

Life Insurance Code of Practice Review 2025

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal people of the Eora Nation.

¹ www.lawyersalliance.com.au

Introduction

1. The ALA welcomes the opportunity to have input to the review of the Life insurance Code of Practice.
2. The ALA's Superannuation and Insurance Special Interest Group has particular expertise in the area of Life Insurance and comprises lawyers from some of the leading lawyers in this area who represent the interests of claimants in relation to income protection, TPD and Life insurance disputes.
3. Insurance has formed an important part of the financial system in Australia. Moreover, Life insurance has formed a critical part of the overall safety net for consumers whose working lives have been cut short, temporarily or permanently in Australia.
4. Importantly, a substantial amount of life insurance in Australia is sold via the superannuation system. The distribution of life insurance via the superannuation system means that most working people have a basic level of protection in relation to Total and Permanent Disablement (TPD) and Death/Life insurance. Many also have income protection insurance cover.
5. Given the breadth of coverage across Australia it is critical that the life insurance industry has a set of standards which they agree to conform to. The ALA acknowledges the efforts of the Life Insurance industry via the FSC and CALI in implementing the original life insurance code of practice.
6. It is regrettable that the Superannuation Industry walked away from the Voluntary Insurance in Superannuation Code of Practice. As history will now record, that was an error and ultimately has led to some poor consumer outcomes in the superannuation sector and the Government will now legislate, relevant to this review, superannuation service standards including in relation to claims handling.
7. This code review comes at a time of some significant issues arising. Those issues include:
 - a. The introduction of Superannuation Service Standards which are currently the subject of consultation, but not yet finalised;
 - b. A mental health claims assessment framework being developed by the Council of Australian Life Insurers;

- c. A significant rise in mental health claims placing pressure on the cost of insurance cover;
 - d. The increased involvement of the use of AI in life insurance underwriting and claims;
 - e. A review of the Disability Discrimination Act which is currently being undertaken.
8. Given the myriad of issues currently facing the life insurance industry we welcome the opportunity to constructively contribute to the discussion about aspects of the life insurance code of practice which we believe need revision so as to ensure the continued improvement in the consumer experience in life insurance.

Artificial Intelligence (AI)

9. It is noted that the Code consultation paper does not make any reference to the use of AI in either an underwriting or insurance claims context. In our view, this is an omission which ought to be considered as a part of the review. When the Life code was first introduced in 2017 AI was not being used. Over the last 3 years there has been a rapid uptake in the use of AI which does create some consumer issues which include:
- a. Whether there are any privacy concerns which may arise in relation to the use of AI in reviewing/summarizing claim documents;
 - b. Whether AI may present challenges or also opportunities in streamlining claims assessment processes.
 - c. Whether consumers should have a right to know whether their information has been reviewed using AI;
 - d. Whether consumers should have a right to know whether AI has been used to assist in drafting communications with them.
10. The above issues are merely a few basic examples of issues which we consider are likely to arise. There are no doubt many more. However, in our view this subject is worthy of consideration in this review and we would be happy to contribute a further supplementary submission on this issue if that is considered worthwhile.

