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**By email: [FSRCFeedback@royalcommission.gov.au](mailto:FSRCFeedback@royalcommission.gov.au)**

Royal Commission into Misconduct  
in the Banking, Superannuation and  
Financial Services Industry

Dear Sir/Madam

### **Comment: Royal Commission Background Paper 14 - General Insurance**

We refer to the Royal Commission's *Background Paper 14: General Insurance (Background Paper)* and make the following comments. We note that the Background Paper reflects the views of the authors and not the Commission. Our comments focus on key issues for consumers raised by the authors, in particular:

- Consumer protections available to people dealing with insurers,
- The role of intermediaries in selling insurance,
- The operation of the duty of utmost good faith and the need for an unfair contract terms regime, and
- Claims handling and dispute resolution.

Our comments are based on casework and research undertaken by Consumer Action Law Centre (**Consumer Action**) and recent law reform developments and proposals. We note that the Background Paper focuses substantially on commercial insurance. Our focus and expertise are in domestic insurance and issues faced by individual consumers.

### **About Consumer Action**

Consumer Action is an independent, not-for-profit consumer organisation with specialist expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns and community training, outreach and engagement. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

Our general comment is that some of the views expressed in the Background Paper are not supported by the evidence, are unclear and omit relevant information and considerations. We have set out our specific comments in response below. For ease of reference, our comments are listed under the headings and paragraph numbers in the Background Paper to which they correspond.



## Part 5—Overview of insurance relationships

### 3. Process

At paragraph 3.10, the Background Paper states: 'A proponent will usually obtain a quotation for the insurance cover from a number of different insurers and make a choice from among those quotations.'

This statement fails to take into account the issue of consumer understanding of the product, which has been confirmed by a range of recent reports.

For example, the Senate inquiry report on general insurance entitled *Sapping consumers of the will to compare*<sup>1</sup> found that few people actually compare policy features (as it is almost impossible) and that most divert to a decision on price instead. Moreover, a lot of shopping around is via online comparators which are often little more than sales channels directing you into a particular insurer. Similarly, the NSW Emergency Services Levy Insurance Monitor (**ESLIM**) report on standard profile quotations noted divergent prices for home insurance on the same properties<sup>2</sup> and found that obtaining quotes will tell someone little about what they're actually getting. The Insurance Council of Australia (**ICA**) Effective Disclosure Research Report<sup>3</sup> also found that generally, consumer comprehension of policy coverage is poor.

### 4. Selling – channels

At paragraph 4.4, the Background Paper states: 'Third, the process might be conducted online. The proponent applies for insurance through the insurer's website. There is a record of communication. There are fewer questions and answers.'

Online sales do not necessarily mean fewer questions and answers. Some insurers have better online sales processes than others. There is much scope for improvement.

### 5. Parties – sales process

At paragraphs 5.1 to 5.6 of the Background Paper, there is a discussion of intermediaries.

We consider that there are conflicts and uncertainties as to who intermediaries are working for and their obligations. For example, a recent General Insurance Code of Practice (**GICOP**) Code Governance Committee (**CGC**) report found that many sellers of add-on insurance are not covered by the GICOP.<sup>4</sup> The first round of

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<sup>1</sup> Senate Standing Committee on Economics, Parliament of Australia, *Australia's general insurance industry: sapping consumers of the will to compare*, 10 August 2017 <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Generalinsurance/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance/Report)>.

<sup>2</sup> NSW Emergency Services Levy Insurance Monitor, *Standard profile quotations: Mid-term review*, April 2018 <[https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/Discussion\\_Paper-Standard\\_Profile\\_Quotations\\_20180420.pdf](https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/Discussion_Paper-Standard_Profile_Quotations_20180420.pdf)>.

<sup>3</sup> Insurance Council of Australia, *Consumer Research on General Insurance Product Disclosures*, February 2017 <[http://www.insurancecouncil.com.au/assets/report/2017\\_02\\_Effective%20Disclosure%20Research%20Report.pdf](http://www.insurancecouncil.com.au/assets/report/2017_02_Effective%20Disclosure%20Research%20Report.pdf)>.

<sup>4</sup> General Insurance Code Governance Committee, *Who is selling insurance? 2014 General Insurance Code of Practice Own Motion Inquiry*, June 2018 <[http://codeofpractice.com.au/assets/CGC%20REPORT/CGC%20report%20-%20Who%20is%20selling%20insurance%20\(18062018\).pdf](http://codeofpractice.com.au/assets/CGC%20REPORT/CGC%20report%20-%20Who%20is%20selling%20insurance%20(18062018).pdf)>.



hearings on consumer lending before the Royal Commission heard similar issues raised in relation to mortgage brokers.<sup>5</sup>

Intermediaries can be further conflicted where sales are incentivised through commissions, an issue also exposed by the evidence of the consumer lending hearings.<sup>6</sup> The evidence given by consumer witnesses showed that although authorised representatives, brokers and third-party sellers are legally different, they can look the same to customers. In addition, customers sometimes do not understand that the seller is a different entity to the insurance provider.

