LIFE CODE COMPLIANCE COMMITTEE

27 September 2021

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Dear Mr Kirwan,

Life Code Compliance Committee Feedback on Code 2.0 Consultation Version

Thank you for the opportunity to review and provide feedback on Code 2.0 Consultation draft 18 August 2021 (Code 2.0).

As you are aware, the Life Code Compliance Committee (Life CCC) is the independent body responsible for the administration and enforcement of the Life Insurance Code of Practice (the Code). It acts in accordance with the Life CCC Charter (the Charter), which sets out the powers, duties, functions, and responsibilities of the Life CCC, subject to any provisions in the Code. The Life CCC formed on 1 July 2017 and has been monitoring the compliance of subscribers with the Code since that date.

The Life CCC's feedback on Code 2.0 has been informed by our extensive experience since the introduction of the Code in 2017 in monitoring subscribers' compliance with the Code through stakeholder engagement, investigation of alleged breaches, data collection and conduct of inquiries on industry practice in meeting specific Code obligations. Our feedback has also been informed by our meetings with representatives of the FSC and attendance at the recent FSC roundtable on the Code review.

This submission sets out the Life CCC's feedback on Code 2.0. Our submission focuses on:

- Three key principles that underpin our review of and feedback on Code 2.0.
- The strengths and limitations of Code 2.0 provisions, grouped around several themes including:
    - Governance
    - Weakened or removed Code obligations
    - Clarity of Code provisions
    - Strengthened consumer protections
- The Life CCC's role in monitoring subscribers' compliance with the Code and the importance of the Code in driving continuous improvement of industry practice.

Key principles

The Life CCC's feedback on Code 2.0 is based on three key principles.

1. **Enhanced protection for consumers**

The revised Code should enhance and strengthen, not remove or weaken consumer protections.

2. **Clarity of Code provisions for subscribers and consumers**

Code provisions should be in plain language and provide clarity for subscribers on their obligations to consumers, and for consumers on their expectations of subscribers' obligations to them.

3. **Enforceability of Code provisions**

Code provisions should state definitively the obligations of subscribers, thus providing a clear and objective base minimum standard of conduct and practice against which the Life CCC monitors compliance, supports subscribers in their compliance with the Code and determines breaches and sanctions where obligations have not been met.

These three principles underpin our consideration of Code 2.0 provisions and our recommendations for improvement.

Governance

Definition and determination of a Significant Breach

The Life CCC is pleased to note that the FSC has accepted the Life CCC's recommendation to provide the Life CCC with the ability to determine a significant breach (section 7.2(k)).

The ability for the Life CCC to determine a breach as significant will further enhance the reputation of the industry as well as the Life CCC's education and guidance to subscribers regarding matters the Life CCC considers significant.

External Dispute Resolution body can now consider breaches

Clause 8.9 of Code 2.0 states that External Dispute Resolution (EDR) bodies, "if allowed, may consider if the entities bound by it have met their obligations in the Code when they Determine disputes".

This clause and the Code are unclear as to *who allows* this; is this allowed by the subscriber, the FSC, the Life CCC and/or the consumer? The Code is also silent on the factors that are to be considered in relation to allowing the EDR body to assess Code compliance.

This clause appears to give EDR bodies like the Australian Financial Complaints Authority (AFCA) the power to determine breaches of the Code. The Life CCC is concerned that this creates confusion and undermines the authority and independence of the Life CCC as the body that monitors compliance with the Code.

The Life CCC **recommends** that clause 8.9 of Code 2.0 be amended to note that only the Life CCC, as the body which monitors Code compliance, can determine a breach of the Code. However, bodies such as AFCA should be able to refer to and consider any potential breaches of the obligations in the Code when determining disputes.

Identifying subscribers in Determinations

The Life CCC notes that Code 2.0 does not include provision for the Life CCC to identify subscribers in the Life CCC's published Determinations. This has been recommended by the Life CCC in previous submissions on the Code for two important reasons:

- Identifying subscribers in published Determinations is in line with the changes to AFCA's rules which have allowed financial firms to be named in AFCA determinations.
- Identifying subscribers in its published Determinations will give customers additional confidence in the industry and in the Life CCC's independence.

