

# Life Insurance Code of Practice

Legal Aid NSW Submission to  
the Financial Services Council

*February 2016*

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## About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the Legal Aid Commission Act 1979 (NSW) to provide legal assistance, to people who are economically or socially disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 35 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

Legal Aid NSW provides Civil Law services to some of the most disadvantaged and vulnerable members of our society. Currently we have over 150 civil lawyers who provide advice across all areas of civil law and specialists divisions that assist with insurance issues that affect particularly disadvantaged clients.

We welcome the introduction of a Life Insurance Code of Practice and thank you for the opportunity to provide our comments. It will be particularly helpful

to have a document which sets out the obligations of life insurers, since the absence of such a document has led to perceptions that these insurers remain largely unregulated.

Our experience in relation to life insurance is limited to assisting clients with the claims process. The claimants that we assist in this area either come from non-English speaking backgrounds, have severe physical or psychiatric disabilities or are from rural or remote communities. Many are homeless and all are in extreme financial hardship.

Should you require further information or would like to discuss any of our recommendations, the contact officers are:

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## The FSC Code – General comment

The FSC Code contains the minimum standards required of FSC members and will help educate consumers about what they can expect from life insurers during a traumatic and often daunting period in their lives.

The FSC Code contains both obligations for members and general information for consumers. For clarity, we suggest that the Code and general information be separated. For example, the information about the duty of disclosure provided before Clause 5, could be misinterpreted as an obligation on the consumer rather than the insurer.

We suggest that the life insurance industry give consideration to registering the Code. We believe that this would demonstrate the industry's commitment to the Code (ASIC, RG 183).

We note the Australian Lawyers Alliance proposed a Superannuation Disability Claims Code of Practice (the ALA Code) and Legal Aid NSW supports the proposal that the ALA Code be incorporated into the FSC Code.

## The FSC Code – Recommendations of Legal Aid NSW

### Clause 3.8 - When cover is refused

Clause 3.8(a) states that where possible the consumer will be provided with reasons why cover has been denied. Clause 3.8(b) provides that if cover is refused then the information relied on to make a decision will be provided to the consumer if requested. We submit that the information should be provided to the consumer in any event and be included in the refusal letter.

**Recommendation:** Legal Aid NSW recommends that sub-clauses 3.8(a) and (b) are consolidated and amended in the following terms:

“(a) the reasons for our decision and any information that we relied on to make that decision”

### Clauses 3.10 to 3.13 - Cancellation rights

**Recommendation:** Legal Aid NSW recommends that consumers are provided with clear information about options other than cancelling their policies. In particular we recommend that consumers are advised if the policy allows for a ‘premium holiday’ or if the member has the discretion to allow this.

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## Clause 4 – Replacement Policies

**Recommendation:** Legal Aid NSW recommends that consumers are informed in writing that they may not be insured for any health issues that arise during the term of their policy and that a new waiting period may apply. A lot of confusion exists in this area because private health insurance policies, with which most consumers have experience, do not contain such provisions. With private health insurance, when consumers change insurers, so long as the same level of cover is maintained there are generally no waiting periods and waiting periods for pre-existing conditions are waived. The opposite occurs when consumers change life insurers.

## Clause 6 – Consumers requiring additional support

We welcome the addition of this clause and the recognition that vulnerable consumers do require assistance during the claims process. In our experience the most disadvantaged members of the community have significant difficulties with the claims process. We have been involved in cases where consumers do not understand why their claims have been denied or what was said to them during phone conversations with claims officers.

**Recommendation:** Legal Aid NSW recommends that consumers from non-English speaking backgrounds are offered an interpreter at the outset of their claim.

