

# **Independent Review of the General Insurance Code of Practice**

Submission by Legal Aid Queensland

28 May 2024

# Independent Review of the General Insurance Code of practice

## Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Independent Review of the General Insurance Code of Practice (the Code). LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts, tribunals, and Ombudsman schemes. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ’s Consumer Protection Unit lawyers have extensive experience providing specialist advice and representation to vulnerable clients about insurance matters generally and following disasters. The unit provides advice to clients as well as lawyers and financial counsellors throughout Queensland in relation to insurance, mortgage stress, housing repossession, debt, contracts, loans, telecommunications and unsolicited consumer agreements.

LAQ assists and represents clients who have legal problems as a result of insurance matters. This submission is informed by that knowledge and experience.

## Consultation questions

### 2.1 Financial Hardship

#### **2.1 Does the Code provide adequate protections to ensure customers facing financial difficulties are obtaining suitable and appropriate assistance from insurers?**

No, the Code does not provide adequate protections to ensure consumers facing financial difficulties are receiving meaningful assistance from insurers.

**If not, how can it be improved?**

In LAQ's submission, the financial hardship commitments in the Code should be increased to match the ASIC letter setting out ASIC's expectations regarding financial hardship.<sup>1</sup>

**For example:**

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

LAQ supports the Code adopting the expectations set out by ASIC in relation to financial hardship. ASIC's expectations go beyond the current Code requirements and should be incorporated into the Code in line with ASIC RG183.<sup>2</sup>

LAQ recommends the following specific additions to the Code to address financial hardship:

- (a) Amending Clause 107 to provide consumers experiencing extreme hardship with financial hardship assistance. Insurance is a product that is vital to consumers in times of increasing disasters and the cost-of-living crisis. It is important that insurers work with their customers to provide assistance.
- (b) Clause 123 should include the following additional options:
  - Providing short term premium waivers and assistance.
  - Permitting a hold or deferral of premium payments.
  - Removing the loading that is applied for monthly premiums.
  - The option for customers to change from annual premium payments to monthly payments for no additional cost.
  - Reassessing the customer's risk profile because of a change in circumstances such as spending more time at home.
  - Allowing an excess to be paid by installments.
  - Suspending third party debt recovery.
  - Allowing debts to be paid by instalment.
- (c) Clause 105 should be improved by committing insurers to:
  - Providing easily accessible and plain English communication about support options.
  - The availability of payment assistance should be provided on all insurance renewals and notices of cancellation of insurance.
  - Providing financial hardship assistance information in more than just English.

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<sup>1</sup> <https://asic.gov.au/about-asic/news-centre/news-items/asic-sets-expectations-of-life-and-general-insurers-following-a-review-of-insurers-responses-to-consumers-experiencing-financial-hardship-during-the-covid-19-pandemic/>

<sup>2</sup> <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-183-approval-of-financial-services-sector-codes-of-conduct/>

- Providing a specific phone number for those consumers seeking financial hardship assistance.
- (d) Clause 115 should include a commitment by insurers to not ask for unnecessary documentation.
- (e) Consider new code commitments:
- Insurers will tell insureds that a claim will be processed and assessed even if the insured cannot afford to pay the excess.
  - Proactively contact a consumer before the end of any assistance they are providing to assess whether further assistance needs to be provided.
  - Undertake training and education for staff on implementing payment difficulty assistance in a trauma informed way.
- (b) Should the Code more explicitly address financial hardship in relation to the payment of premiums or distinguish between assistance available to those with short-term financial hardship, compared to those for whom financial hardship is more entrenched. If so, how?**

In LAQ's submission, the Code should address financial hardship concerning the payment of insurance premiums.

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

### **Collection Agents**

Clause 41 should be amended to require insurers to proactively and regularly monitor the performance of their suppliers.

In addition, insurers should be liable under the Code for any breaches of the Code made by their service suppliers.

