# General Insurance Code of Practice

## Independent Review

Submission in response to initial consultation paper

June 2024

afca
Australian Financial Complaints Authority

# Contents

# 1 Introduction and overview

AFCA[1] welcomes the opportunity to make this submission to the 2023/24 independent review of the 2020 General Insurance Code of Practice (GI Code), responding to the initial consultation paper released by the review dated April 2024 (Consultation Paper). AFCA and our predecessor external dispute resolution (EDR) schemes have contributed extensively to the development of the GI Code over time, and we are committed to contributing to this review process.

## 1.1 AFCA's role with industry codes

AFCA has a dual role in relation to financial sector codes of practice:

- In our primary dispute resolution role we must have regard to applicable industry codes or guidance in accordance with AFCA's Complaint Resolution Scheme Rules (Rules)[2] and
- In our role as administrator for several codes including the GI Code.

The Code administration team supports independent Code Committees including the General Insurance Code Governance Committee (CGC) to monitor compliance with codes of practice to achieve service standards people can trust. It is a separately operated and funded business unit of AFCA, and this submission is not made on their behalf.

AFCA is committed to ensuring codes remain a progressive conduct model, extending above the minimum standards required by the law. This is consistent with the ASIC Regulatory Guide 183 *Approval of financial services sector codes* (RG 183) which states that an effective code should elaborate on legislation to deliver **additional benefits** to consumers. The CGC has undertaken targeted inquiries of compliance with the Code which have identified areas of potential consumer harm[3]. As discussed in this submission, these inquiries have identified issues that are of concern also to AFCA arising out of the complaints we deal with.

## 1.2 Executive summary

AFCA strongly believes in the enduring importance of financial sector codes of practice. General insurance (GI) plays a critical role in safeguarding some of the most important assets and activities of Australian consumers and small businesses. Given the impact of climate change and the increased incidence of natural disasters, the need for effective commitments and service standards is even more important today than when the GI Code was first introduced. We applaud the ICA for confirming their

[1] Comprehensive information about AFCA is available on our website, www.afca.org.au.
[2] In assessing and determining complaints, an AFCA decision maker must do what they consider is fair in all the circumstances, having regard to: a) legal principles b) applicable industry codes or guidance c) previous relevant determinations of AFCA of predecessor schemes. See Rule A 14.2
[3] Including *Information about Financial Hardship support on Insurers' websites* (June 2023), *Making Better Claims Decisions* (July 2023), *Oversight of External Experts* (current).

intention to obtain ASIC approval of the GI Code. ASIC approval of the Code will act as a signal to consumers that it is a code they can have trust in.

Over recent years a range of environmental and external factors have created challenges for the GI sector and more broadly for Australian businesses and consumers. In the most recent financial year 2022-23 AFCA received 27,924 GI complaints, an increase of 50% compared to the preceding year. Nearly 30% of those complaints were about delays.

This submission focuses on issues that AFCA has identified as priorities for consideration by the Review Panel. Some of these issues have also been covered in detail in AFCA's submission to the Parliamentary Inquiry examining the major floods in Australia in 2022 (AFCA's Flood submission)[4].

## Enforceability and enforcement

Based on our experience, AFCA considers that the GI Code must be enforceable if it is to be effective and enjoy the confidence of all consumers. This would help to make the GI Code a best practice Australian industry code. AFCA recommends that:

- at a minimum, code commitments are expressed to be contractually enforceable by consumers (as is the case with the Banking Code of Practice)
- where code commitments are breached, there are appropriate remedies and sanctions available to ensure compliance
- the CGC has the appropriate powers and resources required to monitor and enforce compliance effectively, and
- consideration be given as to whether existing timeframe provisions in the GI Code should be designated as enforceable by ASIC[5]

## Rasing code standards and improving consumer outcomes

Insurers must meet obligations to handle claims and communicate with their customers within specified timeframes, especially during periods of heightened need and vulnerability for customers, such as after disaster events. Based on our complaints and systemic issues experience, AFCA also recommends that the GI Code be amended to strengthen:

- decision making, communication and disclosure about cash settlements in claims handling
- effective oversight of experts and how insurers should rely on and apply expert reports in claims handling and dispute resolution
- approaches to dealing with vulnerability and hardship
  - AFCA considers all consumers lodging claims in the context of a natural disaster, particularly large-scale disasters, should be treated at least as suffering

[4] Inquiry into insurers' responses to 2022 major floods claims by House of Representatives Standing Committee on Economics.
[5] Section 1101A(2) of the *Corporations Act, 2001*

situational vulnerability. The related provisions around hardship support should also be strengthened.

We also recommend that the GI Code definition of small business be aligned with the AFCA Rules definition, and that firm data should give a clear picture of the impacts of delays in claims handling and communication, including whether this is impacting withdrawn claims and complaints.

We have not answered all of the questions raised in the Consultation Paper but our submission is presented in the same order and adopts the same headings. Part 2 of this submission provides an overview of general insurance complaints received by AFCA between 1 July 2019 and 31 May 2024, and Appendix 1 describes the factors AFCA considers dealing with complaints about experts reports.

## 2 AFCA data: general insurance complaints

Following is a high-level summary of the GI complaints that AFCA has received over the period 1 July 2019 to 31 May 2024 (data review period). This is a period of almost five years, comprising:

- the current, incomplete financial year up to 31 May 2024
- the four previous financial years which followed the establishment of AFCA on 1 November 2018.

The data presented in this submission is intended to give the Review Panel a high-level oversight of the scale and nature of general insurance complaints that AFCA has received. While the data review period corresponds approximately with the cycle of GI Code reviews, annual trends in complaints are also published in AFCA's Annual Reviews and current complaints and performance data against individual insurers can be searched via the AFCA Datacube.