The Life CCC encourages the FSC to reconsider this issue and **recommends** that Code 2.0 include provision for the Life CCC to identify subscribers in the Life CCC's published Determinations in line with the changes to AFCA's rules which have allowed financial firms to be named in AFCA determinations.

Obligation to review and update medical definitions for on-sale and off-sale policies

The Life CCC previously provided feedback to the FSC relating to expanding the obligation for subscribers to review their medical definitions to off-sale policies. In Code 1.0, subscribers are only required to review medical definitions in policies that are on-sale, with off-sale policies being excluded. Given the significant number of consumers who hold off-sale policies, the Life CCC recommended that the obligation to review the medical definitions be expanded to include off-sale policies as well as on-sale policies.

We understand from our discussions with the FSC that this recommendation was not accepted largely because requiring medical definitions to be reviewed in off-sale policies could have material pricing implications for those products, to the detriment of many consumers.

While the Life CCC acknowledges the pricing implications raised by the FSC, the Life CCC also notes that excluding off-sale policies from any requirement to review the medical definitions may result in consumers losing cover.

Due to the rapid pace of medical advancements, outdated medical definitions often result in unfair outcomes for consumers, especially in scenarios where the outdated medical definition uses a treatment, test or metric that is no longer commonly used in the identification or treatment of that condition. This would make it less likely for a consumer to successfully claim under the outdated definition.

To prevent this, the Life CCC considers that all policies on-sale at the time of a subscriber's adoption of the Code should have its medical definitions reviewed and updated at least every 3 years, regardless of whether the policy is currently on-sale or off-sale. The updating of the medical definitions should reflect medical advancements and provide the consumer with a level of cover commensurate with the cover available to the consumer when the policy was purchased.

The Life CCC **recommends** that the Code 2.0 provision regarding review and updating of medical definitions be expanded to include additional obligations on subscribers to ensure that medical definitions in on-sale policies, and off-sale policies (to provide the consumer with a level of cover commensurate with the cover available to the consumer when the policy was purchased) are reviewed and updated on a regular basis.

Risk of medical definitions becoming outdated

Code 2.0 includes minimum standard definitions for Cancer, Heart attack and Stroke. Given the fast pace of medical advancement, the Life CCC notes that these minimum definitions may become outdated over time, and even prior to Code 2.0 being adopted by the industry.

The Life CCC questions the effectiveness of including minimum standard definitions within the Code that may become outdated over time and even prior to the Code becoming in-force.

Instead of including minimum standard definitions, the Life CCC **recommends** that subscribers be required to regularly review and update their medical definitions to remain up to date with the latest medical advancements and definitions.

Implications of proposed arrangements for commencement of Code 2.0

Clause 1.4 of Code 2.0 notes that Code 2.0 will replace the previous version of the Code when it comes into force. This will apply to existing claims and complaints from the date that the subscriber is bound by the Code, having a retrospective effect.

The Life CCC notes this will not work in practice since monitoring compliance for existing claims and complaints would be unclear and convoluted. Any ongoing investigations by the Life CCC at the time when Code 2.0 comes into force would need to be restarted under Code 2.0 since the corresponding sections and clauses in the two Codes do not align or may not exist.

In addition, as several obligations in Code 2.0 are weakened when compared to the initial Code, this may result in instances where the subscriber is in breach under the initial Code but not in breach under Code 2.0.

The Life CCC strongly **recommends** that Code 2.0 only applies to new claims and complaints lodged after the subscriber adopts Code 2.0. This will enable the Life CCC to avoid having to restart any ongoing investigations at the point that subscribers adopt the new Code and ensure that there is a clear changeover point for Code 2.0 adoption.

Code 2.0 creating obligations for consumers

The Life CCC notes that one of the purposes of the Code is to provide consumers with consumer protections in relation to the life insurance products sold by subscribers to the Code. The Code is meant to create obligations for subscribers, who are the only entities that are bound by the Code, not obligations for consumers.

