Queensland Small Business Commissioner

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Our ref: QSBC-9411

Insurance Council of Australia
Attention: Code Review Panel
(via email: secretariat@codeofpracticereview.com.au)

31 May 2024

To the Review Panel,

Re: Independent Review of the 2020 General Insurance Code of Practice

The Queensland Small Business Commissioner (QSBC), including the Small Business Commissioner and supporting office, welcomes the opportunity to provide feedback to the independent review of the 2020 General Insurance Code of Practice (the Code).

The QSBC is established under the *Small Business Commissioner Act 2022*, and one of the main objectives is to enhance the operating environment for the almost 483,000 small businesses in Queensland.[1] This includes advocating on behalf of small businesses to government and other entities on matters relevant to small businesses, such as insurance.

We know that insurance can be challenging for small businesses to navigate, and they face sector-specific barriers such as limited insurance sector knowledge, cash-flow constraints, inadequate product options, and a reliance on intermediaries such as brokers. Affordability and availability of insurance pose persistent challenges for small businesses. A recent survey from Business Chamber Queensland found that over 60% of Queensland businesses reported the cost of insurance premiums as the second largest constraint on business growth, and that higher insurance costs have contributed to a significant rise in their overall operating costs.[2]

The QSBC recognises that the Code is a positive step towards promoting best practice in the insurance sector and commends the Insurance Council of Australia for its commitment to continuously improve the Code. The QSBC provides the following feedback on the Code for the Review Panel's consideration:

Retail insurance and wholesale insurance

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?

The QSBC notes that many parts of the Code (including Standards for our Service Suppliers; Buying insurance; Cancelling an insurance policy; Making a claim; Supporting customers experiencing vulnerability; and Complaints) do not apply to wholesale insurance. As many small business insurance products would be considered wholesale insurance under the Code, small businesses are excluded from much of the Code's standards and protections.

[1] Australian Bureau of Statistics, (2023). *8165.0 Counts of Australian Businesses, including Entries and Exits, 30 June 2023.*
[2] Business Chamber Queensland, (2023). *Pulse Survey of Business Conditions: December 2023 Quarter*.

The QSBC recommends that all parts the Code be extended to SME wholesale insurance (or at a minimum, small business wholesale insurance), to ensure that small businesses are not excluded from the Code's protection because of arbitrary definitions.

For instance, Part 9 of the Code—which currently only applies to retail insurance products—provides support for customers experiencing vulnerability due to factors including language barriers, cultural background, and Aboriginal and Torres Strait Islander status. A small business customer who is considered 'vulnerable' in the context of a retail insurance product should not be considered *less* vulnerable in the context of a wholesale insurance product. For example, there are more than 47,000 small businesses operated by culturally and linguistically diverse (CALD) owners in Queensland.[3] The vulnerability standards of the Code, such as 'using interpreters' (paragraphs 101-103), should apply to all CALD small business owners regardless of whether they have purchased a retail or wholesale insurance product.

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?

The QSBC recommends that the Code adopts AFCA's definition of an SME—an organisation with less than 100 employees—and extends all parts of the Code to SME wholesale insurance (as noted in response to question 2.10 above). Given AFCA's role in managing small business insurance complaints and disputes, a consistent, standardised definition will reduce confusion and streamline processes should matters progress to AFCA.

The QSBC recognises, however, that some stakeholders may not agree with such a broad extension of the Code. Based on our experience, small businesses (defined in Queensland as a business with less than 20 employees) are need of the Code's protections. To ensure the necessary support and protection for small businesses, the QSBC recommends that all parts of the Code be extended to at least small businesses. If only extended to small businesses, the Code should adopt two separate definitions: one for a small business (an organisation with less than 20 employees); and one for medium enterprise (an organisation of more than 20 employees and 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?

The QSBC recommends consistency in the application of the Code, regardless of whether a small business is dealing directly with an insurer or using an intermediary (such as an insurance broker). Small businesses often rely on brokers to navigate the complexities of insurance products and seek their expertise to ensure they obtain the most suitable coverage. A consistent application ensures that the Code standards apply to small businesses regardless of how the product has been obtained, fostering a more accountable and supportive insurance environment for all parties.

Financial Hardship (Part 10 of the Code)

2.1 (a) Should the Code adopt the expectations identified by ASIC relating to financial hardship? If not, why not?

