



Independent Review: Initial Consultation Paper



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About this paper

This paper is the Initial Consultation Paper for the independent review of the 2020 General Insurance Code of Practice being undertaken over 2023/4.

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1. Background and context

The General Insurance Code of Practice was introduced in 1994 by the Insurance Council of Australia (ICA) as a voluntary Code. It has been regularly reviewed and updated.

The 2020 General Insurance Code of Practice (2020 Code or Code) is due for formal independent review as part of the regular 3-year continuous improvement cycle. The ICA intends to apply to the Australian Securities and Investments Commission (ASIC) for approval of the new Code under the *Corporations Act 2001* (Cth) (Corporations Act) (with regard to ASIC Regulatory Guide 183).

The Code sets out the standards – such as honesty, openness and fairness – that general insurers commit to meeting when serving their customers. It seeks to influence industry practices across all aspects of general insurance, including product disclosure, reporting obligations, claims handling and investigations and relationships with people experiencing vulnerability.

The Code covers general insurance products such as home contents, building, car, pet and travel insurance and commercial insurance for business (not otherwise excluded). It does not cover statutory scheme insurance such as Workers Compensation, medical indemnity, motor vehicle injury, and domestic builders insurance or domestic builders warranty and indemnity. It also does not cover reinsurance, life or health insurance.

This Code Review is being undertaken by an independent three-person panel (the Review Panel). Panel members have backgrounds in financial sector regulation, consumer advocacy and the insurance industry. They are former Australian Prudential Regulation Authority Deputy Chair Helen Rowell (Panel chair), consumer expert Gerard Brody, and industry expert Paul Muir.

1.1 Guiding principles and scope

The Terms of Reference for the Review Panel set out the guiding principles for the Code Review. The overarching principle is to maintain and enhance consumer protections. In seeking to achieve this overarching principle, the review observes these guiding principles:

1. **modernisation** – by being progressive and keeping up to date with contemporary developments;
2. **enhancement of the customer experience journey** when interacting with general insurers, for example when buying insurance, or at claim or complaints time;
3. **accessibility** – in terms of clarity, enhanced understanding and simplification without losing meaning;
4. **effectiveness and efficiency** – in terms of a positive customer experience and also operationally for general insurers, for the Code Governance Committee, consumers and other stakeholders; and
5. **providing consumer value without unnecessarily adding to claims cost pressures** – which may also take into account the weighing of broader cost-benefit considerations.

The Code Review will consider feedback and submissions on the practical operation of all aspects of the 2020 Code and seeks to make findings and recommendations on changes that may improve the operation and effectiveness of the Code.

The Terms of Reference for the review highlight a focus on the following relevant external developments:

1. **catastrophe response** – taking into account the learnings and opportunities for Code improvement arising from the 2022 floods including the findings of both the Deloitte review¹ and the Federal Parliamentary Inquiry into the general insurance industry’s response to the 2022 floods (the Flood Inquiry)², as well as the COVID-19 pandemic;
2. **financial hardship** – support for customers and third-party beneficiaries in urgent financial need or experiencing financial hardship, especially having regard to a catastrophe context. The review might also take into account any relevant ASIC good practice findings for the general insurance sector, the ACCC’s recommendations in its *Final Report of the Northern Australia Insurance Inquiry*³ and any relevant Code Governance Committee recommendations;
3. **vulnerable customers** – whether the Code or its accompanying guidance for Part 9 of the Code (which deals with supporting vulnerable customers) continues to meet community standards in light of new and emerging best practice approaches for extra care, customers experiencing vulnerability and the *National Plan to End Violence Against Women and Children 2022-2032*;⁴
4. **the interaction of the Code with existing laws** and whether advancements or clarifications are needed having regard to the Financial Services Royal Commission reforms such as the new product Design and Distribution obligations, the inclusion of claims handling as a Financial Service, the deferred sales model for add-on insurance and the phasing out of cheques by 2030;
5. **enforceable code provisions** – identifying possible Code commitments which might be advanced for designation as an enforceable Code provision as part of any application for Code approval to ASIC. The Review Panel will also consider if any enhancements are necessary to the Code’s underlying governance arrangements to support the work of the Code Governance Committee. There may need to be adjustments to advance an application for Code approval to ASIC that include identification of enforceable Code provisions.

1.2 Process and Timing

The Code Review commenced on Tuesday 14 November 2023, and will take 12 to 18 months to complete. It will be conducted in two phases to enable insights and recommendations from the current Flood Inquiry to be considered.

The first phase will focus on general topics not directly related to the floods, such as Code governance, support for vulnerable customers and the interaction between the Code and existing laws. It will also consider, where relevant, information and feedback provided in the context of the Flood Inquiry and about catastrophes more generally, such as bushfires and hailstorms. This is in recognition of the interconnectedness of the issues during a catastrophe. Following consideration of submissions to this Initial Consultation Paper, a report outlining the findings and recommendations for the first phase of the Code Review is expected to be released in mid-2024.

¹ Deloitte, [Review The new benchmark for catastrophe preparedness in Australia](#) – A review of the insurance industry’s response to the 2022 floods in South East Queensland and New South Wales (CAT221) (October 2023)

² Standing Committee on Economics, Federal Parliamentary [Inquiry](#) into Insurers’ responses to 2022 major floods claims

³ ACCC, [Final Report Northern Australian Insurance Inquiry](#) (28 December 2020)

⁴ Department of Social Services, [National Plan to End Violence Against Women and Children 2022-2032](#) (17 October 2022) <https://www.dss.gov.au/ending-violence>

The second phase of the Code Review will assess information, insights and recommendations from the Flood Inquiry (expected later in 2024). The second and final report for this Code Review may include additional findings and recommendations arising from the Flood Inquiry and will also outline any adjustments to the review's first phase findings and recommendations.

In undertaking the Code Review, the Review Panel will consult widely with stakeholders, including the general insurance industry, ASIC, APRA, Australian Financial Complaints Authority (AFCA), the Code Governance Committee (CGC), relevant industry bodies and consumer representatives. This consultation is both formal and informal.

The Code Review process will consider the information and views submitted to the Review Panel but will, ultimately, reflect the informed views of the Review Panel. The ICA and its members have appointed the Review Panel and are funding the review, however the Review Panel will act independently.

The ICA and its members have indicated that they remain committed to continuously improving the Code. Hence, following receipt of the Review Panel's final recommendations there will be a process whereby the ICA and its members consider each report to determine what changes should be made to the Code and prepare a revised draft of the Code. This revised Code will be submitted to ASIC for approval and ASIC may undertake further consultation. Once the Code is approved, there will be an appropriate transitional period before the revised Code takes effect, to provide time for general insurers to train staff and update their systems, processes and procedures.

1.3 Developments since 2020

The previous Code Review commenced in 2017/18 and led to the adoption of the 2020 Code with effect from 1 July 2021. The report of that Review included 30 recommendations on matters such as:

- assisting consumers experiencing vulnerability (including family violence, financial hardship and mental health conditions);
- more effective disclosure;
- standards on claims investigations; and
- strong governance of product design and distribution.⁵

The ICA considered these recommendations, together with the ICA's own proposed amendments to the Code, with a view to making changes that would have the greatest impact on achieving good consumer outcomes.

The ICA recognised that some issues (such as improving disclosure) were being dealt with outside of the Code mechanism, that others were not within the ambit of the Code or the scope of the Review and that others intersected with a range of legislative changes or proposals already underway.⁶

In some areas, such as family violence, mental health and disclosure, the industry developed best practice principles rather than minimum standards. These principles, while not mandatory, aimed to set higher standards than could be achieved through binding minimum Code obligations.

⁵ ICA, [Final Report Review of the General Insurance Code of Practice](#) (June 2018)

⁶ As above for note 5 (see Executive Summary, pages 4-5)

Since 2020, several legislative changes have been (or are being) implemented that are relevant to the Code. Many of these changes were made following the Financial Services Royal Commission (FSRC) and include:

- product Design and Distribution obligations;
- the designation of claims handling as a Financial Service including the requirement to provide a Cash Settlement Fact Sheet in certain circumstances;
- the deferred sales model for add-on insurance;
- amendments to the hawking prohibition;
- the replacement of the duty of disclosure with the new consumer duty to not misrepresent for consumer insurance contracts;
- the Unfair Contract Terms (UCT) regime in the ASIC Act applying to general insurance contracts;
- the Financial Accountability Regime; and
- APRA Prudential Standard CPS 230 that deems the providers of underwriting and claims management services as a material service provider.