However, Code 2.0 includes wording in clauses such as clause 6.19 which requires the consumer to take specific action to receive assistance rather than the subscribers being proactive is inviting such communication.

The Life CCC **recommends** that the FSC review clauses in the Code which create or appear to create (whether intended or not) an obligation for consumers and either remove the clause or re-word the clause to place the obligation on the subscriber to inform the consumer about the expectations of the consumer and thus assist both the consumer and the subscriber to obtain the best outcome.

For example, in clause 4.2 the phrase “but we do expect you to have a good understanding of your health, lifestyle and financial situation” could be removed and embedded in clauses

4.1 and 4.3 to create an obligation on the subscriber to inform the consumer about the expectations of them in answering questions asked by the subscriber.

Alternatively, clause 4.2 could be reworded to require the subscriber to inform the consumer in plain language at the time of answering the questions that the consumer should have a good understanding of their health, lifestyle, and financial situation as it will be relevant to their duty not to misrepresent and in the consumer's interest to obtain a suitable product or may result in their claim being denied. This would create an obligation on the subscriber to communicate this information to the consumer.

We also note that clauses 4.1 and 4.3 do not specifically cover written applications. This appears to be a gap in the coverage of the Code, which could be rectified by including reference to written applications in clause 4.1 and/or clause 4.3.

Enforceable provisions not identified

The Life CCC notes that Recommendation 4.9 in the *Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* required the FSC to take all necessary steps to designate the enforceable Code provisions by 30 June 2021.[1]

However, as of September 2021 there are no designated enforceable provisions in Code 2.0. We understand that the FSC is awaiting the publication of Australian Securities & Investments Commission (ASIC) guidance on enforceable Code provisions, and in the meantime is working with members to identify which provisions would be feasible to categorise as enforceable.

While such stakeholder consultation is important, the Life CCC considers that the key consideration in relation to enforceable provisions is not the 'feasibility' of the provision to be enforceable. Instead, enforceable provisions should relate to obligations in the Code that are likely to cause significant consumer harm if breached.

Enforceable provision framework not present

The current Code 2.0 does not sufficiently explain enforceable provisions or provide sufficient clarity in relation to how enforceable provisions will work, including identifying the entity that will monitor compliance with the enforceable provisions.

As the body that monitors the Code, the Life CCC requires additional clarification from the FSC in relation to how enforceable provisions will be monitored, as well as more information in relation to the additional sanctions that a breach of an enforceable provision will entail.

The Life CCC considers that the framework for enforceable provisions is an important area that will require public consultation and a close discussion with the Life CCC as a key stakeholder in the monitoring of the Code.

[1] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, Volume 1, February 2019, p.33, sighted at https://treasury.gov.au/sites/default/files/2019-03/fsrc-volume1.pdf.

Weakened or removed Code obligations

The Life CCC submits, as a key principle, that changes to the Code should primarily be made in relation to providing consumers with additional protections, fortifying the protections available to them. Unless there is a valid reason to do so, changes to the Code should not weaken or remove the obligations on subscribers and result in a lower level of protection for consumers. This is particularly important in protecting vulnerable consumers.

The Life CCC is concerned that multiple clauses in Code 1.0 that provide important protections to consumers have been removed or amended with the effect of relaxing the obligations of subscribers, such that consumers appear to have fewer protections in Code 2.0 when compared to Code 1.0.

Some obligations in Code 1.0 have been removed because they are also covered by legislation. In our view this is unhelpful to consumers who may not be aware of the relevant legislation. It is our strong view that the Code should encompass a consumer's entire relationship with the subscriber and include all obligations governing that relationship, even if the obligations are also included within legislation.

Several obligations in Code 2.0 have been weakened compared to Code 1.0, eroding important protections to consumers.

We set out below our concerns about the weakening and removal of consumer protections in Code 2.0 compared with Code 1.0.

Policy design obligations weakened

Section 3.1 of Code 1.0 creates obligations for subscribers when designing and introducing a new life insurance policy. The Life CCC notes that the mirror obligations in Code 2.0 have been weakened compared to the **obligations** in Code 1.0.

