# Claims and Complaints Handling Obligations

A REVIEW OF COMPLIANCE
BY LIFE CODE SUBSCRIBERS

LIFE
CODE
COMPLIANCE
COMMITTEE

MARCH 2020

**Code breach allegations are an important source of information about issues affecting life-insured persons, as well as how the Code is interpreted ...**

## Executive summary

This report is the outcome of a review by the Life Code Compliance Committee (the Committee) of 11 Code subscribers' compliance with sections 8.16, 8.17 and 9.10 of the Life Insurance Code of Practice (the Code).

The Committee's review was initiated by the receipt of more than 700 alleged breaches of the Code from a plaintiff law firm in February 2018. The alleged breaches concern sections of the Code which relate to the processing of claims and complaints (sections 8.16, 8.17 and 9.10).

As part of the review, the Committee undertook a substantial number of individual investigations together with an assessment of each subscribers' underlying processes and procedures. In tandem with the review the Committee has provided guidance to subscribers where gaps and inadequacies in subscribers' process were identified, and has monitored implementation of agreed remediation measures.

### THE ROLE OF PLAINTIFF LAW FIRMS IN MONITORING CODE COMPLIANCE

Plaintiff law firms and other consumer advocates play an important role in referring alleged Code breaches. Since the Code came into formal effect on 1 July 2017, the vast majority of Code breach allegations have been referred by legal professionals on behalf of their clients, with the Committee receiving over 900 Code breach allegations since its inception two years ago.

Code breach allegations are an important source of information about issues affecting life-insured persons, as well as how the Code is interpreted and where the Committee needs to focus its guidance to subscribers on their Code obligations. They are also an important learning opportunity for subscribers. Responding to alleged Code breaches gives subscribers the opportunity to review their processes and procedures, identify any areas of non-compliance and take corrective action to prevent future breaches.

**315** OUT OF 701 ALLEGED BREACHES AMOUNTED TO BREACHES OF THE CODE

## THE OUTCOMES OF THE REVIEW

In all, the Committee's review found that 315 out of the 701 alleged breaches amounted to breaches of the Code. Of concern to the Committee is that a substantial number of these were only identified as a result of the bulk referral, clearly indicating that many subscribers lacked robust frameworks for monitoring compliance with sections 8.16, 8.17 and 9.10 of the Code. In addition, in most cases, subscribers had not reviewed or improved their frameworks until the Committee undertook its review.

While subscribers have now made, or are working towards making, the necessary remedial changes to strengthen their compliance monitoring frameworks, the Committee notes that it has taken far too long and is largely only occurring as a result of the review rather than the subscribers' desire to ensure they comply with the Code. Initial responsiveness to the Committee's enquiries was generally poor and remediation has not been pro-active.

Subscribers must take their Code compliance far more seriously than they have to date. Compliance monitoring must be prioritised, ongoing and systematic. It should not take a bulk referral of alleged Code breaches, followed by a Committee investigation, to prompt subscribers to assess the efficacy of their compliance frameworks and ensure they are keeping the promises that they have willingly made to their customers by adopting the Code.

All subscribers are urged to read this report in the context of their own processes and procedures for sections 8.16, 8.17 and 9.10 of the Code, paying particular attention to the Committee's expectations on pages 12–14. With the completion of its review and the implementation of the remedial changes by subscribers, the Committee anticipates that the number and significance of Code breach allegations relating to these sections will decrease.

The Committee will continue to closely monitor subscribers' compliance with these sections and may consider the use of its sanctioning powers in the event of a failure to implement any agreed remedial action.

Taking the lessons from this review, subscribers are also encouraged to pro-actively consider how they properly assure themselves that they are complying with the Code – particularly those sections relating to less easily measured commitments such as product design, and having adequate monitoring systems in place - on an ongoing basis.

# 1. Scope and methodology

**An alleged breach of the Code by a subscriber can be referred to the Committee by anyone – an individual, a personal/legal representative or the Australian Financial Complaints Authority (AFCA).**

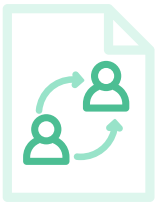
Once a referral is received, the Committee has discretion to:

- Investigate;
- determine whether a breach or breaches of any Code obligation occurred;
- agree with the subscriber the corrective measures to satisfactorily address the breach; and
- monitor the implementation of such measures.