ASIC has also updated some of its regulatory guides and other material relevant to the Code, in particular changes to internal dispute resolution requirements (Regulatory Guide 271) which came into effect in October 2021.⁷ It has also updated financial services breach reporting guidance (Regulatory Guide 78).⁸

There have also been several reviews that are relevant to areas covered by the Code. These include:

- ASIC Report 768 *Navigating the storm: ASIC's review of home insurance claims*;⁹
- ASIC Report 765 *When the price is not right: Making good on insurance pricing promises*;¹⁰
- the Deloitte review *The new benchmark for catastrophe preparedness in Australia*;¹¹
- the CGC's thematic inquiry into financial hardship support on insurers' websites;¹²
- the CGC's review of subscribers' implementation of vulnerability and hardship obligations;¹³
- the ACCC *Northern Australia Insurance Inquiry Report*;¹⁴ and
- ASIC's review of insurer claims handling practices.¹⁵

Crucially, the environment in which insurers operate and community expectations of insurers, have continued to evolve, particularly in light of the heightened frequency and severity of severe weather events and the impact of the COVID-19 pandemic. Consumers' experience of these events has highlighted the need for insurers to improve practices in areas such as consumer communications (particularly around claims), complaints handling, treatment of vulnerable customers and those in financial hardship, processes for managing third parties and resourcing of key areas.¹⁶

⁷ ASIC, [Media Release 20-171MR](#) ASIC releases final updated guidance on complaints handling (30 July 2020); ASIC [Regulatory Guide 271](#) *Internal Dispute Resolution* (updated 2 September 2021)

⁸ ASIC, [Regulatory Guide 78](#) *Breach reporting by AFS licensees and credit licensees* (updated December 2023)

⁹ ASIC, [Media Release 23-221MR](#) ASIC review finds insurers can and should improve claims handling (16 August 2023); ASIC, [Report 768](#) *Navigating the storm: ASIC's review of home insurance claims* (16 August 2023)

¹⁰ ASIC, [Report 765](#) *When the price is not right: Making good on insurance pricing promises* (23 June 2023)

¹¹ As above for note 1

¹² CGC, [Thematic Inquiry](#) *Information about Financial Hardship support on Insurers' websites* (June 2023)

¹³ CGC, [Review](#) Parts 9 and 10 of the 2020 Code – *Review of subscribers' implementation of vulnerability and financial hardship obligations* (November 2021)

¹⁴ As above for note 3

¹⁵ ASIC, [Letter](#) to Chairs and CEOs of general insurance companies, *Obligations of general insurers: Insurance claims and severe weather events* (6 March 2024)

¹⁶ ASIC, [Letter](#) to Chairs and CEOs of general insurance companies, ASIC's expectations of general insurers: responding to consumers in financial hardship (22 April 2021)

In undertaking the Code Review, the Review Panel is seeking to understand the impact for consumers and insurers of the Code changes introduced in 2020 and what changes to the Code may be appropriate given developments since 2020. This is important to ensure the Code remains fit for purpose and continues to commit insurers to:

- high standards of service;
- better, more informed relations with consumers;
- fair and effective complaints resolution; and
- maintaining and promoting trust in the general insurance industry.¹⁷

It is important to note that there are a range of mechanisms and approaches to addressing issues that may be raised as part of the Code Review that are separate to the Code, and that there are a range of other reforms and inquiries related to insurance currently in train.

While changes to the Code may address some issues, in other cases alternative mechanisms may be more appropriate. For example, Treasury is consulting on whether certain definitions should be standardised and whether there should be changes to the standard cover regime. The ICA is also working with members to develop a possible standardised definition of maintenance, wear and tear in general insurance. Adoption of any standardised wording would be subject to obtaining the required regulatory approvals.

1.4 Consultation questions

This paper briefly outlines key themes around the Code that have been raised in stakeholder discussions or other reviews. To gather the required insights, it poses a series of questions.

A list of the consultation questions is available at <https://codeofpracticereview.com.au>

In preparing submissions and responding to the questions, we encourage stakeholders to focus on those matters that fall within the scope of, and are best addressed through, changes to the Code.

1.5 How to make a submission

Submissions are due by 5:00 pm, Friday 31 May 2024.

More information about how to make a submission is available at <https://codeofpracticereview.com.au>

Making a confidential submission

Please note: All submissions the Review Panel receives will be treated as public and published on the Code of Practice Review website unless the author of the submission clearly indicates that the submission contains confidential information and should not be made publicly available. If you would like your submission to remain confidential, please mark your submission as 'Confidential' on the front page.

¹⁷ ICA, [2020 General Insurance Code of Practice](#), Part 1: Objectives of the Code

2. Key areas to be considered

2.1 Financial Hardship

Part 10 of the Code outlines how insurers assist individuals dealing with financial difficulties. It includes commitments regarding providing information about available support, identifying those facing financial hardship, timeframes for determining who qualifies for assistance and how insurers handle debt collection procedures. The Review Panel wants to understand the effectiveness of the existing commitments and how they might be improved. The Review's Terms of Reference specifically notes support for customers and third-party beneficiaries in urgent financial need – for example in a catastrophe context – as an area of focus.¹⁸ While this issue will be further considered in Stage Two of this review – which will primarily focus on catastrophe response and issues arising from the 2022 floods – the Review Panel is also interested in stakeholders' current views.

The Review Panel notes the expectations issued by ASIC in 2022 regarding financial hardship including that insurers should:¹⁹

- offer a range of flexible support options to help consumers maintain cover, such as help to maintain premiums;
- provide specified support options regarding the payment of an excess to prevent unfair outcomes;
- more proactively communicate financial hardship information;
- monitor data on hardship requests and outcomes to inform the support options provided;
- proactively engage with consumers before the end of support; and
- avoid asking for unnecessary documentation to demonstrate financial hardship.

ASIC also published specific expectations regarding travel insurance. For example, insurers should proactively offer to cancel travel insurance policies and provide a refund of premiums where policies no longer provide material value. While these expectations were provided in the context of the COVID-19 pandemic, the Review Panel is interested in their broader applicability (without creating an expectation that insurers will provide regulated personal financial advice).

The Review Panel is also interested in whether and how the Code should distinguish support provided to those experiencing short-term financial hardship from those whose hardship is more entrenched. The Review Panel notes that the Australian Banking Association's (ABA) Banking Code of Practice distinguishes between the support available when a recovery of the consumer's financial position is possible and longer-term issues where restoring their financial position may be unlikely.²⁰

The CGC has undertaken two relevant inquiries:

- November 2021 review of insurers' implementation of vulnerability and financial hardship obligations;²¹ and
- June 2023 Inquiry into information about financial hardship support on insurers' websites.²²

¹⁸ As above for note 17, paragraph 64 in Part 8 provides for fast-tracking of claims to those who have urgent financial need

¹⁹ As above for note 16

²⁰ ASIC, Media Release [23-306MR](#) *ASIC consults on ABA's proposed changes to the banking code* (17 November 2023). See paragraph 164 of the ABA Code under consultation

²¹ As above for note 13

²² As above for note 12

These reviews identified some good practices but also some weaknesses, for example non-compliance by debt collection agents authorised by insurers. Consumers have also called out concerns around the debt collection practices of residential landlord insurers, with commitments made by insurers to not pursue tenants for accidental damage under a right of subrogation.²³ The CGC has also foreshadowed a thematic inquiry looking at end-to-end insurer processes for providing financial hardship support to consumers.²⁴

Questions

2.1 *Does the Code provide adequate protections to ensure customers facing financial difficulties are obtaining suitable and appropriate assistance from insurers? If not, how can it be improved?*

For example:

- (a) *Should the Code adopt the expectations identified by ASIC relating to financial hardship? If not, why not?*
- (b) *Should the Code more explicitly address financial hardship in relation to the payment of premiums or distinguish between assistance available to those with short-term financial hardship, compared to those for whom financial hardship is more entrenched. If so, how?*

2.2 *How can the Code and/or its administration encourage greater compliance with financial hardship obligations, particularly where third party debt collectors are involved?*

2.3 *Are other mechanisms more appropriate than the Code to address issues related to the assistance insurers provide customers facing financial hardship, and if so, what and why?*

2.2 Customer vulnerability

Part 9 of the Code commits insurers to take extra care with customers experiencing vulnerability. In addition to identifying factors that might indicate vulnerability, the Code commits insurers to having internal policies and training around vulnerability and a publicly facing policy relating to family violence. The Code also makes commitments regarding the use of interpreters.

In addition to the Code commitments, the ICA has published guidance on helping customers affected by family violence and mental health issues.²⁵

The Review Panel is interested in views about the effectiveness of the current commitments and guidance relating to vulnerability. The Review's Terms of Reference specifically include whether the arrangements continue to meet community standards in light of new and emerging best practice approaches around extra care for customers experiencing vulnerability and the *National Plan to End Violence Against Women and Children 2023-32*.

For example, the International Standards Organisation (ISO) has recently published a new standard *Customer Vulnerability: Requirements and guidelines for the design and delivery of inclusive service*.²⁶ This standard recognises that vulnerability is a human experience that many people will go through at some point in their lives. When a person experiences vulnerability it can create barriers that inhibit their capacity to engage with markets which can

²³ CHOICE, ['Huge win for renters' – landlord insurers change policies following CHOICE campaign](#) (30 November 2021). Note: Subrogation is a right that allows an insurer that pays a debt or obligation on behalf of an insured to step into the shoes of the insured and pursue repayment from the original debtor.

²⁴ CGC, [Monitoring Priorities Consultation 2023-24](#); CGC [Response Paper](#) *Monitoring Priorities Consultation 2023-24* (June 2023), page 6

²⁵ ICA, [Guide on mental health](#) (1 July 2021); ICA, [Guide to helping customers affected by family violence](#) (1 July 2021)

²⁶ ISO 22458:2022 *Customer Vulnerability: Requirements and guidelines for the design and delivery of inclusive service*

lead to a multitude of further negative impacts including accessibility challenges. A key focus of the standard is to promote inclusive design as a tool that organisations can use to plan for vulnerability and ensure their services reduce barriers and problems, rather than create them.

