Obligations relating to the review of medical definitions

Report on an own motion inquiry into Life subscribers' compliance with section 3.2 Of the Life Insurance Code of Practice

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LIFE CODE COMPLIANCE COMMITTEE

Contents

It is vital that industry stay up to date with new medical developments to ensure definitions keep pace with medical advances and do not result in unfair treatment of customers.

Executive Summary

This report is the outcome of an Own Motion Inquiry (OMI) conducted by the Life Code Compliance Committee (the Committee) assessing compliance with section 3.2 of the Life Insurance Code of Practice (the Code).

Section 3.2 relates to the obligation that medical definitions in on-sale policies be reviewed and updated (if necessary) at least every three years in consultation with medical specialists. It also requires Code subscribers to communicate updates to customers (other than for Group policies).

Given the pace of advancements in the medical profession, it is vital that the industry keep up to date with new medical developments to ensure definitions do not result in unfair outcomes for customers. The obligations set out under this section reflect this important consumer protection.

The Committee collected data from all 17[1] relevant subscribers currently offering life insurance products via a questionnaire to assess compliance with the four requirements set out in section 3.2.

The OMI results revealed a **reported 100% compliance rate** across the elements of section 3.2 – that is, all relevant subscribers had reviewed (and where appropriate updated or scheduled to update) the medical definitions for their on-sale products within the required 3-year timeframe, the reviews had involved consultation with relevant medical specialists and all updated medical definitions have been communicated or are slated to be communicated to customers. The Life CCC notes that while section 3.2 has a communication requirement, the section does not stipulate a timeframe for the communication to occur. In addition, all participating subscribers confirmed that they have appropriate compliance frameworks in place to ensure ongoing compliance with section 3.2 of the Code.

The Committee is reassured by these overall OMI results and about the ongoing ability of Code subscribers to maintain this good practice in the future, given the evidence of robust processes and systems to monitor compliance with the Code.

However, detailed analysis of the data by the Committee identified some inconsistencies in practice and opportunities to improve aspects of the processes by which subscribers achieve compliance, particularly in relation to the timeliness of updating revised medical definitions and the communication of changes to customers. Accordingly, 7 recommendations are made in this report, aimed at improving overall industry practice for the benefit of customer outcomes, and subscribers are encouraged to adopt these recommendations where relevant.

1 Of the 17 relevant subscribers, 15 subscribers had on-sale policies and 2 subscribers did not offer any on-sale policies as at the time of the data collection.

Significant points that emerged after analysis of the data include:

15 subscribers reported a total of:

99 on-sale products that were covered under the obligations in section 3.2 of the Code

Out of the 99 on-sale products, **98** products had to be reviewed by July 2020.[2] All 98 on-sale products had their medical definitions reviewed within the 3-year timeframe requirement

791 medical definitions were reviewed and flagged for an update

Of the 791 medical definitions, 773 were updated

Subscribers confirmed that the remaining **18** medical definitions[3] would be updated within next **6-12** months

13 out of **15** subscribers confirmed that the relevant updates to medical definitions were communicated[4] to customers either via website, email and/or letter.[5]

2 One product was introduced by the subscriber in late 2017 and was not due to be reviewed till late 2020. The subscriber confirmed that the product was reviewed in December 2020.

3 Of the 18 medical definitions that were not updated, 12 medical definitions required reinsurer's approval, 3 medical definitions required pricing analysis prior to implementation and 3 medical definitions would be updated as part of the subscriber's product review process.

4 The Life CCC notes that section 3.2 does not stipulate a timeframe for the communication of the change in medical definition, only that the change has to be communicated.

5 One subscriber required approval for some of the changes resulting from its review. As a result, those changes were not communicated to customers prior to the Life CCC's data collection. The subscriber has since confirmed that in January 2021 the approval was received, and that the subscriber will communicate the changes through a quarterly newsletter and annual statements. Remaining subscriber planned to communicate the changes to customers as part of the annual renewal notices and is an ongoing process.

Scope and methodology

What is an Own Motion Inquiry (OMI)?

As the body responsible for monitoring and enforcing subscribers' compliance with the Life Code of Practice, the Life Code Compliance Committee (the Committee) utilises a variety of compliance assessment tools.