Mental Health

11. As indicated above, the prevalence of mental health claims has increased and considerable work is presently being undertaken by industry to develop action plans in this respect.
12. Under the Code in its current form there are a number of measures involving commitments about how insurers will deal and interact with consumers with mental health conditions.
13. However, in the experience of the advocates from the ALA it is rarely the case that individual circumstances are properly considered so as to offer a tailored way to address a particular consumers issue in a compassionate and transparent way.
14. One such example is the use of a lawyer or a claims advocate by a consumer to assist them through the claims process. There are many instances where life insurers see the involvement of lawyers or claims advocates through a hostile lens. When, particularly in the context of mental health claims, the reality is that due to the claimants vulnerabilities and sickness the claimant would have a very very difficult time dealing with a claims process which can sometimes feel overwhelming. Most consumers rightly or wrongly see the claims process as being a process of them versus an insurer and see that as a confrontational interaction.
15. In this regard, the involvement of a lawyer or claims advocate will in many instances assist the smooth (or at least smoother) provision of information to assist the timely assessment of a claim.
16. It is the experience of the ALA members that there are too many instances of administrative difficulties and stringent requirements as to the form of a third party authority which can unnecessarily delay claims. It is to be remembered that the authority that a consumer gives to an insurer is the claimants to give, not the insurers. Accordingly, so long as the authority contains the relevant and necessary information there should not be a requirement that a particular form on a particular insurers letterhead be provided.
17. There are many instances where a consumer has provided an authority on a law firms letterhead and been advised by an insurer that the authority "isn't valid" or needs to be in the particular insurers prescribed form. In many instances these requirements are unnecessary and just cause delay.
18. The above example is a single example of simple steps that would help a mentally ill person interact with their insurer via their representative.

Blanket Mental Health Exclusions and the Disability Discrimination Act

19. The issue of claims for TPD or income protection benefits in relation to mental health conditions is currently the focus of significant attention from the life insurance industry.
20. Under the Disability Discrimination Act, there is a prohibition on discrimination in an insurance context unless the insurer can support their position with actuarial or statistical data. That exemption is an important exemption because it allows insurers, where justified, to appropriately rate the risk that they are exposed to. However, the requirement for actuarial and statistical data is a very important consumer protection mechanism and ensures that the insurance industry will not unfairly or unreasonably exclude certain medical conditions from being covered.
21. The Life Code Compliance Committee have recently indicated that they have observed the existence of some blanket mental health exclusions. In addition, there are practices which have been observed in underwriting in which insurers are applying exclusions rather than premium loadings or other options to manage the risk.
22. At present, whilst the DDA requires that the insurer have actuarial or statistical data to support their position, there is no positive obligation on insurers to provide the data to a consumer. Consumers are routinely advised that the data is commercial-in-confidence or similar.
23. We submit that one way to improve the experience of consumers in these circumstances is to require that insurers produce the actuarial or statistical data to consumers upon request. Plainly the data is in the possession of the insurers at the time that the decision is made. It is submitted that the provision of the actuarial or statistical data would enable consumers to understand the underwriting decision that has been made which may be adverse to their interests. Moreover, the provision of information which is relied upon to make a decision is consistent with procedural fairness obligations and is simply good industry practice.

Claims Handling

24. The handling of insurance claims has been the subject of considerable attention in recent times as a consequence of ASIC's recent prosecutions of CBUS and Australian Super in relation to alleged failures in respect of Death Benefit claims handling.
25. It should be noted that since the introduction of the Code in 2017 considerable improvement has been observed in relation to claims timeframes which is one of the issues which has traditionally been a significant concern for consumers.
26. It is the view of the ALA that the current timeframes under the Code are appropriate. However, there remain some concerns in relation to the definition of "Circumstances Beyond Our Control" (CBOC). Under the Code the timeframes are required to be met, unless there are "Circumstances Beyond Our Control" within the definition of that term in the Code. The Code relevantly defines CBOC as:

"Any of the following:

- a) We have not received or had a reasonable time to assess reports, records, evidence or other information we reasonably requested from you, the Group Policy Owner, an Independent Service Provider, your doctor, a government agency, or another person or entity (but not a Reinsurer).*
- b) You or the Group Policy Owner have not responded to our reasonable enquiries or requests for documents in a reasonable timeframe.*
- c) We have not had a reasonable opportunity to complete our assessment of your claim and make a decision after we issue a Show Cause or Procedural Fairness letter.*
- d) We have been unable to contact you about your claim.*
- e) You are, or will be, undergoing rehabilitation, retraining or further treatment, which means we are unable to make a final decision about your claim.*
- f) You or the Group Policy Owner have asked for a delay or extension to part of the claims process.*
- g) We reasonably suspect there was non-disclosure, misrepresentation or a failure to take reasonable care before the cover or policy started that we believe may impact your claim, and we need further investigation, evidence and/or information.*
- h) We reasonably suspect that your claim is fraudulent and need further investigation, evidence and/or information"*