In February 2018, a plaintiff law firm submitted, in bulk, just over 700 referrals relating to 11 Code subscribers. Each referral alleged a breach of one or more of section 8.16, 8.17 or 9.10 of the Code.

At the time, the Committee had been in operation for only a few months and its limited resources were never intended to facilitate investigation of each of the alleged breaches in a referral of this magnitude. Accordingly, the Committee chose a sample of 31 referrals to be investigated on an individual basis. The sample included at least one referral from each of the 11 subscribers, covering both sections 8.16/8.17[1] and 9.10 of the Code. The 31 referrals have been managed as standard individual investigations.

In addition to conducting its own investigation of the 31 sample referrals, the Committee notified the 11 subscribers of all the breaches alleged against them by the plaintiff law firm.



OVER

**700**

REFERRALS RELATING TO 11 CODE SUBSCRIBERS SUBMITTED BY A PLAINTIFF LAW FIRM IN FEBRUARY 2018

1 Given the similar obligations created by sections 8.16 and 8.17, the investigation combined the review of subscribers' compliance with both sections, noting that the processes and procedures for compliance with both sections will be identical, other than a modification to the timeframe for providing a decision on the claim.

**the Committee conducted a review of the subscribers' processes and procedures for sections 8.16/8.17 and 9.10 of the Code to determine their adequacy and the reasons for any non-compliance ...**

The Committee asked each subscriber to:

- review the allegations and report back to the Committee with their findings;
- self-report any breaches identified as part of their review; and
- explain their processes for complying with each Code section allegedly breached.

Most subscribers failed to respond to the Committee's request, which was both perplexing and disappointing. Whilst some relevant general information was gleaned from the ongoing individual investigations, this was insufficient to gain an overall perspective. Accordingly, the Committee wrote to these subscribers' CEOs in August 2019 with a follow-up request to provide their reviews of the breach allegations, all of which were subsequently forthcoming.

Using this information, the Committee conducted a review of the subscribers' processes and procedures for sections 8.16/8.17 and 9.10 of the Code to determine their adequacy and the reasons for any non-compliance, and also to inform the Committee of areas where subscribers need guidance on interpreting the Code and implementing corrective actions.

In all, the investigation took more than 18 months and involved a substantial amount of work with each individual subscriber, helping them to correctly interpret sections 8.16, 8.17 and 9.10 of the Code, reviewing their compliance frameworks and advising them on the best corrective actions when breaches had occurred.

The findings of subscribers' reviews of the breach allegations and the Committee's investigation into subscribers' compliance are outlined on pages 8 to 10 of this report.

# 2. Interpreting sections 8.16, 8.17 and 9.10 of the Code

The findings in this report should be read in the context of subscribers' obligations to customers as outlined in Chapters 8 and 9 of the Code and, more specifically, how sections 8.16, 8.17 and 9.10 are to be interpreted by subscribers and customers alike.

Chapter 8 of the Code sets out the obligations agreed by subscribers when a customer[2] makes a claim. Sections 8.16 and 8.17 sets out the obligations relating to the timeframes for advising a customer of a decision about their claim.

Chapter 9 of the Code relates to complaints and disputes. It conveys upon a customer the right to make a complaint[3] about any aspect of a policy, claim or customer experience, along with the right to dispute any decision made by the subscriber relating to the complaint. It also sets out the subscriber's obligations to customers in relation to dealing with a complaint or dispute, including requirements of the subscriber's process for complaints handling and dispute resolution.

## Section 8.16

Section 8.16 of the Code sets out obligations to customers when assessing **income-related claims**. To comply with Section 8.16, the subscriber must:

- inform the customer of the subscriber's initial decision about the claim no later than two months after the subscriber is notified of the claim, or two months after the end of any waiting period, unless Unexpected Circumstances[4] apply
- where Unexpected Circumstances apply, inform the customer of the subscriber's decision no later than 12 months after the subscriber is notified of the claim
- where Unexpected Circumstances apply, inform the customer of the reasons for the delay and their right to disagree with the reasons, and provide an undertaking to conduct a review if the customer disagrees
- provide the customer with the subscriber's complaints process if a decision cannot be made within 12 months.

**2** A **Customer** in this report refers to a life insured, a policy owner, or a third-party beneficiary as defined in the Code.