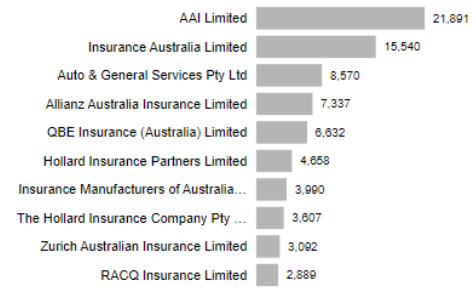
## Overview GI data: 1 July 2019 – 31 May 2024

- AFCA received 109,665 general insurance complaints.
- 59,641 of these complaints (58.4%) were accepted into case management at AFCA. This means that they were not resolved at first stage of the AFCA process – known as Registration and Referral (RR). AFCA does not know how the complaints closed at RR were resolved – this occurs directly with the insurer.
- $408 million in compensation was awarded in relation to the general insurance complaints accepted over the data review period
- The volume of general insurance complaints received has steadily increased from less than 1,500 per month in July 2019 to approximately 2,500 per month in April 2024.
- Domestic insurance accounts for more than 95% of cases received.
- Within the Domestic Insurance category, Motor Vehicle Comprehensive (MVC) and Home Building Insurance account for about 60% of cases.
- The top issue raised in general insurance complaints to AFCA was delay in claims handling (26,537 or 24% of total complaints received over the data review period). Part 8 of the GI code already contains a series of timeframes about claims handling.
- The product category with the greatest increase in volume has been MVC. The number of MVC complaints received per month by AFCA has doubled over the period.

The Table below shows the top 10 GI firms that AFCA received complaints about over the data review period, the top 10 GI products that were complained about and the top 10 issues raised in these complaints.

### Table 1: Top 10 Firms, Products and Issues in general insurance complaints (1 July 2019 – 31 May 2024)

Top 10 Firms




Top 10 Products

| Product | % |
|---|---|
| Motor Vehicle- Comprehensive | 29% |
| Home Building | 27% |
| Travel | 9% |
| Consumer Credit Insurance | 6% |
| Home Contents | 6% |
| Motor Vehicle- Uninsured Third Party | 5% |
| Unknown | 4% |
| Landlords Insurance | 3% |
| Commercial Property | 1% |
| Residential Strata Title | 1% |
| Total | 92% |

Top 10 Issues

| Issue | % |
|---|---|
| Delay in claim handling | 24% |
| Claim amount | 19% |
| Denial of claim-Exclusion/ condition | 16% |
| Denial of claim | 12% |
| Service quality | 7% |
| Misleading product/service information | 4% |
| Unknown | 3% |
| Incorrect premiums | 3% |
| Liability Disputed | 3% |
| Cancellation of policy | 2% |
| Total | 87% |

A key observation is that delays in claims handling is the number one issue raised in GI complaints made to AFCA over the extended data review period (24%). This is an indication that insurers' claims and IDR systems are not working as well as they should and that there has been under-investment in these areas.

As noted above, there was a 50% increase in complaints against general insurers in the 2022-23 financial year. Despite some signs of improvement in general insurance volumes coming to AFCA in early 2024, we have seen a recent spike in GI complaints received between March 2024 (n=2,445) and May 2024 (n=3,126). Again, the

dominant issue underlying these complaints is delay in claims handling, in particular impacting motor vehicle claims.

AFCA has been proactively raising concerns about these volumes in our engagement with industry over the past two years, as well as in AFCA's Flood submission and our related appearance before the Parliamentary Inquiry. We have also noted that the increased volumes of complaints made to AFCA were not about catastrophes or weather events but about 'business as usual' general insurance matters.

By the time they reach AFCA, consumers are often stressed and fatigued, having typically already been through a drawn-out claims process and internal dispute resolution (IDR) processes with their insurer. While the GI Code cannot of itself drive appropriate resource allocation by insurers, it can and should set standards that reduce barriers and frictions for consumers and improve practices that are within insurers' control (e.g. better and timely communications) to reduce complaints coming to AFCA.

### Systemic Issues

As well as handling individual complaints, AFCA plays a role in the broader consumer protection framework by identifying, investigating and reporting systemic issues (SI). This role extends to sharing information and insights gained through SI work with the financial services industry to help improve practice and reduce complaints.

We use the term 'systemic issue' to refer to an issue likely to have an effect on consumers in addition to any person who has submitted a complaint to AFCA. A SI may be raised in several complaints, a single complaint or otherwise be identified by information that we obtain. Our work in this area benefits consumers impacted by SI including consumers who have not made any complaints about the issues.

In 2022-23 AFCA identified and investigated issues resulting in remediation to 378,830 consumers and small businesses, achieving remediation and refunds of $100,528,522. We resolved 94 SI investigations with financial firms and reported 94 SI to regulators in line with our legal obligations[6]. There were 17 confirmed SI relating to general insurance. In the first half of 2023/24 we have 13 confirmed SI relating to GI. We have included some case studies from our SI work in this submission where relevant. Our Flood submission also includes details of SI relating to complaints arising out of the 2022 floods, including one working with an insurer to clarify their documentation around cash settlements.

## 3 Financial hardship and vulnerable consumers

Section 2 of the consultation paper seeks input on the Code's responsiveness and effectiveness of its commitments to issues facing insurers' customers. These include issues relevant to a customer's personal circumstances, such as their experience of

[6] Section 1052E, *Corporations Act*, 2001

financial hardship or family violence, through to insurer responsiveness to First Nations customers, customers with a past or current mental health issue, LGBTIQA+ customers and customers with a past insolvency event.

AFCA supports all measures that seek to understand and improve outcomes for Australians who are experiencing vulnerability, facing discrimination, or dealing with difficult health or family situations.

### 3.1 Fair, flexible and inclusive processes and services

While there are important differences in the issues and challenges faced by individual consumers in dealings with their insurer, AFCA considers the starting point for general insurers and the GI Code should be a focus on fair, flexible and inclusive processes and services.

A fair, flexible and inclusive design that applies to each stage of the customer journey (covering part 6 to part 11 of the code) is one that acknowledges that each customer is different and may face different issues at different stages of life that may affect their engagement with their insurer affecting their ability to navigate an insurer's processes including claims, financial hardship or complaints processes.

A significant enhancement to the GI Code would be to effectively support the design and development of service models that have sufficient flexibility within them to tailor responses to customer behaviours or other signs that a particular customer is having trouble or where extra care may be required. These may involve sensitivity to one or more of the following:

- Personal characteristics (age, gender, location)
- Health and abilities (illness, physical or mental health issue)
- Access and skills (language, literacy, numeracy, access to communication)
- Life events (job loss, relationship breakdown, bereavement)
- External conditions (economic, natural disaster, market conditions, organisational behaviour).

Some factors may be self-evident, for example, where customers are affected by a severe weather event while other factors may be less readily apparent, such as customers struggling to lodge a claim, understand information, provide claim related responses and information, or pay an excess.