## Part 6—Regulation

### 1. Introduction

At paragraph 1.12, the Background Report states: ‘... the major consumer protection developments have not been reactive, certainly not to financial crisis. There is anecdotal evidence that these consumer protection developments are a result of serial failures, actual or perceived, to meet customer expectations which culminate in a burst of regulatory activity through temporary alliances of consumer advocates, concerned regulators and communal value governments. Third, the greater the crisis or disaster, the more severe the community and political reaction, and the more penetrating and intrusive the regulation and surveillance’ (emphasis added).

It is unclear what the ‘anecdotal evidence’ and ‘a burst of regulatory activity through temporary alliances of consumer advocates, concerned regulators and communal value governments’ means. Arguably, this statement reflects only an insurance industry view; it is not a neutral position. Consumer advocates have long-standing and collaborative relationships with government, regulators and some sectors of industry. We advocate for law reform on the basis of strong evidence through casework and research of systemic problems. We advocate for outcomes-based solutions.

### 3. Consumer protection regulation

At paragraph 3.31, the Background Paper states: ‘Part 2 of the ASIC Act deals with ‘consumer protection in relation to financial services in the following Subdivisions: a) C: Unconscionable conduct; b) D: Consumer protection; c) E: Conditions and warranties in consumer transactions; d) G: Enforcement and remedies; and e) GA: Proportionate liability for misleading and deceptive conduct.’

The operation of the ASIC Act protections is critical for the Royal Commission to consider in that it is important to note the significance of these consumer protections, despite the authors’ discussion being limited to one paragraph. While these protections do not give consumers a cause of action to have an insurance contract reviewed due to operation of section 15 of the *Insurance Contracts Act 1984* (Cth) (**IC Act**) (e.g. the prohibition

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<sup>5</sup> Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 10* (2018), 982.

<sup>6</sup> Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Transcript of Proceedings Day 6* (2018); Australian Securities and Investment Commission, *Buying add-on insurance in car yards: Why it can be hard to say no*, Report No 470 (2016); Australian Securities and Investment Commission, *The sale of life insurance through car dealers: Taking consumers for a ride*, Report No 471 (2016); Australian Securities and Investment Commission, *A market that is failing consumers: The sale of add-on insurance through car dealers*, Report No 492 (2016).



on unfair contract terms does not apply), the prohibitions on unconscionable conduct and misleading and deceptive conduct do apply to conduct outside the contract, for example, the promotion or selling of insurance.

#### 5. The 2014 Code

Paragraph 5.13 of the Background Paper states: 'The Code, like other ASIC-approved codes, does not include amongst its sanctions financial penalties. Financial penalties would only deter if the amounts of the penalties were significant. And if that were the case, the Code would need to ensure natural justice for those facing penalties.'

This statement appears to suggest that the GICOP is approved by ASIC. It is not and we are not aware of any other industry Codes of its kind which have been approved by ASIC. (We note that the Code of Banking Practice is currently with ASIC for consideration for approval.)

### Part 7 – Introduction to the Insurance Contracts Act 1984

#### 5. Limited relief elsewhere: Section 15

Paragraph 5.3 of the Background Paper notes the operation of section 15 of the IC Act and suggests it prevents a policyowner from seeking relief under provisions of the ASIC Act. As noted above, relief can be obtained under some of these consumer protection provisions.

For example, some consumers do obtain relief for unconscionable conduct, misleading and deceptive conduct and false and misleading representation. With respect to the insurance sales process, the arguments set out in letters generated by DemandARefund.com<sup>7</sup> are based largely on unconscionable conduct and misleading and conduct and many people have successfully claimed refunds for mis-selling on this basis. DemandARefund.com has seen many people successfully obtain refunds by claiming the seller engaged in misleading and deceptive and/or unconscionable conduct when selling consumer credit insurance (**CCI**), guaranteed asset protection (**GAP**) insurance and warranties (also called mechanical breakdown insurance). It is true that consumers cannot reopen the contract as they could under UCTs.