**3** A **Complaint** is defined in the Code as 'an expression of dissatisfaction made to us, related to our products or services, or our Complaints handling process itself, where a response or resolution is explicitly or implicitly expected'.

**4** The Definition for Unexpected Circumstances can be found in Chapter 15 of the Code, which is available at the Life CCC's website: https://lifeccc.org.au/app/uploads/2019/04/life-code-of-practice-1.pdf

## Section 8.17

Section 8.17 of the Code outlines subscribers' obligations when assessing all **non-income-related claims**. The obligations are the same as those outlined above for Section 8.16, with two exceptions: the subscriber must inform the customer of their **decision** (as opposed to an **initial decision**) within **six months** of being notified of the claim, or six months after the end of any waiting period, unless Unexpected Circumstances apply.

## Section 9.10

Section 9.10 of the Code deals with subscribers' obligations to respond to complaints received via a superannuation fund trustee. It applies whenever a trustee receives a complaint from a customer or their representative and refers the complaint to the subscriber for the purposes of assisting the trustee to provide the customer with a response.

Section 9.10 sets out two obligations for subscribers – a timeframe obligation and an information obligation.

The **timeframe** obligation requires a subscriber to respond to the trustee, where possible, within a period of time that would allow the trustee to reply to the complaint in writing within 90 calendar days of having received it.

The **information** obligation requires the subscriber to inform the customer of:

- the subscriber's final decision about the complaint and the reasons for that decision
- the complainant's right to copies of the documents and other information the subscriber relied on to assess the complaint, which, if requested, must be provided within 10 business days
- the complainant's right to take their complaint to AFCA if they are not satisfied with the subscriber's decision
- the timeframe within which the complainant must take their complaint to AFCA
- contact details for AFCA.

The subscriber must provide this information in writing, either directly to the customer (life insured), their representative or to the trustee (the policy owner) to be passed on to the life insured.

# 3. Analysis of subscribers' compliance

At the Committee's direction, subscribers conducted their own review of each of the Code breaches alleged against them by the plaintiff law firm. The results were provided to the Committee, along with any self-reported breaches that were identified as part of the review and an explanation of the subscriber's processes for ensuring compliance with each Code section that was confirmed as having been breached.

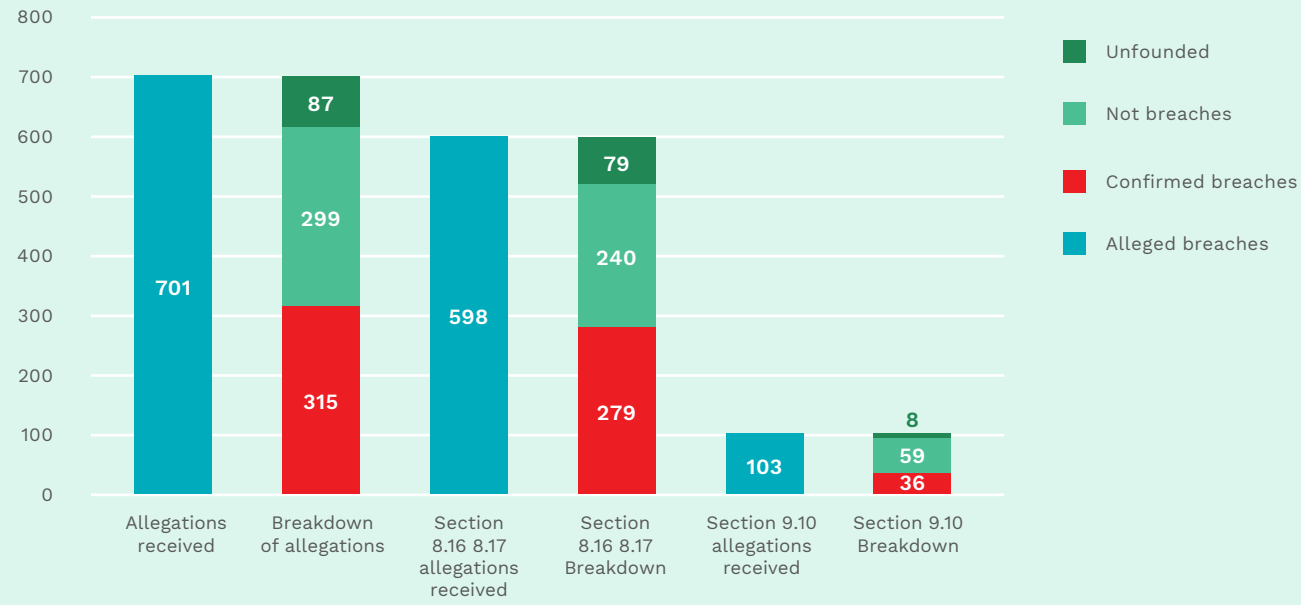
Data gathered from subscribers' reviews showed that **315** alleged Code breaches **(45%)** were confirmed or acknowledged by subscribers as actual breaches; **299** alleged Code breaches **(43%)** were not breaches; and **87 (12%)** alleged Code breaches unfounded (either because the alleged breach occurred prior to the subscriber adopting the Code; or because the subscriber could not identify the customer in question as a policy holder).

