits from the introduction of the Code, and that the life insurance industry is making genuine steps towards addressing legitimate public concerns with its practices.

Timeframes

The Code must set hard timeframes for claims handling process and document requests from 1 July 2017. Claimants should have a clear time at which they can commence internal and external dispute resolution processes. All other timeframes should be set against the provision of documents by the consumer.

As it stands, the Code does not provide hard timeframes. In our view, the timeframes in the Code are circumvented by not requiring insurers to comply where there are 'exceptional circumstances'. By defining 'exceptional circumstances' to include a claim being made three months after the date of

¹ John Trowbridge, *Review of Retail Life Insurance Advice*, March 2015. Trowbridge's report followed the 2014 ASIC report which found that a high proportion of personal advice on life insurance was of a poor quality and that financial incentives for advisers were misaligned: ASIC, *Report 413: Review of retail life insurance advice*, 9 October 2014.

² Trowbridge report, p 60.

disablement, life insurers will be able to avoid compliance with the timeframes in the Code in a very significant number of claims.

Enforceability and registration

The Code should be expressly binding on and enforceable against insurers as a term of its contractual arrangements with people who have life insurance. It should also be registered with ASIC in accordance with Regulatory Guide 183.

We have been recommending registration of this Code since the beginning of the consultation process in January 2016. We believe that the FSC can and must commence the registration process with ASIC now.

Group insurance

As it currently stands, the Code will not cover superannuation fund trustees. People making claims under group policies held by superannuation fund trustees will therefore not benefit from key elements of the Code, such as claim timeframes and communication obligations. Given that most life insurance in Australia is held under group policies, the exclusion of fund trustees is a serious failing of the Code.

We strongly recommend that the Code applies to group insurance. While we understand that the Code is intended to create obligations on FSC members only, there should be specific commitments made by FSC members who provide group insurance policies. FSC members have contractual relationships with trustees of superannuation funds, and can use those contracts to require trustees to meet Code requirements.

We understand that the FSC is working with superannuation industry bodies on this issue. We encourage this to be done in a transparent way and to involve consumer groups. To be effective, this should result in changes to the LICOP so that it covers super trustees, rather than new self-regulatory documents.

Sales practices and problem products

The draft Code fails to fully address the serious concerns consumers have with sales practices, particularly commission-based and add-on models, as well as problem products such as funeral insurance and Consumer Credit Insurance (CCI). We believe that at a minimum the Code should include the following commitments:

- Funeral insurance:
 - is not sold to people under 50 years of age, at the absolute youngest,
 - premiums should be fixed for the life of the policy, and the Code should prohibit stepped premiums, and

- premiums should cease once the benefit amount is reached (or a very small % above that). Insurers have the benefit of holding the money paid in premiums, which should be sufficient for their profit.
- CCI:
 - where CCI includes life-insurance, there should be a delayed opt-in, that is, four clear days after the sale of the loan, a consumer can opt-in to the purchase of the CCI. This aligns with best practice, that is, equivalent requirements in the UK, and
 - CCI premiums should not be financed – if a direct debit option is available, this will always be cheaper than a financed single premium option.

Medical definitions

The FSC has publicly stated that the Code will include medical definitions.³ However, the public consultation draft does not include such definitions.

We expect the Code to require medical definitions to be reviewed and updated as necessary by an independent medical expert, not simply a relevant expert. We also believe that, in the best interests of consumers, community standards and fairness should be taken into account when updating medical definitions.

We also expect more transparency from insurers on the impact that updated definitions will have on premiums. Outdated definitions are currently one of the most significant public concerns with life insurance and should be dealt with accordingly.

Ongoing stakeholder engagement

We recommend that the FSC establish a forum including consumer and industry representatives, to share views on life insurance issues and the effectiveness of this Code. We expect the FSC to ensure that the range of stakeholder views are taken into account in the next review of the Code.

³ Sally Loane, 'Banks royal commission means death for life insurance reforms', *Australian Financial Review*, 29 August 2016, <http://www.fsc.org.au/media-centre/interviews,-appearances-opeds/banks-royal-commission-means-death-for-life-insurance-reforms.aspx>.

