



12 September 2016

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

Dear Ms Phillips

Life Insurance Code – Stakeholder Consultation

Thank you for the opportunity to review the FSC's public consultation draft of a proposed Life Insurance Code (the Code).

The FPA offers the following general suggestions and comments to assist the FSC to improve the current draft.

If you have any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or 02 9220 4500.

Yours sincerely

Benjamin Marshan
Head of Policy and Government Relations
Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 11,000 members and affiliates of whom 9,000 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
 - In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
 - We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
 - The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
 - We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
 - CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
 - We are recognised as a professional body by the Tax Practitioners Board
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FSC LIFE INSURANCE CODE

FPA submission to:
FSC

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Simplifying the message

While we commend the work done to simplify the structure of some sections of the Code from previous iterations, we still believe that given the intended audience that the Code could be significantly simplified. Subscribing to the Code should also be seen as a differentiator between life companies. Complicated legalistic tones will not assist consumers to understand how life companies complying with the Code benefits them. It should enable both for consumers and financial planners, to understand which companies adhere to higher protections, particularly given the recent scrutiny of their behaviour. It would be helpful for instance if the document contained an executive summary of the Code. This should cover how it establishes higher standards than the general law so consumers can understand the additional protections and raised standards at which subscribing life companies are prepared to operate.

We would highlight the work being done to improve Life Insurance SOAs by ASIC and the move to make product disclosure simpler as examples of documents being provided to consumers in simplified language. We again call on the Code to contain a simplified message of some 10 – 15 key principles that your life company members will adopt to improve the consumer experience of acquiring, owning and claiming against life insurance products, and assisting life companies develop products which are in the best interests of their policy owners. We would further highlight paragraph 3.5 in particular sets out positive standards for the use of clear language, but we would suspect the Code itself would fail this test.

To successfully address the task of assisting to improve consumer confidence post-ASIC Report 413, it is important that the Life Insurance Code offers more to consumers than a mere restatement of the general law. Identifying 10 – 15 simple commitments where life companies are prepared to self-regulate an improved consumer offer could reset public perceptions.

The Code document still contains additional material about life insurance products, the role and responsibilities of the product issuer in the acquisition of products and in claims processing, and on consumer responsibilities which might usefully be dealt with in separate consumer guidance. This adds length to the document without necessarily improving the effectiveness of the intended communication.

While we are well aware of the imperative to release the Code as part of the Life Insurance Framework and have life companies start to comply with higher standards, this should not be rushed at the expense of developing a code which will not benefit consumers in better understanding the promises being made to them. We believe the current drafting of the Code is a good start, but given the issues highlighted in this submission that amendments and further iterations should quickly follow this version to ensure the Code operates at a level which raises the conduct of life companies in protecting consumers beyond the protections offered under the law.

Connecting with the broader life risk industry reform project

You have quite properly excluded from the scope of the document any requirements for financial planner conduct. We note the FPA has already introduced new professional guidance to assist its members to meet FPA code obligations in delivering life risk advice.

The Code however fails to properly identify the important role that financial planners play in assisting consumers to acquire and transact life insurance products in the consumer's best interest. For example at paragraph 3.1D it is highlighted that clear and informative information will be

provided to the consumer, but we question why such standards would not also be adhered to where information is provided to a financial planner to assist their client in transacting on life products. We would further note that the current drafting does not use consistent terminology in relation to advice providers or life company representatives throughout the document. The code uses financial adviser, financial planner, financial adviser/planner, authorised representative, representative and staff inter-changeably in reference to advice providers. The draft should abandon the use of outmoded sales and distribution language in favour of a professional advisory services model and terminology for life insurance intermediaries. It should also make a commitment to how life companies will interact with the consumer's financial planner.