We also note enforcement action by ASIC in reliance on provisions of the ASIC Act. For example, AAMI paid \$43,200 for misleading advertising after ASIC found it had made false or misleading statement on its website and in radio advertisements for home insurance.<sup>8</sup> Further, Allianz, CGU and Accident and Health International agreed to refund collectively approximately \$2,400,000 in CCI premiums following the Federal Court's finding that the sale of CCI to consumers who were highly unlikely to benefit constituted unconscionable conduct.<sup>9</sup>

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<sup>7</sup> DemandARefund.com is an initiative of Consumer Action Law Centre that seeks to assist consumers obtain compensation in relation to add-on insurances that may have been mis-sold.

<sup>8</sup> Australian Securities and Investment Commission, 'AAMI pays \$43,200 for misleading advertising' (Media Release, MR17-398, 22 November 2017) <<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-398mr-aami-pays-43-200-for-misleading-advertising/>>.

<sup>9</sup> Australian Securities and Investment Commission, 'Allianz agrees to refund \$400,000 in 'useless' payday insurance premiums' (Media Release, MR15-044, 3 March 2015) <<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-044mr-allianz-agrees-to-refund-400k-in-useless-payday-insurance-premiums/>>; Australian Securities and Investment Commission, 'CGU Insurance and Accident & Health International to refund 2 million in



We refer also to The FOS Approach to Misleading Conduct, in particular case study 4, in which FOS found in favour of the applicants in respect of a claim as a result of reliance of statements about policy coverage by the insurer's representative at the point of sale.<sup>10</sup>

Paragraph 5.6 of the Background Paper refers to a 2013 bill which proposed to introduce an unfair contract terms (**UCTs**) scheme for standard form general insurance contracts, but that the bill lapsed. We note that on 18 December 2017, the Government announced that it would extend the unfair contract term provisions to contracts of insurance.<sup>11</sup> The Government is now seeking stakeholder views on a proposed model to implement this policy.<sup>12</sup>

Paragraphs 7.1 to 7.3 of the Background Paper discuss balancing the interests of insurer and policyowner, and notes that the IC Act was introduced to try and achieve a fairer balance. While the IC Act improved consumer protections available under the common law, it was enacted more than 30 years ago. We consider that the insurance market, products, customer needs and, importantly, customer understanding of how consumer protections operate and what is effective have evolved significantly since the 1980s.

Paragraph 7.3 warns that proposed changes to consumer protections should 'have regard to everyone's interest in seeking insurers stay profitable and in business'.

This statement reflects a very common industry refrain that law reform to address the imbalance in customer relationships will significantly impact profits and/or lead financial institutions to withdraw from the market. We consider that industry should address concerns about law reform proposals through more specific and evidence-based comments. We also consider that there is no legitimate argument that insurer profits should be made via the exploitation of customers or unfair contracts which cause significant distress when people are most vulnerable.

## **Part 9—Utmost good faith**

### *6. Reliance on a provision as a breach of the duty*

Paragraph 6.2 of the Background Paper notes that the Australian Law Reform Commission (**ALRC**), when it recommended a statutory duty of utmost good faith (**DUGF**), intended that insurers would apply the terms of contracts of insurance fairly. The intentions of the ALRC have not always borne out in practice. In our view, the suggestion that the DUGF constitutes a "UCTR" regime which is broader than a UCT regime (a concept we have not seen anywhere before) is incorrect. It certainly does not have that effect in the lives of consumers.

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'useless' payday insurance premiums' (Media Release, MR15-175, 7 July 2015) <<https://asic.gov.au/about-asic/media-centre/find-a-media-release/2015-releases/15-175mr-cgu-insurance-and-accident-and-health-international-to-refund-2-million-in-useless-payday-insurance-premiums/>>.

<sup>10</sup> Financial Ombudsman Service, *The FOS Approach to Misleading Conduct* <<https://fos.org.au/custom/files/docs/fos-approach-misleading-conduct.pdf>>.

<sup>11</sup> Commonwealth Treasury, *Australian Government Response to the Senate report on Australia's General Insurance Industry*, (20 December 2017) <<https://treasury.gov.au/publication/p2017-t248756/>>.

<sup>12</sup> Treasury, *Proposals Paper: Unfair contract terms – insurance contracts* (June 2018) <<https://treasury.gov.au/consultation/c2018-t284394/>>.



Paragraph 6.4 of the Background Paper states that the DUGF may be ‘under-utilised’. We consider that DUGF does adequately assist consumers in their disputes with insurers<sup>13</sup> and that the provision is overwhelmingly used as a tool for insurers to deny claims on the basis of fraud or non-cooperation. It is our experience that it is effectively impossible for an individual to argue a breach of the DUGF by an insurer without a lawyer. This defeats the purpose of accessible and effective internal and external complaints processes.