For example, section 3.1 in Code 1.0 requires subscribers to incorporate plain language into their sales and policy information, while clause 2.3 of Code 2.0 requires subscribers to use plain language "where possible".

In addition, section 3.1 in Code 1.0 requires subscribers to regularly review their on-sale products to ensure that they remain generally suitable. This has been reduced to a requirement to "periodically" review the target market in clause 2.2 of Code 2.0.

These changes reduce the minimum standards expected of subscribers, lower protections for consumers and erode consumer trust and confidence in the life insurance.

The Life CCC **recommends** that the changes to the policy design obligations in Code 2.0 are reversed to the original wording in Code 1.0.

Anti-discrimination obligation removed

Section 5.17 of Code 1.0 required subscribers to comply with the requirements of anti-discrimination laws when making decisions on applications for insurance. The Life CCC notes that this requirement has been removed in Code 2.0.

While the Life CCC acknowledges that section 5.17 of Code 1.0 is a restatement of existing legislation, the Life CCC notes that there is value in including such sections in the Code as the typical consumer is unlikely to be aware that such legislation exists. As consumers are generally not legally trained, they might also struggle to locate and interpret such legislation.

The inclusion of such obligations in the Code allows consumers to be more aware of the rights and protections that are available to them and allows the Code to be a 'one-stop shop' for consumers to review and identify the rights and protections that are available to them.

The removal of this obligation in Code 2.0 would also restrict the Life CCC's monitoring work as the Life CCC would no longer be able to conduct any monitoring or investigations relating to any alleged discrimination in the sale of policies.

The Life CCC **recommends** that the FSC include within Code 2.0 any obligations that have been removed due to a duplication in existing legislation and consider how to build and improve on existing legislation and create industry standards.

Clause 5.43: Timeframes for finalisation of decisions

Clause 5.43 of Code 2.0 requires that, once the subscriber has received all the information that it reasonably needs to complete its assessment and has taken all steps to finalise its decision, the subscriber must tell the consumer the decision within 5 business days and confirm the decision in writing within 10 business days of telling the consumer.

The mirror provision in Code 1.0 is section 8.15. Section 8.15 has a 10-business day timeframe for subscribers to inform the consumer of the decision on the claim once the subscriber has all the information that it reasonably needs and has completed all reasonable enquiries to assess the claim.

Clause 5.43 in Code 2.0 weakens section 8.15 in Code 1.0 in two ways.

- Firstly, the timeframe in clause 5.43 for the written decision has been extended from 10 business days to 15 business days. While clause 5.43 requires the subscriber to tell the consumer of the claims decision within 5 business days, this communication does not require the subscriber to inform the consumer about the reasons for the decision or list the information that the subscriber relied on in making its decision. That information will only be provided within the written decision which has been increased to a 15-business day timeframe (from 10 business days).
- Secondly, clause 5.43 only requires the subscriber to communicate the decision once the subscriber has "taken all steps to finalise its decision". This is broader than the "complete all reasonable enquiries" trigger in section 8.15 in Code 1.0. In section 8.15, a reasonable enquiry is limited to a request for information which the subscriber requires to assess the claim, such as a request for medical information. Clause 5.43 expands this to include "all steps to finalise a decision". Taking all steps to finalise a decision may cover steps like a claims assessor submitting the claim decision for internal quality assurance (QA), which is excluded under the reasonable enquiries trigger in section 8.15.

The Life CCC notes that the breach data that it has collected since the commencement of the Code does not indicate that the obligation in section 8.15 is too onerous or that subscribers generally have issues with complying with this obligation.

The Life CCC considers that clause 5.43 has been weakened significantly compared to the equivalent Code 1.0 provision. A key consumer protection in section 815 of Code 1.0 has been redrafted in a manner that is significantly in favour of the subscriber to the detriment of the consumer.

The Life CCC strongly **recommends** that the FSC revert clause 5.43 in Code 2.0 to the wording used in section 8.15 of Code 1.0.