GI Code commitments should assist insurers to identify:

- barriers in processes that result in consumer disengagement, friction, stress, escalated complaints or poor customer outcomes
- opportunities for training and capacity building among staff to empower them to tailor services and provide extra care to customers, where needed.

The Code is an important vehicle for the sharing of learnings and opportunities to lift standards across the industry with the CGC providing public transparency and accountability around the development of those standards.

### 3.2 Financial hardship

AFCA has limited jurisdiction to deal with complaints about the payment of premiums or about policy coverage (see discussion below under "Affordability"). Combined with the lack of current standards/law around the treatment of financial hardship in GI, this means that there can be limited remedies for affected consumers who have a complaint about how their insurer has responded to their requests for assistance. We therefore support consideration of how the GI Code might be enhanced by:

- Requiring insurers to **proactively** identify consumers in hardship and communicate about the full range of support options available.
- Making additional support options available including permitting a hold or deferral of premium payments and removing the loading for monthly premiums

Section 114 of the GI Code provides some examples of evidence that insurers may consider when assessing a hardship request but does not otherwise provide examples of circumstances in which hardship might arise. We think that the Code should be more explicit about this, and could include for example cost of living increases, financial stress, unemployment or the impact of natural disasters. Financial hardship may be short-term situational hardship (e.g. difficulty paying an excess in a motor vehicle claim that follows a job loss), or it may be more entrenched (e.g. compounding existing difficulties faced by customers with little financial buffer who may be wholly reliant on statutory incomes).

Financial hardship can also compound the negative experience of consumers when making a claim. For instance, their ability to pay for expert reports which may jeopardise their ability to provide evidence of the cause of the damage in support of their claim; or their ability to pay for long term temporary accommodation once the policy benefit is used up.

The ASIC CEO letter (22 April 2021) referenced in the Consultation Paper conveyed the regulator's expectations of general insurers responding to consumers in financial hardship. While this letter arose in the context of the COVID-19 pandemic, AFCA's view is that these considerations remain relevant in the context of ongoing natural disasters, weather events and even cost of living pressures. AFCA also agrees that effective hardship processes in general insurance should focus – by way of

**outcomes –** on reducing the numbers of consumers who become uninsured or under-insured through hardship.

We also note that ASIC's recent Report 783, *Hardship, hard to get help*[7] while focussing on home lenders is likely to contain applicable and actionable insights for general insurance including about making it easy for customers to apply for hardship and communicating effectively. However, in line with the observations above, we consider that fair, flexible and inclusive design of hardship processes (accessible communications, call scripts, system flags, sensitively designed online forms, good call notes and staff training) can better identify and support tailored hardship responses.

Following is a case study highlighting areas for improvement AFCA identified in relation to debt collection activities and the intersection with the AFCA Rules. The CGC has also previously identified concerns about debt collection agents authorised by insurers, and this provides an example of the important roles both AFCA and the CGC can play in lifting standards across the industry, and the need for the GI Code to support these outcomes.

### Systemic Issue Case Study: Debt collection

**AFCA engagement Collection activity during an open AFCA complaint**

A general insurer's process for stopping collection activity during an open AFCA complaint was not robust enough to ensure compliance with AFCA Rule A.7.1. This precludes a firm from pursuing a debt that is the subject of the complaint.

During engagement with the firm, 23 instances of collection activity taking place during open AFCA complaints were identified over an 18-month period. The root cause of the failures in most cases appeared to be human error, which indicated that the firm's processes and practices were inadequate to ensure compliance.

To resolve the issue, the firm took steps such as recruiting additional resourcing to its complaints handling team, introducing a process for actioning AFCA notifications and implementing a revised process for debt collection and reporting on such matters.

AFCA considers the process enhancements undertaken by the firm will help it to reduce the risk of this issue occurring again, but AFCA will continue to monitor this issue.

## 3.3 Vulnerability

The GI Code should be updated to ensure that it is line with community expectations regarding customer vulnerability. Paragraph 92 of the GI Code creates, in effect, a definition of vulnerability by setting out a non-exhaustive list of factors that may

[7] ASIC REP 783 *Hardship, hard to get help: Lenders fall short in financial hardship support* 20 May 2024

increase a customer's risk of experiencing vulnerability. AFCA believes the approach taken in paragraph 92 should be changed.

While there is not a single definition of vulnerability that applies across financial or other retail markets, there is general acceptance for a broad approach which makes clear that:

- anyone can become vulnerable at any time
- experiencing vulnerability is a personal situation that requires extra care and often
- a tailored response
- there is no exhaustive set list of prescriptive factors that amount to vulnerability.

This type of approach also acknowledges that the conduct of firms (in this context, general insurers) can of itself amplify consumer vulnerability. This may result, for example, from complex product design, hidden or opaque pricing, hard-to-navigate processes, particularly during a claim, and excessive delays in communication or in finalising a claim. The reliance on a list of factors such as in paragraph 92 could result in insurers focussing on checking off this list – without fully and wholistically considering a customer's particular situation and the circumstances in which they are contacting or engaging with their insurer.

In considering alternative vulnerability provisions, the approach taken by the UK Financial Conduct Authority (FCA) could serve as a model. The FCA's definition of 'vulnerable customer': '*someone who, due to their personal circumstances, is especially susceptible to harm – particularly when a firm is not acting with appropriate levels of care'*.

For general insurers whose products are designed to respond to risks, the reality is that many customers at the time of lodging a claim are likely to be experiencing some form of vulnerability (e.g. following injury and/or loss of income resulting from a car accident to trauma and loss of income and housing following a severe weather event). That vulnerability may be obvious and disclosed (trauma in the aftermath of a flood disaster) or hidden (lack of literacy, mental distress, or experience of family violence).

We consider that an assumption of some vulnerability at claim time supported by fair, flexible and inclusive design principles in insurer processes for the acceptance and processing of claims will result in better consumer outcomes. This approach:

- acknowledges that the conduct of firms, can itself amplify consumer vulnerability, resulting from complex, hard-to-navigate or delayed processes; and
- shifts the onus from a customer to disclose to the insurer who is best placed to deploy data, operational experience and organisational capabilities to identify and respond to those claims that may require tailored care.

We also think that the GI Code should expect insurers to take a more proactive approach to identifying consumers who need special care and designing processes to cater for them. This approach is consistent with advice from consumer advocates that

the burden of 're-telling' to multiple employees or agents amplifies trauma and can lead to consumers dropping out of important conversations and processes (including claims, hardship and IDR).[8]

The GI Code (paragraph 98) should also be strengthened to ensure that simple and effective measures are in place to ensure that consumers are easily able to appoint a representative to assist or support them, and that insurers effectively recognise these appointments.

