***Supplementary File S4: Concerns expressed by Life Code Compliance Committee (LCCC)***

The LCCC, whose role is to ensure that the self-regulated industry is kept properly accountable, is established by and funded through the FSC and is comprised of only 3 members(1):

* One industry representative, appointed by the FSC, and considered independent if he/she has not been employed by FSC/FSC insurer within the last 12 months;
* One consumer representative, appointed by the Financial Ombudsman Service (FOS) (now the Australian Financial Complaints Authority, although neither the Code nor the LCCC Charter have been updated to acknowledge this); and
* One chairperson, appointed jointly by the FSC and FOS.

The LCCC’s role is discretionary - there is no requirement on the LCCC to investigate any allegation made, or to impose any sanction on an insurer, regardless of the results of an investigation (ss7 and 8.4). Sanctions must not be imposed until an insurer has been given an opportunity to implement ‘corrective measures’ (s8.1). The sanctions able to be imposed (s8.3) have little or no punitive value – the worst being the ability to publicly name the insurer as non-compliant with the Code. Removing an insurer from membership of FSC is not an available sanction, nor are fines or other punitive actions. Complaints concerning the LCCC will be determined by a party jointly appointed by the FSC and the FOS – not independently appointed by the FOS to investigate. There is no mechanism in the charter if FSC and FOS cannot agree on the appointment of the independent party. There is also no mechanism by which the determination of the independent party can be enforced, and no further sanctions that can be applied by the independent party.

Each year, the LCCC publishes an annual report. In the 2017-18 report(2):

* The inaugural chair resigned, and the LCCC was unable to convene from Nov 2017 to Feb 2018. This demonstrates the inherent issues in allowing the appointing parties to prevent the LCCC from carrying out its proposed functions by delaying appointment of representatives.
* The LCCC lacked resources to investigate all of the breaches notified to it - only 56 investigations were initiated from 747 referrals received.
* Only 2 investigations were completed within the financial year. One identified a breach, and the LCCC is “working with” the insurer on the other investigation.
* No sanctions were imposed in the financial year.

In the 2018-2019 Annual Report(3):

* The LCCC noted numerous concerns with insurers’ compliance with the Code, stating, “**self-regulation is a privilege, not a right.** That privilege comes with a responsibility to ensure that appropriate mechanisms are in place to monitor compliance and report code breaches via accurate quantitative data”. [emphasis ours]
* an insurer breached the Code significantly, failed to write to consumers about the breach and continued to sell non-compliant products. The LCCC required the insurer to publish information on its own website and the FSC website about its breach– the most serious sanction possible to impose. No other penalties were applied, either for the breach or the failure to rectify for a significant period of time.
* the LCCC notes it made a recommendation to the FSC regarding “expanding upon the range of potential sanctions available - including more stringent sanctions and earlier application. This would demonstrate greater industry accountability in preventing harm and strengthen the overall authenticity of the Code.”
* The LCCC refers to and repeats recommendations made in the Royal Commission Final Report regarding the extension of sanctions powers in the Code.
* The LCCC notes “the very limited consultation process undertaken to date for the Code review”, and “urged the FSC to take a more formal, consultative and transparent approach to the process”.

In the 2018-2019 LCCC Annual Compliance Report(4):

* The LCCC noted that “all life insurers in the Australian market are now subscribers to the Life Insurance Code of Practice”.
* The LCCC reported that “**the Committee was disappointed with the initial integrity of the data submitted by many subscribers this year**. In many cases, and despite repeated resubmissions of data in some instances, there remained gaps or inconsistencies in reporting, and it was evident that there were many cases of inadequate data quality assurance conducted prior to the initial submission” [emphasis ours]
* The LCCC did acknowledge that “when the Committee’s concerns were explicitly raised with the relevant subscribers, they generally acknowledged the data problems and accepted the issues being highlighted.”
* The LCCC It then notes, however, that “the Committee has been left with the impression that **a number of subscribers were not taking their Code compliance obligations and the Code’s true purpose seriously**”. [emphasis ours]

In the 2019-2020 LCCC Annual Report(5):

* The LCCC noted that the number of complaints-related and claims-related (both customer instigated) breach allegations had reduced from the previous year. It stated that it is “encouraged that our various report recommendations, newly introduced website, supporting Guidance Notes and engagement with industry is having a positive impact on subscribers’ compliance outcomes”.
* However, the LCCC also commented that insurer-reported breaches continued to be low. “Disappointingly, we continue to see subscribers report low numbers of significant breaches. **The Committee believes that not all significant breaches are being reported.** We urge subscribers to regularly review their compliance monitoring frameworks to gain assurance of their effectiveness, but also to encourage and support staff at all levels of the organisation to identify and report significant breaches.” [emphasis ours]
* The LCCC investigated 34 of 44 significant breaches self-referred by insurers (33 confirmed as breaches), and 102 of 127 alleged breaches (65 confirmed).
* However, no sanctions were imposed in the financial year.