27. The ALA and its constituent members have observed many instances in which they have received CBOC letters shortly prior to the expiration of a claims timeframe which cites circumstances which are questionable. For example, medicare or Centrelink records which may have been sought by the insurer 4 or 5 months into the claims process when such documents could have been requested at the commencement of the claim.
28. Further, we have observed many instances of non-disclosure or fraud investigations which have taken an extraordinary and unreasonable timeframe to conclude. Whilst the ALA recognises the need for such matters to be investigated, such investigations should be conducted promptly. That is particularly the case because consumers often feel accused and intimidated by such investigations and they can be very distressing. In our view, it is reasonable for such investigations to be conducted within the normal claims timeframes.
29. If it is the case that information is needed for the purposes of a non-disclosure or fraud investigation which hasn't been provided, and such information remained outstanding, the insurer could still rely upon the provisions contained at a, b or c of the definition of CBOC to justify a delay in the decision-making process. Accordingly, the exemptions at paragraphs g) or h) are not justified and should be removed from the Code.

Enforceability of the Code

30. An issue which arises in this code review is the question of the enforceability of the code. Historically this code and compliance with it has been overseen by the Life Code Compliance Committee (LCCC). The LCCC has on occasions sanctioned or fined a subscriber who has failed to meet its obligations under the Code. However, in real terms, such sanctions or fines do not deliver a remedy to an aggrieved consumer.
31. It is noted that in the Hayne Royal Commission into financial sector misconduct, Commissioner Hayne stated:

*“If industry codes are to be more than public relations puffs, the promises made must be made seriously. If they are made seriously (and those bound by the codes say that they are), the promises that are set out in the code, and are intended to govern the particular relations between the provider and the acquirer of a financial product or financial service must be kept. **This must entail that the promises can be enforced by those to whom the promises are made: the customer who acquires the product or***

service, and the guarantors of loans to individuals and small businesses” (Our emphasis)

32. A current problem with the Code is clause 8.10 which prevents any provision of the Life Code from being the subject of proceedings in a Court or Tribunal. Respectfully, and having regard to the words above, if the promises contained within the Code are to be taken seriously, there should be no reason why clause 8.10 would be necessary.
33. It is the view of the ALA that the Code should be enforceable by consumers when it is breached. It is noted that there are some different options for enforceability of the code. They include:
 - a. Making certain provisions of the Code Enforceable Code Provisions (ECPs);
 - b. Incorporating the terms of the Code as a term of the life insurance contract;
34. It is the view of the ALA that the better option of the two above is that there are certain code provisions which are Enforceable Code Provisions. Those provisions of the code could be:
 - a. Clauses 5.48 and 5.49; and
 - b. 7.13 and 7.17
35. It is noted that in order for a code provision to be enforceable it needs to be objective, measurable, specific and critical to consumer protection. In our view the timeframes for claims decisions to be made and for complaints to be dealt with meet the requirements of being enforceable code provisions.
36. In our view, the current regime within the Life Code which allows for sanctioning if there has been non-compliance with the code are not a sufficient deterrent.
37. In considering enforceable code provisions, it is important to remember that this code review arises at a time where the Federal Government is in the process of legislating Superannuation Service Standards, including in respect of claims handling. Given the amount of insurance in Australia which is sold through the superannuation system it is important in our view that to the extent superannuation trustees may be held to certain standards by way of legislation, similarly life insurance entities should be subject to those standards and such standards should be enforceable by consumers.

Conclusion

38. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the Code Review.

39. The ALA is available to provide further assistance to your review and to provide any further submissions or clarification that you consider would be helpful to your review.



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