### Systemic Issue Case Study: Dealing with third party representatives

**Proactively improving processes for dealing with third party representatives**

An insurer's process for accepting the appointment of and dealing with third-party representatives was unfair as it created unreasonable barriers for consumers.

For example, the insurer was requesting that customers provide a signed authority form on the insurer's letterhead. The insurer was also asking for the personal details (e.g. date of birth) of third-party representatives such as financial counsellors.

When AFCA raised the issue with the insurer, it said it had already identified the deficiency in its process in response to consumer complaints and financial counsellor feedback and had taken proactive steps to enhance its process. The enhanced process included a two-point security check for personal details of the customer and general details of the third-party representative.

The actions taken by the firm resolved AFCA's concerns.

## 3.4 Women's financial safety

The Centre for Women's Economic Safety (CWES) published a discussion paper in March 2024, *Designed to Disrupt, Reimagining General Insurance Products to improve financial safety.* The CWES noted that the misuse and manipulation of general insurance products by people using violence is one of the less well recognised ways they exert control, and create fear, uncertainty and costs for victim-survivors. AFCA supports important research and initiatives to protect women who are impacted by violence.

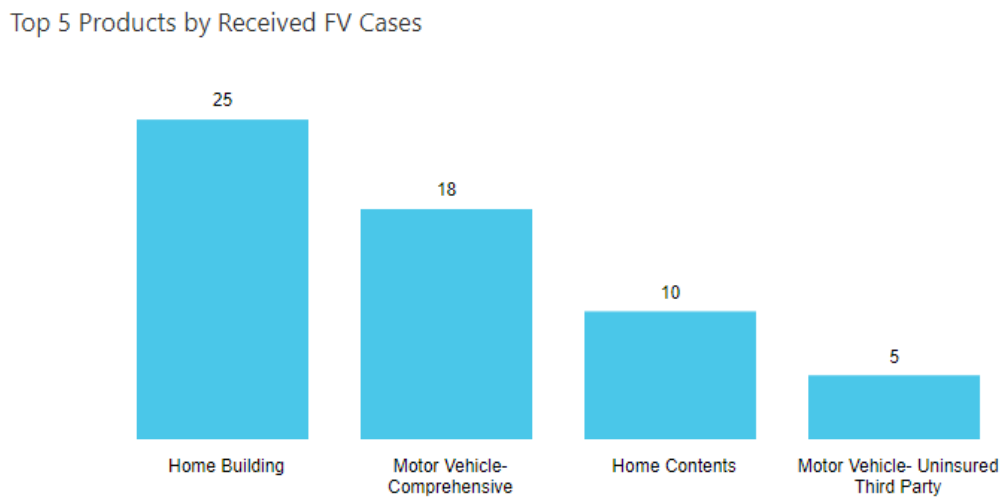
In 2022-23, AFCA identified 584 complaints involving or relating to family or domestic violence. These include cases where consumers proactively disclosed their lived experience of violence in AFCA's complaints form. Of these complaints 65 (11%)

[8] ASIC Report 768 *Navigating the storm: ASIC's review of home insurance claims* involved data and file reviews of home insurance claims lodged between 1 January 2022 and 31 March 2022 and included a focus on vulnerability. AFCA supports ASIC's three related recommendations for insurers which were about: tailoring responses and services to consumers experiencing vulnerability; ensuring insurance representatives are appropriately trained and enhancing claims and complaint systems and processes to facilitate flagging of vulnerability.

involved domestic insurance and the following table shows a breakdown of these complaints by product type.

While this data suggests that less than 1% of all complaints to AFCA involve or relate to family or domestic violence or abuse, there are significant barriers to women making and escalating complaints in these circumstances and so we do not believe that our data is representative of the actual scale of abuse involving the "weaponisation" of financial products and services. This is why we agree with the CWES that general insurers and other financial firms should *design out the potential for this harm* rather than relying on victim-survivors to take action.

### Table 2: Top 5 general insurance products in complaints involving family or domestic violence (2022-23)




The CWES discussion paper noted that by far the most common experience of victim-survivors who shared their insights relates to joint insurance policies. Situations that AFCA has seen in complaints include:

- The perpetrator deliberately damaging the victim's property to financially injure the victim – those often can trigger an exclusion for claims occurring from the deliberate act of an insured
- The perpetrator making changes to the policy so that either:
  - benefits are being provided directly to them which they do not distribute to the victim, and/or
  - resulting in the victim's property being uninsured without their knowledge
- The perpetrator looking to obtain the victim's personal information through the insurance policy (such as their current address or phone number).

AFCA strongly supports the CWES' call for systemic and consistent action across the entire financial sector, and we urge all insurers to follow the lead of AAI/Suncorp and Allianz in introducing 'conduct of others' clauses in their insurance policies.

# 4 The Code and the law

The Consultation Paper notes that certain matters provided for in the GI Code are also provided for in recent legislation. Consultation Question 2.7(b) asks whether any of the GI Code provisions in the overlap areas should be amended or removed.

There is a risk that any changes made to eliminate overlap could reduce consumer protection. Removal or diminution of GI Code provisions could, for example:

- narrow the remit of the CGC and, by doing so, limit an important arm of oversight
- restrict the scope of AFCA, in complaint resolution, to have regard to standards set in the GI Code.

AFCA does not have evidence, arising out of our complaints handling, of confusion or duplication between the GI Code and the law which would suggest any urgent need to remove Code provisions. If changes to eliminate perceived or actual overlap are to be considered, then this should be done after thorough consultation and on the basis that they do not adversely reduce consumer protection and lead to consumer harm. Heightened conduct standards for insurers across law and the Code help enhance consumer protections and effective oversight should help enhance consumer confidence in the general insurance sector.

# 5 Retail and wholesale insurance

Two of the issues addressed in Part 2.4 of the Consultation Paper are:

- What protection should the GI Code provide to small business consumers?
- How should 'small business' be defined in the GI Code?

The GI Code provides limited protection to small business consumers at present. While the entire Code applies to Retail Insurance, paragraph 12 states that Parts 5 to 11 do not apply to Wholesale Insurance[9]. Numerous categories of insurance for small businesses are treated as Wholesale Insurance under the Code, meaning these businesses have the lower level of Code protection. Moreover, Part 16 of the Code defines small business in relatively narrow terms.

