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Insurance Council of Australia
Review of the General Insurance Code of Practice
2nd Report - Independent Oversight

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1. Introduction

This report follows the release of the ICA Final Report of the Review of the General Insurance Code of Practice (“the GI Code”). It provides comments on the management of the Review process from the perspective of the Independent Overseer.

For additional background, it should be read in conjunction with the Interim Report of February 2018.

2. Background – first round of consultation

Relevant to understanding this second stage of the Review are a few observations made in my Interim Report.

1. The ICA, given the extensive independent review conducted in 2014/15 were expecting a more targeted, narrower scope review and with support from a number of stakeholders, chose an ‘in-house’ process for this Review.
2. This meant that the ICA’s role in the process was a little different to the usual independent review process and that some steps in the process had to be ‘invented’ along the way.
3. As events transpired, the ‘narrow scope’ review did not eventuate, with submissions covering a wide range of issues. The consumer advocacy organisation submissions taken together ran to over 250 pages.
4. In my interim report I noted that ICA’s approach to stakeholders in the early stages of the Review was very open and supportive of obtaining broad input. The ICA was generous in providing information, answering questions and providing extensions of time to those submitting.
5. The wide range of issues raised resulted in much more time being required to process the issues, to consult with industry on issues and to reach initial industry positions.
6. The Interim Report took some months to complete and was lengthy. 8 priority areas were identified – each with a brief statement of principles intended to provide guidance about possible code content and a series of specific questions on the detail proposals. In addition, the Interim Report identified a number of matters raised, under 11 themes, that it proposed should be ruled out of scope for this round of revisions to the Code of Practice.
7. From my enquiries, the stakeholder reaction to the Interim Report was very positive overall. Considerable effort has been made to acknowledge and deal with all the matters raised. The joint consumer submission welcomed the ICA response for the “breadth and range” of issues raised.

8. In my Interim Report, I noted some uncertainty about whether the ICA's description of issues and framing of questions implied industry support or signalled the final industry position.

3. Second round of consultation

Written submissions were invited again and, perhaps because of the framing and detailed questions of the ICA Interim Report, even more submissions were received than in the first round.

Again, I found the ICA response to be patient and responsive with a number of extensions of time allowed around the summer break for stakeholders to obtain necessary approvals.

Once these second round submissions had been analysed, the ICA were left with a series of issues to be further investigated and/or solutions developed. Targeted forms of consultation were used including email and telephone exchanges, six consultative workshops (some of which I helped to facilitate), discussions with established consultative groups and so forth. The feedback was that these were largely quite successful, with clarification of issues helping industry to determine what was possible and for stakeholders to understand some of the practical issues.

Most of the workshops were conducted in Melbourne and Sydney with a video link between two meeting rooms. While this was efficient, for some of the meetings the quality of the interaction between the two locations left something to be desired.

The ICA then prepared a final draft report to take through its own industry forums and governance processes to arrive at a Final Report and Recommendations – released at the end of June.

4. Stakeholder reaction

Feedback from non-industry stakeholders has generally been highly positive about the content of the Final Report. Almost all that I was able to speak with were pleased with substantive progress on consumer protection on a range of fronts.

A number of consumer advocates mentioned that the presence of the existing ICA Consumer Liaison Forum (CLF) was a significant strength that helped to set a tone and anchor the Review in what they regarded as positive relationships and sound processes.

Feedback on the process followed by the ICA has been similarly very positive. A number commented, as I had in the interim Report, that the process had at times been a little uncertain and that despite quite tight deadlines on stakeholders, had taken much longer than planned. That said, most understood that the issues raised had been much broader and more complex than expected and were sympathetic to the ICA challenge.

It is important to note that while the feedback is very positive, stakeholders are acutely conscious that the important step of drafting the new code provisions is yet to come and that there may well be contentious issues to emerge in the detail and the risk of further delay.

5. Next steps

As I understand the process going forward, the ICA has initiated the process of drafting the new Code and is aiming to take the new draft Code to the November ICA Board meeting for approval and for decisions about transitional arrangements.

Sensibly, the ICA intends to consult with the Consumer Liaison Forum and relevant stakeholders including ASIC, about the drafting of new Code provisions as part of the development process.

6. Summary

ICA should be commended on a successful process in the face of quite some challenges. This review confronted a number of risks including a much broader and more complex set of issues than expected and some uncertainties about process steps and roles, which could have resulted in a great deal of confusion and potential conflict.

In my view, the organisation's patience in not rushing the process, willingness to listen and maintaining respectful lines of communication with stakeholders were vitally important to the success of the Review.

7. Attachment A: Chronology

Provided by ICA.

