

# Springvale Monash Legal Service Inc.



## Submission

To

## The General Insurance Industry Code of Practice Review - 2009

This submission was prepared by the Springvale Monash Legal Service Inc.

Inquires to Graham Wells (Civil Litigation Advocate - Springvale Monash Legal Service Inc.) on:

9562 3144 or [graham.wells@smls.com.au](mailto:graham.wells@smls.com.au)

## **Introduction**

Springvale Monash Legal Service (“SMLS”) has operated within the City of Greater Dandenong since the early 1970’s. Since that time, SMLS has partnered with Monash University Law Faculty, to provide a clinical legal education program whereby law students assist clients under the supervision of qualified legal practitioners.

The Springvale / Dandenong community is extremely diverse, with a large proportion from diverse cultural and linguistic backgrounds and low socio-economic circumstances.

The philosophy of the legal service is to ensure members of the community receive information and assistance to manage their own legal needs. However, given the high proportion of clients who have limited access to the legal system, (eg. language barriers, lack of formal education, lack of financial resources and others), many matters are taken on as cases to ensure our clients receives as fair an outcome as possible. Despite this, there is still an ethos of assisting the community through legal education to be able to understand the law, legal process and to maximise our clients’ ability to contribute to their community.

The Civil Litigation program seeks to represent clients whose civil matters have reached the point of litigation in either the Magistrates Court or the Victorian Civil and Administrative Tribunal (VCAT).

The Springvale Monash Legal Service is also a teaching legal service with professional practice law students from Monash University Law School who are supervised by experienced practitioners.

We welcome this opportunity to contribute to the General Insurance Industry Code of Practice Review - 2009 (the Review).

## **Our submission**

Essentially this submission asserts:

1. The Code of Practice should accord with principles of corporate citizenship and ethics, and,
2. The standard the General Insurance Code of Practice seeks to achieve should be much more than a self serving customer document if it is to inspire ‘consumer confidence’,

3. An appropriate benchmark that the insurance industry should aspire to in its 'code of conduct' should mirror that of a 'model litigant', in all insurance disputes.

### 1) Corporate citizenship and ethics

The *Insurance Standards Act 1973*,<sup>1</sup> discusses the need for insurers to meet the 'prudential standards' as gazetted by APRA. These standards (with reference to governance) refer to insurers having:

... A culture that promotes good governance is of benefit to all stakeholders of a regulated institution and helps to maintain public confidence in the institution.<sup>2</sup>

'All stakeholders' is a term that connotes regard to the whole community, essentially, all those who deal with insurers. As such, insurance companies must have regard to the needs of 'all stakeholders'. This standard must inspire 'public confidence' which also connotes a very high standard. This might be compared with a standard of corporate behaviour that resembles the Commonwealth's 'model litigant approach'.<sup>3</sup> Certainly, 'public confidence' can be measured by the public's acceptance and support of model corporate ethics and citizenship.<sup>4</sup>

Ultimately the insurance industry will ask the question whether corporate citizenship (and conduct) is good for business. According to David Henderson, (as published by the Centre for Independent Studies),<sup>5</sup> corporate citizenship generally fetters (or undermines) a market economy.<sup>6</sup> Perhaps if a market economy is simply defined to advantage one small group to the detriment of a much larger cohort, Mr Henderson may be correct. However, (and as expressed by the increased need for financial regulation resulting from the Global Financial Crisis), a market economy is very complex and dynamic organism. It is generally accepted by the community, that a market economy must take into account the needs and expectations of those who make up its foundation, the general public.

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<sup>1</sup> *Insurance Act 1973* (Cth), s 32.

<sup>2</sup> Australian Government, , *Prudential Standard GPS 510 – July 2008*, APRA <http://www.apra.gov.au/General/General-Insurance-Prudential-Standards-and-Guidance-Notes.cfm>, as at 22 June 2009.

<sup>3</sup> Australian Government – Attorney General's Department - Comlaw, *Legal Services Directions 2005*, <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/frame/attachment/1E3B68E7EFF1F040CA2574F300153F44>, as at 6 July 2009.

<sup>4</sup> Sylvia Maxwell, Reconciling Corporate Citizenship and Competitive Strategy: Insights from Economic Theory (2008) 80 *Journal of Business Ethics* 367 – 377.

<sup>5</sup> David Henderson, 'The Case Against 'Corporate Social Responsibility'' (2001) 17, No 2, *Centre for Independent Studies: Policy* 28 – 32.