The position in EDR is different. AFCA's jurisdiction covers a Small Business Insurance Product[10] as defined in Section E of the AFCA Rules and we consider complaints made by small businesses within a definition broader than the GI Code's equivalent definition. The AFCA Rules define small business to mean:

> *a primary producer or other business that had less than 100 employees at the time of the act or omission by the financial firm that gave rise to the complaint.*

[9] 'Retail Insurance' and 'Wholesale Insurance' are defined in Part 16 of the GI Code.
[10] See Rule C.1.4a) in the AFCA Rules, explained on pages 134-137 of our Operational Guidelines.

AFCA considers that the group of businesses given rights to access EDR should also have the higher level of GI Code protection provided in respect of Retail Insurance. It is widely accepted that this group should be treated in the same way as individual consumers. This approach underpins current ASIC regulatory guidance[11].

We believe the current position – with inconsistency between EDR access and the GI Code – is complex and may confuse stakeholders including consumer advocates and industry staff involved in complaint handling. EDR systems and training need to anticipate difficulties in this area.

AFCA suggests the following changes:

- The GI Code definition of small business should be aligned with the AFCA Rules definition. This could be done by adopting, in the GI Code, the definition used in ASIC's RG 267. That would cover a business with less than 100 employees, including a primary production business as defined in the *Income Tax Assessment Act 1997*.
- Parts 5 to 11 of the GI Code should apply to a wider range of insurance for small business. More specifically, in our view, the division between Retail Insurance and Wholesale Insurance should be redesigned to align with AFCA's jurisdiction to consider general insurance complaints by small businesses.

## 6 Obligation to be honest, efficient, fair, timely and transparent

The primary obligation in the GI Code – to be efficient, honest, fair, timely and transparent – is stated in paragraph 21. This is a broad statement building on the general obligations of Australian Financial Services (AFS) Licensees to *do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly*[12]*.* All subscribers to the GI Code hold an AFS licence.

Paragraph 22 of the Code states that *The Code sets out how we will meet this obligation to you.* AFCA's view is that paragraph 21 should not be restricted in its operation by paragraph 22 (and that it is clear that the CGC has a role to monitor compliance with – and if necessary impose sanctions – for breaches of paragraph 22).

The GI Code provisions should be consistent with the principles contained in section 21 but they are not currently a complete articulation of all the steps or actions that insurers need to take to comply with these principles, and this may in itself be an unrealistic objective. We think it is preferable to instead ensure that the Code sets clear and specific standards across the areas where consumer outcomes may be compromised or need to be protected.

[11] See, for example, ASIC's RG 267 *Oversight of the Australian Financial Complaints Authority*. Also note that IDR standards in RG 271 were modified to ensure small businesses' access to IDR is consistent with their access to EDR – RG 271.38.
[12] Section 912A(1)(a) *Corporations Act 2001*

AFCA notes that there is currently a lack of regulatory guidance on honest, efficient and fair, including on how it applies to claims handling in insurance. This can lead to a reliance or expectation that the GI Code and/or AFCA (through the resolution of individual disputes) will set out what this means. Our view is that the GI Code can play an important role in this context.

## 7 Standards for Employees and Distributors

AFCA believes that paragraph 34, *Concerns about other Australian Financial Services Licensees who sell our products* can be enhanced. We have seen confusion arise when insurers sell and/or distribute their policies through another firm's AFSL (e.g. banks selling or offering CCI or group travel policies). This can include a lack of clarity about who the complaint should be lodged against, how to source relevant information or who is responsible for the staff training in the sale and/or distribution of the product. It can be both confusing for consumers and challenging at EDR as the division of responsibilities is not always clear.

## 8 Standards for Service Suppliers

AFCA supports the extension of the definition of service suppliers in Part 5 of the GI Code to cover experts. We note that the CGC is currently conducting a thematic inquiry about the oversight of external experts, and this may contain recommendations that address some of the concerns that AFCA has previously expressed about the quality of – and reliance on – experts reports in complaints that come before us. We set out more detailed observations about appropriate standards for experts in Part 10.2 below.

## 9 Buying and cancelling an insurance policy

Insurance products are inherently complex. Consumers buying insurance products must balance uncertainty as to the scope of cover and how a policy may respond in a specific disaster event, with more concrete policy features, such as cost. While such trade-offs are inevitable features of insurance markets, the interaction between the defined scope of cover and the operation of policy definitions and exclusions is often poorly understood by consumers.

It is essential that general insurance is sold fairly and that sales and distribution processes navigate consumers through to products that meet their needs at an appropriate cost. The impact of systemic failures in the design and sale of add-on insurance over many years has driven law reform, remediation and high volumes of complaints through to AFCA, including through paid representatives.

AFCA believes that Part 7, *Cancelling an insurance policy* can be strengthened. It currently appears limited to cancelling the policy due to non-payment of the premium.

However, there are other legal reasons an insurer can cancel the policy including allegations of non-disclosure and breaches of utmost good faith. Cancelling a policy can impact a person's ability to insure elsewhere (this is because it is normally disclosable) and so can have serious consequences for consumers.

In cancelling a policy, good practice is that an insurer should provide **clear reasons** as to the basis for cancellation (e.g. what ground in section 60 of the *Insurance Contracts Act* 1984 is being relied upon) and information in support. They should also communicate the person's right to dispute the cancellation through the IDR process. Whilst insurers generally do this, they are not always clear about the basis for the cancellation. Setting this standard clearly in the Code would ensure people are aware of the basis and their rights at the time of cancellation.

# 10 Claims handling

As already covered, delays about claims handling accounted for almost one quarter of all complaints made to AFCA about general insurance over the data review period, and 71% of all general insurance complaints were claims-related in nature. Effective and fair claims handling is central to the insurance promise that allows consumers to feel confident and secure they will be looked after if something goes wrong.

We also note that the GI CGC *Industry Data and Compliance Report 2022-23* said that over the relevant period there were 5.1 million claims lodged and 422,457 claims withdrawn (up 14% on the previous year's report).

While we understand that there can be a range of legitimate and/or reasonable reasons why a claim may be withdrawn by a consumer, it would be useful to understand the drivers for these rates and the Code could play a role in enhanced data collection in this area. Similarly, we welcome the publication by ASIC of financial firm (including general insurers) IDR data, which will include withdrawal rates at IDR. Again, transparency about and understand of these rates will help to assess the overall health of insurers claims handling (and IDR) systems.