While Standards Australia is still considering whether to adopt this standard, potentially with some amendments to suit local conditions, the Review Panel is interested in stakeholder views about this conception of vulnerability in an insurance context. The Review Panel notes the recommendation from the Deloitte review, *The new benchmark for catastrophe preparedness in Australia*, that insurers should review the effectiveness of the definition, identification and support for vulnerable customers during catastrophes.²⁷ Deloitte noted that, after a large-scale catastrophe, most customers will be, in some way, vulnerable. However, there has been inconsistency in identifying customers experiencing heightened levels of vulnerability who might require additional support.

A broad conception of vulnerability can embrace this notion of situational vulnerability, for example, in a disaster scenario. A benefit of this approach is that it should not necessarily depend upon an individual self-identifying that they are experiencing vulnerability.²⁸ Building a trauma-informed claims process could be one way to respond to vulnerability.

However, there will be some customers who require prioritised assistance, even where many others are experiencing some vulnerability after a disaster. The existing Code obligation encourages the consumer to tell the insurer about their vulnerability. Recognising that the customer may not advance this information, it may be preferable for all people who have experienced traumatic situations to be regarded as vulnerable and necessitating extra help.

Such situations may include:

- impact of natural events such as storms, bushfires, cyclone and floods;
- impact of events such as terrorism;
- in respect of travel insurance – the impact of a hospitalisation, death or violent crimes affecting not just the primary victim but a travelling group;
- in respect of pet insurance – serious injury, illness or death of a pet; and
- in respect of home and contents insurance – material damage (due to fire, storms, etc) requiring the family to temporarily vacate the premises and malicious damage or property damage due to a violent, criminal act whether by a family member or another person.

The Review Panel is interested in views on how the Code might help enable earlier identification of those that need additional help.

In addition to considering vulnerability generally, the Review Panel is interested in views about how the Code can best support the needs of persons experiencing vulnerability.

2.2.1 Women's financial safety

The Review Panel notes the *Guide to Prevention and Action on Financial Abuse within the Financial Service Sector* published in October 2021.²⁹ This guide includes principles that promote safety by design so that user safety and rights are at the centre of service and product development. The recent *Designed to Disrupt* paper published by the Centre for Women's Economic Safety also calls for an inclusive design approach to insurance, including through improved data collection that promotes proactive intervention and tailored prevention

²⁷ As above for note 1, see Recommendation 2

²⁸ For example, [NAB framework for customers who need extra support 2024-2026](#) includes a commitment to developing systems that allow for early identification of vulnerability

²⁹ Department of Prime Minister and Cabinet's Office for Women, [Supporting Women's Financial Safety: A Guide to Prevention and Action on Financial Abuse within the Financial Service Sector](#) (2022)

measures and ongoing measurement of the effectiveness of interventions designed to prevent or lessen harm.³⁰

The Code already requires subscribers to publish a family violence policy on their website. The ICA also has a guide that sets out how insurers can identify and support people affected by family violence.³¹

Some insurers have taken steps to address the suitability of insurance policies for customers experiencing family violence. For example, AAI/Suncorp updated its policies to introduce a 'conduct of others clause' so insurance policies cannot be weaponised by a perpetrator against a survivor of family violence. The Review Panel is interested in whether and how the Code should promote safety by design in insurance.

2.2.2 First Nations customers

The Code recognises that Aboriginal and Torres Strait Islander or First Nations customers may experience vulnerability. It also commits insurers to take a flexible approach to supporting customers' verification and identification needs including for First Nations customers.

The Review Panel notes that the proposed ABA Banking Code of Practice includes additional commitments to First Nations customers, including the provision of appropriate accounts and services. The proposed Banking Code of Practice also commits banks to following AUSTRAC guidance on identification and verification of Aboriginal and Torres Strait Islander customers, as well as providing cultural awareness training to staff who regularly assist First Nations customers.

Research confirms that there are differing levels of awareness about the insurance products available and relevant to First Nations customers, including business customers.³² ASIC has also recognised the need for more culturally appropriate products and services as part of its *Indigenous Financial Services Framework*.³³ The Review Panel is interested in views about whether the Code should include commitments about culturally appropriate communication or support for First Nations customers and, if so, what those commitments might be.

2.2.3 Mental health

The Code includes specific commitments to support customers who have a past or current mental health condition. These commitments relate to product design and fair treatment. The ICA has also published a Guide on Mental Health, which outlines best practices insurers should consider in meeting their Code requirements.

Insurers have obligations under anti-discrimination laws not to discriminate based on disability, including mental health. However, in recognition that insurance is a risk-based product, there is an exception which allows an insurer to treat a customer with a protected attribute differently in terms of the price of the premium, the terms of the policy, or declining the customer altogether, so long as it is based on reasonable reliance on actuarial or statistical data, or, if data is not available, the different treatment is otherwise reasonable.

The Public Interest Advocacy Centre (PIAC) has called for the Code to contain commitments that might improve compliance with anti-discrimination laws, including that insurers:³⁴

- regularly report on the processes, procedures and policies they implement to ensure compliance;

³⁰ CWES, [Discussion Paper](#) *Designed to Disrupt: Reimagining general insurance products to improve financial safety* (March 2024)

³¹ As above for note 26

³² Prepared by Winangali for Allianz Australia, [Research Report](#) *Indigenous Business Insurance* (August 2022)

³³ ASIC, [Indigenous Financial Services Framework](#) (February 2023)

³⁴ PIAC, [Report](#) *Mental Health Discrimination in Insurance* (October 2021)

- provide the actuarial or statistical data they rely upon should they deny coverage or only offer cover on non-standard terms due to disability;³⁵ and
- regularly review the data they rely on to make decisions to discriminate and continually seek better data to enable differentiated underwriting of particular mental health conditions.

The *Draft National Stigma and Discrimination Reduction Strategy* has also called for more accountability and transparency around insurance decisions and data.³⁶

The Review Panel is interested in views about how the Code could promote compliance with existing laws and best practice in respect of mental health, including the recommendations of the PIAC.

2.2.4 LGBTIQA+ customers

The Code does not specifically recognise LGBTIQA+ customers. However, the Review Panel notes suggestions to update paragraph 92 of the Code to include ‘sexual orientation, gender identity and sex characteristics’ as factors relevant to vulnerability.³⁷ There have also been concerns raised about discrimination against transgender and gender diverse people.³⁸ The Review Panel is interested in views about whether and how the Code might respond to these concerns.

2.2.5 Customer personal insolvency

Consumer advocates have also raised concerns about insurance denials for non-disclosure of a past insolvency event (such as bankruptcy or debt agreement).³⁹ Concerns include that insolvency is unrelated to the risk being insured (i.e. home, contents or motor vehicle insurance), or that customers were not aware that debt agreements are a form of personal insolvency at the time the disclosure was sought by the insurer. The Review Panel is interested in views about whether and how the Code might respond to these concerns, and whether there are other questions insurers ask at the point of sale or renewal which may create or exacerbate vulnerabilities. The Review Panel also seeks feedback on whether this issue is best dealt with outside the Code.

Questions

- 2.4 *Is the Code in line with community expectations regarding customer vulnerability? If not, how can it be improved? For example:*
- Should the Code promote inclusive product and service design to better address customer vulnerability? If so, how?*
 - Are there other types of vulnerability or disadvantage that need to be more explicitly addressed by the Code?*
 - How could the Code require or encourage better identification of potential vulnerabilities, other than at the point of claim? Should the assumption of vulnerability in the Code be reversed in certain situations such as those involving trauma? If so, how could the Code be amended to achieve this?*

³⁵ Some (but not all) Federal and State anti-discrimination laws now require insurers to provide the consumer with the data relied upon, or an explanation of the data, if the customer requests it

³⁶ NMHC, [Draft National Stigma and Discrimination Reduction Strategy](#)

³⁷ InsurePride, [Report Worth the Risk](#)

³⁸ CHOICE, [Transgender people facing ‘unacceptable’ discrimination from insurance industry](#) (9 June 2022)

³⁹ Consumer Action, [Submission](#) to CGC consultation Monitoring and Compliance Priorities 2023-24 (1 February 2023)

(d) *How should the Code promote enhanced responses to customers experiencing heightened levels of vulnerability, particularly during a catastrophe?*

2.5 *How can the Code and/or its administration encourage greater compliance with vulnerability obligations?*

2.6 *Are other mechanisms more appropriate than the Code to address issues related to the assistance insurers provide vulnerable customers and if so, what and why?*

2.3 The Code and the law

The Code is designed to work with laws applying to the general insurance industry (paragraph 18). If there is any conflict or inconsistency between the Code and any law, then that law prevails (paragraph 20). Following the FSRC, several new laws were introduced to implement the FSRC's recommendations. Many of those came into effect soon after the 2020 Code was finalised. These new laws cover some matters covered by the Code, for example:

- paragraph 43 of the Code and design and distribution requirements relating to financial products for retail clients;⁴⁰
- paragraph 80 of the Code and the requirement to provide a Cash Settlement Fact Sheet to retail clients in certain claim settlement circumstances;⁴¹ and
- the effect of paragraph 141 and ASIC RG 271 on Part 11 of the Code in relation to complaints handling.

