

October 2021

Mr Nick Kirwan  
Policy Director Life Insurance  
Financial Services Council  
By email: [policy@fsc.org.au](mailto:policy@fsc.org.au)

Dear Mr Kirwan

### **Consultation Draft: Life Insurance Code of Practice**

Legal Aid NSW welcomes the opportunity to provide comment on the Financial Services Council's (**FSC**) final consultation draft of the Life Insurance Code of Practice (**the Code**).

In January 2019, we provided feedback to the FSC on the second iteration of the draft Code.<sup>1</sup> Our previous submission focused on our casework arising through our Civil Law Service for Aboriginal Communities and the prevalence of funeral insurance matters for Aboriginal and Torres Strait Islander consumers. Our experience is also informed by our specialist consumer law team which assists the most vulnerable consumers in our community, including those with cognitive impairment, language or literacy issues, low levels of education, young people and consumers experiencing domestic and family violence or elder abuse.

We support the recognition of vulnerability in the Code at clause 6.1. This is consistent with the experience of our solicitors, which indicates everyone is likely to experience vulnerable circumstances at some point in their lives, due to common, unavoidable and unpredictable life events such as illness, job loss, financial shocks, the death of a loved one and natural disaster.<sup>2</sup> These issues can further compound any barriers faced in dealing with consumer law problems.

We concur with the submission made by the Financial Rights Legal Centre (**FRLC**) that the final draft Code does not go far enough in protecting vulnerable consumers

---

<sup>1</sup> Legal Aid NSW, Submission to the Financial Services Council Life Insurance Draft Code of Practice 2.0 (January 2019) 2.

<sup>2</sup> O'Neill, Emma, 'Exploring regulatory approaches to consumer vulnerability: A report for the Australian Energy Regulator', *Consumer Policy Research Centre* (1 November 2019).

from inappropriate, unsuitable, and misunderstood products.<sup>3</sup> While we acknowledge many of the new additions to the Code are a significant improvement, we remain concerned that gaps continue to exist.<sup>4</sup> Our responses to the final consultation draft of the Code are set out below.

### **Funeral Insurance products**

The Review of Consultation Feedback report states that the Design and Distribution Obligations along with the anti-hawking reform will provide “above and beyond” protections for consumers.<sup>5</sup>

The introduction of clauses 2.27 (g) and (h) to the Code requires insurers to explain to consumers how stepped premiums operate, but the clauses fail to ensure vulnerable consumers will not pay a significant amount over the agreed benefit. Stepped premiums always have the potential to become unaffordable, and result in consumers becoming ‘trapped’ in an unsuitable product they cannot cancel without significant loss of investment. Any funeral insurance product sold to a consumer under the age of 50 (without a life-limiting condition) is likely to incur premiums that cost more than the benefits insurers will eventually pay.

Legal Aid NSW maintains our previous submission, and supports the submissions of the FLRC, that there remains a need for the Code to set minimum standards for the design and distribution of funeral insurance.<sup>6</sup> Our casework experience informs us that Aboriginal and Torres Strait Islander clients have culturally significant obligations for funeral arrangements. This places them at high risk of purchasing inappropriate and ultimately unaffordable funeral insurance products. The safeguards necessary to protect these consumers must be robust.

We strongly recommend that the Code apply a cap on premiums, prohibit stepped premiums, and implement a presumption against the outbound sale of funeral insurance to consumers under the age of 50. Where a consumer is under the age of 50, a suitability framework should apply (for example, whether the consumer has a life-limiting condition or lack of alternative future superannuation).

In our previous submission, we suggested the Code could alternatively model a ‘fit for purpose’ clause based on section 12ED of the *Australian Securities and Investment Commission Act 2001* (Cth).<sup>7</sup> Either a ‘fit for purpose’ clause or suitability framework

---

<sup>3</sup> Financial Rights Legal Centre, Submission to the Financial Services Council Life Insurance Draft Code of Practice 2.0 (September 2021).

<sup>4</sup> Financial Rights Legal Centre, Submission to the Financial Services Council Life Insurance Draft Code of Practice 2.0 (September 2021).

<sup>5</sup> Financial Services Council, Life Insurance Code of Practice 2.0 - Review of Consultation Feedback Report (November 2020).

<sup>6</sup> Legal Aid NSW, Submission to the Financial Services Council Life Insurance Draft Code of Practice 2.0 (January 2019) 2 - 10.

<sup>7</sup> *Ibid*, 7.

should be adopted by the Code to ensure funeral insurers undertake a rigorous assessment of the suitability of a funeral insurance product for a consumer against objective criteria. For example, verifying the consumer's financial circumstances, reasons for obtaining a policy, existence of other life insurance or funeral products, and whether the consumer or any of the individuals insured are under the age of 50.

### **Rebekah's story<sup>8</sup>**

Rebekah is a 68-year-old Aboriginal woman, and mother to six children. She is a carer for a number of her grandchildren, and lives with a chronic health condition. She was previously a victim of domestic violence. Having left school at a young age when her mother died young, Rebekah has a low level of literacy.