Clause 5.48: Reopening of claims

Clause 5.48 notes that if a claim is closed or declined and subsequently reopened, the subscriber is entitled to treat the reopened claim as a new claim with a new received date, and the timeframes under the Code will restart once the claim is reopened. This means that a subscriber who reopens a claim will be provided with the full 2 or 6month timeframe under the Code to assess a reopened claim, even though the subscriber may already have all the information that it needs.

This approach to reopened claims is contrary to the Life CCC's approach to reopened claims as articulated in the Life CCC's Determinations and *Guidance Note No. 2: Interpreting and applying Life Insurance Code of Practice section 9.10*.[2] The Life CCC's approach in Code 1.0 has been to use the complaint response timeframes in section 9.10 and 9.12, as appropriate, as the timeframe for the subscriber to provide its decision on a reopened claim. The Life CCC has taken this approach for two main reasons:

- Code 1.0 does not include a specific timeframe for a reopened claim.
- Using the full 2 or 6month timeframe in section 8.16 or 8.17 to reassess a claim that was previously determined is unfair to the consumer.

The approach to reopened claims in Code 2.0 is contrary to the Life CCC's approach to reopened claims and significantly extends the timeframe that subscribers have to assess reopened claims. In the view of the Life CCC, this extension is not necessary and erodes consumer trust and confidence in the Code and industry practice.

Instead, the Life CCC **recommends** that Code 2.0 should include a specific timeframe for subscribers to assess reopened claims that have been previously determined by subscribers. The Life CCC further **recommends** that this timeframe should align with the complaint response timeframes in ASIC's *Regulatory Guide 271 Internal dispute resolution*[3].

Clause 5.52: Financial advice for non-income related claims

When a non-income related claim is accepted, and the amount is at least $50,000, the subscriber is required under clause 5.52 to provide information to help the consumer obtain independent financial advice to help manage the payment, unless the recipient is a superannuation trustee.

The equivalent obligation in section 8.18 in Code 1.0 applies to all lump sum payments regardless of size.

The Life CCC notes that whether the consumer seeks independent financial advice to manage the claim payment is a decision for the consumer to make. The inclusion of a suggestion in the claim acceptance letter for the consumer to seek financial advice does not force or coerce the consumer to seek financial advice in any way. Instead, the inclusion of

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[2] Life CCC, *Guidance Note No. 2: Interpreting and applying Life Insurance Code of Practice section 9.10*, November 2019, p.4, sighted at https://lifeccc.org.au/app/uploads/2019/10/GN-No.2-Interpreting-and-applying-Life-Insurance-Code-of-Practice-9.10-_-Final.pdf.

[3] ASIC, *Regulatory Guide 271 Internal dispute resolution*, September 2021, pp. 19-33, sighted at https://download.asic.gov.au/media/3olo5aq5/rg271-published-2-september-2021.pdf.

the suggestion for the consumer to seek financial advice is to ensure that consumers are aware of this option that is available to them.

The Life CCC does not agree with the $50,000 minimum amount. For the most financially vulnerable consumers, a lesser amount may still have a significant adverse financial impact on Centrelink or tax entitlements. We **recommend** that this arbitrary limit is removed from clause 5.52 of Code 2.0.

Clause 5.53: Financial and legal advice regarding income-related claims

When an income-related claim is accepted, and the subscriber offers a consumer the option of a lump sum settlement instead of future income payments, clause 5.53 requires the subscriber to suggest to the consumer to seek independent financial advice before the consumer makes a decision.

In contrast, section 8.18 in Code 1.0 requires the subscriber to suggest that the consumer seek financial and legal advice. It is unclear why the suggestion to the consumer to seek legal advice has been removed.

The Life CCC **recommends** that the wording regarding seeking legal advice be returned to clause 5.53 of Code 2.0.

12-month timeframe for decision on income related and non-income related claims

The current Code requires subscribers to make a decision on income related and non-income related claims "no later than 12 months after we are notified of your claim". This obligation has been removed in Code 2.0, resulting in the removal of a key consumer protection currently included in Code 1.0. The removal of this timeframe also serves to erode consumer confidence in the industry as it indicates to consumers that the industry is not confident in being able to assess and provide decisions for most claims within the 12-month period.