It is expected that the Code goes beyond the minimum legal requirements with a view to promoting better practice. A Code can also help subscribers meet the law by setting out good practice steps that meet or exceed legal obligations.

There is further commentary on the interaction of the Code and recent legislative changes in later sections. Consideration of enforceable code provisions is covered in section 5 of this paper.

Questions

2.7 *How effectively does the Code interact with the law and how, and in what areas, could this be improved?*

(a) *Are paragraphs 18 and 20 of the Code sufficient to manage any conflict or inconsistency between the Code and the law? What changes would you propose to these paragraphs, if any, and why?*

(b) *Are there any paragraphs of the Code that should be amended or removed due to subsequent regulatory changes? If so, which paragraph and why?*

2.8 *How can the Code go beyond the law? And would it be appropriate to do so?*

For example:

(a) *Paragraph 21 of the Code and the general obligation of AFS Licensees to provide financial services efficiently, honestly and fairly.⁴²*

⁴⁰ Corporations Act 2001(Cth), Part 7.8A

⁴¹ As above for note 41, Part 7.7 Division 3A

⁴² As above for note 41, section 912A(1)(a)

- (b) *Paragraphs 28 and 38 of the Code and the general obligation of AFS Licensees to ensure representatives are adequately trained and competent to provide the financial services.*⁴³
- (c) *Paragraph 43 of the Code and design and distribution requirements relating to financial products for retail clients.*⁴⁴
- (d) *Paragraph 79 of the Code and the Cash Settlement Fact Sheet.*⁴⁵
- (e) *Part 11 (Complaints) of the Code and enforceable paragraphs of RG 271.*⁴⁶

2.9 *In which areas could the Code help Code subscribers meet legal obligations by setting out good practice?*

2.4 Retail insurance and wholesale insurance

The Code applies differently to retail and wholesale insurance (see paragraph 12). Parts 5, 6, 7, 8, 9 and 11 of the Code do not apply to wholesale insurance.

The Code generally adopts the Corporations Act definition of retail insurance and this may result in certain types of commercial policies for small business being defined as wholesale insurance.

In respect of general insurance disputes, it is noted that AFCA defines a small business as an organisation with less than 100 employees.

In addition, the Code does not distinguish between the commitments of insurers in respect of consumers dealing directly with the insurer and those consumers who have an insurance broker or intermediary acting on their behalf. The Review Panel notes that some insurance brokers⁴⁷ are bound by the National Insurance Brokers Association of Australia (NIBA) Insurance Brokers Code of Practice and where other codes apply to services being performed by insurance brokers, the broker will comply with the higher of the Code standards that apply in performing those specific services.⁴⁸

Questions

- 2.10 *Should the application of the Code to retail and wholesale insurance – and in particular small and medium sized enterprises (SMEs) – be reviewed and if so, how?*
- 2.11 *If there were different application for SMEs, should the Code adopt the AFCA definition of an SME as an organisation with less than 100 employees?*
- 2.12 *Should the Code distinguish between the commitments of insurers for consumers dealing directly with an insurer and those who have an intermediary (including insurance brokers) acting on their behalf? If so, how?*

⁴³ As above for note 41, section 912A(1)(f)

⁴⁴ As above for note 41, Part 7.8A

⁴⁵ As above for note 41, Part 7.7 Division 3A

⁴⁶ As above for notes 7 and 41, section 912A(2)(a)

⁴⁷ NIBA, [Insurance Brokers Code of Practice](#) (1 November 2023), paragraph 2.1(a): *The Code applies to all Members of the National Insurance Brokers Association. Non-members may adopt the Code with approval from NIBA*

⁴⁸ As above for note 48, paragraph 3.2(b)(vi): *By adopting the Code, we acknowledge: (vi) that there may be other codes that apply to services provided by a Code Subscriber (for example, the General Insurance Code of Practice). When other codes apply to services being performed by us, we will comply with the higher of the Code standards that apply in performing those specific services*

3. Other parts of the Code

The previous section highlighted some of the key areas of focus for this review of the Code, as set out in the Terms of Reference. Given the significant changes made to the Code following the previous review, this Review provides an opportunity to consider the practical operation of the 2020 Code and any areas where refinement may be desirable. This section therefore briefly outlines other sections of the Code on which stakeholders may wish to provide feedback. It also highlights some issues noted by stakeholders as part of informal discussions with the Review Panel in the development of this paper.

3.1 Key obligation – honest, efficient, fair, timely and transparent

The primary obligation of the Code is set out in paragraph 21 and commits subscribers (including distributors and service suppliers) to be honest, efficient, fair, transparent and timely. Paragraph 22 sets out how insurers will meet this obligation to consumers and largely reflects (but does not use exactly the same language) as the general obligation in financial services law to provide services ‘efficiently, honestly and fairly’. There may be benefit in the Code further articulating what this standard means in the context of general insurance.

The Review Panel considers the primary obligation is a vital over-arching commitment of the Code and its subscribers and is interested in feedback on how the provisions are working in practice and whether any change is needed.

Questions

- 3.1 *Do you have any feedback on the practical operation of the over-arching obligation in paragraph 21, including whether the Code could expand on what ‘honest, efficient, fair, transparent, and timely’ means, in the context of general insurance?*
- 3.2 *Do you consider that paragraph 21 is restricted in its operation by paragraph 22, and if so, why? How could this be addressed?*

3.2 Standards for Employees and Distributors

Part 4 applies to retail and wholesale insurance products and focuses upon the conduct, education and training of Code subscriber employees and distributors. In addition, the Code provides mechanisms and remedies for dealing with concerns about those employees and distributors. Part 4 also provides a mechanism for raising concerns about a person or organisation selling the subscriber’s products who is not a distributor.

Employees and distributors are defined in Part 16 of the Code. An employee is defined as a person employed either by the Code subscriber or a related entity that provides services to which the Code applies. The definition of distributors is linked to the distribution of financial services by an Australian Financial Services Licensee in accordance with the Corporations Act or when operating under a binder with the Code subscriber.

Some stakeholders noted that consumers do not always understand the role of brokers and underwriting agents, and on whose behalf they are acting. Further, some concerns were noted about the adequacy of oversight by insurers of distributors. There may be opportunities to include additional clarification or guidance in the Code, to improve understanding and accountability, including clarifying the roles of different types of distributors (such underwriting agents) and on whose behalf they are acting.

3.2.1 Training

The Code requires employees, distributors and service suppliers to be trained and competent.⁴⁹ Financial services laws require that representatives are adequately trained and are competent to provide the relevant financial services. Other than when providing financial product advice,⁵⁰ the Code and laws are non-prescriptive on the nature, amount and type of training required. Some stakeholders have indicated that there would be merit in strengthening or elaborating the Code in relation to the nature and amount of training provided by insurers. This would help ensure employees, distributors and service suppliers are well-placed to provide appropriate support and protection for consumers.

Questions

- 3.3 *Do you have any feedback about the practical operation of Part 4 of the Code, including the relevant definitions in Part 16? Does it deal effectively with ensuring that Code subscribers are accountable for the conduct of their employees and distributors?*
- 3.4 *Should the Code be more prescriptive on the training requirements for employees, distributors and service suppliers? If so, how would the Code achieve this given the different and varied roles across the industry?*

3.3 Standards for Service Suppliers

Part 5 applies to retail insurance products only and focuses upon the conduct, monitoring and supervision of Code subscriber service suppliers. In addition, the Code provides mechanisms and remedies for dealing with concerns about those suppliers.

Service suppliers are defined in Part 16 of the Code and the definition is restricted to:

- an Investigator;
- Loss Assessor or Loss Adjuster;
- Collection Agent; or
- a person, company or entity who is contracted by the Code subscriber to manage a claim on their behalf, including insurance brokers with delegated claims authority.

There may be an opportunity for the Code to be more explicit about the standards expected for service suppliers, or some classes thereof. For example, clearer standards about the content and understandability of expert reports may be helpful. In terms of oversight of service suppliers, the Code could articulate the role of insurers in coordinating certain parties, such as assessors and repairers.

Questions

- 3.5 *Do you have any feedback about the practical operation of Part 5 of the Code, including the definition of Service Supplier in Part 16? Does it deal effectively with ensuring that Code subscribers are accountable for the conduct of their Service Suppliers?*
- 3.6 *The provision of claims handling and settling services for insurance products is now included in the definition of a 'financial service' in the Corporations Act. What impact has this had, if any, on the operation of Part 5? Does Part 5 need to be amended given the changes to the law and if so, how?*

⁴⁹ As above for note 17, see Parts 4 and 5 of the Code

⁵⁰ ASIC, [Regulatory Guide 146](#) *Licensing: Training of financial product advisers* (July 2012)

3.4 Buying and cancelling an insurance policy

Part 6 applies to retail insurance products and makes a range of commitments relating to buying insurance, including use of plain language communication, avoiding pressure selling and the application and renewal processes. There are also specific obligations regarding automatic renewals, sum-insured calculators for home building policies (paragraph 48), displaying the prior year premium on renewals (paragraph 50) and no claims discounts (paragraph 51).

This Part of the Code also includes paragraphs that may be affected by recent law reform, including the new Design and Distribution Obligation (paragraph 43), the deferred sales model for add-on insurance (paragraphs 52-54) and the anti-hawking provision (paragraph 44). The Review Panel is interested in feedback on the interaction of the Code with these reforms.