The QSBC recommends that the Code adopts the expectations issued by ASIC in relation to insurance and financial hardship. We believe the adoption of these expectations will standardise the approach to addressing financial hardship and further strengthen the Code for small businesses.

For example, one of ASIC's expectations is to 'more proactively communicate financial hardship information' to customers. While the Code currently states that financial hardship information will be

[3] Australian Bureau of Statistics, (2021). *Census 2021 – Employment, Income and Education.*

published on the insurer's website (paragraph 105) and provided if a customer is identified as experiencing financial hardship (paragraph 111); the QSBC recommends that the Code be strengthened in line with ASIC's expectations and consistently applied across the sector. This could be done by requiring information about financial hardship to be made available at the point of purchase and adding information about the National Small Business Helpline to the Code (paragraph 111b), to proactively make assistance more accessible for small businesses.

Additionally, in line with ASIC's expectations to 'avoid asking for unnecessary documentation to demonstrate financial hardship', an example of reasonable evidence for small businesses could be added (paragraph 114) to include a letter from a small business financial councillor or an account/bookkeeper already representing the small business, rather than expecting detailed financial statements which may take significant time and cost to prepare which the small business does not have given they are in financial hardship. We know quick and timely intervention can help small businesses stablise in times of financial stress.

2.1 (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?

Small businesses often face unique financial challenges that can significantly impact their operations. These challenges may be short-term, because of a natural disaster, temporary roadworks impacts or the loss of a customer, or the challenges may be more entrenched, because of market collapse or a culmination of many smaller impacts over time.

Part 10 of the current Code primarily addresses standards for short-term financial hardship. The QSBC recommends that the Code be expanded to distinguish between assistance available to those experiencing short-term financial hardship and those experiencing more entrenched financial difficulties. For example, for more entrenched hardship insurers could collaborate with external support services (such as financial counsellors) to help small businesses navigate their financial challenges.

Additionally, establishing employee procedures to proactively follow up and monitor these small businesses will ensure that the support provided is effective and adjusted as necessary. The QSBC notes these changes would further help align the Code to ASIC's expectations regarding financial hardship, specifically that insurers should 'proactively engage with consumers before the end of support' and 'monitor data on hardship requests and outcome to inform the support options provided.'

Customer vulnerability (Part 9 of the Code)

2.4 (b) Are there other types of vulnerability or disadvantage that need to be more explicitly addressed by the Code?

As outlined in response to question 2.10, the QSBC recommends that all parts of the Code are extended to SME wholesale insurance (or, at a minimum, small business wholesale insurance); however, if that recommendation is not adopted then the QSBC recommends that Part 9 of the Code be extended to small business wholesale insurance, in recognition of the inherent vulnerability and disadvantage of small businesses customers, compared to larger businesses.

Research recently commissioned by the QSBC found that small businesses experience the 'liability of smallness', with resource constraints making them more vulnerable to economic changes.[4] Personal finances and assets are often secured against the business which can significantly impact the mental wellbeing of small business owners—further exacerbating their vulnerabilities.[5] These layers of

[4] Queensland Small Business Commissioner, (2024). *Understanding the Life Cycle and Mindset of Queensland Small Businesses.*
[5] Australian Small Business and Family Enterprise Ombudsman, (2020). *Access to Justice Report, November 2020.*

vulnerability increase the vulnerability risk profile of small business and necessitate additional protections under the Code.

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

As outlined in response to question 2.4 (b), small businesses are inherently vulnerable—this vulnerability is further heightened during a catastrophe. For example, after recent flooding events in Queensland, many small business owners experienced simultaneous damage to their homes and business premises. This compounded their mental stress and financial strain, highlighting the critical need for responsive insurance support to help alleviate the impact of any psychosocial hazards.

During crises like this, the importance of fast-tracking claims and providing timely and empathetic face-to-face on-the-ground support are crucial, as small business owners need immediate assistance to navigate their personal and professional losses. The QSBC recommends that in crisis situations, such as natural disasters or other major disruption events, the Code should automatically assume vulnerability for small business customers in the affected region or location.

Key obligation – honest, efficient, fair, timely and transparent (Part 3 of the Code)

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?

The QSBC recommends that the Code's primary obligations could be made clearer by providing practical plain English examples of what 'honest, efficient, fair, transparent, and timely' means in the context of general insurance. For example, 'efficiency' could be given context by including a practical example on how subscribers can streamline processes that reduce unnecessary delays such as only requesting the minimum amount of reasonable documentation necessary to determine an insurance claim or a request for financial hardship. These practical, contextual examples could be added to 'Part 3: Our obligation to you' or added in relevant parts throughout the Code. Using plain English is essential to maximising accessibility and assists in making translation more effective.