As previously raised, you have also excluded an intermediary facing standard for life companies from the scope of this document. We would strongly urge the FSC to consider the development of such a standard in conjunction with the present document and in time for the timetable for the proposed commencement of the life insurance framework legislation in July 2017. In relation to the Code however, we note at paragraph 2.5 you have identified that financial advice providers may be operating under their own Codes of conduct. We would suggest there is an opportunity to educate consumers on this issue and assisting them to identify the codes under which financial advice providers operate and encouraging them to ensure their particular financial planner has voluntarily subscribed to a professional code (including a code of ethics).

In an environment where advice practitioners will be required to lose income yet deliver higher quality consumer outcomes, the new operating environment increases the commercial and professional risk for advice businesses. Some of our members may opt-out of the provision of life risk advice where it is uneconomic to do so.

As offered, the FPA would welcome the opportunity to participate in the development of FSC life company standards specifically designed to assist intermediaries such as financial planners to meet the challenge of efficient best interest life risk advice delivery under the new framework. We believe a robust discussion aimed at identifying and improving practices and processes between life companies and financial planners offers the best foundation to ensure the success of FSC's consumer facing initiative.

On a separate note, while we understand the logic of group insurance not being covered in the Code, we would encourage the FSC and its members to attempt to replicate these code obligations in the group insurance space given the recent public controversies highlighted as a result of these products. The FSC and its subscribing members should actively encourage their super fund members (and even non-members) to subscribe under paragraph 2.1.

Addressing the costs of life insurance

The FSC has already identified a number of key areas for reform through its Trowbridge process. We believe targeted initiatives to improve practices and standardised processes in client acquisition, underwriting, product replacement, claims processing, data feeds, and improvements to product design, transparency and comparability could significantly improve the cost of life company products to benefit consumers, attack the incentives for life company and adviser malpractice and help advisers to efficiently manage commercial and professional risks in the new operating environment for life risk advice.

The determination of your members to embrace broader reform would also surely take some of the heat out of the current issues which continue to be publicly raised and shake consumer confidence in an environment of chronic under insurance. In our view this work is of even higher priority than your proposed consumer initiative as it would potentially bring the industry together to deliver real consumer benefits and improved practices.

We therefore recommend that additional standards be developed as a priority to address these practices which are adding to the cost and under performance of life insurance products.

Strength of the Code

While we understand the benefits of rapidly developing and implementing an FSC member standard, we would caution that this does not guarantee that all life companies will be subject to operating under the Code. If the FSC and its members truly believe in the benefits of this Code framework, we would encourage the FSC to apply for the Code to become a Statutory Code through application to ASIC, and a requirement that all life companies be subject to these additional consumer protections.

While we commend the additional work which has been done to strengthen the repercussions of non-compliance with the Code obligations, we do not believe the Code provides strong enough disincentives for breaches and non-compliance. Firstly, given life companies are making a commitment to abide by the Code in their dealing with consumers, we believe paragraph 2.20 must be removed to demonstrate life companies' commitment to the Code. We question where the consumer benefit is, and what additional standards life companies are promising to adhere to above the legal minimum standards if there are no legal avenues to hold the life company to these standards in the event of non-compliance and breach. We would highlight that the FPA Code of Professional Practice which practitioner members of the FPA operate under does not contain such an exclusion and is regularly cited in court proceedings as being the best practice standard for financial advice providers.

We would also note that the Code is currently missing information around monitoring and supervision obligations which are generally found in industry codes. This is both in respect of the arrangements which life companies must put in place around their and those they are responsible for' conduct, but also those to be put in place by the Life Code Compliance Committee on subscribed life companies.

We note that there appears to be an assumption made in section 2 that all life companies subscribing to the code are a member of FOS, and would ask the FSC to ensure this is a correct assumption given paragraph 9.14 appears to contradict this assertion. Consideration also does not appear to have been given to ASIC's proposals in *CP 247 – Client review and remediation programs and update to record keeping obligations* which may impact some aspects of section 2.

We also do not believe the penalties contained in the section pertaining to Sanctions are robust enough. Where life companies are found to be in breach of the Code in a manner which has affected policy holders from applying, during the underwriting process, the setting and payment of premiums and claims handling process and has resulted in a detrimental outcome, the Life Code Compliance Committee must have the powers to ensure consumers are made whole and appropriately compensated for such breaches.