Part 7 of the Code applies to retail insurance products and makes commitments relating to cancelling an insurance policy. First, where policies allow for cancellation and the obtaining of a refund, subscribers commit to returning the refund within 15 days (this might not apply to insurance arranged through a broker). Second, paragraphs 56 and 57 commit subscribers to provide notification upon non-payment before cancelling the policy in situations where policy premiums are payable by instalment.

The Review Panel's Terms of Reference ask it to consider the proposed phasing out of cheques by 2030. This may affect Code commitments relating to cancellation of insurance policies and the provision of refunds. The Review Panel welcomes suggestions on how the Code should respond to the proposed phasing out of cheques.

Questions

- 3.7 *Do you have any feedback on the practical operation of Part 6 or 7 of the Code? Do these Parts deal effectively with consumer issues or concerns around purchase, renewal and cancellation processes?*
- 3.8 *What has been the interaction between the Code commitments and recent law reforms, such as the Design and Distribution Obligation and the deferred sales model for add-on insurance? What changes or clarifications to the Code would be helpful, including to deal with the phasing out of cheques?*

3.5 Claims handling

Part 8 of the Code outlines the commitments of insurers in relation to claims handling and Part 15 addresses claims investigations. These provisions were developed before the implementation of the key recommendations of the FSRC and in particular the inclusion of claims handling as a financial service.

Claims handling comprises a significant portion of general insurance complaints to AFCA (over 65% in 2022-3) and has been a key area of focus in submissions and evidence to the Flood Inquiry. ASIC has set out its expectations in relation to claims handling in a range of reports and industry communications, including INFO SHEET 253.⁵¹ The Deloitte review noted record levels of breaches of the Code communication timelines in relation to the 2022 flood events. Claims handling has also been a focus of the CGC, including a thematic report published in July 2023.⁵²

Common issues raised include communication about the progress of claims, the use of external experts and expert reports, and cash settlements. Part 8 includes provisions relating to the appointment of external experts and a timeframe for providing a report, however the Code does not contain requirements for the content of the report.

⁵¹ ASIC, [INFO 253 Claims handling and settling: How to comply with your AFS licence obligations](#) (6 May 2021)

⁵² CGC, [Thematic Inquiry Making Better Claims Decisions](#) (July 2023)

The Review Panel is interested in feedback on enhancements to the Code that help insurers meet the reasonable expectations of consumers throughout the claims process.

3.5.1 Cash settlements

Paragraph 79 of the Code requires information to be provided if a cash settlement is offered under a home building policy, to help the customer understand how cash settlements work and how decisions are made on cash settlements. We note that the ICA has issued an information sheet to support paragraph 79 that gives common reasons for when a cash settlement should be considered.⁵³

The Corporations Act⁵⁴ governs the requirement to provide a Cash Settlement Fact Sheet to retail clients in certain circumstances.

The Review Panel recognises that payment of a cash settlement may be the most appropriate way to settle an insurance claim in certain circumstances. However, there may be risks associated with cash settlements, such as the transfer of project management risk from the insurer to the insured and the escalation in cost of repairs, which has been discussed at the Flood Inquiry. The Review Panel is interested in whether and how the Code could be enhanced to improve understanding and better protect customers where cash settlements are used.

3.5.2 Expert reports

Like cash settlements, expert reports have been subject to discussion at the Flood Inquiry and in other contexts. The Code currently requires that the expert has relevant expertise and that experts' reports are delivered within a certain timeframe after appointment.⁵⁵

Issues raised around expert reports include readability and accessibility, failure to identify causation, the level of detail or lack thereof and the cost for the insured to obtain reports that challenge the insurer's report. Similar issues arise in relation to building Scope of Works.

The Deloitte review⁵⁶ identified policy design as a key area for improvement, for example where a design feature required expert assessments (such as hydrologists for flood exclusions) and the experts were in short supply.⁵⁷

3.5.3 Timeframes

Part 8 of the Code prescribes timeframes for assessing a claim (paragraphs 68-71) and claim decisions (paragraphs 76-77).

The Code can apply different timeframes or changes to timeframes for several reasons. For example, in the event of an Extraordinary Catastrophe (paragraph 78(a)) or due to the complex nature of the claim (paragraphs 83-85).

The Review Panel wants to understand the impact on consumers where variations to Code timeframes are applied and whether any changes to the Code should be considered.

Questions

- 3.9 *Do you have any feedback about the practical operation of Part 8 of the Code and its effectiveness in protecting consumers during the claims process? What improvements, if any, to Part 8 of the Code would be desirable, particularly in light of recent law reforms such as the inclusion of claims handling as a financial service?*

⁵³ ICA, Information Sheet [Cash Settlements under a home building policy](#)

⁵⁴ As above for note 41, Part 7.7 Division 3A

⁵⁵ As above for note 17, paragraphs 74 and 75

⁵⁶ As above for note 1

⁵⁷ As above for note 1, Finding 8.6

- 3.10 *How could the Code be enhanced to improve understanding and better protect customers where cash settlements are used? For example:*
- (a) *Should the Code be more prescriptive in outlining better practice in administering the legal requirements for cash settlement payments?*
 - (b) *Should paragraph 79 be extended to all cash settlement payments?*
 - (c) *Should the Code mandate consideration of a contingency uplift factor for cash payments over a certain dollar value to better manage the risk of higher repair costs?*
 - (d) *How could the Code assist in developing consumer understanding of cash settlement payments, the risks associated with the same, and the need to obtain independent advice before accepting the cash settlement?*
- 3.11 *Should the Code prescribe minimum content requirements for external experts' reports (including Scope of Works) or are their other mechanisms that would better address concerns about the quality, consistency and accessibility of experts reports?*
- 3.12 *In what circumstances if any, should the Code allow insurers to vary the prescribed Code timeframes in paragraphs 68-71 and 76-77?*

3.6 Complaints

Part 11 applies to retail insurance products and also extends to uninsured persons making a claim against a customer insured by a subscriber under a retail insurance policy.⁵⁸

Subscribers commit to providing readily available information about complaints processes, acknowledging complaints, handling complaints with appropriate expertise and independence from claims handling staff and keeping customers informed about the progress of complaints at least every 10 days (unless an alternate timeframe is agreed).

Subscribers also make several commitments relating to decisions on complaints, including that the decision rationale is provided and that complaints are resolved within 30 days. If this timeframe is not met, the subscriber will explain why and provide information about the right to take complaints to AFCA.

Paragraph 141 of the Code commits subscribers to comply with the ASIC guidelines. Since the current version of the Code came into force, ASIC has updated its regulatory guide, including making some standards and requirements relating to dispute resolution enforceable.⁵⁹ At this time, the ICA updated the Code, to align the definition of complaints and timeframes for responding to a complaint with ASIC's regulatory guide.

It would be helpful to understand how the Code can help insurers meet or exceed ASIC complaints requirements. For example, there may be an opportunity for insurers to more proactively help vulnerable consumers access complaints processes. The Code could also be enhanced to include commitments by insurers to use available complaints data to drive performance and improve consumer outcomes.⁶⁰

⁵⁸ As above for note 17. The Part also applies to wholesale insurance products where the customer is entitled to financial hardship support under paragraph 107(b)

⁵⁹ As above for note 7

⁶⁰ As above for note 54. The CGC Report *Making Better Claims Decisions* sets out good practice actions taken by subscribers in response to insights from complaints data, page 17

Questions

- 3.13 *Do you have feedback about the practical operation of Part 11 of the Code relating to complaints, or have any suggestions for how it could be enhanced for the benefit of consumers?*
- 3.14 *Do the Code commitments relating to complaints need to be amended or clarified in light of ASIC's new guidance on internal dispute resolution, including its imposition of enforceable standards?*

3.7 Other Feedback

This paper has outlined a number of areas where *specific* feedback is sought by the Review Panel. The Code Review is intended to cover all aspects of the operation and effectiveness of the Code and the Review Panel welcomes feedback on any other areas that may be relevant. For example, Part 12 commits subscribers to complying with obligations relating to access to and use of information.

Question

- 3.15 *Do you have feedback on the practical operation of the Code that is not covered elsewhere?*

4. Emerging Issues

4.1 Affordability

The cost of insurance has risen dramatically, with the Australian Bureau of Statistics reporting that insurance prices rose 16.2 percent in the 12 months to the end of December 2023. This is the largest annual rise since March 2001.

Codes of Practice do not generally address prices. However, given affordability is such a significant community concern, the Review Panel is interested in what, if anything, the Code might do to improve the affordability of premiums, recognising that other mechanisms may be more appropriate for this purpose.

For example, the Review Panel is aware of concerns that some insurers charge higher amounts where premiums are paid by instalments rather than annually. There are also calls for insurance premiums to be payable via Centrepay.⁶¹ The Review Panel is interested in how insurers address these concerns, particularly in a more digital/tech-enabled environment.

Similarly, the Review Panel is aware of concerns about the premium differentials between new and renewing customers. In 2018, the Association of British Insurers launched a set of guiding principles and action points to address excessive differences between new customer premiums and renewal premiums that unfairly penalise long-standing customers.⁶² Subsequently, the UK Financial Conduct Authority enacted new rules so that renewal quotes for home and motor insurance consumers are not more expensive than those for new customers.⁶³

In 2023, ASIC issued a report identifying a range of 'pricing failures' primarily related to insurers' internal systems and processes and recommended improvements required to fix them.⁶⁴ The report confirms the standards general insurers need to meet in designing and promoting pricing promises to ensure consumers get the full benefit of any discounts promised. The Code includes a commitment to explain how 'no claims discounts' work, and the Review Panel is interested in how effectively this provision promotes clear pricing promises by insurers.