When Rebekah's own children were young, she was visited at her home in regional NSW on three occasions by a company she believed was an Aboriginal community organisation. Rebekah understood that she was joining a community fund that assisted Aboriginal families pay for funerals. The company representative encouraged Rebekah to sign up her young children (aged between one to six years) for life insurance. Rebekah was not told that she was purchasing life insurance, or that the company was a private company. She was not told that the premiums would increase over time, or that the premiums may exceed the maximum benefit.

Rebekah entered into a life insurance policy for herself and her children. Rebekah paid the policies for 22 years until she found out the company was not Aboriginal. Legal Aid NSW assisted Rebekah to lodge an external dispute resolution complaint and Rebekah received a refund of the premiums she had paid.

### **Claim decisions**

Legal Aid NSW notes clause 5.50 of the Code introduces the allowance for subscribers to extend response times beyond 12 months if "circumstances beyond our control" apply, with no limitation period imposed.

We consider that for timeframes to be effective, a decision about a claim should adhere to a hard timeline. We support the submission by the FLRC that the upper timeframe limit of 12 months should be restored.<sup>9</sup> By comparison, the General Insurance Code of Practice requires a decision to be made within four months of receiving a claim, unless a prescribed range of circumstances exists.<sup>10</sup> The maximum extended period if a prescribed circumstance applies is 12 months.<sup>11</sup>

---

<sup>8</sup> All case studies in this submission have been de-identified.

<sup>9</sup> Financial Services Council, *Life Insurance Code of Practice 2.0 Review of Consultation Feedback Report* (November 2020) 9.

<sup>10</sup> General Insurance Code of Practice (2021) 28.

<sup>11</sup> General Insurance Code of Practice (2021) 28.

Legal Aid NSW further supports the submission by the FLRC that if a closed or declined claim is reopened, the subscriber is not entitled to restart the clock with respect to timeframes of decision making.<sup>12</sup> We agree it runs contrary to the fairness principle that the subscriber has already had the opportunity to review the claim. We further support the FLRC submission in a return to the terminology “final decision” rather than “final written response” which would allow insurers to avoid the guidance set by the Life Code Compliance Committee.<sup>13</sup>

### **Vulnerable consumers and financial hardship**

Legal Aid NSW welcomes improvements made to the identification of vulnerabilities in the Code. However, we consider that more can be done to strengthen provisions dealing with consumers experiencing financial hardship. We previously recommended that consumers in financial hardship be provided with flexible arrangements to allow them to retain their cover.<sup>14</sup> We support the FRLC submission that identifies proposals to help consumers experiencing financial hardship maintain cover by ensuring providers undertake proactive customer communication in a clear and transparent manner, use multiple forms of communication, review and refine flexible support options, and have robust processes in place to support consumers experiencing vulnerability.<sup>15</sup>

#### **Robert’s story**

Robert is an 82-year-old single man who is dependent on the aged pension and lives in social housing. Robert has low level literacy and is in financial hardship.

Robert was concerned about the cost of his funeral when he passes, and the burden he would leave his children. He attended his local big bank, whom he trusted based on a lifelong banking relationship. Robert was directed to a ‘life insurance advisor’, who advised that Robert should take out a number of insurance policies including total and permanent disability insurance. Robert opted for life cover. Robert was told the premiums would be a certain amount per week. Robert was not told that the premiums would go up over time, or that he could end up paying more than he would be paid out, or that the life insurance policy would expire when Robert reached a certain age.

Robert must now make further sacrifices on essential living items in order to continue to pay the premiums and is in financial hardship. Legal Aid NSW wrote to the bank seeking a refund on premiums paid, and to terminate the policy. The bank has rejected

---

<sup>12</sup> Financial Services Council, *Life Insurance Code of Practice 2.0 Review of Consultation Feedback Report* (November 2020) 10.

<sup>13</sup> Financial Services Council, *Guidance Note No. 2 Interpreting and applying Life Insurance Code of Practice* (November 2019) 9.10.

<sup>14</sup> Legal Aid NSW, Submission to the Financial Services Council Life Insurance Code of Practice 2.0 (January 2019) 9.

<sup>15</sup> Financial Services Council, *Life Insurance Code of Practice 2.0 Review of Consultation Feedback Report* (November 2020) 12 – 14.

the internal dispute resolution claim and the matter is ongoing. Robert continues to make payments.

**Plain language**

We note the revisions to the draft Code to remove overlap and reduce the overall length and complexity of the document. However, we caution that the objective to create a plain language document should not come at the cost of clearly articulating roles and responsibilities for subscribers. We strongly support the protection of consumer interests by rigorous standards, as outlined above.

Thank you for considering our submission. If you have any questions or require further information, please contact [REDACTED], [REDACTED], [REDACTED] [REDACTED], on [REDACTED] or at [REDACTED].

Yours sincerely

Brendan Thomas  
**Chief Executive Officer**