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?

To address any perceived restrictions, the QSBC recommends that Part 3 explicitly states that the Code sets out the 'minimum standards' to meet the Code's primary obligation. For example, paragraph 22 could be updated to state: 'The Code sets out the minimum standards of how we will meet our obligation to you'.

While the Code sets out minimum requirements, Code subscribers should be encouraged to exceed these standards. This addition would reinforce the intention behind paragraph 21 and ensure that the overarching obligations are not undermined. By encouraging insurers to go beyond minimum requirements, the Code lays the groundwork for continuous improvement and driving best practice supports good corporate-social responsibility and better ESG standards across the sector.

Standards for Employees and Distributors (Part 4 of the Code)

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?

The QSBC recommends that enhancements are made to the Part 4 and 16 of the Code to clarify the definition of a 'distributor' to explicitly *include* entities like insurance brokers, who act on behalf of insurers in distributing insurance products. This clarification would ensure that brokers are recognised as distributors and are subject to the same standards and accountability measures outlined in Part 4 of the Code. Given the significant role of brokers in relation to small business insurance, the QSBC sees this as a critical amendment.

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?

The QSBC recommends that the Code be more prescriptive on the training requirements for employees, distributors and service suppliers. For example, paragraph 28 should be expanded to state that all employees who handle small business clients are specifically trained to assist small businesses and have a good understanding of the challenges facing small businesses.

In recognition of the varied roles and varied training requirements across the industry, the QSBC recommends that Part 4 outlines the minimum standard for education and training with more detailed and topic-specific training requirements outlined in the relevant parts of the Code. For example, specific training requirements for dealing with customer vulnerability should be outlined in Part 9. This approach helps to make the training requirements relevant and effective in addressing the needs of small businesses.

Emerging issues - Affordability

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

The QSBC knows that the affordability and availability of insurance is a significant challenge for small businesses in Queensland. The QSBC has engaged with many small businesses that have raised concerns about the escalating cost of policies and the inability to secure affordable insurance—jeopardising the financial stability and viability of small businesses.

For example, the Caravan Association of Australia reported a significant rise in insurance premiums for park operators between 2022 and 2023. On average, premiums increased by 15% to 20% but some operators saw increases exceeding 400%. Additionally, 61% of the surveyed operators voiced concerns about their ability to access insurance, with escalating premiums making it challenging to maintain the coverage they need, posing significant risks to their businesses.

The QSBC acknowledges that Codes of Practice do not generally address prices and that there are limitations on what can be achieved due to competition laws; however, the QSBC believes there are appropriate measures which can be undertaken to promote transparency and fairness in pricing in the Code particularly in relation to payment terms and renewal offers.

For example, the QSBC recommends that a provision be added to the Code stating that customers will not be charged more if they choose to pay their premiums in instalments rather than annually. This will ensure small businesses are not penalised for paying in instalments and assist with their cash flow. In addition, a provision should be added that, when renewing a policy, the renewal premium should not exceed the premium offered to new customers. While the premium can still increase in line with inflation or changing risk profiles, the rate would align with the rate offered to new customers, ensuring that renewing customers are not penalised for their loyalty.

In addition, the QSBC's recommendation in response to question 4.2 regarding risk-mitigation, will also help to address affordability concerns for small businesses.

Emerging issues – Helping reduce risks

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?

The QSBC is aware of a number of instances where individual small businesses have undertaken significant proactive, risk-mitigation efforts (often at great cost to the business) to reduce the risks associated with their business; however, these efforts have not resulted in a reduction in associated insurance premiums. There is a view that insurers will not adjust premiums or provide discounts to individual small businesses irrespective of their actual risk profile without collective action to reduce risk profiles of whole industries or entire regions.

The QSBC recommends that provisions be added to the Code to require insurers to consider individual risk-mitigation measures, relevant to the industry or location, undertaken by small businesses for any new or renewing insurance policies. The Code could achieve this, for example, by encouraging customers to use the multi-hazard resilience tool being developed by ICA and insurers. Any risk-mitigation recommendations made by the tool and completed by the small business should be automatically deemed as ‘appropriate’ and ‘reasonable’ under the Code and result in a reduction in premiums reflecting the reduction in risk to the insurer.

