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Independent Review Initial Consultation Paper: list of consultation questions

| Key areas to be considered   | Response   |
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| <b>2.1 Financial Hardship</b>  |  |
| <p>2.1 <i>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?</i></p> <p><i>For example:</i></p> <p>(a) <i>Should the Code adopt the expectations identified by ASIC relating to financial hardship? If not, why not?</i></p> <p>(b) <i>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?</i></p> | <p>2.1 (a) – No response.</p> <p>2.1 (b) – The Code in trying to distinguish between payments of premiums for short term assistance and long-term assistance should take into consideration that there are several products available for people that may be in different socio-economic groups and as such the pricing, instalment billing and product design is available to meet the needs of those different groups.</p> <p>If financial support is to be applied to individuals with longer term financial hardship, this would lead to increased pricing in other segments of the community. This is at a time where there is stress with respect to premium levels in insurance and as such should be considered quite carefully.</p> |
| <p>2.2 <i>How can the Code and/or its administration encourage greater compliance with financial hardship obligations, particularly where third party debt collectors are involved?</i></p>  | <p>No response as our members do not have extensive use of third-party debt collectors and this is more an area for direct insurers.</p>   |
| <p>2.3 <i>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?</i></p>   | <p>No response at this point.</p>  |
| <b>2.2 Customer vulnerability</b>  |  |
| <p>2.4 <i>Is the Code in line with community expectations regarding customer vulnerability? If not, how can it be improved? For example:</i></p>   | <p>The members of the UAC primarily distribute via intermediaries and as such negative comments with respect to current delivery of vulnerability actions is rarely experienced.</p> <p>There is commentary here around looking at vulnerability in wider groups, including individuals that may have been affected by catastrophes such as</p>  |

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|  | <p>storms, bushfires etc. or acts of terrorism.</p> <p>If regulators wish for this to be actioned for wider groups, it could potentially be effectively coordinated by a central authority such as The Insurance Council for actions and activities to support these individuals as they will be spread among a number of insurers, and there will be the risk of customers receiving different messaging and in turn levels of service and responses from various insurers which is the reality of what happens at times of a catastrophe. Insurers are stretched in different ways at these times because of pure volumes, access issues and at times, supplier limitations An important consideration in all of this analysis is that the more of these activities that get spread into larger segments of society, there is a subsequent increased cost and this cost will be passed on to the public in general pricing at a time when there is affordability stress in the economy and among the community. These potential initiatives are all inflationary. It would be useful to establish a cost benefit analysis on these items.</p> |
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| Key areas to be considered  | Response  |
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| <p>(a) <i>Should the Code promote inclusive product and service design to better address customer vulnerability? If so, how?</i></p> <p>(b) <i>Are there other types of vulnerability or disadvantage that need to be more explicitly addressed by the Code?</i></p> <p>(c) <i>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?</i></p> <p>(d) <i>How should the Code promote enhanced responses to customers experiencing heightened levels of vulnerability, particularly during a catastrophe?</i></p> | <p>2.4 (a) – No comment.</p> <p>2.4 (b) – We do not believe at this point in time that there are other types of vulnerability or disadvantages that needs to be explicitly addressed by the Code, although there are comments made in the guidance paper with respect to some `examples' of different categories. There is no outline of the frequency or volume of these issues, and no cost benefit work seems to have been undertaken.</p> <p>Spreading resources more thinly in some of these areas that are not particularly voluminous, takes away from core claims management, particularly at times of catastrophes when there is a larger number of people that need to be looked after.</p> <p>We feel there needs to be a balance between need &amp; expectation. As previously outlined there haven't been many examples to our membership of areas where working with vulnerable customers has been considered a weakness or a failure.</p> <p>2.4 (c) – The practice of a claim being the common method of identifying a vulnerable customer, or through the customer contacting insurers/Agencies to outline their needs, appears to be reasonably effective at this time. The risk in reversing this assumption is there are a lot of people who do not want to be directly communicated with or consider contact to be an intrusion at times when they are feeling stressed around particular circumstances or issues, so to put that onus on to the Insurers/Agencies or Claims Manager means that you can actually exacerbate the issue with respect to the individual.</p> <p>2.4 (d) – In addressing a large cohort of individuals who may have what you may describe as community needs at a particular time, for example during a catastrophe, we believe that a central area coordinating this for the industry would be more beneficial. The Insurance Council or a central group of insurers/Agencies could ensure this area is adequately staffed and that the right advice is given to individuals and, equally coordinated among the individual insurers/agencies as required.</p> |