### **Debt Recovery from tenants**

Insurers have publicly pledged that tenants will no longer be liable for accidental property damage.<sup>3</sup> It is appropriate that this commitment be reflected in the Code. The same commitment should apply to strata insurers not pursuing renters for accidental damage to common property.

### **Insurers pursuing employees rather than their vicariously liable employers.**

Employees are not liable for damage that is caused in the course of their employment. An employer is vicariously liable for the tortious acts of their employee.<sup>4</sup>

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<sup>3</sup> <https://www.abc.net.au/news/2021-12-01/insurance-companies-to-stop-billing-tenants-for-property-damage/100661188>

<sup>4</sup> Hollis v Vabu (2001) 207 CLR 21.

There is currently no standard of proof or expectations from insurers concerning what would satisfy them for an employee to show that they were driving in the course of their employment. The Code should set out the minimum proof that is required for an insurer to be satisfied that an employee was driving in the course of their employment.

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

LAQ recommends the following law reform proposals:

- The *Insurance Contract Act* should be amended to mirror sections 268-270 of the *Property Law Act (NZ)* to:
  - (i) confirm that an insurer is not entitled to pursue a renter for damage to property unless it was intentionally caused.
  - (ii) allow renters to be treated as third party beneficiaries under a landlord or strata policy.
- Introduce similar protections for renters as exist for family members and employees under Sections 65 and 66 of the *Insurance Contracts Act 1984*.

## **2.2 Customer vulnerability**

### **2.4 Is the Code in line with community expectations regarding customer vulnerability? If not, how can it be improved?**

The Code does not meet community expectations. ASIC has highlighted that insurers do not always engage well with vulnerability and how it affects consumers.<sup>5</sup>

LAQ recommends that the Code should include:

- A principles-based approach.
- Specific commitments that provide context and direction for the broader principles.
- A review of existing commitments to ensure they consider vulnerability.

#### **Principles based approach.**

Clause 91 currently sets out a non-exhaustive list of vulnerabilities.

LAQ recommends this list be expanded to include:

- LGBTIQ+ consumers

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<sup>5</sup> <https://asic.gov.au/about-asic/news-centre/speeches/asic-s-expectations-for-protecting-vulnerable-customers/#:~:text=ASIC's%20definition%20of%20'vulnerable%20customers,death%20of%20a%20family%20member.https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-221mr-asic-review-finds-insurers-can-and-should-improve-claims-handling/> <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-768-navigating-the-storm-asic-s-review-of-home-insurance-claims/>

- Cognitive impairment
- Family and domestic violence
- Financial abuse
- Elder abuse.

### Specific commitments

- (a) LAQ recommends identifying specific types of training in Clause 96:
- Trauma informed training.
  - LGBTIQA+ training for staff.
  - Aboriginal and Torres Strait Islander cultural training.
  - Training on financial hardship and customer assistance.
- (b) Key elements of the family violence guide should be incorporated into the Code to emphasise the insurers' commitment to dealing with what is a major issue in society.
- (c) Clause 101 should commit insurers to:
- Only exempt an insurer from providing an interpreter in exceptional circumstances.
  - Not use family and friends as an interpreter.

### Embed vulnerability throughout the Code.

LAQ recommends adopting a vulnerability by design lens to the review of the Code.

#### For example:

#### **(a) Should the Code promote inclusive product and service design to better address customer vulnerability? If so, how?**

In LAQ's experience harm to consumers arises both from the services that they receive from an insurer and from the design and distribution of insurance products. Currently, the Code focuses only on services issues.

This problem can be addressed by taking a customer centric approach to commitments in line with ASIC's RG274.47.<sup>6</sup> The Code needs to commit insurers to taking a safety by design, human rights by design and privacy by design approach to its products development.

LAQ also draws the review's attention to the recently released Designed to Disrupt report<sup>7</sup> which includes a number of recommendations that could reduce the incidence of financial abuse in insurance products. These include:

- Committing to treating joint insurance policies as composite when an insurer is told the couple has separated or divorced.