<sup>6</sup> *Ibid*, 32.

This question is answered by Sylvia Maxwell in the Journal of Business Ethics where she describes ways of ‘reconciling’ both business principles of competition with corporate citizenship.<sup>7</sup> Ms Maxwell states that ‘based on ... [the] evidence CSR (corporate social responsibility) ... does not *hurt* profitability.’<sup>8</sup> The writer then moves on to discuss the way economic theory complements corporate social responsibility, and as I argue, corporate citizenship.

A more detailed discussion of the economic benefits associated with corporate citizenship is beyond the scope of this paper, however SMLS asserts that it is in the interest of all insurers, to embrace high standards of accountability,

The following case studies relate to the experience of SMLS clients:

- a) A was a professional liaising with a major insurer as a result of a motor vehicle accident. A’s client is not the insurers’ customer, but A’s client was directly affected by the insurance customers actions. The insurer refused to talk with A, on the basis ‘... we have no obligation or need to discuss with this matter with you ... take us to Court ...’. Such behavior lacks many principles associated with the existing Code of Conduct and does not enhance ‘public confidence’ in the insurance industry. As a result of the insurer’s complete unwillingness to negotiate the matter a Complaint will be served. It’s probable that either before or just after Arbitration, that an offer will be made by the insurer.
  
- b) Our client held an insurance policy with another major provider. We rang the insurer trying to fax a letter of authority so as we might discuss some questions to do with the policy. The customer service officer stated that, ‘... you’re a nobody, you are not mentioned on this file, there is no one here you can talk to ...’ and then hung up. We immediately rang the insurers’ complaints branch and again stated that we wanted to fax a letter of authority so as to resolve questions with the policy.

The salient point demonstrated by these two case studies is that some insurers are not taking their obligations under the existing code seriously. If insurers are serious about enhancing public confidence and avoiding unnecessary litigation through embracing corporate ethics (as expressed through principles of corporate citizenship), responses to negotiation might be more considered. Thankfully in ‘b)’ there was a complaints mechanism that afforded a solution to the problem.

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<sup>7</sup> Sylvia Maxwell, *Reconciling Corporate Citizenship and Competitive Strategy: Insights from Economic Theory*, Journal of Business Ethics (2008) 80 [367 – 377].

<sup>8</sup> Ibid, 368.

## 2) The General Insurance Industry Code of Practice should be more than a self serving document.

In keeping with the current legislation (both Commonwealth and Victorian), principles of corporate citizenship and the community expectations of fairness, the Code of Practice must go beyond simply reflecting levels of customer satisfaction (as mechanisms to protect customers are already a part of both consumer law and fair trading legislation). The Code of Practice must reflect the insurance industry's need to respond to all stakeholders interests in good practice, whether they be insurance customers, other members of the public, or those in dispute with an insurance provider.

## 3) The insurance provider as a model litigant

A model litigant is defined as:

### The obligation

1 Consistently with the Attorney General's responsibility for the maintenance of proper standards in litigation, the Commonwealth and its agencies are to behave as model litigants in the conduct of litigation.<sup>9</sup>

These principles are characterised in the following ways:

### Nature of the obligation

- ... Acting honestly and fairly....,
- ... avoiding unnecessary delays ...,
- ... paying legitimate claims without litigation ...,
- ... participating in alternative dispute resolution ...,
- ... not taking advantage of a claimant who lacks resources....,
- ... not relying on 'technical defences', ...,
- ... apologising where there have been wrongful or improper actions...<sup>10</sup>

The 'model litigant' approach does provide a meaningful standard by which insurance providers can say to the public that they are responsible corporate citizens who genuinely believe in adopting high standards of corporate ethics and behaviour. Such characteristics will provide public confidence in what remains a vital and important industry.

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<sup>9</sup>Australian Government – Attorney General's Department - Comlaw, *Legal Services Directions 2005*, <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/frameclodgmentattachments/1E3B68E7EFF1F040CA2574F300153F44>, as at 6 July 2009..

<sup>10</sup> Australian Government – Attorney General's Department - Comlaw, *Legal Services Directions 2005*, <http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/frameclodgmentattachments/1E3B68E7EFF1F040CA2574F300153F44>, as at 6 July 2009.

**Conclusion:**

In addition to the existing federal and state consumer laws and the existing Code of Practice, the insurance industry needs to go further to promote a culture of confidence and accountability in both their products and services. This amounts to enhancing the existing principles of corporate citizenship and responsibility.

Thank you for the opportunity to contribute to this Review.