## 10.1 Cash Settlements

AFCA often deals with complaints which involve disputes or misunderstanding about cash settlements. The treatment and application of cash settlements varies across different classes and issuers of insurance products, which can increase complexity for consumers when making a claim.

Complaints made to AFCA typically arise as to how an insurer has chosen to settle a claim. For example, the insurer may have chosen to repair or replace an item but the consumer wants to receive a cash settlement (or vice versa). Often insurers have discretion under their policies to either repair the damage, replace the item or pay the cost of either the repairs or replacement. This does not mean that an insurer can unilaterally decide how to settle a claim, the insurer must still exercise their discretion

fairly and consistently with the principles of utmost good faith. Similarly, if a complaint involving a decision about a cash settlement is made to AFCA, we must do what is fair in all the circumstances in resolving that complaint.

For example, an insurer may want to cash settle a home building claim arising out of a natural disaster event where the consumer is vulnerable and unlikely to be able to deal with or manage the repair process. This may not be fair because the logistics involved are complex and overwhelming. At the same time, by cash settling the insurer is not providing a lifetime guarantee for the works and risks shift to the consumer.

Paragraph 79 of the Code should be strengthened to require that insurers provide consumers with all the information that they need to fully understand the significant implications of, and risks that come with, cash settlements. This should include that insurers be required to:

- provide a complete breakdown of the quotes and scope of works any settlement is based on
- itemise quotes in a meaningful way so that a consumer can understand the rates and costs being charged
- ensure quotes and rates are based on either an actionable quote or a cost that can be matched in the local market by the consumer
- add appropriate contingency margins or uplifts for various factors, most importantly the transfer of risk (noting that often costs increase as building works commence or if there is a scarcity of trades in the local area)
- include other policy benefits that are likely to be triggered by the repairs (e.g. temporary accommodation, removal and storage of contents, etc.)

### 10.2 Expert Reports

Concerns about – and case studies involving – the use of expert reports in general insurance have been covered in depth in the Parliamentary Flood Inquiry and have also been the subject of recommendations in the 2023 CGC thematic inquiry into home building claims. In the latter inquiry, the CGC recommended that insurers establish a standard format for expert assessment reports to drive consistency and quality improvements. AFCA supports this recommendation.

In AFCA's Flood Inquiry submission, we said that our experience from the Major Floods, and more broadly across our general insurance business, indicates that expert reports relied on by insurers vary in quality and in some cases may be deficient. The reports may, for example, not address important factors including statements or evidence provided by the consumer during the claims process, or they may draw conclusions that are not supported by adequate evidence.

While consumers who make complaints to AFCA will be able to have the reliability and use of an expert report tested in relation to their individual claim, we think that the

Code should set clearer and higher standards to ensure that all consumers (through a claims process and at IDR) can get similarly appropriate outcomes.

In 2024, AFCA will be developing/publishing an external fact sheet which sets out how decision makers approach complaints about or involving the use of expert reports. We provide below an outline of AFCA's views about how expert reports can be improved followed by some suggestions on standards the Review Panel could consider in the review of the GI Code to improve consumer outcomes.

AFCA believes that outcomes will be improved if insurers carefully:

- select and brief relevant, qualified, independent experts
- ensure experts are appropriately briefed on all relevant matters
- have appropriate controls and measures to ensure experts' independence is preserved
- weigh up the strength of the reports before making a claim decision
- consider how many expert reports are realistically needed to support the insurer's position
- make a claims decision based on the reports and other information
- ensure the expert confines their opinions to matters within their expertise (e.g. not provide an opinion about whether the claim is covered by the policy or not).

We encourage the Review Panel to consider developing standards around:

- Determining and maintaining appropriate independence of experts
- Determining appropriate expertise of experts for particular issues
- Writing reports in factual, neutral, accessible language and in plain English
- Format of reports to ensure that relevant supporting information relied upon is set out, along with the relevant issues, the reasoning, the evidence relied upon and the conclusions
- Respectful and constructive interactions with customers while collecting information
- Experts identifying vulnerable customers and being appropriately trained and equipped to respond to them.
- Expert reports being provided as a matter of course where they have been denied on or to reduce a claim and not just when a consumer requests them.

We note that the development of AFCA fact sheets or Approaches is intended to improve certainty, consistency and efficiency for our stakeholders and in our business. It is **not** a replacement for the setting of appropriate standards that insurers should adhere to for all their customers, not just those that escalate complaints. For further background, we have included at Appendix 1 an outline of the factors and matters that AFCA decision makers consider when dealing with complaints involving expert reports.

## 10.3 Timeframes

Concerns about general insurers timeliness have been raised by ASIC[13], the CGC[14], Deloitte[15], AFCA[16] and during the Parliamentary Flood Inquiry. While the GI Code **sets** timeframes (including for decisions about claims, communication about the progress of claims, and asking for further information about claims) their inclusion in the Code to date has not been enough to drive broad compliance. Indeed, AFCA and CGC data shows that insurer performance against key timeframes has deteriorated over recent years, and the increase in complaints about delays in claims handling has directly impacted AFCA's business. We have engaged extensively with the insurers and the Insurance Council of Australia about this over the last few years.

While it is important that the Code continue to set these timeframes, it is opportune for the Review Panel to consider what can and needs to be done to ensure that these timeframes are substantially complied with by ICA members and that there are appropriate sanctions in place for where these are not met. AFCA wants to see changes so that when the GI Code is next reviewed, AFCA's general insurance data is not again dominated by complaints about claim delays.

The CGC 2022-23 data report found that the most breached obligation under the GI Code continues to be section 70 "*We will tell you about the progress of your claim at least every 20 Business Days*".

Unlike weather events or natural disasters, communication with their customers is entirely within the control of general insurers. We don't believe that the ongoing non-compliance with section 70 supports a case for extending timeframes under the GI code but suggest that careful consideration should be given to what sanctions and/or incentives are necessary to improve these outcomes, noting that they may be regulatory in nature.

Code breach data should also give a clearer picture of the scale of delays on claims handling and communications. Insurers case management systems should provide detailed picture of what is driving delays within their individual business.