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| <p>2.5 <i>How can the Code and/or its administration encourage greater compliance with vulnerability obligations?</i></p>  | <p>The Underwriting Agencies consider their requirements with respect to vulnerability obligations highly and look to coordinate and act on these whenever they have examples of individuals that require additional assistance and support.<br/>We believe the Code in its current format addresses this.</p> |
| <p>2.6 <i>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?</i></p>   | <p>No response</p>   |
| <p><b>2.3 The Code and the law</b></p>   |  |
| <p>2.7 <i>How effectively does the Code interact with the law and how, and in what areas, could this be improved?</i></p> <p>(a) <i>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?</i></p> | <p>No response</p>   |

| Key areas to be considered  | Response   |
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| <p>(b) <i>Are there any paragraphs of the Code that should be amended or removed due to subsequent regulatory changes? If so, which paragraph and why?</i></p>  | <p>No response</p>   |
| <p>2.8 <i>How can the Code go beyond the law? And would it be appropriate to do so?</i></p> <p><i>For example:</i></p> <p>(a) <i>Paragraph 21 of the Code and the general obligation of AFS Licensees to provide financial services efficiently, honestly and fairly.</i></p> <p>(b) <i>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.</i></p> <p>(c) <i>Paragraph 43 of the Code and design and distribution requirements relating to financial products for retail clients.</i></p> <p>(d) <i>Paragraph 79 of the Code and the Cash Settlement Fact Sheet.</i></p> <p>(e) <i>Part 11 (Complaints) of the Code and enforceable paragraphs of RG 271.</i></p> | <p>No response</p>   |
| <p>2.9 <i>In which areas could the Code help Code subscribers meet legal obligations by setting out good practice?</i></p>  | <p>No response</p>   |
| <p><b>2.4 Retail insurance and wholesale insurance</b></p>  |  |
| <p>2.10 <i>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?</i></p>   | <p>The Code as it currently stands with respect to the definitions of retail vs wholesale insurance seems practical and we believe it meets expectations. To expand the definitions is not seen as necessary.</p> <p>Small businesses are not necessarily less vulnerable and often have different resources and support available to them and therefore this is not a homogenous group.</p> |

| Key areas to be considered   | Response  |
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| <p>2.11 <i>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?</i></p>  | <p>There has been an ongoing issue with financial services with respect to many individuals understanding of the terminology and jargon used in insurance. Financial literacy is considered a societal issue. The definitions of insurance agencies vs brokers should be made as clear and as practical as possible; however, we don't believe any change is required with respect to oversight.</p> <p>Where an underwriting agency is a material outsource partner to an underwriter, virtually all regulation and rules are passed down to that insurance agency and therefore it is acting 'de facto' under those rules and regulations. More regulatory oversight takes the risk of confusing rather than ensuring that efficient and effective services are provided.</p> <p>The importance of regulation and oversight is well understood in the underwriting agency market.</p> |
| <p>2.12 <i>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?</i></p>                               | <p>The UAC believes the Code should distinguish between the commitments of insurers for consumers dealing directly vs dealing with an insurer via an intermediary, particularly insurance brokers.</p> <p>The insurance broker is legally the insurance representative of the client or end customer and as such dealing with the insurance broker should be interpreted in all instances as equivalent to dealing with the end customer.</p> <p>At times communication is slowed by going through the insurance broker who may be interpreting the information received, or looking at the next course of action with the customer and this should be recognized as a fact in measuring and assessing regulation throughout the Code.</p>  |
| Other parts of the Code  | Response  |
| <p><b>3.1 Key obligation – honest, efficient, fair, timely and transparent</b></p>   |   |
| <p>3.1 <i>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?</i></p> | <p>The observation of some of our agencies is that the overarching obligation of the Code with respect to dealing with customers in an 'honest, efficient, fair, transparent and timely' manner is changing behaviour over time, and particularly our claims staff.</p> <p>Areas where claims are relatively grey are being interpreted more in the favour of the end customer and observations of decisions made through AFCA for</p>  |