The Review Panel is also very interested in whether the Code could assist consumers with insurance affordability and if so, how. This could include, for example, commitments in relation to insurer communication to consumers in relation to the material components that comprise or affect the insurance premium and options that may be available to the consumer, such as alternative products and/or policy terms, that may offer lower premiums.

Question

- 4.1 *Is it appropriate for the Code to address affordability issues, such as those outlined above? If so, how might this be done without raising competition law concerns or creating an expectation that insurers will provide regulated personal financial advice?*

4.2 Helping reduce risks

A number of Australian insurers have developed programs that incentivise consumers to improve the structural resilience of their homes in exchange for premium discounts. For example numerous major insurers operating in Northern Queensland provide consumers with

⁶¹ As above for note 14

⁶² UK ABI, [News Insurance industry takes action on excessive differences between new customer premiums and renewals](#) (8 May 2018)

⁶³ UK FCA, [News FCA confirms measures to protect customers from the loyalty penalty in home and motor insurance markets](#) (28 May 2021)

⁶⁴ ASIC, [Media Release 23-169MR General insurers to repay consumers \\$815 million for broken pricing promises](#) (23 June 2023)

premium reductions for cyclone retrofitting and/or elevating homes at risk of flood. The insurance industry more broadly has indicated that consumers' risk mitigation activities can be considered by insurers when setting a premium and that some insurers 'may offer discounts at an individual level'.⁶⁵ In property insurance, for example, taking certifiable measures to make your home more resilient, such as strengthening doors and sealing windows, elevating floors and using improved materials can reduce risks associated with cyclones, flood or bushfires.

The National Emergency Management Agency (NEMA), through the Hazard Insurance Partnership (HIP), is leading the development of a national mitigation measure knowledge base that will help households understand the actions they can take to reduce risk.⁶⁶ To complement this work, insurers have been working with the Resilient Building Council on the development of a bushfire resilience app and some insurers have recently committed to offering premium discounts to home policyholders who use the app, supported by NEMA, to improve their bushfire risk. Households that complete the Bushfire Resilience Rating Home Assessment and certifiably strengthen their properties' defences will be given discounted premiums by participating insurers.⁶⁷ The ICA and insurers are also currently involved in the development of the multi-hazard version of this tool, which includes bushfire, flood, cyclone and energy efficiency. Taken together, these approaches could provide a more coordinated scheme that ensures risk mitigation measures are responded to transparently by insurers when communicating and setting premiums.

Similar types of mechanisms have been suggested by consumer groups, by the NSW Bushfire Royal Commission,⁶⁸ the Royal Commission into National Natural Disaster Arrangements⁶⁹ and the ACCC.⁷⁰ The ACCC, in its inquiry into Northern Australian Insurance, found that individual risk mitigation efforts are not always recognised by insurers. It called for insurers' quotes and renewal notices to:

- display what, if any, discounts have been applied to reflect mitigation measures undertaken on that property; and
- include a schedule of mitigation measures customers in similar properties have undertaken to improve their risk rating and a guide to the premium reduction – if any – that ensued.

The Review Panel is interested in whether a new Code commitment should be introduced to require insurers to consider relevant individual-level mitigation measures for any new or renewing insurance policy, and to demonstrate how those measures have been reflected in the proposed premium. The Review Panel is also interested in feedback on other ways the Code could address this issue, for example through insurers assisting consumers to better understand the impact of risk mitigation on their insurance premiums.

Question:

- 4.2 *Should the Code include provisions that encourage or require insurers to respond to consumers risk-mitigation efforts where appropriate and reasonable? If so, how might the Code do this?*

4.3 Simplification and standardisation of terms

Several reviews have suggested the simplification of aspects of insurance policies, such as the use of standard terms and cover, to facilitate consumer communication and understanding. For

⁶⁵ ICA, [Reduce your risk](#)

⁶⁶ NEMA, [Hazards Insurance Partnership](#)

⁶⁷ Insurance News, [Insurers launch premium discounts through bushfire resilience app](#) (21 March 2024)

⁶⁸ Final Report, [NSW Bushfires Inquiry](#) (31 July 2020), see recommendation 28, pages xii and 195

⁶⁹ [Royal Commission into National Natural Disaster Arrangements](#), see recommendation 19.2

⁷⁰ As above for note 3, recommendations 21.1 and 21.2

example, a standard definition of the term 'flood' was introduced in June 2012 and the Government recently issued a consultation paper exploring other possible natural hazard terms to standardise for insurance contracts. They also suggested a review of the standard cover regime.⁷¹ In addition, the ICA has announced work to develop a standard definition of 'wear and tear'.

Issues in relation to the definition of maintenance and 'fair wear and tear' have also been raised by stakeholders in the context of complaints about denial of claims and challenges with the application, communication and understanding of these terms.

The Code does not currently directly address the application and use of standard terms, as this would generally be covered by other mechanisms (in particular legislation or other regulatory material). As a result, the Review Panel is not considering addressing this in the current Code Review.

⁷¹ Federal Treasury, [Consultation](#) *Standard definitions and standard cover for insurance*

5. Code structure, enforceability and governance

5.1 Structure of the Code

The Code sets out the standards that general insurers commit to meeting when providing services to their customers. It is used by insurers, consumers and other stakeholders and includes a mix of high-level principles or commitments and more detailed sections intended to assist insurers in meeting those commitments.

The Review Panel is seeking views on whether the structure and level of content of the Code should be revised to better meet the potentially differing needs of insurers and consumers. This might, for example, see the Code developed into a more detailed 'how to' guide for insurers that outlines better practice in more detail (similar to Part 15 on Claims investigation standards). If this were the case, a shorter and more accessible document may be needed for consumers. The Review Panel notes that in the proposed Banking Code of Practice that is currently being considered for approval by ASIC, the ABA is suggesting that the revised code be accompanied by a new customer-facing document or Customer Guide.

Questions

- 5.1 *Should the primary audience for the Code be insurers? Or is it consumers and other stakeholders? Considering these questions, would it be appropriate to revise the structure and content of the Code to more appropriately reflect its intended audience or audiences? If so, how?*
- 5.2 *For which sections of the Code, if any, would more detail (similar to Part 15) be helpful and why? For example, would there be merit in providing more detail in relation to the conduct of employees, distributors and services suppliers?*

5.2 Code governance and compliance

Part 13 is an important Part of the Code providing mechanisms for breach reporting and the imposition of sanctions. Part 13 also sets out the role of the CGC and compliance arrangements for Code subscribers.

The CGC is an independent body that monitors and enforces insurers' compliance with the Code. It does this by undertaking thematic reviews and other activities to assess how well Code subscribers are complying with the Code's standards, highlighting both best practice and emerging risks and guiding insurers on how to lift compliance and improve service.

In addition, there is a Code Governance Committee Association which is responsible for appointing the members of the CGC and establishing its charter and budget.

This governance structure and how it operates in practice may not be well understood by some stakeholders and the structure differs from the approach in other industries and jurisdictions. Some stakeholders have suggested that improvements to the governance arrangements for the Code could better support the CGC in promoting Code compliance.

Further, to effectively fulfil its role, it is important that the CGC is adequately resourced, independent and wields adequate powers and sanctions.

It is important the Code not only sets out standards of conduct and behaviour that meets community needs, standards and expectations but that it can impose effective penalties and deterrence mechanisms when standards are not met. Recognising that it is not long since some of the sanctions were introduced to the 2020 Code, the Review Panel is interested in

suggestions for compliance activities that could better promote compliance. This may include, for example, allowing the Code Governance Committee to 'name' insurers in its annual reports on breaches and reports on own-motion investigations.

The Code requirement to report significant breaches of the Code to the CGC is in addition to the requirement on AFS Licensees to report 'reportable situations' to ASIC.⁷² The Review Panel is interested to understand any duplication or inefficiencies this may create. The Review Panel notes it is important to balance efforts to remove such duplications against the need for the CGC to effectively perform their Code role of monitoring and enforcement.

The Review Panel is also interested in stakeholder perspectives on Code governance and compliance and how it could be enhanced to effectively facilitate compliance with Code commitments. For example, the Review Panel notes that some other industry code commitments are incorporated into the contract with the consumer and contribute to enforceability by the consumer. Other industries and jurisdictions provide for periodic reviews of the performance and effectiveness of their Code oversight body. The Review Panel is interested in whether a mechanism for periodic reviews of the performance of the CGC would be of value and, if so, how it could be optimally implemented.

