9 November 2023

Chris Cupitt
Chief Executive Officer
Council of Australian Life Insurers
by email: christine.cupitt@cali.org.au
cc. Benjamin Marshan, Director of Policy and Industry Affairs, ben.marshan@cali.org.au

Dear Chris

Life Insurance Code of Practice – v.2.1.1 Proposed Amendments Consultation

Thank you for the opportunity to comment on the Proposed Amendments to the Life Insurance Code of Practice version 2.1.1. The Financial Rights Legal Centre (**Financial Rights**) will address amendments to the Code - introduced in the 29 September version 2.1 of the Code - where we have outstanding concerns.

Clause 3.15 – Errors or omissions

> *3.15 If we find that we have made an error, omission or inconsistency that disadvantaged you, we will tell you within 10 Business Days. We may need extra information to address it. These timeframes will not apply if the error is identified as part of an investigation into* ***a potential or actual broader*** *remediation program affecting multiple customers* ~~***or has been reported to a regulator***~~.

We appreciate CALI proposing to remove the words "or has been reported to a regulator", to ensure there is no unintended delay in informing the customer when an issue or breach has been identified.

However we remain concerned that the words "an investigation into a potential or actual broader remediation program…" remain. Our concern is focussed on the broadening of the types of errors that may not be told to an insured on the basis that there may potentially be a broader remediation or ultimately not. These customers should not be kept in the dark purely on the basis that there *may* or *may not* be a remediation coming. This places too much power in the hands of an insurer to consider a remediation and thus delay reporting the problem to customers.

We recommend removal of the words "an investigation into a potential or actual."

Clause 5.4 – Primary Contact

> *5.4 If you make an income-related claim, we will ensure you have a **primary contact** throughout the claims process and, if we consider it appropriate, we will also:*
>
> *a) identify and act upon ways to support your recovery during the claim*
>
> *b) identify and act upon ways to encourage best practice rehabilitation and return to work programs*
>
> *c) work with your doctor, other healthcare providers and your employer to support your recovery, rehabilitation and return to work.*

We remain concerned with the use of the phrase "primary contact" as this strips out the human element of the previous commitment which could now be technically fulfilled by - or interpreted as - an email address or phone line. The original Code referred to "primary contact person" (clause 8.26) and Code 2.0 referred to "assigned claims assessor" (clause 5.4). The importance of having an assigned human to which to speak and handle your claim is the key to resolving frustrations people experience in having to repeat stories and experience further delays. It is also important that this contact person not simply be a liaison or concierge-like person but a person who can make decisions and action things when required.

We recommend that "an assigned claims assessor" be retained with the addition of "keep you updated if this person changes" to deal with inevitable leave, and staff changes.

Clause 5.63 b) – All reasonable enquiries

> *5.63(b) For any ongoing income-related benefits, we will pay you any benefits we owe you by the later of:*
>
> *a) the due date, or*
>
> *b) within 5 Business Days of when we have all the information we reasonably need to make a decision to pay you.*

We note that CALI asserts that the addition reflects a general understanding that 'all the information we reasonably need' would include having 'completed all reasonable enquiries'. This was not our original understanding when contributing to the LICOP version 2 review, nor do we support the addition.

Our concern here is that what enquiries are required and whether these are in fact reasonable are all within the power of the insurer subscriber to determine leading to a significant imbalance in the rights and obligations of the insurer and insured. Delays are the key reason for complaints in the life insurance space and this rewording simply provides further ability to life insurers to cause delays.

Clause 2.30 - Funeral insurance key facts sheet

> *2.30 If you purchase a Funeral Insurance Policy from us, we will explain that you may choose level or stepped Premiums, if stepped Premiums are offered. Along with **information on** the key facts ~~sheet~~ which we will provide to you, we will explain: …*

Our concern with this change is that the information can now be solely provided in oral form with no written record. This information should be provided in writing – be it in soft or hard copy form. Having this in writing is important for customer record keeping and being able to refer to it when needed, down the track. It also provides a receipt/record that the commitment has been met. A video may be of use to improve comprehension and understanding, but the nature of videos tend to be that they disappear off the internet and websites when they grow out of date. We remain of the view that written material is the key here.

5.59 Circumstances Beyond Our Control

> *5.59 Where we cannot comply with a timeframe in the Life Code due to Circumstances Beyond Our Control, we will not have breached the Life Code. If we believe the Circumstances Beyond Our Control are likely to continue, meaning we will not be able to make our decision within 2 months of the Claim Received Date* ***or the end of the waiting period****, whichever is later for income-related benefits or within 6 months of the Claim Received Date* ***or the end of the waiting period, whichever is later*** *for lump sum benefits we, or the Group Policy Owner, will:*

We do not support these amendments.

The practical impact of these changes would be that some customers who have put in a claim will not hear from their insurer until the end of their waiting period (be it 6 months, 12 months) providing them with information about the circumstances beyond the insurers control that are impacting their claim nor be told about the complaints process. This previously would have occurred at 2 months.

While a decision may or may not be made until the end of the waiting period, the customer would have at least been informed of what the circumstances were that are leading to non-compliance with the timeframe for a decision. Lack of information, delays and poor communications are core sources of frustration for life insurance customers and these amendments will exacerbate this problem.