Of all the alleged Code breaches, **598 (85%)** related to section 8.16/8.17 of the Code. Just under half of those (**279** or **47%**) were confirmed as actual breaches.

There were **103** alleged breaches of Code section 9.10 (accounting for **15%** of all alleged Code breaches). **36 (35%)** of those were confirmed as actual breaches.

The Chart below shows a comparison of alleged breaches and confirmed breaches by Code section.

CHART 1. COMPARISON OF ALLEGED BREACHES AND CONFIRMED BREACHES BY CODE SECTION



# 4. Key findings from the Committee's review

**The Committee reviewed the processes and procedures of all 11 subscribers for compliance with section 8.16/8.17 and section 9.10 of the Code. Overall, three key themes emerged to indicate why subscribers were in breach of these Code sections.**

## Subscribers lack adequate processes for advising customers when Unexpected Circumstances apply to their claim

The Code defines Unexpected Circumstances as a set of circumstances which when met, provides a subscriber with additional time to assess a life insurance claim. There are 8 specific scenarios listed under Chapter 15 of the Code which qualify as Unexpected Circumstances.

The most common issue among subscribers found to be non-compliant with sections 8.16 and 8.17 was a general lack of process for advising customers about when Unexpected Circumstances apply to their claim, how this impacts the claim decision timeframe, and what they can do about it.

Some subscribers had no process at all for enabling claims assessors to inform customers about the application of Unexpected Circumstances, which meant customers were not made aware that there would be a delay to their claim decision. Other subscribers advised customers about Unexpected Circumstances but either failed to explain why Unexpected Circumstances applied or failed to let the customers know about their right to disagree with the reasons that were provided.

While a number of subscribers used template letters to notify customers about Unexpected Circumstances, in most cases the template letters did not include all the relevant information as outlined in sections 8.16 and/or 8.17 – for example, that customers have the right to request a review if they disagree with the reasons why the subscriber has applied Unexpected Circumstances.

**There is no obligation for subscribers to use template letters to inform customers about Unexpected Circumstances. However, the Committee considers the use of an appropriately worded template to be the best way to reduce risk of non-compliance and notes that the subscribers with the most robust processes for claims management use template letters which include all the information outlined in sections 8.16/8.17.**

## Subscribers' complaint response templates do not include all information required under the Code

The vast majority of confirmed breaches of section 9.10 occurred due to subscribers' complaint response letters failing to include the information in section 9.10 (b) – that customers have a right to copies of the documents and information relied on in assessing their complaint, and that if copies are requested, the subscriber will provide them to the customer within 10 business days.

As previously mentioned, while the use of template letters is not obligatory, the Committee encourages subscribers to use them as an efficient and effective way of ensuring customers are provided with all the information outlined in section 9.10 of the Code.

One subscriber was found to have breached the Code due to an incorrect interpretation of section 9.10 (b). As the subscriber's procedural fairness process included providing customers with copies of all documents used to assess the claim, the subscriber considered it unnecessary to include the same information in the complaint response letter. The Code is quite clear regarding the provision of documents. Even if the subscriber's interpretation were correct, given that procedural fairness may be issued some time prior to a complaint being made and the subscriber's final complaint response, the Committee considers it would be unfair to assume that a customer has kept the documents previously provided by the subscriber.