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<sup>6</sup> <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-274-product-design-and-distribution-obligations/>

<sup>7</sup> <https://cwes.org.au/publications/>

- Adopting a conduct of others clause which gives an insurer discretion when a malicious damage exclusion disadvantages a victim survivor.
- Conducting risk assessments for each product during its development and review processes to assess its effect on a survivor of family and domestic violence.

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

Yes, see above.

**LGBTIQA+**

(a) LAQ recommends that Clause 92 should be amended to identify sexual characteristics and orientation and gender identity as factors that can contribute to a consumer's vulnerability.

(b) Insurers should ensure:

- Sex or gender information is only collected when necessary.
- Questions are asked in a gender-neutral manner as far as possible.
- Non-binary options for gender and titles are provided.
- Processes for changing names, title and gender are easy.
- A consumer wanting to change their name title or gender should only speak to one person.

**First Nations customers**

Insurers should consider the provision of culturally appropriate insurance.

**Mental Health**

The Code should be updated to include in it as part of the Code:

- The key points in the Guide to Mental Health.<sup>8</sup>
- Providing actuarial data, they rely on to deny coverage or offer a non-standard terms insurance policy.
- Regularly review the data they rely on to differentiate between particular mental health conditions.

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<sup>8</sup> <https://insurancecouncil.com.au/resource/guide-on-mental-health/>

**(c) 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?**

The Code should include a specific commitment that requires insurers to proactively identify and communicate with consumers experiencing vulnerability. LAQ refers to the review to Clause 165 of the Banking Code for a similar clause that could be adopted.<sup>9</sup>

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

LAQ recommends Clause 92 be amended to specifically refer to the effect disasters have on vulnerability.

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

As outlined above, LAQ recommends the adoption of a principles-based approach that is supplemented by specific commitments in the Code. LAQ does not support the use of unenforceable often aspirational guidance which frequently does not change industry wide practice.

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

LAQ submits that other appropriate mechanisms are:

- Standard definitions could be developed to address issues of poor insurance design, e.g., innocent victims' clauses.
- Revising ASIC's guidance on Product Design and Distribution obligations to specify ASIC's expectation regarding vulnerability.

## **2.3 The Code and the law**

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

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

LAQ submits that similar to the Banking Code of Practice, the General Insurance Code of Practice should be a term of the contract for all general insurance products. This change would provide a contractual right to consumers to enforce the Code.

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<sup>9</sup> <https://www.ausbanking.org.au/banking-code/>



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

LAQ does not support removing code provisions that are believed to be a restatement of the law.

An approach such as this means that:

- It makes it more difficult for the Code Governance Committee (CGC) to oversee compliance with these areas.
- It becomes more difficult for the CGC to identify systemic issues.
- Consumers will be required to read through legislation and regulatory guidance to identify their rights.
- RG183 does not require a clause of any industry code that replicates the law to be removed.

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

In line with ASIC's RG183<sup>10</sup> industry codes should set out the minimum standards that insurers will adhere to in order to meet the requirements of the law.

**For example:**

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

Section 912A of the *Corporations Act* requires AFS Licence holders (including Insurers) to act efficiently honestly and fairly. This obligation is expanded by Clause 21 to include transparency and timeliness. This Clause is a good example of the Code going beyond the requirements of the law.

**(b) Paragraphs 28 and 38 of the Code and the general obligation of AFS Licensees to ensure representatives are adequately trained and competent to provide the financial services.**

LAQ recommends that further details are provided in these clauses concerning:

- The specific types of training that is appropriate for staff.
- Increased responsibility placed on insurers to monitor their service suppliers, including a requirement to audit the systems, processes, and programs of their service suppliers.

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<sup>10</sup> <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-183-approval-of-financial-services-sector-codes-of-conduct/>

**(c) Paragraph 43 of the Code and design and distribution requirements relating to financial products for retail clients.**

This clause needs clarification concerning the differences between the Code Requirement and the requirements of S994B(2) and (9) of the *Corporations Act* to make a Target Market Determination.