Detailed comments

1. Introduction and objectives

The current objectives of the Code at 1.4 are too limited. Our view remains that the “Key promises under the Code” that were previously included should be reinstated and be included at clause 1.4. These should not be left for separate consumer information. The following additional ‘key promises’ should also be included:

- *We will act honestly, fairly, and respectfully, towards you in a consistent and ethical manner.*
- *We will provide general information about the rights and obligations that arise out of the insurer and consumer relationship in relation to insurance services.*
- *We will provide information to you in plain language*
- *We will communicate with you in a timely, responsible and transparent manner whether by written or electronic communications (including by telephone)*
- *We will not engage in pressure selling.*
- *When you buy a product from us, we will explain the product’s key features and pricing.*
- *We will review and update our medical definitions to ensure they stay current with medical advances.*
- *If you buy a product from us directly or through a financial adviser or financial planner, we will explain your options if you are having trouble meeting your premium payments or if you have urgent financial need when you make a claim.*
- *We will provide you with additional support if you have difficulty with the process of buying insurance or making a claim.*
- *When you make a claim, we will explain to you your cover and the claim process, including why we need certain information and any waiting period which may apply before payments are made.*
- *If we deny your claim, we will tell you why and let you know next steps if you disagree with our decision.*
- *You can make a complaint to us about any aspect of your experience with us or with our representatives, and we will tell you our process for handling your complaint.*
- *We will require the FSC to establish, and we will support, a forum (including consumer, and industry representatives) for the exchange of views on insurance issues and the effectiveness of this Code. We will require the FSC to ensure that these views are taken into account in the next review of this Code.*
- *We will make copies of this Code available to you.*

2. Scope of the Code

Binding superannuation trustees

We note that clause 2.1 expressly excludes superannuation fund trustees from the Code. This means that the majority of people who have life insurance (under group policies) will not benefit from key elements of the Code, including claims timeframes and communication obligations.

We strongly recommend that the Code applies to group insurance. While we understand that the Code is intended to create obligations on FSC members only, there should be specific commitments made by those members who provide group insurance policies. FSC members have contractual relationships with trustees of superannuation funds, and can use those contracts to require trustees to meet Code requirements.

Enforceability

We recommend the removal of Clause 2.15 stating:

The Code is not intended to create legal or other rights between us and any person or entity other than the FSC.

In our view, the Code should form a part of the insurance policy and be included in the PDS of all insurance products. If the FSC cannot reach this point with this Code, we question the efficacy of the Code.

Higher service standards

Clause 2.19 states:

We may have agreed service standards with a Group Policy-owner in relation to a Group Policy, and different standards apply to different Group Policies. If we have agreed to service standards that are higher than the Code standards, the higher service standards apply

Ideally, these service contracts should be based on the minimum standards required by the Code. We also expect insurers not to contract with superannuation funds on lesser terms than the standards in the Code.

Court proceedings

Clause 2.20 states:

*The **Code** does not apply once **you** commence proceedings in any court, tribunal or external alternative dispute resolution process (with the exception of the Financial Ombudsman Service and the Superannuation Complaints Tribunal)*

We strongly recommend that the FSC remove this restriction on a claimant's dispute resolution options.

3. Product design and disclosure

Clause 3.1(e) states that insurers will:

regularly review our on-sale policies to ensure they are sustainable and affordable and remain generally suitable for the relevant customers. We will re-design our on-sale policies where necessary.

We expect the Code to ensure that insurers will inform existing policyholders of any changes made to their policies once they are re-designed. We understand that consumer communications can be expensive for insurers, therefore insurers should devise a way to make this scalable depending on the significance of the change. Communication between insurer and consumer is a key issue that is currently lacking in the life insurance industry and needs meaningful consideration.

Medical definitions

Clause 3.2 states:

*Our medical definitions for any type of benefit that is payable on a defined medical event will be reviewed at least every three years and updated where necessary to ensure the definitions stay current with medical advances **[including diagnostic criteria and treatment protocols, as well as the best interests of consumers, community standards and fairness]** This will be done in consultation with relevant **[Independent]** specialists*

We believe the FSC should include the additions in bold. This would go a long way to addressing one of the most significant public concerns with life insurance.