STAGE 1	
17 Feb 2017	The ICA announced a fresh, targeted Review of the Code and called for submissions on the Terms of Reference.
31 Mar 2017	The ICA extended timeframes for submissions on the Terms of Reference by four weeks.
28 Apr 2017	<p>Submissions on the Terms of Reference closed.</p> <p>Ten public submissions and four confidential submissions were received. Public submissions were made by the following stakeholders:</p> <ul style="list-style-type: none"> · The Australian Securities and Investments Commission · The Australian Institute of Chartered Loss Adjusters · The Code Governance Committee · The Consumer Action Law Centre · David Warner · The Financial Legal Rights Centre · Legal Aid NSW · The Motor Traders' Association NSW · The Public Interest Advocacy Centre · WEstjustice
11 May 2017	Phil Khoury was engaged to provide independent oversight.
May-July 2017	<p>The ICA drafted the Interim Report based on stakeholder consultation and submissions to the Terms of Reference. Page 74 of the Interim Report states:</p> <ul style="list-style-type: none"> · The ICA followed up with a number of submitters via telephone and/or face-to-face meeting, to discuss their feedback and ensure the ICA has properly captured and understood their concerns · ICA member committees have provided verbal and written feedback on key issues raised by submitters, as well as the various draft documents included as appendices to this report. · The ICA has taken member feedback into account in drafting this interim report in order to take a balanced view. The ICA Board has

	considered and approved the release of this report for consultation.
3 Aug 2017	A draft Interim Report was considered by the ICA's Board. Further work continued.
9 Nov 2017	The ICA released the finalised Interim Report, announced a six-week public consultation period, and requested stakeholder feedback. The Interim Report identified 8 priority areas for a revised Code and 11 additional Code Review themes.
Nov-Dec 2017	The ICA met with a number of key stakeholders to discuss the Interim Report.
19 Dec 2017	The ICA extended timeframes for submissions on the Interim Report to 19 January, increasing the stakeholder consultation period to eight weeks.
STAGE 2	
19 Jan 2018	<p>Submissions on the Interim Report closed.</p> <p>The ICA received 13 public submissions and three confidential submissions. Public submissions were made by the following stakeholders:</p> <ul style="list-style-type: none"> · Beyondblue · Caxton Legal Centre · The Code Governance Committee · The Consumers' Federation of Australia · The Financial Ombudsman Service Australia · IAG · The Law Council of Australia · Legal Aid NSW · Legal Aid Queensland · The National Code Committee · The Public Interest Advocacy Centre · Suncorp · The Victorian Equal opportunity and Human Rights Commission

Jan - June 2018	ICA reviewed all submissions. Commenced regular engagement with key stakeholders on progress of the review: monthly progress reports to ASIC and the CGC's Code Compliance Manager, updates at FOS Industry Liaison meetings.
20 Feb 2018	ICA held Code issues workshops with consumer, industry and regulator stakeholders, facilitated by Phil Khoury: <ul style="list-style-type: none"> • Workshop 1: Application of the Code to third party distributors. • Workshop 2: The Code internal complaints process.
27 Feb 2018	<ul style="list-style-type: none"> • Workshop 3: Product design and distribution.
13 March 2018	<ul style="list-style-type: none"> • Workshop 4: Mental health guidance. • Workshop 5: Industry data collection.
26 March 2018	Further workshop on mental health guidance
28 March 2018	ICA attended ASIC workshop on insurance fraud investigation practices
4 April 2018	ICA and NCC Vulnerable Customer Sub-Working group meeting to discuss new vulnerable consumer section
5 April 2018	Meeting of the ICA's Consumer Liaison Forum
10 & 11 April 2018	ICA met with ICA's National Code Committee (NCC) to discuss industry submission
12 April 2018	Family Violence working group
18 April 2018	ICA and NCC meeting

3 May 2018	ICA Board meeting: presented with draft Final Report for consideration by 30 May 2018
9 May 2018	ICA and NCC meeting to consider ICA Board feedback
22 May 2018	ICA and NCC workshop on recommended commitments section
7 June 2018	Family violence working group
14 June 2018	ICA and NCC IDR/EDR meeting to discuss potential changes to the Code complaints process
15 June 2018	ICA met with the Code Governance Committee
26 June 2018	Final Report Released
9 & 10 July 2018	ICA and NCC workshop to commence drafting new Code provisions based on Final Report recommendations
Next Steps:	<ul style="list-style-type: none"> • (2 August 2018: Board meeting considered complaints process and key commitment section.) • ICA to consult with the Consumer Liaison Forum and relevant stakeholders including ASIC about the drafting of new Code provisions. • ICA to finalise new draft Code for their November Board meeting and consider transition periods for industry compliance with new Code provisions.