**(d) Paragraph 79 of the Code and the Cash Settlement Fact Sheet.**

In LAQ's submission this clause is an opportunity to address the on-going problems that consumers have with understanding and engaging with Cash Settlements.

**(e) Part 11 (Complaints) of the Code and enforceable paragraphs of RG 271.**

LAQ supports retaining Part 11 of the Code because it provides consumers with an accessible and easy to understand summary of their rights. Most consumers that LAQ interacts with would have significant difficulty in understanding their rights by reading ASIC RG 271.<sup>11</sup>

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

LAQ does not support aspirational elements in the Code. The Code should set out minimum standards that will be met.

## **2.4 Retail insurance and wholesale insurance**

**2.10 Should the application of the Code to retail and wholesale insurance – and in particular small and medium sized enterprises (SMEs) – be reviewed and if so, how?**

In LAQ's submission, SMEs should have access to all Code commitments. This can be achieved by extending the Code to cover wholesale products or by developing a separate Code for SMEs.

In the alternative, the Code should be extended to cover insurance products that are covered by Section E of the AFCA rules.

**2.11 If there were different application for SMEs, should the Code adopt the AFCA definition of an SME as an organisation with less than 100 employees?**

For consistency and to remove complexity there should be one definition of SMEs.

**2.12 Should the Code distinguish between the commitments of insurers for consumers dealing directly with an insurer and those who have an intermediary (including insurance brokers) acting on their behalf? If so, how?**

No, the commitments should be the same. All consumers should receive the same commitments from an insurer regardless of which channel they seek a product through.

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<sup>11</sup> <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-271-internal-dispute-resolution/>

## Other parts of the Code Response

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

**3.1 Do you have any feedback on the practical operation of the over-arching obligation in paragraph 21, including whether the Code could expand on what ‘honest, efficient, fair, transparent, and timely’ means, in the context of general insurance?**

**3.2 Do you consider that paragraph 21 is restricted in its operation by paragraph 22, and if so, why? How could this be addressed?**

Please refer to LAQ’s response to Question 2.8(a).

### 3.2 Standards for Employees and Distributors

**3.3 Do you have any feedback about the practical operation of Part 4 of the Code, including the relevant definitions in Part 16? Does it deal effectively with ensuring that Code subscribers are accountable for the conduct of their employees and distributors?**

In LAQ’s submission, all employees, distributors and service suppliers and insurers should be equally subject to the Code. This requirement should form part of the agreement that the insurer negotiates with any third party.

Clause 30 of the Code should be amended to include a process that commits insurers to regular monitoring of all third-party providers.

**3.4 Should the Code be more prescriptive on the training requirements for employees, distributors and service suppliers? If so, how would the Code achieve this given the different and varied roles across the industry?**

Yes, the Code should detail the specific types of training required e.g., Family and Domestic and financial abuse.

### 3.3 Standards for Service Suppliers

**3.5 Do you have any feedback about the practical operation of Part 5 of the Code, including the definition of Service Supplier in Part 16? Does it deal effectively with ensuring that Code subscribers are accountable for the conduct of their Service Suppliers?**

Insurers should provide comprehensive training to its claims consultants and monitor their decision making to ensure that these consultants can identify expert recommendations and reports that are not well substantiated.

Insurers should also commit to maintaining adequate oversight of all its service providers (External experts, Loss assessors and adjusters and Investigators.) This commitment should include a commitment to communicate with insurers about when these suppliers are attending the consumers property and in what order.

**3.6 The provision of Claims handling and settling services for insurance products is now included in the definition of a ‘financial service’ in the Corporations Act 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?**

In LAQ’s submission, apart from outlined above, part 5 does not require further amendment.