### 10.3.1 AFCA remedies for delays

For completeness we note that AFCA recently received supplementary questions from the Parliamentary Flood Inquiry, including about whether we would support an increase in AFCA's non-financial loss compensation limit, which is currently $6,300. This question was posed in the context of non-financial loss awards being available in cases where consumers had suffered because of delays in resolving claims or complaints by general insurers.

[13] ASIC Report 768
[14] CGC Industry Data and Compliance Report FY23
[15] Deloitte *The new benchmark for catastrophe preparedness in Australia* October 2023
[16] AFCA Flood submission, AFCA Annual Review 2022-23

In our public response to this supplementary question, we acknowledged that the specific limits on indirect financial loss and non-financial loss of $6,300 may be inadequate and we therefore supported the AFCA limit being reviewed and lifted[17].

We note that a change to the limit would not affect AFCA's approach to the circumstances where an award may be appropriate, but it would enable AFCA to respond more effectively and fairly to cases where a higher award is warranted. It would also signal to a financial firm that they have materially fallen short of their responsibilities toward their customers – including in cases of extended delays. We note that AFCA is not a regulator – it is not our role to fine a firm – we are seeking to compensate the complainant for the stress they have experienced due to the firm's conduct.

Importantly, insurers should also consider initiating and making non-financial loss payments to customers who are impacted by extended or unfair delays. This could be done outside of an IDR or AFCA process and the GI Code could be amended to explicitly provide for this.

### 10.4 Complaints

Para 141 of the GI Code states that "*our complaints process will comply with the Australian Securities and Investments Commission's guidelines*". ASIC Regulatory Guidance 271, *Internal dispute resolution* (RG 271) provides comprehensive guidance about the IDR standards and requirements imposed by ASIC on retail financial services and credit providers. Many of these standards and requirements are enforceable by the regulator.

The CGC data report 2022-23 identified material increases in breaches of section 146 (keeping informed of progress of complaint every 10 days – by 106%); section 142 (acknowledging receipt of complaints – by 141%) and section 147 (we will make a decision about your complaint within 30 days – by 113%). There were also significant increases in failures of service suppliers telling insurers about complaints made to them. We note that sections 142 and 147 of the GI Code are equivalent to enforceable (by ASIC) provisions of RG 271.

We have already highlighted the significant burden imposed on consumers progressing through successive claims and complaints processes. To ensure that more complaints are dealt with fairly and effectively at IDR, AFCA urges the Review Panel to see how or if the Code can deliver the following outcomes:

- Ensure there are appropriate incentives or sanctions in place to drive higher levels of compliance with the timelines that are already in the Code about communicating with consumers and making relevant decisions

[17] To make such a change is not within AFCA's unilateral control. A change to an AFCA compensation cap would require a change to AFCA's Rules, public consultation and, as it would be a material change to the AFCA scheme, it would be subject to ASIC approval under s1052D of the Corporations Act, 2001.

- Ensure that general insurers apply feedback and learnings from IDR and EDR to improve consistency and continuous improvement particularly in claims handling
- Understand reasons behind complaint withdrawal rates

To avoid doubt, AFCA does not support increases in relevant complaints timeframes as a response to ongoing sector-wide compliance failures.

# 11 Emerging issues

## 11.1 Affordability

Insurance costs have risen significantly over recent years. While cost increases can prompt consumers to shop around, insurance customers may stick with the same insurer—often for many decades—simply accepting the policy terms and premium on offer at renewal each year. This results in the most loyal customers often paying significantly higher premiums than new customers (a 'loyalty tax').

It is apparent that there is a lack of transparency about both:

- the premium paid by loyal customers relative to other customers insuring the same or similar risks; and
- whether customer stickiness may also be highest amongst older or more vulnerable customer cohorts.

In other jurisdictions, regulators have intervened to respond to this issue introducing pricing, auto-renewal and data reporting remedies.[18]

AFCA cannot consider a complaint about premiums merely because a consumer is dissatisfied the premium has increased or is unhappy about the amount of the increase. However AFCA may consider a complaint if the premium was not disclosed, or was misrepresented or incorrectly applied, or someone believes there's been some other breach of a legal obligation on the part of the insurer[19].

AFCA has published a factsheet about insurance premium increases and the types of complaints we can consider. Our submission to the Flood Inquiry also included a case study[20] of a determination where a consumer had flood cover but altered his insurance policy to exclude that cover (and reduce premiums) before the major floods of 2022 occurred and where his own home was impacted. It highlighted the choices and affordability challenges that consumers are faced with when renewing their insurance coverage.

It is ultimately a commercial decision for insurers to make about how much premiums cost, and we understand that there are many factors that go into determining this. Clear comparable policies with standard definitions could make it easier for

[18] FCA confirms measures to protect customers from the loyalty penalty in home and motor insurance markets | FCA
[19] AFCA Rule C.1.2 a)(i)
[20] Case study 4

consumers to shop around to get the best deal and coverage for their circumstances, however we think that insurers can and should communicate more effectively and clearly about premium increases.

AFCA is seeing more complaints when premiums increase, particularly significantly so, from one period to the next. It can be problematic getting insurers to explain the basis for the increase in a way that is meaningful and can enable the consumer (and AFCA decision makers) to understand the basis for it. For instance, if the increase is due to the property being in a 'flood zone', then the consumer may be able to produce information to dispute this legitimately (which in some cases, they have). However, if they have no meaningful explanation behind the increase, then there is no basis for them to challenge this.

The GI Code only refers to how the premium *is calculated* on paragraph 50, but that is fairly vague and, in practice, results in minimal meaningful information being provided. Insurers can and should do better in how they communicate about the basis for premium increases. This does not have to be an exhaustive explanation, just enough to explain the factors that led to the increase.

AFCA therefore supports updates to the Code to respond to affordability issues arising for customers, particularly at renewal. Commitments relating to fair pricing at renewal help build trust and confidence and are a practical demonstration of code subscribers' commitment to the fair treatment of their customers.

### 11.2 Helping reduce risk

Risk mitigation in the context of climate change is a complex task involving public policy interventions along a spectrum from Government policy settings about land-use and flood mapping, for example, through to the adoption of certifiable standards to make a home more resilient to a specific disaster risk.

AFCA considers that risk mitigation is an efficient and effective way to address insurance affordability issues. However, such initiatives need to be supported by clear referrable standards to guide consumers about the types of measures other customers confronting similar risks have undertaken and clear disclosure about any premium reductions that may follow.