**To achieve Code compliance, subscribers' complaint response letters must include the information outlined in section 9.10 (b), irrespective of whether the customer has been advised of or provided with this information in previous correspondence.**

## Subscribers have inadequate training and ineffective monitoring for sections 8.16/8.17 and 9.10 of the Code

In all, more than 300 of the alleged breaches were confirmed as a breach of the Code. This is a clear indication that subscribers need significant improvements to the way they detect, identify and remediate Code breaches, and to their Code compliance training for staff.

Many of the confirmed breaches could be attributed in part to subscribers not providing their claims assessors with adequate training and guidance to comply with sections 8.16/8.17 and 9.10. This was most apparent in the management of the Unexpected Circumstances process, where several breaches occurred because subscribers did not inform their claims assessors about changes to the process, nor did they provide them with relevant training. There were also instances of claims assessors using outdated, non-compliant versions of complaint response templates because they had not been made aware that these templates were no longer in use.

It is evident that many subscribers lack robust frameworks for monitoring compliance with sections 8.16/8.17 and 9.10. It is concerning to the Committee that several subscribers' monitoring frameworks failed to detect Code breaches that occurred due to claims assessors inconsistently applying Unexpected Circumstances or not applying them at all.

# 5. Remedies undertaken by subscribers

The Committee is generally satisfied with subscribers' willingness to implement the necessary changes to their processes, procedures and training to ensure compliance with sections 8.16/8.17 and 9.10 of the Code. However, the Committee will expect to see timelier and more pro-active remediation in future. We note that corrective actions have now been carried out by most subscribers following the Committee's investigation into the bulk referral, as well as subscribers' own reviews of each of the alleged breaches.

Subscribers who were found to have breached **section 8.16/8.17** have undertaken some of the following corrective actions to improve their processes for enabling claims assessors to inform customers about the application of Unexpected Circumstances:

- introducing template letters to advise customers when Unexpected Circumstances apply to their claim, to explain what this means for the claim decision timeframe and to let customers know what rights they have in such situations
- amending existing template letters to include all the information required for compliance with section 8.16/8.17 of the Code
- rolling out training to claims assessors to improve their awareness and understanding of the requirements of section 8.16/8.17 of the Code and the processes in place to achieve compliance
- introducing automatic reminders within claims systems to ensure customers are notified about Unexpected Circumstances and follow-up timeframe letters are sent on schedule.

The ways in which subscribers have remediated breaches of **section 9.10** include:

- amending templates for complaint response letters so that all the information required under section 9.10 (b) is included
- requesting all associated trustees to include the information under section 9.10 (a) to (d) within their responses to customers
- introducing automatic reminders to the internal dispute resolution process to ensure case managers are progressing complaints within the required timeframes.

The Committee continues to monitor four subscribers who, despite the Code having now been in place for well over 2 years, are still in the process of undertaking corrective action to ensure compliance with sections 8.16/8.17 and 9.10 as this report goes to publication.

# 6. Committee expectation of subscribers

All Code subscribers are urged to analyse the findings in this report and undertake a review of their processes for managing claims with Unexpected Circumstances and responding to customer complaints received via a superannuation fund trustee.

The following outlines what the Committee considers to be best practice for compliance with the obligations under sections 8.16, 8.17 and 9.10 of the Code. The Committee also intends to issue Guidance Notes on these Code sections to further assist subscribers to interpret and achieve their compliance obligations.

## Implement robust processes and procedures for enabling compliance with sections 8.16 and 8.17

The key learning from the Committee's investigation into the bulk referral is that subscribers' non-compliance with sections 8.16/8.17 is largely due to weak or non-existent processes. The Committee considers that a robust process for enabling compliance with these sections includes an appropriate combination of:

- automatic reminders within claims handling systems to prompt claims assessors to notify customers of Unexpected Circumstances and send any follow-up letters
- template letters that include all the information contained in sections 8.16/8.17 of the Code to advise customers of the application of Unexpected Circumstances to their claim
- staff training, Quality Assurance and review programmes
- monitoring/reporting functions (such as regular exception reporting or reviews) to accurately track claims assessors' compliance with their Code obligations.