7.2 Complaints process explanation

> *7.2 If you make a Complaint to us and we are unable to resolve it* ***within 5 Business Days of receipt****, we will explain our Complaints process to you and we will tell you how you can access the Life Code, in line with clause 1.3. We will acknowledge your Complaint within 24 hours (or one Business Day) of receiving it, or as soon as practicable.*

This change now provides Life Insurers up to 5 days to resolve a complaint before sending information on the complaints process. This was previously "when you first contact us." This amendment empowers life insurers to now delay resolving a complaint - for up to 5 days - whereas it previously incentivised resolving a complaint as early as possible. This is a backward step for a code clause that provided additional benefits beyond the law – a key intention of codes.

We understand that this amendment has been proposed because there is an issue for some insurers with the automated issuing of correspondence about the complaints process after a complaint has been resolved, causing confusion for the customer in some instances. This is an issue for the insurer to resolve - not the code. Nor should some insurers' unwillingness to update

a system be the problem that all life insurance customers should suffer from and lose out on an important protection. The commitment under 7.2 has been known for some time now and it is incumbent on all subscribers to amend their systems to align with compliance with the code. he amendment should be rescinded.

8.21 f) Publication of breaches on CALI website

> *8.21 A sanction for a Significant Breach may mean giving a formal warning or may require us to do one or more of the following, depending on the severity of the breach:…*
>
> *f) publish our non-compliance on our website*

We remain of the view that this is a clear backward step in sanction powers for the LCCC. Having the ability to require publication breach on the peak body's website is important to send the message to the entire membership that the peak body, as owner of the Code, it has *the* key role in promoting good practice and highlighting poor behaviour of its members. To outsource this role to the LCCC is to step away from a core tenant of Code ownership – that the code owners promote the Code, its commitments and key promises to its membership, consumers and other stakeholders.

Other issues:

5.7 Current versus previous claims

> *5.7 If you ask us for information about your current claim at any point, we will respond within 10 Business Days.*

We note the word "current" has been introduced under LICOP v.2.1.

Previously this applied to both current and past claims, be it intentionally or unintentionally. It is now incumbent upon CALI to include a timeframe for previous claims, otherwise these will now be subject to no time frame at all.

6.13 - Interpreters

> *6.13 If you tell us that you need extra support from someone else, or if we identify that you need extra support – such as a lawyer, consumer Representative, interpreter, family member, carer or friend – we will recognise this and allow it in all reasonable ways.* ***If you tell us that you need an interpreter, or if we identify that one is required, w****e will* ***offer to*** *arrange* ***and pay*** *for an interpreter. We will make sure our processes are flexible enough to recognise the authority of your support person where possible.*

The new wording means that life insurers will now only offer to arrange and pay for an interpreter if you ask or if the life insurer identifies. The previous wording simply committed life insurers to arrange and pay for the interpreter. The previous wording was:

> *We will arrange for and pay for an interpreter if you tell us that you need one or if we identify that one is required.*

This previous wording should be retained to remove the insureds choice to have an interpreter if the life insurer identifies it is needed. Providing this choice is a problem since some people may

over-estimate their language abilities with respect to complex financial instruments like life insurance and in so doing do themselves an inadvertent disservice. It is also important to not rely on family or friends undertaking interpreting services, since there may be conflicts of interest, their language skills may be untested or not up to scratch, or there may be financial abuse, coercive control or other domestic violence issues at play. It is critical that in all circumstances where language difficulties arise that an independent interpreter be engaged and paid for by the insurer.

4.18, 5.45, 8.17 – FSC Guidance and Standards

We note that Clauses 4.18 and 5.45 references CALI standards and guidance have been introduced to references to replace FSC standards and guidance. However reference to FSC standard 1 under clause 8.17 has not been replaced.

FSC Standard 1 is the Code of Ethics, and we note that CALI have decided to not replace this document. The reason put forward is that following a mapping exercise it was decided that the commitments made under FSC Standard 1 are simply reflective of existing legal obligations. This is flawed logic.

Firstly, the mapping exercise references concepts like the Duty of Utmost Good Faith and Section 912A of the *Corporations Act*. Both of these example obligations are broad in nature and open to judicial interpretation. No effort has been made to demonstrate how each Code of Ethic standard is captured by the concept with cross references to *specific* judicial precedents laying out this connection. We would suggest that if such an exercise were to be undertaken, then the mapping exercise would not stand up. Unless this exercise was to take place, relying on the assertion that a code of ethic clause is captured by these concepts is unsound.

Secondly, committing to a Code of Ethics is similar to a Code of Practice in that the Code provides the meat on the bones of legal obligations, extending industry commitments beyond that spelled out in the law. In other words, the Code of Ethics provides the further details and commitments from the industry on how they *will* work to meet their Duty of Utmost Good Faith and section 912A obligations.

Thirdly, committing to a Code of Ethics document is a public statement to the community, to customers and other stakeholders that the industry is professional, that the industry will meet certain ethical standards and the industry will "do the right thing". The existence of the document in and of itself, *is* the message. Stepping away from a Code of Ethics, thus sends the opposite message. It says the industry will merely meet its black letter obligations under the law – no more, no less. This is a mistake,

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact me at drew.macrae@financialrights.org.au .

Kind Regards,

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Financial Rights Legal Centre

About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers 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 National Debt Helpline, 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, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.