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|   | example are being fed back into the various organisations and this is leading to more decisions in favour of the customer at the earlier stage of claims management and where there are disputes.   |
| 3.2 <i>Do you consider that paragraph 21 is restricted in its operation by paragraph 22, and if so, why? How could this be addressed?</i>   | No response   |
| <b>3.2 Standards for Employees and Distributors</b>   |   |
| 3.3 <i>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?</i> | At this point in time, we believe the application of Part 4 of the Code is reasonably practicable. We believe it is dealing effectively with the Code, and subscribers are accountable for the conduct of their employees and distributors. This is often a very thorough and overarching relationship that ensures expectations are being met for both employees and distributors. |
| 3.4 <i>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?</i>  | The application of more prescriptive requirements is often less effective than targeted training. We believe the training for Responsible Managers may be more effective and this could then flow through to the general parts of the organisation who are dealing with customers.  |

| Other parts of the Code  | Response  |
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| <b>3.3 Standards for Service Suppliers</b>   |   |
| <p>3.5 <i>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?</i></p>  | <p>We believe that the practical operation of the Code for service standards for suppliers are generally meeting the needs and expectations. Often the reason where Code expectations or requirements are not being met, is when supply is unable to meet demand for suppliers for some of these services. This applies to the building industry for example in times of catastrophes.</p> <p>In an economy that has full employment, there is unfortunately a reality of shortages in areas such as the building industry and associated operations like assessing. This has resulted in issues at times of large catastrophes and also when claim numbers accumulate through a frequency of smaller catastrophes, which has been experienced in recent times.</p> <p>This is an Australian macro economic issue that needs to be addressed through macro-economic policy as much as through Insurers and/or Agencies looking to employ more individuals and looking to bring new people into the industry.</p> <p>This is not an issue solely in insurance and is being faced by virtually every sector of our society that requires trades, material and supplies etc.</p> |
| <p>3.6 <i>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 2001. 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?</i></p> | <p>No response</p>  |
| <b>3.4 Buying and cancelling an insurance policy</b>   |   |
| <p>3.7 <i>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?</i></p>  | <p>No response</p>  |



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| <p>3.8 <i>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?</i></p> | <p>No response.</p>  |
| <p><b>3.5 Claims Handling</b></p>  |  |
| <p>3.9 <i>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</i></p>   | <p>Part 8 of the Code is effective in ensuring that customers are kept updated regarding the progress of their claim and informed regarding their rights and the purpose of key documents (such as scopes of works) that form part of any settlement framework.</p> <p>As an improvement, the Code can be more prescriptive in what constitutes an update to the Insured, so that any information passed to the Insured via this mechanism is meaningful and clear. This needs to be practical and not overly bureaucratic which only diminishes its effectiveness with customers.</p> |

| Other parts of the Code   | Response  |
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| <p><i>light of recent law reforms such as the inclusion of claims handling as a financial service?</i></p>  |   |
| <p><b>3.10</b> <i>How could the Code be enhanced to improve understanding and better protect customers where cash settlements are used? For example:</i></p> <p>(a) <i>Should the Code be more prescriptive in outlining better practice in administering the legal requirements for cash settlement payments?</i></p> <p>(b) <i>Should paragraph 79 be extended to all cash settlement payments?</i></p> <p>(c) <i>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?</i></p> <p>(d) <i>How could the Code assist in consumer understanding of cash settlement payments, the risks associated with the same, and the need to obtain independent advice before accepting the cash settlement?</i></p> | <p>3.10 (a) The Code can mandate a more detailed explanation of the Insured's legal rights regarding cash settlements (instead of simply recommending that the Insured seek their own legal advice).</p> <p>3.10 (b)<br/>We agree with this position for home claims only where the majority of customers are direct customers. The bulk of SME customers are represented by brokers who assist in interpretation, advocacy, and education of their customers.</p> <p>3.10 (c) Insurers should be basing any cash settlement upon valid and actionable quotations. In that context, a further mandated contingency uplift in cash settlement should not be required. This will be inflationary and directly feed into pricing which would compound issues with respect to affordability.</p> <p>3.10 (d) As per (a), a better outline/narrative of customer legal rights and explaining risks around undertaking a construction project (e.g. timeframes, material &amp; labour cost fluctuations, variations), and the potential impact upon customer premiums and access to insurance if works are not completed in a timely fashion.</p> |
| <p><b>3.11</b> <i>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?</i></p>   | <p>The Code should not be prescriptive regarding the content of all reports as it is impossible to capture all scenarios and would therefore limit the usefulness of experts if their output was excessively regulated. This will potentially slow down the production of reports, creating more issues at times of catastrophes. In financial services, overly lengthy documents are often not read or comprehended well.</p>  |
| <p><b>3.12</b> <i>In what circumstances if any, should the Code allow insurers to vary the prescribed Code timeframes in paragraphs 68-71 and 76-77?</i></p>  | <p>There will be circumstances where a claim does not progress for an extended period of time due to extenuating circumstances (e.g. lengthy Council approvals, complex expert opinions), and the Code does need to allow flexibility in its prescribed timeframes to accommodate these types of circumstances.</p>   |

