



Submission by the

**Financial Rights Legal Centre
and
Consumer Action Law Centre,**

Financial Services Council

Draft Minimum Standard Medical Definitions

November 2016

About Financial Rights Legal Centre

The Financial Rights Legal Centre (Financial Rights) is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2014/2015 financial year.

About the Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Introduction

Thank you for the opportunity for the Financial Rights Legal Centre and the Consumer Action Law Centre to comment on the Financial Services Council's Draft Minimum Standard Medical Definitions.

Scope

We note that the scope of standard definitions is limited to three standard definitions:

- a) Cancer – *excluding early stage cancers*
- b) Severe heart attack – *measured by specific tests*
- c) Stroke – *resulting in permanent impairment*

During the consultation process for the drafting of the Life Insurance Code of Practice, there were four definitions mooted – the above 3 plus a definition for by-pass. While this is a procedure rather than a disease or health condition, we were led to believe that this would be included as one of the more common procedures claimed under a life insurance policy. We believe it may be worth examining the possibility of including a definition for by-pass.

Definitions

While we intend to confine our comments to the administration and review of minimum medical standard definitions we wish to raise the following general observations with respect to the definitions themselves.

Firstly the definitions include a number of acronyms and technical language. For example, T2bNOMO, TNM, Gleason score, RAI stage, ST-T and others. While this may be appropriate it would assist consumers if there were a glossary attached in order to promote better understanding.

Secondly with respect to the definition of “Cancer – excluding early stage cancers” – “early” is not actually defined. Further the stage of cancer may not necessarily be correlated with the severity of the cancer. Many cancers are aggressive and even if discovered early can kill quickly. This is particularly significant given the intention to differentiate between a clinical definition and an insurance definition which “takes into account severity of the condition.”

Third, we note that title of 4.2 is of “Severe heart attack – measured by specific tests” not simply “heart attack” the severity of which is measured by specific tests. The document then goes on to define “heart attack”. The use of the qualifier severe in the title is confusing. Many

product disclosure statements simply refer to heart attack rather than severe heart attack. We recommend for simplicity sake that the title of 4.2 simply be heart attack – and the severity of which can simply be measured by specific tests as detailed in the definition.

Review

We note that the Life Insurance Code of Practice (**the Code**) addresses the issue of medical definitions at section 3.2 stating that they “will be reviewed at least every three years” and that “[t]his will be done in consultation with relevant medical specialists.”

We remain concerned that the FSC has referred to “relevant” medical specialists” in the Code rather than “independent” medical experts. Who is a “relevant” medical specialist is entirely at the discretion of insurers and the Financial Services Council. This fundamentally undermines the appearance of impartiality and raises questions as to the validity of any review into medical definitions, in the eyes of consumers.

This lack of independent review has unfortunately carried over into this current draft of minimum standards medical definition document. With respect to a comprehensive review of the minimum standard medical definitions, there is no requirement for it to be conducted by an independent reviewer. The document states at section 5 that the “FSC will carry out both comprehensive reviews and intermediate reviews of the minimum definitions.” We are strongly of the view that these reviews must be conducted independently, if they are to hold any legitimacy or validity in the eyes of the community.

We note that under 12.2 of the Code that:

“The FSC is **responsible for commissioning formal independent** reviews of the Code as appropriate, no less than every three years.” (**our emphasis**).

This is appropriate and as we understand was an oversight of drafting quickly corrected. This same standard of independence should be applied to minimum standard medical definitions and this document. The FSC should not be the ones to “carry out” the reviews. We therefore recommend that Section 5 be amended to state:

“The FSC is responsible for commissioning both formal independent comprehensive reviews and independent intermediate reviews of the minimum definitions.”

Furthermore it is unclear whether independent medical experts and the community will be even given the opportunity to provide input into future definition reviews. Section 5.1 states that

*“The [comprehensive review] process should use **the expertise of FSC members and relevant medical experts.**”*

The review process therefore seems to exclude public consultation including input from independent medical specialists. Without independent medical specialists, the definitions will

remain wholly within the hands of life insurers, again holding little legitimacy or validity in the eyes of the community.

Finally, the mooted review process will:

“take into account changes in medical science, relevant events (such as changes in legislation since the last comprehensive or intermediate review), experience, available research, and current market practice.”

Again we believe that this process should be independent and that it should also take into account “diagnostic criteria and treatment protocols, as well as the best interests of consumers, community standards and fairness.” These elements should be included to balance the inclusion of “current market practice” which will lean any review towards the insurance industry’s perspective rather than any independent or balanced perspective.

Intermediate review

We note that the establishment of an intermediate review under section 5.2, is a decision for the FSC. We recommend that when an issue is raised with the FSC and the FSC decides not to carry out an intermediate review then the FSC should publish their reasons for not doing so, explaining how the request does not meet the standard required – that is that it does not materially change outcomes for customers or insurers.

Further the intermediate review section is written in such a way as to instigate an intermediate review only when an issue is *raised* with the FSC. It should also state that the FSC is empowered to instigate consideration of an intermediate review by itself when it becomes aware of an issue, without it necessarily requiring the step of an external party raising the matter. The FSC should be monitoring such issues and address them when and if they arise.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact us on the details below.



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