In the 2019-2020 LCCC Annual Compliance Report(6):

* The LCCC noted it was “pleased to see subscribers apply far more rigour to the data collection and compliance reporting process than was the case last year. Better quality reporting has given us valuable insight into subscribers’ responses to some of the unique challenges faced by the industry over the last 12 months.”
* However the LCC also noted that “some of the issues we flagged in last year’s Report – such as the high number of isolated breaches of the Code attributed to people-related causes – do not appear to have been addressed by all subscribers.”
* The LCCC noted the issues involved in the use of third-party distributors who are not bound by the Code, and recommended that it be a requirement of the Code for third-party distributors to be bound by the Code’s standards, and for subscribers to establish a contractual obligation with distributors to comply with the requirements of the Code
* The LCCC noted that the FSC is considering these recommendations, but they have not yet been implemented.

In the 2020-2021 LCCC Annual Report(7):

* The LCCC reported that **some of its prior feedback was not reflected in the updates to the Code** (Code 2.0), including the ability to publish determinations about subscribers on an identified basis. [emphasis ours]
* The LCCC asked the FSC “to reconsider our previous recommendations to increase consumer protections and subscriber accountability, and to carefully consider our further recommendations for improving Code 2.0 to ensure that it is sufficiently fit for purpose and enforceable.”
* The LCCC noted further feedback that it had given about Code 2.0, including, “governance matters relating to enforceable provisions and the definition and determination of a significant breach”… “the need for the Code’s obligations to be the responsibility of the subscriber, not the consumer”… and “compliance of the Code by third party distributors”.
* The LCCC noted that “the number and nature of breach allegations this year indicates areas for improvement, particularly in relation to subscribers’ self-reporting of significant breaches and compliance with the Code’s claims and complaints obligations.”
* The LCCC added that “Despite consistent pleas from the Committee for subscribers to ensure their breach detection processes are robust, we have once again seen subscribers report low numbers of significant breaches, yet our active monitoring continues to result in previously unidentified significant breaches. This is disappointing given the number of guidance resources we have provided for subscribers to help them strengthen these processes.”
* The LCCC investigated 48 significant breaches self-referred by insurers (38 confirmed as breaches), and 294 alleged breaches (104 confirmed). A number of these breaches took place in previous years, when the Committee was under-resourced to assess them.
* However, no sanctions were imposed in the financial year.

In summary, only one sanction has ever been imposed (in 2018-19) since the commencement of the LCCC. The LCCC has made numerous comments about the failure of insurance companies’ compliance with the Code, and continued assertions about the need for amendments to the Code to incorporate greater sanctioning power, meaningful penalties and enforceability. However, the LCCC is constrained by the provisions of the Code under which it is constituted.

**REFERENCES**

1. Financial Services Council. Life Insurance Code of Practice. 2019.

2. Life Code Compliance Committee. Annual Report 2017-2018. 2018 September 2018.

3. Life Code Compliance Committee. Monitoring Compliance with the Life Insurance Code of Practice - 2018-19 Retrospective: The Annual Report of the Life Code Compliance Committee. 2019 September 2019.

4. Life Code Compliance Committee. Annual Industry Data and Compliance Report 2018−19. 2020 June 2020.

5. Life Code Compliance Committee. Monitoring Compliance with the Life Insurance Code of Practice - 2019-20 Retrospective: The Annual Report of the Life Code Compliance Committee. 2020 September 2020.

6. Life Code Compliance Committee. Annual Industry Data and Compliance Report 2019−20. 2021 April 2021.

7. Life Code Compliance Committee. Monitoring Compliance with the Life Insurance Code of Practice - 2020-21 Retrospective: The Annual Report of the Life Code Compliance Committee. 2021 September 2021.