Question:

- 5.3 *What measures would improve governance of the Code and promote enhanced compliance with Code commitments? In particular:*
- (a) *Are the sanctions in Part 13 a sufficient deterrent to misconduct. Should they be strengthened? If so, how?*
 - (b) *A number of the sanctions available to the Code Governance Committee are restricted to a significant breach of the Code (defined in Part 16). Should the additional sanctions in paragraph 174 apply to any breach of the Code?*
 - (c) *Should the Code definition of 'significant breach' be aligned to the ASIC reportable situations regime, in RG 78 and if so, how?*
 - (d) *The CGC is only able to require a Code subscriber to publish the fact that the subscriber has committed a significant breach of the Code. Should the CGC be able to name subscribers that commit a substantial breach? Should this additional sanction apply to all Code breaches? What other transparency mechanisms may better promote Code compliance?*
- 5.4 *Does the requirement to report significant breaches of the Code to the CGC duplicate or create inefficiencies related to the obligation on AFS Licensees to report reportable situations to ASIC? If so, how should this be managed given the role of the CGC in monitoring and enforcing the Code?*

5.3 Enforceable Code Provisions

The ICA has indicated its intention to submit the version of the Code developed through this Review to ASIC. The Terms of Reference for the review include identifying possible Code commitments that might be advanced for designation as Enforceable Code Provisions (ECPs) as part of that application.

ASIC Regulatory Guide 183 *Approval of financial services sector codes of conduct* (RG 183)⁷³ sets out ASIC's expectations when considering a Code for approval. RG 183 has not been updated since the FSRC reforms introduced new powers for ASIC to approve a Code with

⁷² As above for notes 8 and 41: sections 912D and 912DAA

⁷³ ASIC [Regulatory Guide 183](#) *Approval of financial services sector codes of conduct* (1 March 2013)

designated Code commitments as an ECP. However there are legislative criteria for determining an ECP.

A Code commitment that is an ECP would have elevated status as it would become financial services law and therefore be enforced by ASIC (and not the CGC). A Code commitment would not meet the legislative criteria for commitments capable of ECP designation if it:

1. is broad, in-principle, or an aspirational commitment;
2. restates the law or mirrors a legal requirement;
3. would not cause significant and direct detriment to a person if the commitment is not met; and
4. is not a commitment by a general insurer to a person relating to transactions or dealings.

Consistent with point 2 above, the Code commitment would need to go above the law or elaborate on the law. It would also need to be drafted with sufficient particularity to be able enforcement by ASIC.

The Review Panel notes that ASIC is currently consulting on a proposed Banking Code of Practice that was submitted by the ABA for approval. This did not include any Code commitments designated as an ECP. The Review Panel will consider the submissions and outcomes of this consultation in its consideration of possible Code commitments that might be advanced for designation as ECPs.

The Review Panel is interested in stakeholders' views on the areas of the Code that could be considered for designation as ECPs and any changes to the current Code that would facilitate that.

Question:

- 5.5 *Which provisions of the Code could be considered for designation as Enforceable Code Provisions and what changes to the Code would be needed to support that?*

Appendices

Appendix 1 – Review Terms of Reference



GENERAL INSURANCE CODE OF PRACTICE INDEPENDENT REVIEW TERMS OF REFERENCE

Background

The General Insurance Code of Practice was introduced in 1994 by the Insurance Council of Australia (ICA) as a voluntary Code and it has been regularly reviewed and updated, most recently in 2020.

It sets out the standards that general insurers must meet when providing services to their customers, such as being open, fair and honest.

The Code is intended to be a positive influence across all aspects of the general insurance industry including product disclosure, claims handling and investigations, relationships with people who are experiencing vulnerability and reporting obligations.

The 2020 General Insurance Code of Practice (2020 Code) is due for a formal independent review this year as part of the regular 3 year cycle for continuously improving the Code. It is the intention of the ICA to apply to ASIC for approval of the new Code under the Corporations Act and having regard to ASIC Regulatory Guide 183.

Guiding principles for the review

The review's overarching principle will be to overall, maintain or enhance consumer protections.

In seeking to achieve the overarching principle, the review will also take into account the guiding principles of:

1. **modernisation** by being progressive and keeping up to date with contemporary developments;
2. **enhancement of the customer experience journey** when interacting with general insurers for example when buying insurance or at claim or complaints time;
3. **accessibility** in terms of clarity, enhanced understanding and simplification without losing meaning;
4. **effectiveness and efficiency** in terms of a positive customer experience and also operationally for general insurers, the Code Governance Committee, consumers and other stakeholders; and
5. **providing consumer value without unnecessarily adding to claims cost pressures** which may also take into account the weighing of broader cost-benefit considerations.

Independent review

In line with our sector's commitment to continuously improve the Code through formal independent reviews at least every three years, the ICA has appointed a three person Review Panel to conduct the review. The Review Panel will comprise of Helen Rowell (Chair), Paul Muir (industry expert) and Gerard Brody (consumer expert).



Scope of the review

The review will focus on the practical operation of the 2020 Code and relevant external developments including:

1. catastrophe response – taking into account the learnings and opportunities for Code improvement arising from the 2022 floods including the findings of both the [Deloitte review](#) and the [Federal Parliamentary Inquiry](#) into the general insurance industry's response to the 2022 floods as well as the COVID-19 pandemic;
2. support for customers and third-party beneficiaries in urgent financial need or experiencing financial hardship especially having regard to a catastrophe context. The review might also take into account any relevant ASIC good practice findings for the general insurance sector, the ACCC's recommendations in its Final Report *Northern Australia Insurance Inquiry* and any relevant Code Governance Committee recommendations;
3. whether the Code or its accompanying guidance for Part 9 of the Code (which deals with supporting vulnerable customers) continues to meet community standards in light of new and emerging best practice approaches for extra care, customers experiencing vulnerability, and the *National Plan to End Violence Against Women and Children 2022-2032*;
4. the interaction of the Code with existing laws and whether advancements or clarifications are needed having regard to the Financial Services Royal Commission reforms such as the new product Design and Distribution obligations, the inclusion of claims handling as a Financial Service, the deferred sales model for add-on insurance and the phasing out of cheques by 2030;
5. identifying the possible Code commitments which might be advanced for designation as an enforceable Code provision as part of any application for Code approval to ASIC.

The Review Panel will also consider if any enhancements are necessary to the Code's underlying governance arrangements to appropriately support the work of the Code Governance Committee. Adjustments may be necessary to advance an application for Code approval to ASIC which will include identification of enforceable Code provisions.

Timing of the review

The review will commence on Tuesday 14 November 2023, with the Review Panel to conduct the review in two phases.

The first phase will focus on consulting on topics that are unrelated to the floods (i.e. topics 2. – 5. and the governance arrangements to support the Code Governance Committee) towards delivering initial findings and recommendations of the first phase of the review in a Report by no later than 30 June 2024.

The second phase will focus on consulting on flood related topics to deliver findings and recommendations (and also confirm whether there might be any adjustments to the review's first phase findings and recommendations) in a Report by no later than 30 June 2025.

Both reports will contain findings and recommendations as to changes that may improve the operation and effectiveness of the Code taking into account the views expressed to the Review Panel during the



consultations and having regard to the guiding principles for the review. However the reports will be framed according to the opinions of the individual members of the Review Panel. Whilst the ICA and its members will appoint the Review Panel and fund the review and the ICA will provide secretariat support, the Review Panel will act independently.

The ICA and its members remain committed to continuously improving the Code and will consider each report to determine what appropriate changes should be made to the Code.

Consultation

The Review Panel will consult key stakeholders, including the general insurance industry – the ICA and its members, ASIC, APRA, the General Insurance Code Governance Committee (CGC), Code Monitoring Team, AFCA and consumer representatives.

Appendix 2 - Summary of key legislative changes since the Financial Services Royal Commission (FSRC)

Commencement Date	Legislative Change	What the change means
1 January 2021	ASIC's power updated to approve an industry Code with enforceable code provisions (ECPs) and to declare a Code mandatory. Amendments to Corporations Act	ASIC's Code approval power was strengthened in response to a FSRC recommendation. ASIC's power to approve an industry Code was updated to approve a Code that has Code commitments that are designated as enforceable code provisions (ECP). Designated ECPs are elevated to have the same status as financial services laws. This means the failure of a Code subscriber to comply with a designated ECP is enforceable by ASIC and not the General Insurance Code Governance Committee. A Code approved by ASIC must be independently reviewed every 5 years. ASIC's power was also updated to allow ASIC to declare a Code mandatory.
5 April 2021	Prohibition on unfair contract terms Amendments to ASIC Act and Insurance Contracts Act	The prohibition in respect of Unfair Contracts Terms (UCTs) was extended to insurers in response to a FSRC recommendation. On 5 April 2021, the UCT regime was expanded to include standard form insurance contracts made or renewed with an individual or small business customer. The legislation aims to respond to the power imbalance and different bargaining positions between a general insurer and an individual or small business customer. General insurers must ensure their standard form customer contracts are free of unfair terms. UCTs are those terms that would disadvantage the individual or small business customer and are not reasonably necessary to protect the legitimate interests of the general insurer. This obligation sits alongside the 'duty of utmost good faith' for insurers.
1 October 2021	Updated breach reporting regime Amendments to Corporations Act	General insurers must report certain breaches of the law to Australian Securities and Investments Commission (ASIC) as a condition of their Australian Financial Services (AFS) Licence. This reporting obligation was strengthened in response to a FSRC recommendation. General insurers are now required to report a significant breach within 30 days of knowing, or there