We also note that at footnote 324, it is stated: ‘a UCT regime, only operates if a term is inherently unfair, which terms of insurance seldom are’. This is a significant and baseless claim and also overlooks the fact that contract terms can be applied in unfair ways.<sup>14</sup>

### *7. Regulatory supervision of utmost good faith*

Paragraph 7.1 of the Background Paper notes that regulatory supervision of DUGF was enabled as the result of reforms in 2013. It is arguable that an ASIC action for a breach of the DUGF may not yield anything more than an ASIC action for unconscionable conduct. We are unaware of any action taken by ASIC under section 14A in its five years of operation. The 2013 reforms do not appear to have had their intended effect.

### *8. Utmost good faith: Content of duty*

Paragraph 8.1 of the Background Paper notes that DUGF is defined at common law not in the IC Act. It is therefore virtually impossible for a non-lawyer to understand or even be aware of the duty. We also consider that DUGF is enforced as a ‘cure’ rather than a protection. This is clearly an outdated and inaccessible consumer protection.

### *General comment: Unfair contract terms*

As noted above, it is current government policy to introduce an UCTs regime for insurance. This policy is based on the recommendations of a Senate Committee inquiry<sup>15</sup> and the Australian Consumer Law Review in 2017.<sup>16</sup> These recommendations follow similar findings in other inquiries and reviews. In this context, it is surprising to see a suggestion in the Background Paper that the DUGF is a sufficient consumer protection to ensure that insurers do not unfairly apply insurance policies.

Consumer Action recently published a report proposing an UCTs regime for insurance, titled *DENIED: Levelling the playing field to make insurance fair*.<sup>17</sup> We note in particular:

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<sup>13</sup> See Consumer Action Law Centre, ‘Denied: Levelling the playing field to make insurance fair’ (February 2018), 8 (analysis of FOS decisions involving DUGF) <<https://policy.consumeraction.org.au/2018/02/13/denied-levelling-the-playing-field-to-make-insurance-fair/>>.

<sup>14</sup> See the examples in the DENIED report. See also the AAMI Home Building Insurance Supplementary Product Disclosure Statement, which confirms that AAMI will pay a reasonable cost in cash settlement which is in effect the lowest quote they can get, including all their bulk discounts etc <<https://www.aami.com.au/aami/documents/personal/home/spds-building-05-03-2018.pdf>>.

<sup>15</sup> See above n 1.

<sup>16</sup> Consumer Affairs Australia New Zealand (CAANZ), *Review of the Australian Consumer Law – Final Report* (March 2017), proposal 10 <<http://consumerlaw.gov.au/consultations-and-reviews/review-of-the-australian-consumer-law/final-report/>>.

<sup>17</sup> See above n 13.



- An UCTs regime is a modern consumer protection approach which addresses the structural imbalance between large corporations and individual customers. It requires companies to ensure that terms of standard consumer contracts (including contracts with small business customers) reflect their legitimate business interests and that the terms are clear and transparent to customers. In our view, it is a well-reasoned minimum standard which the community should be able to expect of all consumer contracts.
- The UCT protections apply to virtually every standard form consumer contract except an insurance contract. We can see no legitimate basis for this to continue.
- UCT laws operate as a prevention rather than a cure. The introduction of the regime prompted industries such as banks and telecommunications retailers to improve their consumer and small business contracts.

In our view, an UCT regime would bring significant benefits to industry, consumers and regulators, including:

- Prevention of disputes by insurers proactively changing contract terms which cause consumer detriment,
- Increased consumer trust and confidence in the insurance industry,
- More efficient, uniform regulation of the financial sector, and a means for ASIC to address problem products in a systemic manner.

## Part 10—Cover and indemnity

### 1. Cover – main terms

Paragraph 1.11 of the Background Paper discusses the subject matter of an insurance and the amount covered.

The authors do not mention the way subject matter is defined in the IC Act. Under the IC Act, the ‘subject-matter’ of an insurance contract is the thing being insured, such as ‘property’<sup>18</sup> or a ‘road motor vehicle’.<sup>19</sup> It could also be a person or group of people.<sup>20</sup> Importantly, the subject-matter of an insurance contract is distinct from the insured event and the risk (or cause of loss) under the contract.<sup>21</sup>

This is a significant omission, given that insurers have previously argued that, if the exemption of insurers from the UCTs regime ends, the definition of ‘main subject matter’ should be broad, meaning the scope of cover.<sup>22</sup> This is because contract terms defining the ‘main subject-matter’ of a contract are not subject to review under the existing UCT regime, therefore a broad definition of ‘main subject matter’ will mean that fewer policy clauses are subject to a fairness requirement and potential review.