The Life CCC **recommends** that the FSC include the 12-month timeframe for the assessment of claims within Code 2.0. This provides consumers with certainty that their claims will not drag on unnecessarily and will be finalised within 12 months.

Clause 7.7: Complaints about declined or closed claims

Clause 7.7 notes that the subscriber's final response to a complaint about a declined or closed claim can be a response noting that the subscriber will reconsider or reopen the claim.

The Life CCC has previously stated in *Guidance Note No. 2: Interpreting and applying Life Insurance Code of Practice section 9.10*[4] that the decision to reopen the claim does not qualify as a final decision in relation to the complaint. As a result, clause 7.7 is contrary to the Life CCC's approach to a subscriber responding to a complaint about a closed or declined claim.

[4] Life CCC, *Guidance Note No. 2: Interpreting and applying Life Insurance Code of Practice section 9.10*, November 2019, p.4, sighted at https://lifeccc.org.au/app/uploads/2019/10/GN-No.2-Interpreting-and-applying-Life-Insurance-Code-of-Practice-9.10-_-Final.pdf.

In addition, we note that the complaint obligations under clause 7.7 of Code 2.0 have been changed to require a final written "response" to the complaint, instead of a final "decision" in relation to the complaint in Code 1.0. This change means that the subscriber can close a complaint if it simply provides a response, instead of a decision.

The Life CCC notes that a "decision" in relation to the complaint must address the consumer's complaint and provide some form of resolution to the consumer's concerns. A "response" in relation to the complaint simply requires a reply from the subscriber that may or may not address the consumer's concerns.

This is a significant reduction in the obligations for subscribers in relation to responding to a complaint and reduces the rights that a consumer has when a complaint is lodged.

The Life CCC **recommends** that the wording in clause 7.7 reverts to the original wording in Code 1.0.

Clarity and readability of Code obligations

Clarity of obligations

The Life CCC notes that the FSC has done significant work in providing clarity around Code 2.0 obligations. However, there are still several clauses in Code 2.0 that do not prescribe subscriber obligations. Rather they restrict the application or scope of specific clauses, describe standard procedures, or place obligations on consumers rather than subscribers.

We suggest it is more helpful to both the consumer and subscriber if such statements are made separately to the clauses of the Code or else expressed as an active obligation of subscribers. We set out below a list of these clauses along with our recommendations in relation to amending these clauses to provide clarity for subscribers and consumers.

- **Clause 2.8:** We **recommend** moving this clause to a sub-header below the 'Updating Medical Definitions' header and removing the clause number as it is an explanatory statement.
- **Clause 2.34**: We **recommend** moving this clause as a sub-header below the 'Insurers will clearly explain CCI' header and removing the clause number as it is an explanatory statement.
- **Clause 3.3**: We **recommend** rewording this clause to create an obligation for the subscriber to inform the consumer if communication with the employer or superannuation fund trustee is required.
- **Clause 3.14**: We **recommend** rewording this clause to create an obligation for the subscriber to inform the consumer when information about the consumer's health is determined to be best communicated to the consumer's doctor, including why.
- **Clause 4.36**: We **recommend** moving this clause to a sub-header below the 'Policy cancellations' header and removing the clause number as it is an explanatory statement.
- **Clause 5.11**: We **recommend** rewording this clause to create an obligation for the subscriber to clearly inform the consumer regarding who will be the contact on their claim. The consumer should also have a clear understanding on the relevant entity to contact for more information. We **recommend** rewording the clause to include an obligation on subscribers both to let consumers know who will contact them and help

them with their claim and to let consumers know who they can contact for more information.

- **Clause 5.19**: We **recommend** including a summary of the standards that independent medical examiners will meet, rather than referring to an external document which is not readily available to consumers.
- **Clause 6.17**: We **recommend** moving this clause to a sub-header below the 'Financial hardship' header and removing the clause number as it is an explanatory statement.