This approach not only encourages small businesses to take proactive steps to mitigate risks, but also ensures that insurers recognise and reward the efforts in reducing premiums incentivising and driving risk reduction across industries benefiting all parties. This will also promote transparency throughout the insurance process by taking into account the individual circumstances of each business rather than applying a blanket approach based on a whole industry and/or regional factors.

Structure of the Code

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?

Given the diverse needs and perspectives of insurers, customers (including small businesses) and other stakeholders, the QSBC recommends that, once finalised, the Code be presented in a variety of formats tailored to each audience and to improve accessibility.

As previously outlined, the QSBC recommends extending all parts of the Code to small business wholesale insurance. If this recommendation is not adopted, the QSBC recommends that the Code is separated into two separate Codes—retail insurance, and wholesale insurance. This separation will provide better clarity for small businesses with wholesale insurance products by removing parts of the Code which do not apply to them.

In any form, the Code should be written in plain English and be easy to follow, understand and apply. As it currently stands, it is difficult for a small business to read and understand the Code as they have to read multiple definitions and paragraphs throughout the Code and decipher what it means in their specific circumstances. The QSBC further recommends the Code be written in plain English and formatted so it is easy to read and understand without the need to cross-reference different parts, contextualise definitions etc. A simple matrix could also be added to the Code to help determine whether a product is a retail insurance product, wholesale insurance product, or a product which is excluded from the Code entirely.

These changes would help small business (and other consumers) to access and understand the Code. It would also help insurers by providing more detailed and practical guidance for employees, distributors, and service suppliers (similar to Part 15) by promoting best practice and including case studies from insurers.

Code governance and compliance

5.3 (b) A number of the sanctions available to the Code Governance Committee (CGC) 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?

It is the QSBC's view that the sanctions available to the Code Governance Committee (CGC) in paragraph 174 should remain restricted to 'significant breaches' which are determined in reference to the number and frequency of breaches; the impact of the breach; the actual or potential financial loss caused by the breach; and the duration of the breach. It is, however, noted that sanctions should only be included in the Code if the CGC intends to take genuine and timely action in relation to significant breaches.

The QSBC is concerned that extending the sanctions to *any* breach may result in unintended consequences of deterring insurers from subscribing to the voluntary Code and driving better practice. The QSBC considers that the current definition of 'significant breach' in Part 16 is broad enough that the CGC could apply sanctions on a breach that they consider warrants action. This approach ensures that the most severe consequences are applied to serious offences, maintaining a balanced approach and that insurers are not deterred from subscribing to the Code due to fear of harsh penalties for minor breaches.

Between trivial matters and significant breaches, the CGC could implement a formal warning step for breaches that may contribute to or be indicators of a potential future significant breach. This would protect both customers and work to improve the reputation of the insurance industry by intervening early to ensure the Code drives industry best practice.

5.3 (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?

The QSBC supports the addition of provisions requiring the CGC to name subscribers in its annual reports who have committed a significant breach of the Code or who have been given a formal warning under the Code—this measure should be reserved for 'significant breaches' and warnings in relation to actions that are considered a precursor to (or indicator of) a significant breach, and not applied to other breaches as outlined in response to question 5.3 (b).

While supportive of the 'naming and shaming' of significant breaches or formal warnings, the QSBC recommends that the CGC focuses on proactive engagement with all stakeholders and celebrating best practice. This could include the publishing of best practice case studies, recognising insurers that are making significant efforts to exceed the minimum requirements, and ensuring customers at all levels have a voice in improving the industry. This approach will help promote industry improvements by subscribers to the voluntary Code and it is, quite simply, good business.

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?

The QSBC recognises that a breach of the Code may not always constitute a breach under the ASIC 'reportable situations' regime. On occasions where a breach falls under both the Code and ASIC regulations, the QSBC supports reporting through both avenues. Although this might result in some duplication of effort by insurers, it is crucial that both the CGC and ASIC receive the necessary information to perform their respective monitoring and enforcement roles effectively. Ensuring both bodies are informed helps maintain robust oversight and reinforces the integrity of the insurance industry.

Thank you for the opportunity to provide this feedback. If you have any further questions, please contact Rebekah Godbold, Principal Policy Officer, Strategy and Engagement on 07 3334 2303 or email strategy@qsbc.qld.gov.au.

Yours sincerely

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