Clause 3.3 states:

When medical definitions in your Life Insurance Policy are updated by us as a result of section 3.2, we will let you know.⁵ Updates will be automatically incorporated into your Life Insurance Policy unless we believe there will be an increase in cost due to an increase in the likelihood that you could make a claim under that medical definition. Changes that reduce the likelihood that you could make a claim on your Life Insurance Policy will not be incorporated into your policy without your consent.

Premium costs and coverage is a very contentious consumer issue. Where a change in definitions will potentially lead to more and/or higher value claims, then premiums are bound to change either at an individual policy level or for all policies. The wording in the Code should be very clear.

As stated in our introduction, we also expect more transparency from insurers on the impact that updated definitions will have on premiums.

Plain language information and cost projection

Prior drafts of the Code had included the following clause, committing insurers to provide to consumers with:

*[A] projection of the cost of the **Life Insurance Product** in one year, five years, ten years, twenty years, thirty years, forty years and fifty years (unless **your Life Insurance Product** is for a term of less than five or ten years);*

We recommend that this clause be reinstated, particularly given the nature of life insurance as a product.

We have previously suggested that ‘any commission paid as part of your premium’ be disclosed to a consumer under clause 3.5. We reiterate that insurers can and should include this in a way that consumers will not be given the impression that they will have to pay this amount over and above their premium.

Financial Rights and Consumer Action see significant consumer detriment caused by conflicted remuneration, including commissions paid on the sale of life insurance. While disclosure of premiums will not address these problems in their entirety, the Code should at minimum require this disclosure.

Funeral Insurance

Clause 3.7 regarding funeral insurance is of significant concern to us. Financial Rights and Consumer Action see ongoing consumer detriment caused by problematic funeral insurance being sold to an unsuitable customer base.

We recommend that FSC members commit to ensuring that funeral insurance:

- is not sold to people under 50 years of age, at the absolute youngest,
- premiums should be fixed for the life of the policy, and the Code should prohibit stepped premiums, and
- premiums should cease once the benefit amount is reached (or a very small % above that). Insurers have the benefit of holding the money paid in premiums, which should be sufficient for their profit.

Availability of Product Disclosure Statements

Clause 3.8 states:

Any PDS that we have prepared for a Life Insurance Product will be made available online for you to view prior to making an application. If you ask us for a PDS that has not been prepared

*by us (for example, if it was prepared by a superannuation fund trustee or other Group Policy-owner), we will refer you to the Group Policy-owner for a copy and we will **encourage** the Group Policy-owners that we work with to make these available online.*

The word encourage (above in bold) should be replaced with 'ensure'. This would address a key concern for people who have life insurance through group policies.

We understand that this will require the agreement of each of the group policy-owners. A coordinated response is warranted on this issue. An absence of disclosure obligations leads to unnecessary disputes in FOS and the SCT where claimants are seeking this basic information. The FSC should be doing all it can to require superannuation funds and employers to provide these documents as a matter of course.

In our view, the duty of utmost good faith entitles a beneficiary to the policy document. This wording in the Code still means that most people with insurance will not have guaranteed access to their policy documents, and won't know what definition they are supposed to meet, or what the extent of their cover is. Insurers should make a stand with consumers on this issue.

4. Sales practices and advertising

Clause 4.1(e) states:

When we advertise and market our Life Insurance Policies, we will:

...

e) give a realistic impression of the price or premium where these are referred to;

We believe this can still go further. An example of marketing that we question includes a current product that 'guarantees' that the consumer will receive a benefit when they reach 85 years of age.⁴ However, a consumer is unlikely to be aware that premiums will increase every year and be unaffordable by the time they are 85 years old. This is setting up the consumer to fail and is the sort of marketing that is a blight on the insurance industry. In this example, the policy should not promote itself to pay out when the policy holder is 85 years old without also stating that a policy holder will need to make commensurate premiums which could be very high, and that if the policy holder is likely to be solely reliant on an aged pension, they not be able to afford it.

Clause 4.3(a) states that, to prevent unacceptable sales practices, FSC members will have a 'sales philosophy' that includes:

a) having clear rules on when our staff must stop selling if you indicate you do not want a Life Insurance Policy being offered or if it becomes clear that you will be unlikely to claim the benefit under the policy;

⁴ Flexisure, *Life Cover Product Disclosure Statement*, 2 May 2016: <http://flexisure.com.au/pdf/pds.pdf>.

