

Life Insurance Code of Practice

Legal Aid NSW Submission to
the Financial Services Council

September 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 socially and economically 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 in relation to the Second Draft Life Insurance Code of Practice (FSC Code).

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

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Introduction

Legal Aid NSW believes it will be particularly helpful to have a document which sets out the obligations of life insurers as the absence of such a document has led to perceptions that the insurers in the sector remain largely unregulated.

The experience of Legal Aid NSW in relation to Life Insurance is limited to assistance with the claims process. The consumers we assist in this area 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 when they come to us for assistance.

General comment

The FSC Code contains the minimum standards required of FSC members. The language of the FSC Code has been substantially amended and references to obligations placed on customers have now been removed. Legal Aid NSW welcomes this change as we consider the document is now easier to read.

Legal Aid NSW suggests that the life insurance industry (the Industry) should consider registering the FSC Code. We believe this would demonstrate to consumers the Industry's commitment to the FSC Code.

Legal Aid NSW notes the Australian Lawyers Alliance proposed Superannuation Disability Claims Code of Practice (the ALA Code), and supports the submission made that the ALA Code be incorporated into the FSC Code.

Legal Aid NSW understands consideration was given to having medical assessors comply with the Expert Witness Code of Conduct (EWCC), however this recommendation was not included in the final draft. We submit for the reasons below that medical assessors should be bound by the EWCC.

Recommendations of Legal Aid NSW

Clause 4 – Sales and advertising

Recommendation 1: Legal Aid NSW recommends the FSC Code defines the terms ‘unacceptable sales practices’ and ‘pressure sales’, as their meaning is unclear.

Clause 5.14 – Where offer of insurance is refused

Recommendation 2: Legal Aid NSW recommends that this Clause be amended to remove the requirement under Clause 5.14(b) that a consumer requests the information relied on to make a decision. We believe the reasons for decision and the information relied on to make that decision should be provided to the consumer as part of the denial letter. Legal Aid NSW suggests the following wording for Clause 5.14(a):

The reasons for our decision and any information that we relied on to make that decision.

Clause 6 – Replacement policies

Recommendation 3: Legal Aid NSW recommends that consumers be clearly informed in writing that they may not receive coverage for any health issues that have arisen during the term of their policy and that a new waiting period may apply.

Clause 7 – Consumers requiring additional support

Legal Aid NSW welcomes the addition of Clause 7 and 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.

Legal Aid NSW has seen cases where consumers do not understand why their claims have been denied or what was said to them during phone conversation with claims officers.

Legal Aid NSW is also of the view that the term ‘reasonable measures’ does not adequately account for the particular vulnerabilities of identified customers, and we recommend below that this term be widened.

Recommendation 4: Legal Aid NSW recommends that consumers from non-English speaking backgrounds should be offered an interpreter at the outset of their claim, throughout the claims process, and particularly during interviews by investigators. The cost of the interpreter should be paid by the insurer.

Recommendation 5: Legal Aid NSW recommends that Clause 7.1 be amended to include customers from rural and remote communities as well as people experiencing domestic and family violence.

Recommendation 6: Legal Aid NSW recommends that Clause 7.2 be expanded to ensure training of staff is to a standard that ensures staff have a comprehensive knowledge of the relevant issues.

Recommendation 7: Legal Aid NSW recommends that Clause 7.4 be amended by replacing the term 'reasonable measures' with 'all practicable measures'.

Clause 8.8 – Claims assessments and Third Party Service Provider reports

The FSC code refers to an assessment by a Third Party Service Provider. In our experience, this is usually a doctor or an occupational therapist.

Legal Aid NSW is of the view that the Third Party Service Provider should acknowledge and be bound by the EWCC in each assessment, as opposed to simply referring to the relevant EWCC provisions in Clause 10.4. This would also go some way to addressing the issue around the use of outdated medical definitions and ensure the facts and assumptions the opinion is based on are expressed transparently in the report.

Recommendation 8: Legal Aid NSW recommends that Third Party Service Providers be required to comply with the EWCC.

Recommendation 9: Legal Aid NSW recommends that the Third Party Service Provider Report, together with the letter of instruction, be provided to the consumer within ten working days of the insurer receiving the report.

Clause 8.10 – Medical assessment attendance

The Second Draft of the FSC Code has been amended to make it clear that costs of attendance at a medical assessment will include 'extraordinary travel costs agreed in advance'.

Recommendation 10: Legal Aid NSW recommends that this Clause be amended to include 'reasonable and necessary travel fees/costs, accommodation fees, partner travel and meal expenses', so that consumers are aware of the costs they are able to recover.

Clause 8.11 – Investigator interviews or surveillance

Investigators in Australia remain largely unregulated. It is the experience of Legal Aid NSW that some investigators engage in interview techniques that may not always be appropriate.

Recommendation 11: Legal Aid NSW recommends that prior to an interview the investigator seeks clearance from the customer’s GP, psychologist or psychiatrist, where the customer has a mental illness.

Recommendation 12: Legal Aid NSW recommends that all interviews be conducted in the presence of a support person.

Recommendation 13: Legal Aid NSW recommends that surveillance should only be engaged where there is a reasonable basis to allege that the information the consumer has provided is inconsistent with other information or medical evidence that the FSC member has obtained.

Clause 8.13 – Timeframes

Legal Aid NSW welcomes the inclusion of timeframes in the Second Draft of the FSC Code. However, we note the time taken by the trustee to review a decision and the time taken by treating doctors to provide information has been excluded from these timeframes, and these are referred to as ‘exceptional circumstances’.

In our experience, it is common for a trustee to take some time reviewing the decision and for treating doctors to provide reports. It is the view of Legal Aid NSW that these are not ‘exceptional circumstances’ as they are routine occurrences in most claims. We consider that six (6) months is adequate time for both the insurer and the trustee to review and make a decision in relation to a claim.

Recommendation 14: Legal Aid NSW recommends that Clause 8.13 be amended to include the following:

Where we cannot comply with a deadline required by the Code due to an unreasonable delay that is outside of our control (which does not include a delay by a trustee) and where we have taken all reasonable steps to mitigate that delay (including following up with treating doctors and/or obtaining the information that we require in other ways), we will not have breached the Code. If there are external impacts on timeframes, we will inform you of this and keep you informed of our progress every ten business days.

Clause 8.17 – Financial advice where a consumer receives a payment

Legal Aid NSW is of the view that consumers should be advised to obtain financial advice following acceptance of a claim but prior to payments commencing.

Recommendation 15: Legal Aid NSW recommends that Clause 8.17 be amended with the following wording:

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

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

Clause 8.18 – Information where a claim is declined

Legal Aid NSW believes that all information relied upon should be provided to the consumer where a claim is denied. We do not agree that the consumer should have to take the additional step to request these details from the insurer. In our view, the process of getting advice on the denial would be faster and more efficient if these documents were provided to the consumer at the time of denial.

Recommendation 16: Legal Aid NSW recommends that Clause 8.18 be amended as follows:

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

Recommendation 17: Legal Aid NSW recommends that, in the alternative to the above recommendation, where information is not provided to a consumer, a schedule of the documents not being disclosed as well as the basis of the non-disclosure for each document, be provided to the consumer.