An OMI is one such tool and it has the following characteristics:

- Is a targeted and focused investigation to assess how effectively subscribers are complying with a particular section or area of the Code that is considered high or emerging risk;
- Is evidence-based, proportionate and practical;
- Aims to also provide the Committee with objective insights and evidence to support subscribers' compliance with their obligations under the Code; and,
- Aims to result, where appropriate, in proposed guidance and recommendations for subscribers about how to improve service standards and compliance.

This inquiry into the review and updating of medical definitions is the Committee's first OMI since the industry's adoption of the Code in July 2017.

Background and context

The Committee decided to conduct an OMI into compliance with section 3.2 of the Code for the following reasons:

- Regular review of medical definitions has been identified as an emerging area of risk by regulators. The Australian Security and Investment Commission (ASIC) is currently undertaking a detailed enquiry into medical definitions in the life insurance industry as part of its review into unfair contract terms[6]. Outdated medical definitions have also been brought to the Committee's attention by the Australian Financial Complaints Authority (AFCA).
- To ensure that subscribers monitor and update the relevant medical definitions in accordance with the Code to avoid any unfair outcomes for customers.
- July 2020 marked the start of the fourth year of the Code's operation. As section 3.2 requires review of medical definitions at least every **three** years, it was an opportune time to assess compliance with this obligation.

6 https://download.asic.gov.au/media/5828033/corporate-plan-2020-24-published-31-august-2020-2.pdf

The scope of the inquiry

SECTION 3.2 OF THE LIFE CODE OF PRACTICE STATES THAT FOR OTHER THAN GROUP POLICIES:

*The medical definitions in **our** on-sale policies for benefits that are payable after a defined medical event will be reviewed at least every three years and updated where necessary to ensure the definitions remain current. This will be done in consultation with relevant medical specialists. When medical definitions in **your Life Insurance Policy** are updated by **us** as a result of this, **we** will let **you** know.*

ELEMENTS OF SECTION 3.2

Section 3.2 of the Code sets out four separate elements for Code subscribers:

- Medical definitions of all on-sale policies where benefits are payable after a defined medical event to be reviewed at least every three years.
- Medical definitions are updated (where necessary) to ensure that the definitions remain current.
- The review and update of the medical definitions is done in consultation with relevant medical specialists.
- When the medical definitions are updated, it is communicated to customers, other than for Group policies.

ON-SALE/OFF-SALE PRODUCTS

Section 3.2 of the Code only applies to on-sale products. For the purposes of the inquiry, on-sale products were **deemed to be policies that were offered to customers for purchase as at close of business 30 June 2020**. Subscribers were only required to provide data on products that had benefits payable after a defined medical event.

The Committee also requested data relating to the number of products which were off-sale as of 30 June 2020, but which **had been on-sale at any time between 1 July 2017 and 30 June 2020.**

The Committee notes that off-sale products are outside the scope of section 3.2 but collected this information to determine the scope of the market not covered by the provisions of the Code.

UPDATING THE DEFINITIONS

The Committee acknowledges that section 3.2 does not specifically include a timeframe for subscribers to update the medical definitions once they are reviewed and identified as no longer being current. However, the Committee considers that subscribers should update customers about any changes to the medical definitions within a reasonable timeframe, in line with subscribers' obligations to be honest, fair, transparent and timely under the Code.

As a result, the data collected by the Committee in this inquiry focused on whether the definitions identified had been updated and whether policyholders had been informed of this. Where definitions had been reviewed but not updated, the Committee asked subscribers to provide a timeframe by which the definition would be updated.

> **... subscribers should consult with qualified medical professionals when reviewing and updating the definitions in the relevant products.**

RELEVANT MEDICAL SPECIALISTS

To meet this requirement, subscribers should consult with qualified medical professionals when reviewing and updating the definitions in the relevant products. The Code does not require the relevant medical specialists to be third parties who are not employed by the subscriber. However, the Committee wished to understand the extent of the industry's use of internal and/or external resources.

COMMUNICATION OF UPDATES

Section 3.2 requires subscribers to inform customers if the medical definitions in their products are updated.

This communication should clearly inform customers that the medical definitions have been updated and provide customers with additional information regarding which definitions have been updated and what the new definitions are.