In our view, this should state:

- a) **a requirement that** our staff must stop selling if you indicate you do not want a Life Insurance Policy being offered or if it becomes clear that you will be unlikely to claim the benefit under the policy;

The addition in bold would operate to more effectively prevent pressure selling and other problematic sales practices.

Section 4 of the Code should also include a commitment to not make unsolicited marketing calls, thereby improving the protections offered under anti-hawking rules which provides some exemptions for life insurance.⁵

Consumer Credit Insurance (CCI)

Clause 4.7 regarding CCI is of significant concern to us.

Changes which would address the most significant consumer detriment caused by CCI include:

- where CCI includes life insurance, there should be a delayed opt-in, that is, four clear days after the sale of the loan, a consumer can opt-in to the purchase of the CCI. This aligns with best practice, that is, equivalent requirements in the UK, and
- CCI premiums should not be financed – if a direct debit option is available, this will always be cheaper than a financed single premium option.

5. When you buy insurance

Clause 5.3 states:

At the start of the application process, before asking you any questions, we will explain the duty of disclosure to you.

The duty of disclosure remains contentious. The issue for consumers is that duty of disclosure is currently explained by blurry boxes on application forms that comply with the legislation but are really just meaningless words to consumers. Meaningful engagement by life insurers as to effective communication of the duty of disclosure to improve customer outcomes is vital, including researching effective delivery, training of intermediaries, form design and retention of insureds.

We also believe that there is scope for life insurers to improve the disclosure process. In previous years, prospective policyholders would be subject to a medical test. The life insurer would also examine a prospective policyholder's medical history in detail. These practices are now rare, if they

⁵ *Corporations Act 2001* (Cth) s 992A(3)(a)-(e).

happen at all. Given the mechanics of disclosure, this has been a step backwards for consumers. We believe that the consumer should be encouraged to obtain medical records so they are comprehensively covered or at least know they won't be covered. The Code could be used to facilitate this process.

Mental health

The life insurance industry is acutely aware that mental health exclusions in insurance policies are a significant public concern. However, clause 5.17 states:

*Our decisions on applications for insurance will comply with the requirements of anti-discrimination law. **Our decisions will be evidence-based, involving relevant sources of information where this is available, and having regard to any other relevant factors where no data is available and cannot reasonably be obtained.** We will regularly review our underwriting decision-making processes to ensure we are not relying on out-of-date or irrelevant sources of information. (Emphasis added)*

Under s 46(1) of the *Disability Discrimination Act 1992* (Cth), life insurers can only discriminate based on actuarial or statistical data on which it is reasonable to rely, and is reasonable having regard to the matter of the data and other relevant factors. However, if data cannot reasonably be obtained, it is enough for them to have regard to 'other relevant factors'. The legislation does not allow insurers to make decisions based on 'relevant sources of information' as a starting point.

We recommend that clause 5.17 be amended to remove the sentence in bold above.

In our view, the Code should also include a broader commitment to comply with the law, including in relation to policies which are not underwritten and claims.

6. Policy changes, cancellation rights and replacement policies

We note the exclusion of group policies from Section 6 of the Code.

In our view improvements can be made to the cancellation process currently in the Code. We have previously suggested that the FSC reinstate a clause that has appeared in previous drafts along the following lines:

*If payments due on **your Life Insurance Product** have not been received by us, we will send you a notice **in writing** regarding your non-payment at least X **business/calendar days** before any cancellation by us for non-payment. The cancellation notice will:*

- a) explain when the non-payment was due, how much is due and when it must be paid to avoid cancellation;*
- b) explain the consequence of not receiving the payment by that date; and*

c) *will not include reminders of payment dates for future payments.*

If after sending the above notice we do not receive the unpaid premium within the time given and we intend to cancel your Life Insurance Product, we will send you a second notice in writing prior to cancellation, confirming that your Life Insurance Product is being cancelled for non-payment.

While this may be dealt with in legislation its application is a matter of contention and there is an inconsistency of approach. We note too that the fact that something may be dealt with in legislation has not precluded inclusion of similar clauses elsewhere in the Code. There is an opportunity here for life insurers to promote consistency, build on legislative minimums to improve consumer outcomes, and make consumers' rights clear.