Appendix B - supporting customers experiencing a mental health condition

Code 2.0 includes Appendix B – supporting consumers experiencing a mental health condition, which includes various promises by subscribers to provide extra support to consumers who experience such conditions.

However, Appendix B states that it is not part of the Code. This is confusing and could indicate to the reader that Appendix B is a collection of potentially empty promises that are not binding on subscribers.

The FSC has noted that Appendix B is not a part of the Code. Rather it is a summary of the relevant obligations in the Code and is not intended to duplicate or add additional obligations to those already included in the Code.

While Appendix B is a summary of obligations that are already within the Code, those obligations are scattered in various Code chapters and are difficult for consumers to compile and understand, especially consumers who may be experiencing a mental health condition.

The Life CCC considers that several of the obligations created in Appendix B go above the obligations already in the Code and apply specifically to consumers who are experiencing a mental health condition. Such protections should be embedded in the Code.

In addition, some of the references to the Code within Appendix B are inaccurate and do not correctly reference the Code. For example, point 2 in Appendix B refers to consumers who need extra support due to a mental health condition and references clause 6.5 of the Code, which refers to a subscriber's family violence policy.

Given the vulnerability of consumers who are experiencing a mental health condition, the Life CCC **recommends** that subscribers' obligations in relation to supporting consumers experiencing a mental health condition consolidated in Appendix B be included within the Code, either as a separate chapter, or by expanding each of the relevant clauses in the Code to create clear and binding obligations for subscribers which can then be monitored.

Use of plain language where possible

There are multiple clauses in Code 2.0 which require subscribers to use plain language. However, a number of those clauses have included the "where possible" carve out to the requirement to use plain language. Such clauses include:

- Clause 1.1(c)
- Clause 2.3(a)
- Clause 4.2

We note that other clauses such as clause 4.29 have a plain language requirement without the "where possible" carve out.

The Life CCC considers the "where possible" carve out weakens the requirement to use plain language and is inconsistently applied in Code 2.0.

The Life CCC **recommends** that the "where possible" wording is removed or replaced by a statement identifying a circumstance where it is not possible to use plain language, such as when quoting the law. This would provide certainty in relation to the obligation to use plain language and avoid use of the "where possible" carve out to weaken obligations in the Code.

Definition of Pressure Selling

Code 2.0 has defined pressure selling as "using certain techniques to pressure, compel or otherwise coerce someone into buying a policy that they do not want". The Life CCC has previously noted that this definition of pressure selling does not meet the ASIC requirements as set out in *Report 587 The sale of direct life insurance,* which states:

> *The Code must clearly define and prohibit pressure selling. This must include that firms stop using the cooling off period and deferred payment arrangements to conclude sales and provide a written quote and policy information to consumers if requested. Firms must also have clear guidelines for staff to end a sales call the first time a consumer states that they do not want to proceed.*[5]

Code 2.0's definition of pressure selling does not meet ASIC's requirements, specifically in relation to firms using the cooling off period and deferred payment arrangements to conclude sales.

The Life CCC **recommends** that the FSC align the definition of pressure selling in Code 2.0 with ASIC's requirements as set out in Report 587.

Strengthened consumer protections

Stepped vs levelled premiums

The Life CCC notes that AFCA has raised concerns relating to Code obligations relating to stepped and levelled premiums. AFCA's concerns relate specifically to the obligations in Code 2.0 (clauses 2.27, 2.28 and 3.5) regarding the information that must be provided to consumers. AFCA is concerned that consumers are currently not provided with the information necessary for them to be able to make an informed decision as to whether stepped or levelled premiums are more appropriate for their circumstances.

The Life CCC shares these concerns and **recommends** that the obligations relating to stepped and levelled premiums in Code 2.0 be further strengthened to provide clarity for subscribers about the information they must provide to consumers and to provide protection for consumers in selecting premiums appropriate to their circumstances.

Third party obligations

While Code 2.0 contains additional obligations on third parties and authorised representatives that go beyond the obligations in the current Code, the Life CCC is still of the view that the third-party obligations do not adequately cover aspects such as the advertisement of life insurance policies by third parties.

