

8 September 2016



Sarah Phillips
Policy Consultant
Financial Services Council
Level 24, 44 Market Street
Sydney, NSW, 2000

By email: sPhillips@fsc.org.au

Dear Ms Phillips,

Feedback on the draft Life Insurance Code of Practice

The Public Interest Advocacy Centre (**PIAC**) welcomes the opportunity to provide feedback on the Financial Services Council's (**FSC**) draft Life Insurance Code of Practice (**the Code**).

PIAC commends the FSC's work on the Code. However, a number of critical matters raised in our Submission to the Commonwealth Senate Economics Reference Committee inquiry into the Scrutiny of Financial Advice (**Submission**) on the development of an industry code are not adequately (or in some cases, not at all) addressed in the Code.

Summary of our feedback on the Code

The Code should:

1. Be regulated and enforceable;
2. Establish processes for life insurers to adhere to when considering life insurance applications that reveal a mental health condition;
3. Contain timeframes for providing written reasons and internal reviews;
4. Require public reporting to enhance compliance with existing obligations under legislation; and
5. Contain provisions to enhance compliance with the duty of good faith under the *Insurance Contracts Act 1984* (Cth).

Further consultation with consumer organisations is also required before the Code is finalised.

PIAC would welcome opportunity to meet with the FSC to discuss inclusion of these matters into the Code in further detail.

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Our experience

PIAC is an independent, non-profit law and policy organisation that specialises in providing legal assistance and policy analysis in the area of disability discrimination.

Since 2012, PIAC has provided legal advice and representation to individuals who have experienced discrimination or, who have otherwise been treated unfairly, by general and life insurance providers on the basis of mental health. Approximately 75% of this casework relates to discriminatory practices in the life insurance industry.

PIAC's Submission discusses the systemic problems in relation to life insurance products and mental health identified through PIAC's work. It is our view that existing practices in the life insurance industry have failed to protect consumers with a current or past mental health condition (and in some cases, a mental health condition that has been unreasonably imputed by the insurer) from unlawful disability discrimination.

The terms of the Life Insurance Code of Practice should be enforceable

The development of a Life Insurance Code of Practice is an opportunity for life insurance industry to develop enforceable best practice standards.

Recently, on 29 August 2016, Sally Loane the Chief Executive of FSC opined in the *Financial Review* that 'Australia's \$44 billion life insurance sector is part-way through its biggest reform agenda for decades'. Ms Loane further stated that the development of 'the code is the industry's commitment to strengthen community trust and confidence in life insurance, which is one of the most important financial protections a person can obtain'.

PIAC's casework shows that many insurers have been unwilling to improve their practices voluntarily. To be effective in delivering increased consumer protection and reducing the regulatory burdens for life insurers, the Code must be binding on, and enforceable against life insurers.

We reiterate the view expressed in our Submission that the Code should be similar to other industry codes that are required to be established for particular industries under Part IVB of the *Competition and Consumer Act 2010* (Cth), which is regulated by the Australian Competition & Consumer Commission.

The Code should establish processes for life insurers to adhere to when considering life insurance applications that reveal a mental health condition

Part 5 of our Submission details the systemic problems arising from the way insurers currently assess applications for life insurance involving mental health disclosures.

PIAC acknowledges that Part 5 of the Code includes some steps to improve the guidance offered to insurers in their decision making process however more detail, plain language and clarity is required. For example Recommendation 2 of PIAC's submission recommends that a life insurance industry code of conduct should require insurers to:

- a. Ensure that applications for insurance that reveal a mental health condition or symptoms of a mental health condition are not automatically declined;
- b. Refer applications for insurance that reveal a mental health condition or symptoms of a mental health condition to an appropriately qualified underwriter;

- c. Give an applicant for insurance the opportunity to either withdraw their application or provide further information, including supporting medical documents, before declining to offer insurance or offering insurance on non-standard terms;
- d. Where an insurer offers insurance on non-standard terms (for example, with a mental health exclusion or a higher premium than a standard premium), specify:
 - i. how long it is intended that the exclusion/higher premium will apply to the policy.
 - ii. the criteria the insured would be required to satisfy to have the exclusion removed or premium reduced.
 - iii. the process for removing or amending of the exclusion/premium.
- e. Develop, implement and maintain policies that reflect the above practices.