The additional information does not have to be provided within the communication, but the communication should provide the customer with directions on how to access this additional information easily.

Methodology

DATA COLLECTION

The Committee collected industry data via a seven-part questionnaire assessing subscriber compliance with section 3.2. The questionnaire requested data and supporting documents that the Committee expects would be maintained to demonstrate ongoing compliance with the Code. The questionnaire was supported by a detailed Explanatory Guide, and subscribers were given one month to respond.

The seven questions addressed:

1. Number of on-sale and off-sale products
2. Number of on-sale products with medical definitions reviewed
3. Number and category of medical definitions requiring an update
4. List of medical definitions not reviewed by product
5. Framework to enable ongoing compliance with section 3.2 of the Code
6. Who reviewed and signed off the medical definitions
7. Communication of updated medical definitions

The Committee engaged with subscribers throughout the data collection period to answer questions about the completion of the workbook. Most of the queries were points of clarification which were resolved by reference to the accompanying Explanatory Guide.

Findings

The findings of this OMI and the Committee's observations made throughout this report are based on submissions provided by participating subscribers, which they have attested are accurate and complete.

Question 1: Number of Products

Subscribers were asked to provide information about both on-sale and off-sale products. Of the 17 Subscribers currently collecting premiums for life insurance products with benefits payable after a defined medical event[7]:

- **15** subscribers reported offering on-sale products
- **2** subscribers did not offer any on-sale products but had off-sale products
- **14** subscribers reported that they had off-sale products that were previously on-sale between 1 July 2017 and 30 June 2020
- The industry had a total of **99** on-sale products currently in the market and a total of **48** off-sale products that were previously on-sale between 1 July 2017 and 30 June 2020.
- **1** subscriber had on-sale products which were not due for a review in July 2020 as the products did not go on sale till late 2017. The subscriber has since confirmed that the product was reviewed in December 2020.

Question 2: Review of medical definitions

Subscribers were asked to report on the numbers of on-sale products that had medical definitions reviewed between 1 July 2017 and 30 June 2020, and **all 98**[8] on-sale products had their medical definitions reviewed

In seeking information about the type of products sold by each subscriber, the OMI response data showed that **off-sale** products comprised almost one third of all products offered by subscribers between 1 July 2017 and 30 June 2020.

Off-sale products represent a significant part of the life insurance market but are not covered by section 3.2. It is the Committee's view that customers of these products should also be afforded the protection of section 3.2 of the Code.

7 There were 17 subscribers who were relevant to this OMI. The remaining subscribers consisted of third party industry service providers, subscribers who were solely reinsurers and subscribers who did not offer life insurance products with benefits payable after a defined medical event.

8 Not including the product that was reviewed in December 2020.

Recommendation 1
— Expand Code coverage to off-sale products

The Committee recommends that the Financial Services Council include off-sale products in section 3.2 in the Code in order to ensure that medical definitions in all products are kept up to date to enable fair outcomes for customers when lodging claims.

Recommendation 2
— Good practice: More frequent reviews

The Code stipulates a review of medical definitions at least every three years. Given the pace of medical advancements, the Committee recommends that subscribers regard the three-year timeframe as the minimum requirement and consider reviewing and updating medical definitions as part of their regular product reviews.

Question 3:
Number and category of medical definitions requiring an update

Subscribers were asked to report on the numbers and type of medical definitions they identified as requiring an update, whether each had been updated and if not, when the Subscriber intended to update them (within 1, 3, 6 or 12 months).

- **791** medical definitions were reviewed and flagged for an update.
- **773** of the medical definitions reviewed had been updated by 30 June 2020.
- **18** medical definitions were yet to be updated as at 30 June 2020 (as reported by 3 subscribers). The 3 subscribers indicated they would complete the updates within the following 6 to 12 months.
- Of the 18 medical definitions that were not updated, 12 medical definitions required reinsurer's approval, 3 medical definitions required pricing analysis prior to implementation and 3 medical definitions would be updated as part of the subscriber's product review process.
- Although this is within the requirements of the Code, the Committee considers that long delays that were known in advance are not in the spirit of the Code and considers that best practice would have been for the subscribers to have updated the medical definitions within 3 months after 30 June 2020.