AFCA supports the introduction of code commitments that require insurers to respond via premium reductions to consumers risk-mitigation efforts, where appropriate.

### 11.3 Standard Terms

In April 2024 made AFCA made a submission to the Treasury consultation paper *Standardising natural hazard definitions and reviewing standard cover for insurance* (the Standardising submission).

In the Standardising submission, AFCA supported proposals standardising definitions of the terms 'fire', 'storm' and 'stormwater and rainwater run-off' and based on our

complaint resolution experience, and stating that we believe that standardisation of those definitions could provide important benefits, including:

- making it easier for consumers to compare policies
- simplifying disclosure and claims handling for insurers
- reducing the number of complaints made to insurers at IDR, which could also
- reduce the number of complaints referred to AFCA
- reducing the complexity of complaint resolution and decision making for AFCA.

Relevant to our observations (above) about treatment of expert reports for the purposes of the GI Code consultation, the Standardising submission noted that even if definitions were standardised as proposed, expert reports would still be required.

However, the standardisation of definitions could make certain steps in the claims and complaints handling processes simpler. For example, it may be easier for insurers to instruct experts to comment on crucial issues and to use the reports obtained, lifting the consistency and performance of experts across the industry (and assisting insurers in the handling of claims and complaints). We expect it would also be easier for AFCA to assess, and where appropriate, rely on those reports in EDR.

# 12 Code structure, enforceability and governance

## 12.1 Structure of the Code

Part 5.1 of the Consultation Paper raises questions as to whether changes should be made to the GI Code's structure and level of content. One option discussed is to split the GI Code into two documents:

- a shorter, more accessible document for consumers
- a more detailed 'how to' guide for subscribers.

The GI Code in its current format, with a range of supporting documents, already allows provisions to cover the spectrum from broad principle to fine detail. Principles are highlighted in prominent provisions. Detail is included in supporting documents such as guidance notes issued by the CGC to explain compliance requirements and guidance documents published by the ICA on matters including customers affected by family violence and mental health.

AFCA does not believe splitting the GI Code into two documents would have any significant benefit to consumers, subscribers or other stakeholders. It could have an adverse impact, however. The notes below outline our main concerns.

- Restructuring the GI Code to create two documents would be a complex, resource intensive task
- Consumer protections could be lost in a restructure of the GI Code

- In a total restructure, existing consumer protections could easily be lost. This could be inadvertent and may not become apparent until a case arises where a consumer seeks to rely on a provision that has been altered.

- A restructure could result in confusion or poorer understanding
  - Even if changes to the substance of provisions are kept to a minimum, replacing the GI Code with two new documents introduces new risks of confusion and the new documents may not be understood as well as the current code.
- Approaches and practices have developed over years, based on the GI Code in its current format, and changes to them would involve substantial work

## 12.2 Code governance and compliance

As explained in ASIC's Regulatory Guide (RG) 183[21] *Approval of financial services sector*, an effective industry code should establish a progressive model of conduct and disclosure for subscribers. Those rules should improve consumer confidence in the industry.

The CGC performs a valuable and effective role in reviewing insurer breach data and designing and conducting thematic inquiries that target areas for improvement where consumer outcomes are impacted. The CGC must be adequately resourced to continue to develop this work, and an expansion of its powers to impose sanctions are needed to strengthen the CGC's compliance/enforcement role.

Where a subscriber breaches the GI Code, paragraph 174b gives the CGC limited scope to require the subscriber to be named publicly. The public naming sanction is available only in cases of a 'Significant Breach' as defined in Part 16 and publication may only be done by the subscriber – not by the CGC itself. Public naming of a subscriber can be a powerful sanction. To strengthen compliance arrangements, consideration should be given to making that sanction available for a broader range of substantial breaches (as contemplated on page 27 of the Consultation Paper).

By way of comparison, we note the Banking Code of Practice enables the Banking Code Compliance Committee (BCCC) to impose a range of sanctions that includes, under paragraph 215e), naming a bank in the BCCC's annual report or its website. We also suggest the GI Code should adopt the more direct model permitting publication by the CGC. This would be more transparent and simpler.

## 12.3 Enforceable code provisions

To operate effectively, the GI Code must be enforceable. Having considered the 5-year performance of general insurers against the standards in the Code and in complaints handling at AFCA we recommend that:

- GI Code provisions should be expressed as clear obligations or commitments rather than in aspirational terms – so that they can be enforced

[21] See RG 183, paragraphs 1 to 5.

- individual GI Code provisions should be incorporated into contracts between consumers and subscribers – so that they can be enforced contractually; and
- consideration be given to designating key timeframe obligations in the Code as enforceable by ASIC to address persistent non-compliance. Ongoing delay failures harm consumers, insurers and AFCA.

# Appendix 1: Dealing with complaints involving expert reports

### In dealing with complaints before us AFCA will consider the following matters:

- whether the expert is independent
- how the expert is qualified to provide an opinion on the factual issue; insurers should provide AFCA and the complainant with details of the expert's qualifications
- the facts, matters or assumptions the opinion is based on
- whether the expert has considered all relevant information
- whether the expert has considered irrelevant or incorrect information
- whether the opinion is based on clear and cogent reasoning and justifies the opinions expressed
- how clearly and succinctly the report addresses all key arguments raised by the complainant and their expert reports.

### Factors to consider in commissioning an expert report:

- Is the expert appropriately qualified to provide an opinion on the issue?
- What factors have you considered in deciding they are appropriately qualified?
- Is the expert sufficiently independent to provide an opinion?
- Have you briefed the expert with all relevant material and information (e.g. all information provided by the customer about the event they say caused the damage)?
- Are your instructions clear about what you want the expert to provide an opinion on?
- Have you made it clear to the expert that you are not looking for a view about the application of the policy terms?
- Can the expert write in clear and plain language that a person of average education would be able to understand, including the opinion and the reasoning supporting it?

### Factors to consider in assessing the expert report:

- Has the expert considered all relevant matters in relation to the event and the loss (e.g. if the issue is about ground movement, have they considered the soil profile, floor levels, leaks, etc)
- Is the report internally consistent?
- Does it rely on facts or assumptions that are substantiated?
- Does the expert provide clear and cogent reasoning supporting the opinion?
- Is the opinion tentative or firm? (e.g. if an expert cannot be sure, then how can you)
- Does the opinion show a clear link between the cause of the damage and the exclusion, condition or provision you consider may support a decision to decline the claim?