The Code should be more specific about how the FSC will ensure that underwriters are 'appropriately trained and skilled' in assessing applications or claims raising mental health concerns, in accordance with FSC Standard No 21. Recommendation 3 of our submission recommends that:

The proposed life insurance industry code of conduct include and expand upon the training obligations set out in FSC Standard No 21 and which requires insurers to develop, implement and periodically deliver training to its officers, including call centre operators and underwriters on:

- a. Mental health conditions, the spectrum on which they can occur and their treatment;
- b. The operation and requirements of section 46 of the DDA (the insurance exception); and
- c. Communicating with people with mental illness.

The Code should require public reporting to enhance compliance

Insurers should be required to report annually to the Australian Human Rights Commission (**AHRC**) regarding the number of times they have declined to provide insurance or offered insurance on non-standard terms on the ground of disability. Such an obligation would enhance accountability in relation to particular provisions of the *Disability Discrimination Act 1992* (Cth) (**DDA**). We refer you to Recommendation 11 of our Submission.

The FSC should identify legislation that creates obligations on life insurers, such as the DDA, and where appropriate include in the Code a mechanism requiring public reporting of specific information to enhance compliance.

Timeframes for providing written reasons and internal reviews

The Code must contain solid, well-defined timeframes for considering and deciding insurance applications and for undertaking internal reviews. The timeframes should not be contingent upon vague notions of when the insurer has had time to "complete all enquiries". An estimate of the average timeframe ought reasonably be provided.

Where the insurer requires the insured to provide further information in order to undertake an internal review, insurers should be required to specify to the insured the further information within 14 days of the insurer asking for the review (see Recommendation 6 of our Submission).

PIAC suggests that the Code should also use diagrams, flow charts, or another visual methods to convey information about timeframes, decision making processes, the steps to access the complete range of dispute resolution options.

The Code should further enhance compliance with the duty of good faith

Part 6 of our Submission details the systemic problems arising from insurers' avoidance of policies for an insured's purported failure to comply with their duty of disclosure at the time they applied for cover or to amend existing cover, in circumstances where the non-compliance is minor and innocent, or where the insured did not know, and could not reasonably have known, that the purported non-disclosure would have been relevant to the insurer's decision whether or not to offer a policy and on what terms.

PIAC is concerned that insurers appear to be unfairly and unnecessarily avoiding insurance policies to avoid paying legitimate, reasonable claims. PIAC is of the view that in some circumstances this practice constitutes a breach of the insurer's duty of good faith under the *Insurance Contracts Act 1984* (Cth).

As outlined in Recommendation 9, the Code should:

- a. Require insurers to vary rather than avoid policies wherever reasonably possible;
- b. Include guidance notes providing examples of situations in which variation rather than avoidance of a policy is appropriate, including where the insured has made a claim on their policy for an illness or condition that is unrelated to the illness or condition that it is alleged was required to have been disclosed during the application process.

Further consultation on the Code is required

PIAC urges the FSC to revise the commencement timeframe and to extend the period for public consultation on the Code. The proposed timing for commencement of the Code is 1 October 2016, following a four-week period of public consultation. PIAC is of the view that a more substantive consultation process needs to be taken before the Code is finalised.

PIAC has seen and endorses the comments of each Financial Rights Legal Centre (FRLC) and the Consumer Action Law Centre (CALC) in relation to the contents of the Code as submitted to the FSC in version sixteen of the Code on 8 July 2016. The comments of each the FRLC and CALC exemplify the need for the further involvement of consumers in the development of the Code.

Further consultation should include each of the organisations that made a substantive submission to the Senate Economics Reference Committee inquiry into the Scrutiny of Financial Advice

Next steps

Given the short consultation period available, PIAC has limited this submission on the Code to emphasising key submissions made in our Submission to the Senate Inquiry that are relevant to the development of the Code. As stated above, PIAC would welcome opportunity to meet with the FSC to discuss inclusion of these matters into the Code in further detail.

Please contact Michelle Cohen on the details below to make arrangements for a meeting to occur.

Yours sincerely



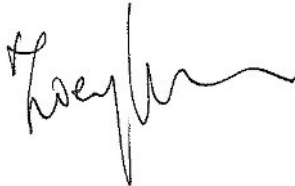
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