Given the size and scale of life company operations and resources we also do not agree with the provision in paragraph 13.7 assuming the Code is actually designed to set standards higher than minimum legal obligations. This inclusion also suggests that decisions by the Life Code Compliance Committee for breaches of the Code are not enforceable in all instances which appears to undermine the whole purpose of subscribing to higher standards. Further on this point, we would expect that where a regulator has identified regulatory breaches of a life companies operations these would be required to be reported to the Life Code Compliance Committee by the subscribing life company for consideration of additional sanctions including removal from the Code and FSC.

Finally, strong consideration must be given to applying the Code to interactions with clients even on policies which were entered into prior to the Code being subscribed to, even if this is only limited to the claims and payment process. Life insurance products are often held for substantial periods of time, and the tail on non-Code compliant policies could run for decades. If the Code is going to address the behaviours of life companies, there shouldn't be a carve out for policies which fall outside the commencement of the Code.

Dealing with inappropriate sales

A further example of where the Code can be strengthened is in paragraph 4.9. While we see paragraph 4.9 as a positive, we would again note that there is a perspective that life insurance products are only sold rather than advised on. When considering inappropriate sales, we would highlight the following:

- “sold inappropriately” isn't defined. When is insurance sold inappropriately? Standards will differ depending on whether the “sale” is advised or non-advised. This standard therefore needs to be developed, otherwise it is too subjective.
- This has the result of the potential for undue emphasis on the *manner* in which insurance is sold rather than the outcome. There is a need to make clear that “sold inappropriately” ought to cover more than the manner in which the sale was achieved; it should also cover the appropriateness of the product for the client, and in the case of non-advised sales the best interest duty does not need to be satisfied.
- We recommend it should be spelt out in the Code to consumers that one of the benefits of getting advice from a financial planner is that advice must be in the consumers best interest including examples.

Possible solutions include:

non-advised sales; and, in the case of advised sales, dealing in the product other than by the provider of the advice – A product is sold inappropriately if no reasonable person with the knowledge and skills expected of the relevant specialist* who facilitated the sale of the product would believe the product is appropriate to the particular consumer in their particular circumstances that are known (or should reasonably have been known) to the specialist.

* in the case, such as a digital sales platform, where the product is not sold directly by a natural person, the relevant specialist is the responsible managers (jointly and severally).

The relevant specialist must take reasonable steps to ensure that they do not facilitate the inappropriate sale of products.

advised sales – The provider of the advice** must act in the best interests of the client in relation to advice on and dealing in a product. The provider of the advice must only provide the advice to the client or deal in the product if it would be reasonable to conclude that the advice or dealing (as applicable) is appropriate to the client, had the provider of the advice satisfied the duty to act in the best interests of the client.

** in the case, such as a digital advice platform, where the advice is given other than directly by a natural person, the provider of the advice is the responsible managers (jointly and severally).

The provider of the advice must take reasonable steps to ensure that they act in the best interests of the client.

In addition, a manager responsible for advice about (or the sale of) a product by others must take reasonable steps to ensure that that the advice or sale is appropriate.

Life Code Compliance Committee

We note that there are a number of assumptions made in the Code on the makeup and operation of the Life Code Compliance Committee, however no details of the makeup of this body or charter have been made available for consideration. We believe this is a significant issue which would impact the operation of the Code, and it is difficult to assess whether the Code can be successfully implemented given no transparency in this area. We would also question whether the proposed makeup of 3 members is sufficient given the importance of the Code and the size of the life insurance industry.

Conclusion

We are encouraged that the FSC has made some progress on the Code, but remain disappointed that more hasn't been done to address the issues we highlighted in January, and this round of consultation has been left so close to the proposed release date given the number of issues we have highlighted in this and the previous submission. We look forward to seeing our concerns addressed and are willing to provide further assistance to the FSC on the related suggestions set out above.