### **3.4 Buying and cancelling an insurance policy**

**3.7 Do you have any feedback on the practical operation of Part 6 or 7 of the Code? Do these Parts deal effectively with consumer issues or concerns around purchase, renewal and cancellation processes?**

LAQ submits the following parts of Parts 6 and 7 need amending:

- (a) Clause 44 should be amended to make clear that an insurer has responsibility for any instances of pressure-selling of insurance products.
- (b) Clause 45 concerns buying insurance. In LAQ’s submission, insurers should commit to:
  - (i) Not using financial hardship or bankruptcy as a reason to deny cover.
  - (ii) Not ask questions about an insured’s marital status when it is not relevant.
- (c) Clause 48 concerns sum insured. Insurers should commit to:
  - (i) Warn consumers if they are uninsured at policy renewal and inception.
  - (ii) Provide an estimated updated sum insured at renewal. The estimate should make clear the information upon which the estimate is based.
  - (ii) Debris removal and architects’ fees should be benefits over and above the sum insured.
- (d) Clause 49 concerns the auto-renewal of policies. Insurers should commit to:
  - (i) Making it easy for consumers to stop their policy from auto renewing.
  - (ii) Allow consumers to opt out of their policy auto-renewing at any point during their insurance contract.
- (e) Loyalty Tax – Insurers should commit to only offering a renewal price to customers that is the same or lower than the price it would offer a new customer.
- (f) Renewal Notices – Insurers should commit to providing renewal notices 28 days before an insurance contract expires. A reminder should also be sent 7 days before the insurance contract expires.

**3.8 What has been the interaction between the Code commitments and recent law reforms, such as the Design and Distribution Obligation and the deferred sales model for add-on insurance? What changes or clarifications to the Code would be helpful, including to deal with the phasing out of cheques?**

LAQ has no submissions to make on this question.

### 3.5 Claims Handling

In LAQ's experience in Queensland, recent disasters have highlighted long standing claims handling issues in the insurance industry. LAQ's submission to the 2024 Parliamentary Inquiry into the 2022 Floods is relevant to this, where a number of these issues have been set out.<sup>12</sup>

LAQ recommends the inclusion of a clause in the Code which says, "When a customer calls an insurer, the insurer will call them back within 48 hours."

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

LAQ submits that the following Clauses of Part 8 require amendment:

#### **Information Sharing**

(a) Clause 58 should be amended to require insurers to take proactive steps to inform consumers about their claimable items.<sup>13</sup>

(b) Clause 59 concerns the information to be provided at claim time. It should be amended to include:

- (i) What the insured can claim under the policy including their options, if any, for temporary accommodation.
- (ii) A map of the claims process.
- (ii) How cash settlement decisions are made.
- (iv) The contact for the person who will be managing the claim.
- (v) The complaint rights that the consumer possesses.

(c) Clause 72 should be updated to confirm that external experts, loss assessors and adjusters and investigators do not act on behalf of the consumer.

#### **Appropriate claims management processes**

1. Each consumer making a claim should have a primary contact person so that they do not have to explain what has happened to them multiple times.
2. The systems of insurers should allow them to:

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[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Economics/FloodInsuranceInquiry/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/FloodInsuranceInquiry/Submissions)

<sup>13</sup> <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-768-navigating-the-storm-asic-s-review-of-home-insurance-claims/>

- (i) Ensure all facts and information about a claim are recordable and assessable.
- (ii) Staff proactively track and manage benefits such as temporary accommodation.
- (iii) The most expensive temporary accommodation options are not booked following a disaster.
- (iv) Where insurers know repairs are likely to take longer than 12 months (the length of many temporary accommodation benefits) the consumer is protected from the risk of homelessness when the policy benefit ends.