### Good Practice – Section 8.16/8.17

The Committee identified one particular subscriber in its review as having comprehensive and robust processes to enable compliance with section 8.16/8.17 of the Code. This subscriber:

- uses an automated claims handling system
- uses 'tasks' to track key deliverables at the two, six and 12-month point in claims
- requires specific actions to close 'tasks' in its claims system
- monitors the 'tasks' through workflow and exception reporting, which is reviewed monthly
- independently peer reviews all claims prior to the six-month timeframe
- automatically generates 'tasks' for further action by the claims assessor
- uses template letters for Unexpected Circumstances
- has a comprehensive training programme for its staff, including e-learning, on-the-job training and a buddy system
- monitors the effectiveness of training via quality assurance and the analysis of the completed rates of e-learning.

## Implement robust processes and procedures for enabling compliance with section 9.10

The Committee considers that a robust section 9.10 process includes the following:

- template complaint response letters that include all the information outlined in section 9.10 (a) to (d) of the Code, including contact details for both the subscriber's and AFCA's internal dispute resolution
- internal dispute resolution processes which enable timeframes for complaints handling to be monitored and managed by case managers
- staff training, Quality Assurance and review programmes
- automatic reminders within complaints handling systems to notify case managers of any unresolved complaints approaching 45 days.

Subscribers should also note forthcoming changes to ASIC's Regulatory Guide to Internal Dispute Resolution (RG 165), which proposes to shorten timeframes for responding to complaints. Following the changes, superannuation trustees will have half as much time to respond to complaints (from 90 days to 45 days), and the Committee expects subscribers to promptly amend their processes and procedures to take these shorter timeframes into account.

### Good Practice – Section 9.10

A subscriber received 11 section 9.10 Code breach allegations in the bulk referral. Upon reviewing its processes for complying with section 9.10, the subscriber demonstrated to the Committee that it was, in fact, compliant in each instance, as:

- the subscriber records all complaints received within its complaints handling system, which automatically generates an acknowledgement letter to the customer within 48 hours of receipt
- the system automatically notifies case managers of any unresolved complaints approaching 45 days
- at 45 days, a further update letter is issued to the customer
- in addition to automated reminders, the subscriber has a weekly tracking system to ensure complaints are progressed appropriately and which in turn is monitored monthly by a quality assurance programme, carried out by a team leader and then an independent Quality Assurance area
- the subscriber uses a template response letter that contains all information as required by section 9.10.

## Ensure staff are trained to understand and comply with their section 8.16, 8.17 and 9.10 Code obligations

A robust process to enable compliance with sections 8.16, 8.17 and 9.10 will only be effective if it is supported by appropriate staff training. Subscribers should implement rigorous training programmes to enable claims assessors and case managers to understand these Code sections and the processes/procedures in place to help them comply. Training should be undertaken as part of the induction process for new starters and provided regularly to existing staff as refresher training. Subscribers should also continually assess the effectiveness of staff training and monitor the outcomes to determine any gaps or deficiencies.

**Subscribers should also continually assess the effectiveness of staff training and monitor the outcomes to determine any gaps or deficiencies.**

## Work closely with trustees when responding to customer complaints

In claims which involve a trustee, the Committee notes that the application of the Code is limited, given that the trustee is not covered by the obligations under the Code. This may result in a negative outcome for the customer, even if the subscriber complies with their Code obligations. The Committee therefore encourages subscribers to work closely with trustees to ensure the trustees are equipped to assist customers in making a claim or complaint. A meaningful way to achieve this would be to agree with trustees to include all the information covered in section 9.10 (a) to (d) in their complaint response correspondence to customers. This would help minimise both the complexity and potential delays in results for customers who are having difficulty identifying their insurer (noting that more than 10% of the alleged breaches in the bulk referral were unfounded as the customer was not insured by the subscriber nominated.)

## Section 13.3(a) of the Code

The Committee notes that section 13.3(a) of the Code creates an obligation for subscribers to have appropriate systems and processes in place to enable compliance with the Code. The results from the Committee's review indicates that most subscribers involved did not have appropriate systems and processes in place to enable compliance with sections 8.16, 8.17 and 9.10 of the Code.

Given that the Code is now heading towards its fourth year of adoption for the majority of subscribers, the Committee expects that subscribers should now have appropriate systems and processes in place to enable compliance with all of the obligations of the Code. Section 13.3(a) will be an area of focus for the Committee over the coming year in both the Committee's monitoring and investigations work.

# Claims and complaints handling obligations

## A review of compliance by Life Code Subscribers

To make a Code breach referral visit our website LifeCCC.org.au or email info@codecompliance.org.au