Subscribers completed reviews of a range of medical definitions. For the purposes of this OMI, medical definitions were categorised by those defined in the Code under Chapter 15 "minimum standard medical definition":

- Heart attack (and other related heart conditions)
- Stroke (and other related Stroke conditions)
- Cancer (and other related Cancer conditions)

The remaining medical definitions listed by subscribers were categorised as **"Other"**, for example: burns, loss of a limb, degenerative conditions, etc.

Of the 4 categories:

- **13** subscribers identified that the 'Heart attack' definitions required an update
- **10** subscribers identified that the 'Stroke' definitions required an update
- **14** subscribers identified that the "Cancer' definitions required an update
- **13** subscribers identified that the 'other' definitions required an update

Recommendation 3
— Good Practice: Updating outdated medical definitions

To avoid unfair outcomes for customers, the Committee considers that once a medical definition has been identified as requiring an update, it should be updated in the relevant policy as soon as possible and no later than three months after completing the review. If a subscriber is aware that a medical definition is not up-to-date and may result in an unfair outcome to a customer, the Committee expects that the subscriber would ensure that the customer's claim is handled and assessed fairly and honestly.

The Committee also notes that in the spirit of the Code, subscribers should ensure that there are sufficient resources and processes in place to enable the timely and efficient review of the definitions, together with the subsequent implementation and communication of any changes. In particular subscribers should co-ordinate their reviews of medical definitions with Product Disclosure Statement (PDS) reviews to facilitate the timely updating of definitions.

Question 4:
Medical definitions NOT reviewed

Of the on-sale products that fell within the scope of the OMI, subscribers were asked to report those which had **not** had their medical definitions reviewed and, where applicable, to provide an explanation.

All subscribers with on-sale products falling within the scope of the OMI reported that they had reviewed all their relevant medical definitions as required by the Code.

All subscribers with on-sale products reported that they had processes and an overarching framework in place to enable ongoing compliance with section 3.2 of the Code.

Question 5: Compliance frameworks

To assist in the Committee's understanding of subscribers' ongoing ability to comply with section 3.2, the OMI questionnaire also asked subscribers to confirm if they had processes in place to ensure that the requirements of section 3.2 are met, and to provide an overview of the related compliance frameworks.

All subscribers with on-sale products reported that they had processes and an overarching framework in place to enable ongoing compliance with section 3.2 of the Code.

The better practice features of these processes and frameworks included:

- Regular **cross-team meeting reviews** of significant medical developments involving product teams, legal teams, actuarial teams and Chief Medical Officers. Meeting frequency ranged from quarterly to annually.
- Use of **registers** to monitor and record changes to medical definitions.
- Documented **internal protocols** for review, update and communication processes.
- Code-specific **timeframes embedded** within systems and procedures to ensure this process is completed at least every three years.

The Committee recommends that subscribers review their processes to ensure that the better practice features above are adopted and implemented.

Recommendation 4 — Minimum definitions in the Code

One subscriber noted that its internal medical specialists reviewed its Cancer, Heart attack and Stroke definitions and confirmed that they were in line with the minimum standard definitions as defined in the Code.

The Life CCC notes that the current minimum standard definitions in the Code for Cancer, Heart attack and Stroke were implemented in 2017 and are out of date. As a result, benchmarking to the minimum standard definitions in the Code is a poor process that is not in line with the spirit of the Code. Instead, subscribers should benchmark their medical definitions against current medical advancements and up to date medical developments.

Question 6:
Medical definitions reviewed, updated and signed off by relevant medical specialists

Subscribers were asked to confirm that medical definitions were reviewed, updated and signed off by relevant medical specialists. They were also asked to confirm if they used:

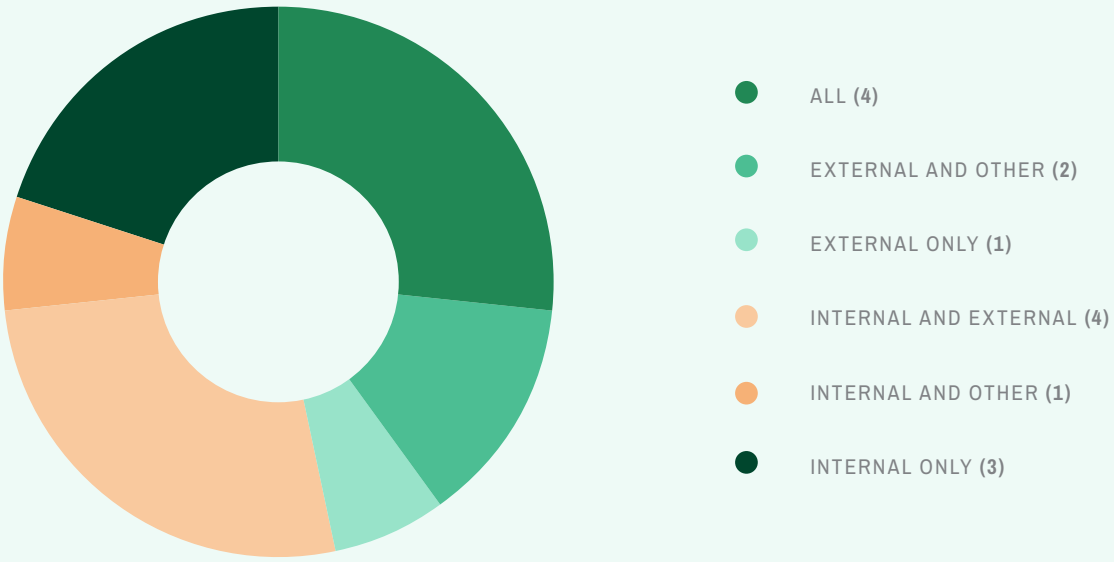
- Internal medical specialists
- External medical specialists
- Other medical specialists

For the purposes of the inquiry, "**internal medical specialists**" were defined as suitably qualified medical professionals employed by a subscriber. "**External medical specialists**" were defined as third parties not directly employed by a subscriber. If subscribers reported the use of medical specialists that did not fall into these categories, they were asked to record these under "**Other medical specialists**" and to provide further details.

Subscribers who reported using "other medical specialists" engaged the Chief Medical Officer of their particular reinsurers. One subscriber reported that it also used its claims, actuary and product team's managers in the review process.

All 15 Subscribers confirmed that some form of medical specialist was consulted as a part of the review of the medical definitions (either internal or external specialists) (**Figure 1**). In addition, 13 out of 15 subscribers confirmed that the relevant updates to the medical definitions were communicated to customers via the subscriber's website, email or letter within the 3-year review timeframe.

FIGURE 1.
Type of specialist used



TYPE OF SPECIALIST USED

Out of the 15 subscribers who had on-sale products that were covered by section 3.2:

- **4** subscribers used all three types of medical specialists (Internal, External and Other)
- **4** subscribers used both Internal and External medical specialists
- **3** subscribers only used Internal medical specialists
- **1** subscriber used Internal and Other medical specialists
- **1** subscriber used only External medical specialists
- **2** subscribers used External and Other medical specialists

Internal medical specialists were the most common specialist used, with 12 out of the 15 subscribers consulting with Internal medical specialists. External medical specialists were also widely used, with 11 out of 15 subscribers. Other specialists were used by subscribers in conjunction with Internal and External medical specialists, with no subscribers only using Other specialists.

Recommendation 5 — Consulting medical specialists

Consulting with medical specialists when conducting the review of medical definitions is an important part of ensuring that medical definitions remain current, given the fast-paced nature of medical advancements as well as the complex nature of many medical conditions.

While not a specific requirement of section 3.2, the Committee considers that consulting with multiple specialists (Internal, External and Others) is good practice in relation to reviewing medical definitions.

The Committee noted that the majority of the industry (11 of 15 subscribers) consulted with more than one type of medical specialist and encourages subscribers to consult with a range of medical specialists when reviewing medical definitions.

Question 7:
Communication of updates to medical definitions

Subscribers were asked to confirm if updates to medical definitions were communicated to customers and, if so, what methods were used.

If updates had **not** been communicated, subscribers were asked to confirm when this would occur and, if deferred for more than three months, to provide an explanation.

Of the **15** subscribers who reported on-sale policies, **13** had communicated updates of medical definitions to customers (**Table 1**). Of the two remaining subscribers:

- One subscriber had communicated the changes on some of its products but did not communicate the relevant changes on a specific product to customers as it was going through its approval process. The subscriber has since advised that changes have been approved and the changes will be communicated to the relevant customers.
- The other subscriber reported that while it had updated the relevant PDSs, the changes would only be communicated as a part of the customer's Policy renewal notices on an ongoing basis.