| <b>3.6 Complaints</b>  |  |
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| <i>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?</i> | The timeframe and Insurer obligations prescribed under the Code presently drives positive customer outcomes. |

| Other parts of the Code   | Response   |
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| 3.14 <i>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?</i> | No amendments are required to the Code for Agencies following ASIC guidance. |
| 3.7 Other Feedback  |  |
| 3.15 <i>Do you have feedback on the practical operation of the Code that is not covered elsewhere?</i>  | No response.   |

| Emerging issues  | Response  |
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| 4.1 Affordability  |   |
| 4.1 <i>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?</i> | <p>The Code is probably not the best avenue to address affordability issues. Most regulation and change that has been delivered to the Australian market in recent times, would be considered inflationary.</p> <p>Equally a lot of regulation is taking up resources that have been relatively scarce at this time as Australia faces issues with respect to full employment and the number of people in the insurance industry, at a time when catastrophes have been at record high levels.</p> <p>We feel that a cost benefit review of all regulatory and legal change would assist in the transparency to the community on the effects on pricing and affordability for the general population.</p> |
| 4.2 Helping reduce risks   |   |
| 4.2 <i>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?</i>  | <p>An issue with applying Code change or Code overview to consumer risk mitigation efforts is that it is difficult to practically apply.</p> <p>The expectation would be that these changes with respect to risk mitigation would lead to price, product, or excess variation and this could be quite different by individual Insurers and their underwriting analysis.</p> <p>Therefore, the level of Code overview would be impractical.</p>  |

| Code structure, enforceability and governance   | Response           |
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| <b>5.1 Structure of the Code</b>  |                    |
| <p>5.1 <i>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?</i></p> | <p>No response</p> |

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| <p>5.2 <i>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?</i></p>   | <p>No response</p>  |
| <p><b>5.2 Code governance and compliance</b></p>  |   |
| <p>5.3 <i>What measures would improve governance of the Code and promote enhanced compliance with Code commitments? In particular:</i></p> <p>(a) <i>Are the sanctions in Part 13 a sufficient deterrent to misconduct. Should they be strengthened? If so, how?</i></p> <p>(b) <i>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?</i></p> <p>(c) <i>Should the Code definition of ‘significant breach’ be aligned to the ASIC reportable situations regime, in RG 78 and if so, how?</i></p> <p>(d) <i>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?</i></p> | <p>5.3 (a) We believe that the current sanctions in part 13 are a sufficient deterrent to misconduct.</p> <p>5.3 (b) We believe that the sanctions available to the Code Governance Committee that are currently restricted to a significant breach of the Code are appropriate and are applicable.</p> <p>5.3 (c) We believe that that the alignment of the definition with the ASIC reportable situations regime in RG78 would be helpful. In any areas we can help create more consistency between the different regulatory environments with the Code would be beneficial and would decrease costs and decrease uncertainty and reduce the potential error from misinterpretation.</p> <p>5.3(d) We believe that additional public reporting would not be beneficial to changes in behaviour of different insurers and/or participants in the Code.</p> <p>The mechanisms of reporting to the various regulators at this point in time are serving the correct purpose with respect to ensuring continual improvement and adjustment in organisations that may be having breaches.</p> <p>The other factor to consider here is the materiality of the breaches. There are no perfect entities. There are no perfect government or private organisations and there should be some relativity or materiality understood here knowing that all participants are looking for continual improvement.</p> |
| <p>5.4 <i>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?</i></p>   | <p>The UAC does believe that efficiency and effectiveness of the Code could be improved through ensuring that definitions are equivalent among the various parties with respect to significant breaches and as such, coordinating between the different parties would enable more efficiency.</p> <p>The important aspect here would be a clear delineation between the different regulatory authorities and the CGC ensuring there are not multiple reactions to the same issues.</p>  |

**5.3 Enforceable Code Provisions**

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?*

No response