### **Identifying and managing vulnerability.**

LAQ recommends that:

1. Insurers proceed on the assumption that all consumers are experiencing vulnerability following a disaster and should be treated as such.
2. Insurers be proactive in identifying vulnerable consumers and then implementing processes that assist the consumer in dealing with that vulnerability. This can be achieved by:
  - (i) Increasing contact with consumers including on the phone or in person.
  - (ii) Providing referrals to external support services.
  - (iii) Ensuring emergency payments are made for essentials.
  - (iv) Project managing claims that are cash settled where the consumer is vulnerable.
3. Insurers should commit to returning a phone call received from a customer within 24 hours. LAQ has provided a significant amount of advice to consumers who have made multiple calls to the insurer and not received a call back. Insurers should remember that not returning a phone call made by a consumer will cause the consumer to think something has gone wrong with their claim. This will lead to the consumer calling the insurer more and more. For example, LAQ has assisted a consumer who said, "I have called my insurer 15 times and they have responded twice."
4. Insurers should commit to meeting the deadlines that they provide to consumers about a claims process. If they are not going to meet that deadline, they should proactively contact the consumer and say "Unfortunately, we are not going to be able to meet the deadline we set because of XXX. Instead, this is what we propose to do."

### **Managing Third Party suppliers**

Insurers should commit to better monitoring and oversight of all of their external suppliers.

### **Poor Quality repairs**

Insurers need better oversight of their third-party contractors undertaking repairs.

### **Temporary accommodation**

In LAQ's experience, temporary accommodation following disasters is not handled well by insurers and is characterized by:

- (i) Consumers being placed in expensive Air BnB accommodation which exhausts their sum insured for temporary accommodation quickly.
- (ii) Consumers being entered into very short-term lease arrangements when the insurer knows it will take 6-18 months to fix the property. The consequence of this is that some consumers have had to move 6 -10 times during the course of their temporary accommodation. This approach places extra costs and stress on the consumer.
- (iii) Insurers do not have processes in place for consistently dealing with consumers whose repairs take longer than the 12 months of temporary accommodation their policy covers them for.

### **Claims decisions.**

- (a) Clause 81 should be amended to include commitments to:
  - (i) Where a claim is partially approved set out which aspects of the claim have been approved.
  - (ii) If the claim has been denied, actually set out that the claim has been denied.
  - (iii) Spell out the reasons the claim has been denied rather than referring generally to an attached expert's report.
  - (iv) Relate the expert evidence to the policy terms.
  - (v) Provide the appropriate complaint details.
- (b) The definitions of maintenance, wear and tear, defect and pre-existing damage clauses should be standardized.
- (c) Insurers should only rely on these clauses to deny claims where:
  - (i) They can show clear evidence of the maintenance that the consumer should have been aware of and undertaken.
  - (ii) Identify the difference that the maintenance they say should have been undertaken would have made to the damage suffered by the property as a result of the disaster.

### **Project Management**

Where a claim is accepted by an insurer an internal project manager should be appointed.

### **Catastrophes, extreme weather events and surge periods**

The Code should reflect ASIC's expectations of insurers following extreme weather events as set out in their letter to general insurers dated 7 November 2022.<sup>14</sup> These commitments should include:

- (a) Committing to reviewing the timeliness and efficiency of their operations following disasters.
- (b) Committing to adequately resourcing claims teams.
- (c) Keeping consumers informed of the progress of the claim.
- (d) Starting with the premise that all consumers following a disaster are experiencing vulnerability.

#### **3.10 How could the Code be enhanced to improve understanding and better protect customers where cash settlements are used? For example:**

##### **(a) Should the Code be more prescriptive in outlining better practice in administering the legal requirements for cash settlement payments?**

Yes. The Code should require the following details to be disclosed as part of a cash settlement:

- Cash settlements do not provide a Lifetime guarantee.
- The insured is responsible for arranging all of the work to be done to the property.
- Accepting a cash settlement is the finalisation of an insurance claim.
- If the customer holds a mortgage they should be advised to talk to your lender before accepting a cash settlement.
- The extent of any uplift made to the cash settlement as a result of higher repair costs.
- Complaint options if the consumer does not agree with receiving a cash settlement or the amount they are receiving.
- If the cash settlement is the result of a partial claim approval details of the experts required to fix the non-insured parts of the property.