7. Consumers requiring additional support

Indigenous people

We recommend inclusion of the following clause:

With respect to indigenous people we will

- (a) take reasonable steps to ensure that our dealings with you are conducted in a culturally appropriate manner taking into account the specific needs of the indigenous community.*
- (b) ensure that any insurance products promoted and sold to you are suitable to your specific needs*

Further consultation with Indigenous groups is required to understand how to identify, what the specific needs are and how to address them. We expect a commitment from the FSC to consider Indigenous inclusion within the Code.

8. When you make a claim

General authorities

Clause 8.6 states:

Where we require information from other sources, such as your doctor or accountant, we may ask you for a general authority to obtain information about you from them. We will only use a general authority to obtain information that we reasonably believe is relevant to your claim. You can instead authorise us to request particular information from particular sources.

However, this may cause delays in the assessment of your claim and we may require further authorities before we can progress the assessment of your claim.

General authorities remain a serious concern. They cause a lot of confusion with consumers and are a real pain point. Getting this right is paramount and explicit guidance is needed in the Code. Insurers are aware of what authorities they need and why. Specific authorities should be the default, and claimants should only be required to sign opt-in or general authorities where they are fully informed of the implications. The fact that insurers use a general authority to avoid returning to a claimant multiple times with additional authorities is not a strong enough reason to avoid transparency. Consumers need to know what enquiries they are consenting to.

Claims assessment

We recommend a requirement that insurers assess claims on the basis of all relevant facts, the terms of the insurance policy, and the law, as is the case under clause 7.11 of the General Insurance Code of Practice.

Investigations

Interviews can be an extremely stressful experience in the claims process. The Code should acknowledge and address this.

Clause 8.11 should give claimants the right to request an interview by an interviewer of the same sex and to have someone attend the interview with them, including an interpreter, at the cost of the insurer.

Timeframes

The establishment of hard timeframes which give claimants in all types of claims a clear point at which they can commence internal and external dispute resolution is one of the most significant practical changes this Code could make for consumers.

In our view, Draft 17 of the Code does not achieve this.

As the Code stands, clauses 8.13, 8.14, 8.15 and 16 could operate to circumvent the timeframes within the Code in a significant number of claims.

In particular, under clause 8.13 insurers are not bound by the timeframes in the Code where there are 'exceptional circumstances'. In our view, because clause 15 of the Code defines 'exceptional circumstances' to include a claim being made three months after the date of disablement, life insurers will be able to avoid compliance with the timeframes in a very significant number of claims.

As a priority, the FSC needs to implement hard timeframes in this Code.

Surveillance

There are legitimate public concerns about surveillance being carried out on claimants. We recommend that, at minimum, people who are under surveillance be better protected by the Code, by including a clause along the following lines:

Surveillance investigators will avoid any act or behaviour which might unreasonably interfere with a person's legitimate expectation of, or right to, privacy including but not limited to the recording of family or friends, the recording of someone within their residential premises, within change rooms, showers, toilets bedrooms, lactation rooms, swimming pools, gyms, educational facilities or at religious or ceremonial occasions.

Financial hardship

Financial hardship arrangements should be in place in relation to premiums and claims. We recommend that the following be added to the end of clause 8.24:

We will ask you to provide documentation to support your request. If you disagree with our decision, we will review this. [We will only request information from you that is reasonably necessary to assess your request. In assessing your request, reasonable evidence of your urgent need might include:

- a. for Centrelink clients, your Centrelink statements,***
- b. current financial documents including bank statements.]***

We also recommend that the Code include clearer requirements for when insurers notify of their decision on a financial hardship application, to the effect of:

We will notify you about our decision within 5 business days of receipt of the documentation we have reasonably requested from you.

If we accept your request for urgent financial need of the benefits you are covered for under your Life Insurance Product we will confirm the arrangement in writing.

If we do not accept your request we will provide you with reasons for our decision and provide details of our complaints process.

15. Definitions

As noted in our comments on timeframes above, the definition of 'exceptional circumstances' will have a significant effect on whether insurers will be required to comply with timeframes in the Code.

In our view, the making of a life insurance claim more than three months after the date of disablement should not constitute an exceptional circumstance. We do not know what evidence the FSC has based

this definition on, but based on our experience, it means that a significant number of claims will not be bound by the timeframes set out in the Code.