The following methods were used to communicate updates to medical definitions:

TABLE 1.

	Website	Email	Letter
Subscriber A	X	X	X
Subscriber B	X	X	X
Subscriber C	X	X	X
Subscriber D	X		X
Subscriber E	X		X
Subscriber F	X		X
Subscriber G	X		
Subscriber H	X		
Subscriber I	X		
Subscriber J	X		
Subscriber K	X		
Subscriber L			X
Subscriber M			X
Subscriber N			
Subscriber O			X
TOTAL	**11**	**3**	**9**

The Committee noted that 14 of the 15 subscribers who reviewed their medical definitions and made changes had amended the relevant PDSs to include the updated definitions. However, the Committee identified that some subscribers tended to focus on indirect communication to customers, instead of directly informing customers of the relevant changes.

Out of the 15 subscribers, only 9 subscribers sent customers a direct correspondence notifying them of the change, with 5 subscribers relying solely on updating their website to inform customers of the change. In addition, 1 subscriber (subscriber N) had not yet communicated the changes and planned to do so as part of its annual renewal notice letters to customers.

Recommendation 6
— Direct and indirect communication

While not a requirement of section 3.2, the Committee encourages subscribers to utilise both direct and indirect methods of communication to provide notice of the changes in medical definitions to customers. The Committee considers this to amount to best practice as customers may often miss or not receive the communication if only provided indirectly.

For example, a customer will be unlikely to notice the changes if the only notification provided is via the subscriber's website. As a result, subscribers should actively alert policyholders to check these sources in the event of a potential claim to see if the definitions have been updated and they may be able to claim. This wording could occur in the annual statements and/or subscriber's PDS.

Recommendation 7
— Good Practice: Communicating updates

The Committee believes that the best way to communicate updates of medical definitions is to give the customer the choice of communication method for all correspondence when they purchase a product.

This choice should be revisited throughout the life of the product to ensure the customer's preferences are kept up to date.

The Committee acknowledges that section 3.2 does not specifically include a timeframe for subscribers to communicate this to customers. The Committee's view is that it should occur as soon as reasonable once the updates have been made, preferably within 3 months of the review. Otherwise, a customer may make a decision to claim or not claim based on outdated information, with potentially unfair consequences.

In conclusion

Use of outdated medical definitions in Life Insurance policies have been the subject of negative media attention in the past and consumer awareness of this issue is high. It has never been more important for the industry to ensure that the medical definitions used in policies are fit for purpose and up to date with current medical developments.

Compliance with the consumer protections enshrined in section 3.2 of the Life Code of Practice is an important signifier of how Code subscribers prioritise fair outcomes for their customers.

The data provided by subscribers indicates a 100% compliance with the obligations in section 3.2 of the Code. However, the data also reveals that almost one third of all products offered between 1 July 2017 and 30 June 2020 are off-sale products and supports the Committee's opinion that, in future reviews of the Code, off-sale products should be included in the scope of section 3.2.

The Committee is reassured by these overall OMI results and about the ongoing ability of Code subscribers to maintain this good practice in the future, given the evidence of robust processes and systems to monitor compliance with the Code.

Given that both the financial services sector and the world of medicine are constantly evolving and developing, the Committee encourages all subscribers to consider the Good Practice guidance contained in this report and to commit to continuous improvement in this area to ensure that customers continue to receive fair outcomes.

Appendix A

Key definitions relevant to the OMI

Defined medical event	A condition, illness, injury, accident, disability or death which entitled the claimant to the relevant and specified amount or benefit. This can include but is not limited to heart attacks, strokes, cancer etc.
Medical definitions	The minimum threshold for a condition or outcome to qualify as a medical event as defined under the policy.
On-sale products	Policies/products currently offered to customers for purchase.
Off-sale products	Policies/products not currently offered to customers for purchase.
Policy/Policies	Individual Contracts of Life Insurance purchased by customers.
Product/s	The different types of Policies offered for sale by the subscriber. For example: Life cover A, Life Cover B, Income Protection A, etc.

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