### *Case Study*

One of our lawyers recently assisted Amy. Amy is from the Philippines and speaks very limited English. Amy suffered a massive cerebral haemorrhage and was in hospital for 10 weeks. Amy's payments had stopped for 3 months and she was not sure why this had happened even though she'd had many conversations with her insurer. She was not sure what she had said to her insurer or what they had said to her and was confused about the whole claims process. Amy had not been offered an interpreter by the insurer, and no assistance had been offered in relation to the brain injury.

## Clause 7 - Getting financial advice when a consumer gets a payment.

**Recommendation:** Legal Aid NSW recommends that this clause be amended to include a recommendation that consumers seek financial advice following acceptance of the claim but prior to payments commencing. We suggest the following wording:

'Prior to commencing payments to you we will write to you and advise you to seek independent financial advice about:

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- a) Whether your payment(s) will affect your tax liability
  - b) Whether some or all of your payments should be kept in your fund/rolled over'

## Clause 7 – Claims generally

We note that this clause does not contain any specific time frames for claims management and determination.

**Recommendation:** Legal Aid NSW recommends that the time frame in the General Insurance Code of Practice (GICOP) be incorporated into the Code, so that less complex claims are determined within 3 months and more complicated claims within 12 months. We submit that these timeframes are reasonable and will provide consumers with some certainty and guidance about how long the claims process will take.

### Clause 7.7 – Claims assessment and investigation

In our experience the third party assessor is usually a doctor or an occupational therapist. We note that the FSC code refers to an independent assessment. We believe that if the term 'independent' remains in the FSC Code then provision should be made for a Third Party Service Provider to be bound by the Expert Witness Code of Conduct. If this is not accepted, we recommend that the reference to an independent assessment should be removed. Additionally, we believe that the report together with the letter of instruction should be provided to the consumer within 10 working days of the insurer receiving it.

**Recommendation:** Legal Aid NSW recommends that the Third Party Service Provider to be bound by the Expert Witness Code of Conduct.

**Recommendation:** Legal Aid NSW recommends that the assessment is limited to one specialist in each field.

### Clause 7.8 - Costs of medical assessment

**Recommendation:** Legal Aid NSW recommends that this clause is amended to make it clear that costs of attendance will also include travel fees/costs, accommodation fees and meal expenses.

### Clause 7.9 - Direct discussions with a treating doctor

**Recommendation:** Legal Aid NSW recommends that this clause is amended to make provision for the consent of the claimant and the provision of a written authority.

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## Clause 7.14 – Claims Denial

Legal Aid NSW submits that all information relied upon should be provided to the claimant when a claim is denied. We do not support the consumer having to take the additional step to request these details from the insurer. If these documents were provided to the claimant at the time of denial it would facilitate the process of seeking legal advice about the denial.

**Recommendation:** Legal Aid NSW recommends that this clause is amended in the following terms:

‘If we deny your claim, we will provide you with the reasons for our decision in writing as well as copies of the document and information we have relied on to make that decision.’

In the case study outlined above, Amy had not been provided with the basis for the denial of her claim or provided with any documents by the insurer.

## Clause 9.3 - Honesty of Service Providers.

**Recommendation:** Legal Aid NSW recommends that this clause provides that the Service Providers must act with honesty, fairness and transparency to the insurer or to the claimant.

## Clause 9.8 - Concerns the Standards for Investigators

In the view of Legal Aid NSW, investigators in Australia remain largely unregulated. In our experience some investigators engage in interview techniques that are not appropriate.

**Recommendation:** Legal Aid NSW recommends that the length of interview time with a claimant be capped at a maximum of 2 hours with consideration given to the claimant’s medical condition.

**Recommendation:** In relation to surveillance, Legal Aid NSW recommends that this should only be undertaken where there is a reasonable basis to suspect that the information that the claimant has provided is inconsistent with other information or medical evidence obtained by the insurer.

## Clause 13.4 – Denial of provision of information

**Recommendation:** Where information is not provided to claimants, Legal Aid NSW recommends that the life insurer provide a schedule of the documents not being disclosed as well as the basis for the non-disclosure for each document.