##### **(b) Should paragraph 79 be extended to all cash settlement payments?**

Yes, it should particularly for motor vehicles.

##### **(c) Should the Code mandate consideration of a contingency uplift factor for cash payments over a certain dollar value to better manage the risk of higher repair costs?**

Yes, cash settlements should include a contingency uplift for higher repair costs in high-risk areas.

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<sup>14</sup> <https://asic.gov.au/about-asic/news-centre/news-items/asic-letter-to-general-insurers-about-severe-weather-events/>



**(d) 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?**

In LAQ's submission, the Code should be amended to provide that:

- Consumers have the right to choose between a cash settlement or the insurer rebuilding the property.
- Clause 79 should require insurers to explain in plain English:
  - (i) Why they are offering a cash settlement.
  - (ii) The impact of a cash settlement.
  - (iii) Any other types of settlement that may be available.
- If a consumer settles within 12 months of a disaster occurring, they have 12 months within which to ask the insurer to review the cash settlement amount.
- Consumers should be directed for legal advice before accepting a cash settlement.
- Cash settlement offers should be based on what it would cost the consumer to repair the property, not the insurer.

**3.11 Should the Code prescribe minimum content requirements for external expert reports (including Scope of Works) or are there other mechanisms that would better address concerns about the quality, consistency and accessibility of expert reports?**

Yes, minimum content requirements should be mandated.

A standardised industry approach should be established under the Code for all exclusions that involve subjective assessments including maintenance, wear and tear, defect, and pre-existing damage, and scope of works reports. This should include commitments to:

- identify what damage occurred to the property.
- identify what reasonable maintenance has not been undertaken by the consumer.
- outline whether the failure to maintain would have made a significant difference to the outcome and damage sustained to the property.
- identify and explain the causal link between the failure to maintain and how that resulted in a significant contribution to the damage sustained to the property.
- be conducted by independent third parties, who are not appointed by insurers.
- be provided in a standard format to obtain more consistent and higher quality input.

Insurers should also commit to:

- only relying on reports containing clear and cogent reasoning, from appropriately qualified experts.
- training and monitoring experts including checking for copy/paste scenarios, proportion of claims in favour as against.
- proactively sharing assessment reports with customers as soon as they become available: p19, ASIC Rep 768.

- pooling funds to allow consumers to obtain independent expert reports in a timely manner when they have complaints in AFCA.

Further, Clause 61 about scope of works needs to be expanded to include the following commitments:

- stop redacting the details of a scope of works document, which has made decision-making difficult.
- only rely on quotes for scopes of works that are actionable.

### **3.12 In what circumstances if any, should the Code allow insurers to vary the prescribed Code timeframes in paragraphs 68-71 and 76-77?**

In LAQ's submission the flexibility offered by the Code to vary these timeframes is relied on too heavily by insurers. If insurers improved planning and had appropriate resourcing the need to rely on this section would be reduced.

## **3.6 Complaints**

### **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?**

Insurers should commit to:

- Adequately resourcing their dispute resolution teams.
- Training their staff to recognise expressions of dissatisfaction as complaints.

### **3.14 Do the Code commitments relating to complaints need to be amended or clarified in light of ASIC's new guidance on internal dispute resolution, including its imposition of enforceable standards?**

It is appropriate that the Code increases commitments to vulnerability.

## **3.7 Other Feedback**

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

#### **Investigations**

Insurers should commit to:

- Providing interview transcripts to consumers as a default.
- Face to face interviews should only be conducted as a last resort.
- All investigations should be approached with an open mind.
- Insurers should only request information that is relevant to the claim and spell out why they say each piece of requested information is relevant.

## Emerging Issues Response

### 4.1 Affordability

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

Yes, it is appropriate that the Code addresses affordability issues.