Commencement Date	Legislative Change	What the change means
		<p>are reasonable grounds to believe, that a 'reportable situation' has arisen. In addition, as insurers were required to report breaches or likely breaches of 'core obligations' (which would be taken to be significant in many cases), a wider range of significant and serious breaches of the law are required to be reported to ASIC.</p> <p>On 7 September 2021, ASIC published Regulatory Guide 78 <i>Breach reporting by AFS licensees and credit licensees</i>. In April 2023 ASIC released updated guidance and ASIC RG 78 has since been updated, with the latest reissue being published in December 2023.</p>
5 October 2021	<p>New product design and distribution obligation</p> <p>Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act and the Corporations Amendment (Design and Distribution Obligations) Regulations 2019.</p>	<p>The new product design and distribution obligation (DDO) was introduced to respond to a FSRC recommendation. The DDO reforms require insurers to design financial products to meet the needs of consumers and to distribute their products in a more targeted manner.</p> <p>General insurers must identify the 'target market' or the intended segment of individual and small business customers at whom the product is directed. General insurers must also continuously review distribution models and key features of the general insurance product to ensure it continues to meet customer needs to prevent customer harms.</p> <p>As part of the DDO, ASIC was given a new product intervention power to stop the sale and distribution of products ASIC considers might be harmful to customers. In June 2023 ASIC issued stop orders for pet insurance products, being the first time that this power has been exercised against general insurance products.</p> <p>On 11 December 2020, ASIC published Regulatory Guide 274 <i>Product design and distribution obligations</i>.</p>
5 October 2021	<p>New hawking prohibition</p> <p>Amendments to Corporations Act</p>	<p>This new prohibition was introduced to respond to a FSRC recommendation.</p> <p>The anti-hawking law prohibits the unsolicited marketing and sales of financial products. The prohibition seeks to give consumers greater control over their purchasing decisions, including when buying general insurance, by allowing individual and small business consumers to determine how they wish to be contacted and the types of products they wish to be offered.</p> <p>On 23 September 2021, ASIC published updated Regulatory Guide 38 <i>The hawking prohibition</i>.</p>

Commencement Date	Legislative Change	What the change means
5 October 2021	<p>New deferred sales model for add-on insurance</p> <p>Amendments to ASIC Act</p>	<p>The new deferred sales model was introduced to respond to a FSRC recommendation.</p> <p>It aims to prevent unfair sales practices and the sale of poor value products, when a general insurance policy might be ‘added on’ to the sale of another good or service, for example the sale of a motor vehicle, mobile handset or other device, credit card or home loan.</p> <p>The new deferred sales model introduces a mandatory four-day pause between the sale of the principal product or service and the sale of the add-on insurance.</p> <p>On 28 July 2021, ASIC published Regulatory Guide 275 <i>The deferred sales model for add-on insurance</i>.</p>
5 October 2021	<p>New consumer duty to not misrepresent</p> <p>Amendments to Insurance Contracts Act</p>	<p>A new consumer duty to take reasonable care not to make a misrepresentation to an insurer was introduced to respond to a FSRC recommendation. This duty applies to ‘consumer insurance contracts’ being those that are wholly and predominantly obtained for the insured’s personal, domestic or household purposes. For those types of contracts this replaced the previous duty of disclosure.</p> <p>The new duty seeks to safeguard individual and small business customers against having their claim declined when they may have inadvertently failed to disclose their past circumstances or because the insurer failed to ask the right questions.</p> <p>The new duty recognises it is important to ensure that insurers can appropriately price the risks being underwritten through limiting the risk of fraud and misleading disclosures.</p>
5 October 2021	<p>Updated internal dispute resolution requirements</p> <p><i>ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98</i></p>	<p>ASIC regulates the way in which AFS licensees, including general insurers, must handle and resolve individual and small business customer complaints through their internal dispute resolution processes.</p> <p>On 2 September 2021, ASIC published new Regulatory Guide 271 <i>Internal dispute resolution</i>. RG 271 and its corresponding legislative instrument was intended to improve complaints handling in the industry so that outcomes are fair and timely, with a stronger emphasis on addressing systemic issues. There are specific requirements outlined in the guide that insurers are legally obliged to follow.</p> <p>The new regulatory guide introduced a number of changes including:</p>

Commencement Date	Legislative Change	What the change means
	ASIC Regulatory Guide 271	<ul style="list-style-type: none"> • stronger requirements for general insurers to resolve complaints more quickly (within 30 instead of 45 days), acknowledge a complaint within 24 hours and other mandatory standards that general insurers must meet to resolve customer complaints; • a broader definition of 'complaint'; • requirements for the management of systemic issues for boards, executives and front-line staff; • requirements for a publicly available, readily accessible complaints policy and an internal complaint management procedure that sets out the detail regarding an insurer's IDR system; • requirements that an insurer's IDR process must have adequate and appropriate staff numbers, empowerment, training, materials and funding 'so that it operates fairly, effectively and efficiently' with continual review; and • Changes to the definition of small business: ensuring small business are entitled to access to AFCA and to IDR.
1 January 2022	<p>Claims handling becomes a financial service</p> <p>Amendments to Corporations Act</p>	<p>Services that handle and settle customer insurance claims were previously exempted from having to hold an AFS Licence issued by ASIC. This exemption was removed to respond to a FSRC recommendation.</p> <p>The effect of this was that those (including insurers) who provide claims handling and settling services must hold an AFS Licence and meet certain standards of conduct. In particular in connection with claims handling, insurers are now required to act efficiently, honestly and fairly, to provide appropriate disclosure to consumers, and to implement processes and policies to manage conflicts of interest and dispute resolution.</p> <p>To assist customer decision making, the legislative changes also introduced a new written disclosure requirement to give the customer a written Cash Settlement Fact Sheet (CSFS) at the time of offering a cash payment to settle the claim. The CSFS must outline the options available to a consumer, for example having their home or goods rebuilt, repaired or replaced, or receiving a cash payout in settlement of the claim.</p> <p>In recognition that strict application of the CSFS obligation could unintentionally prevent general insurers from paying customers up to \$5,000 cash in emergency situations, and could put survivors of family and domestic violence at risk of serious harm, ASIC issued</p>

Commencement Date	Legislative Change	What the change means
		legislative instruments to modify the application of the CSFS. ⁷⁴ This means that in certain instances insurers are relieved of the obligation to provide a CSFS such as when a customer needs urgent financial assistance or where an insurer reasonably believes that providing a CSFS would pose risks of family violence (for e.g. providing a CSFS to joint policy holders)
1 July 2023	Updated financial remuneration arrangements APRA Prudential Standard CPS 511 Remuneration	The FSRC highlighted instances of industry conduct that fell below community standards and the potential for remuneration structures to influence standards of conduct and behaviour. In August 2021, APRA published an updated version of <i>Prudential Standard CPS 511 Remuneration</i> to ensure that remuneration structures incentivise effective management of prudential and other risks. CPS 511 was intended to address recommendations made by the FSRC. The new standards were introduced with phased implementation commencing in January 2023. For larger insurers that are 'Significant Financial Institutions,' the new standards commenced on 1 July 2023.
9 November 2023	Expanded reach of UCTs for small business customers Amendments to the Australian Consumer Law and the ASIC Act	On 9 November 2023, the UCT regime was expanded to protect a broader range of small businesses and therefore apply to more small business contracts. The amendments to the UCT regime also included the introduction of significant financial penalties for contravention against both businesses and individuals.
15 March 2025	New Financial Accountability Regime Financial Accountability Regime Act 2023	The new Financial Accountability Regime (FAR) responds to a FSRC recommendation. FAR will replace the existing Banking Executive Accountability Regime and will be jointly administered by ASIC and APRA.

⁷⁴ [22-034MR ASIC streamlines process for insurers to provide consumers cash in emergency situations | ASIC](#); and [22-261MR ASIC helps insurers to respond to family violence | ASIC](#)

Commencement Date	Legislative Change	What the change means
		<p>Insurers will become accountable entities under FAR and must comply with specified obligations relating to accountability, key personnel, deferred remuneration and notifications.</p> <p>All directors and most senior executives will be identified as accountable persons under the regime and be subject to broad obligations to, among other things, act with honesty and integrity and with due skill, care and diligence. They will be obliged to take reasonable steps to prevent material contraventions of specified financial services laws.</p> <p>Both accountable entities and accountable persons who breach FAR will be exposed to significant financial penalties.</p> <p>On 8 March 2024 the regulators issued regulator and transitional rules in respect of FAR.</p>
1 July 2025	Updated APRA Prudential Standard <i>CPS 230 Operational Risk Management</i> (CPS 230)	<p>Updated CPS 230 intends to strengthen the management of operational risk in the banking, insurance and superannuation industries.</p> <p>In particular, regulated entities, like general insurers, are expected to be able to provide critical services to their customers through disruptions and ensure that the impact of disruptions is minimised to an acceptable/tolerable level through robust business continuity planning, including in relation to supply chains. CPS 230 introduces an expansive concept of material service providers, which includes a requirement to manage material risks associated with using those services providers, and a requirement to look deeper into the supply chain (e.g. to consider fourth-party risk regarding the delivery of critical operations). This means that insurers will have to ensure that supply chains are sufficiently robust to ensure that the insurer is able to continue to provide services.</p> <p>General insurers will need to have identified material service providers and critical operations by mid-2024, as well as set tolerance levels by the end of 2024, to meet the higher standards in readiness for the 1 July 2025 start date.</p>



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Email: secretariat@codeofpracticereview.com.au

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