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[5] ASIC, *Report 587, The sale of direct life insurance*, August 2018, p. 14, sighted at https://asic.gov.au/media/4852974/rep587-executive-summary-published-30-august-2018.pdf.

The Code should also be clear and clarify that a distributor is also an independent service provider of the subscriber and is required to meet all the obligations expected of an independent service provider.

As raised in the Code roundtable meeting, the Life CCC **recommends** that the FSC further expand the third-party obligations within Code 2.0 to cover all aspects of a third party's involvement in the sale of a life insurance policy. The Code should require subscribers to include Code compliance as a contractual obligation with third parties for all new or amended contracts, in the same way that an authorised representative of the subscriber must comply with the Code.

Financial hardship

Code 2.0 does not require subscribers to proactively contact consumers regarding the non-payment of premiums and to provide them with options if they are experiencing financial hardship in line with the Life CCC's recommended best practice as per the Life CCC's *Guidance Note No 4: Section 6.5 – Life Insurance Code of Practice*, which states:

> *Where a customer misses one or more of their premium payments, subscribers should proactively inform the customer that they may have options available to them if they are in financial hardship.*[6]

The Life CCC **recommends** that Code 2.0 include the obligation for subscribers to proactively inform consumers, who have missed one or more of their premium payments, that they may have options available to them if they are in financial hardship.

Continuous improvement

Purpose of the Code and role in continuous improvement of industry practice

The Life CCC sets the standards and commits industry subscribers to compliance with those standards when providing products and services to consumers.

As observed in the *Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, the continued development of industry codes provides an opportunity to identify opportunities for improvement and for industry to commit to making those improvements.[7]

Changes to the Code should provide consumers with more robust consumer protections, increase clarity for consumers and subscribers on subscribers' obligations and aid the monitoring and enforceability of the Code.

While some of the proposed changes to Code 2.0, such as the amendment to Code 2.0 which allows the Life CCC to determine a significant breach of the Code, serve to strengthen the Code, others have resulted in weakened obligations and diminished consumer protections.

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[6] Life CCC, *Guidance Note No.4: Section 6.5 – Life Insurance Code of Practice*, November 2020, p. 3, sighted at https://lifeccc.org.au/app/uploads/2020/11/Section-6.5-Guidance-Note.pdf.

[7] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, Volume 1, February 2019, p.313, sighted at https://treasury.gov.au/sites/default/files/2019-03/fsrc-volume1.pdf.

As the body that monitors the Code, the Life CCC offers a unique perspective and contribution to the review of the Code, including the knowledge and insights drawn from its four years' experience in monitoring compliance with the Code through investigation of alleged and reported Code breaches, collection and analysis of data and conduct of inquiries into industry practice.

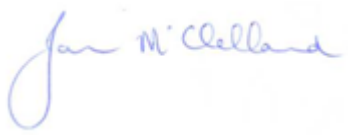
Our work in providing guidance and supporting subscribers in meeting their obligations under the Code has demonstrated the need for clarity of Code provisions for subscribers, as well as for consumers. This point was reinforced in the *Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*.[8] We have identified in our submission the need to avoid removal or weakening of Code provisions that have the effect of diminishing consumer protections as well as the need to review and clarify provisions which in our view are not definitive or clear in relation to subscriber obligations.

The Life CCC encourages the FSC to continue to drive continuous improvement in the drafting of Code 2.0 to instil consumer confidence in the Code and the life insurance industry. To this end, the Life CCC has made several recommendations and suggestions in relation to Code 2.0.

We hope that the FSC will take on board the recommendations made by the Life CCC in this consultation response. The Life CCC's comments and recommendations are aimed at ensuring that the Code provides strengthened protections for consumers, clarity and certainty for subscribers in relation to their obligations and accountabilities, and clarity and certainty for the Life CCC and other entities in relation to governance of the operation of the Code.

The Life CCC once again thanks the FSC for the opportunity to provide feedback as part of this consultation process and for the invitation to the Code Roundtable on 8 September 2021.

Yours sincerely



Jan McClelland AM
Chair, Life Code Compliance Committee

[8] Ibid., p. 312.