#### **Pricing offers.**

LAQ submits that insurers should:

- Proactively use data to determine consumers eligibility for pricing discounts and offers.
- Proactively obtain information about the eligibility of a customer for a pricing offer during any sales conversation.
- Express discounts in fixed terms and not ranges.

#### **Component Pricing**

LAQ submits that insurers should:

- Provide full explanations of any premium increases including those that relate to a specific risk.
- Detail the components of a premium including those that relate to natural hazard risks.

#### **Other options:**

- Provide insurance products that last longer than 1 year.
- Do not penalise consumers for paying by instalments.
- Enable the payment of home and contents insurance via Centrepay.

### 4.2 Helping reduce risks.

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

Yes, the Code should do this.

Insurers can achieve this by:

- Directing consumers to building code changes at renewal.
- Reflect risk mitigation measures undertaken by the consumer in the premium.
- Share all known natural hazard risks with the policy holder so they can understand and mitigate their risk.

- Insurers renewal notices for home insurance should contain a schedule of mitigation measures that other customers have undertaken that led to a reduction in the Insurance premium.

## **Code structure, enforceability and governance Response**

### **5.1 Structure of the Code**

**5.1 Should the primary audience for the Code be insurers? Or is it consumers and other stakeholders? Considering these questions, would it be appropriate to revise the structure and content of the Code to more appropriately reflect its intended audience or audiences? If so, how?**

The audience of the Code is equally:

- Consumers
- Consumer representatives
- Insurers and
- External Dispute Resolution.

The focus should be on producing a Code that is:

- Clear
- In Plain English
- Robust and unambiguous.

LAQ has no concerns over extending the length of the document. Most consumers will not read the document cover to cover but will seek specific information as and when they need it.

**5.2 For which sections of the Code, if any, would more detail (similar to Part 15) be helpful and why? For example, would there be merit in providing more detail in relation to the conduct of employees, distributors and services suppliers?**

In LAQ's submission the sections that would benefit from more detail are:

- Vulnerability
- Claims Handling
- Conduct of employees, distributors and service suppliers.

### **5.2 Code governance and compliance**

**5.3 What measures would improve governance of the Code and promote enhanced compliance with Code commitments? In particular:**

**(a) Are the sanctions in Part 13 a sufficient deterrent to misconduct. Should they be strengthened? If so, how?**

In LAQ's submission they should be strengthened by including automatic naming in line with AFCA's process.

**(b) A number of the sanctions available to the Code Governance Committee are restricted to a significant breach of the Code (defined in Part 16). Should the additional sanctions in paragraph 174 apply to any breach of the Code?**

Yes. The current distinction is artificial and removes the ability of the CGC to apply minor sanctions to particular breaches of the Code.

**(c) Should the Code definition of 'significant breach' be aligned to the ASIC reportable situations regime, in RG 78 and if so, how?**

Yes.

**(d) The CGC is only able to require a Code subscriber to publish the fact that the subscriber has committed a significant breach of the Code. Should the CGC be able to name subscribers that commit a substantial breach?**

Yes.

**Should this additional sanction apply to all Code breaches?**

Yes

**What other transparency mechanisms may better promote Code compliance?**

In LAQ's submission, the transparency mechanisms are:

- Naming insurers
- Committing to provide detailed explanations to the CGC if a subscriber reports low breaches of the Code.

**5.4 Does the requirement to report significant breaches of the Code to the CGC duplicate or create inefficiencies related to the obligation on AFS Licensees to report reportable situations to ASIC? If so, how should this be managed given the role of the CGC in monitoring and enforcing the Code?**

LAQ acknowledges that there may be some overlap in the reporting requirements but submits that the CGC and ASIC perform very different roles and that the information provided to both is important in allowing them to meet these roles.

### **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?**

In LAQ's submission, as much as possible of all Codes of Practice should be made enforceable.

The Code should be made a term of the insurance contract in line with the Banking and Customer owned Banking Codes.

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