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<sup>18</sup> See for example *Insurance Contracts Act 1984* (Cth) ss 17, 44, 49.

<sup>19</sup> *Insurance Contracts Act 1984* (Cth), s 65.

<sup>20</sup> Such as workers under a workers’ compensation policy: *Wallaby Grip Ltd v QBE Insurance (Australia) Ltd* [2010] HCA 9, [29].

<sup>21</sup> *Wallaby Grip Ltd v QBE Insurance (Australia) Ltd* [2010] HCA 9, [29] per French CJ, Gummow, Hayne, Heydon, Kiefel JJ citing Professor Malcolm Clarke.

<sup>22</sup> Insurance Council of Australia, *Submission to Exposure Draft of the Insurance Contracts Amendment (Unfair Terms) Bill 2013* (4 June 2013)

<[http://www.insurancecouncil.com.au/assets/submission/2013/060413\\_Ms%20Michelle%20Calder%20Treasury\\_UCT%20Bill.pdf](http://www.insurancecouncil.com.au/assets/submission/2013/060413_Ms%20Michelle%20Calder%20Treasury_UCT%20Bill.pdf)>.



We strongly recommend that the Royal Commission examine existing insurance law and the UCT regime, as well as community expectations, if it considers the formulation of an UCT regime for insurance.

## **Part 11—Insurance policy - formation and layout**

### *3. Disclosure of policy terms*

Paragraph 3.13 of the Background Paper discusses the requirement to 'clearly inform' the policyowner of relevant policy terms, and the expectations of the Financial Ombudsman Service (**FOS**) to bring policy terms to the mind of the policyowner.

The discussion does not reflect our casework experience. We consider there is little onus on an insurer to do more than provide a copy of the Product Disclosure Statement.<sup>23</sup> Further, section 37 of the IC Act does not apply to prescribed contracts i.e. motor vehicle home building, home contents, travel, CCI. It follows that this requirement does not apply in respect of these policies.

### *4. Categories of terms*

Paragraph 4.8 of the Background Paper discusses section 54 of the IC Act and states that this provision 'significantly blunted an insurer's weaponry in the face of a policyowner's breach or non-compliance with, a term of an insurance contract.' This is not our view of section 54. In our casework experience, insurers rely on exclusions even where section 54 clearly applies (for example, in order to decline a claim due to an insured's inability to pay their excess). It is only where insureds have access to legal advice and assistance that they can challenge an insurer's position on these decisions.

## **Part 14—Claims**

### *General comment: Regulation of claims handling*

We note that Part 14 of the Background Paper does not mention clause 7 of the GICOP, which covers claims. Clause 7 of the GICOP includes insurers' commitments to:

- Handle claims in an 'honest, fair, transparent and timely manner',
- Provide for people in urgent need of benefits,
- Comply with certain requirements when assessing and investigating claims, and
- Comply with claims timeframes.

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<sup>23</sup> See for example FOS determination 271475, where the applicant had his car insurance claim declined because he accidentally reversed into his friend's car (who was living at his parents' home with him temporarily). The insurer initially offered to repair his friend's car, but relied on an exclusion for liability for damage to property owned by someone who 'normally lives with you'. FOS found that section 14 did not prevent the insurer relying on this exclusion, despite the insurer not providing any evidence that the insurer brought it 'to the mind of the policy owner'. FOS concluded that there was no breach of the DUGF because there was no suggestion that the insurer 'acted dishonestly or with impropriety'.





We also note that ASIC cannot investigate misconduct in relation to insurance claims handling, because claims handling is not considered a financial service.<sup>24</sup> We support ASIC's view that removing this exemption would 'enhance ASIC's ability to seek improvements in claims handling practices'.<sup>25</sup> Claim time is the critical point at which insurers and their customers deal with each other. In our view, self-regulation alone is not appropriate, and this is an obvious area for reform.

### 1. Anatomy of a claim

Paragraph 1.1 of the Background Paper refers to the practice of a policyowner appointing his or her own loss assessor to negotiate on their behalf. We have never seen an individual consumer appoint their own loss assessor—this is not common practice in domestic insurance.

### 2. Contractual requirements for making a claim

Paragraph 2.2 of the Background Paper refers to the 'modern trend' of allowing flexibility in the notification of a claim. Flexibility acknowledges the reality of people's lives when they are making an insurance claim—vulnerability, trauma, injury, death, hospitalisation, etc. Current notification obligations are a practical approach to claims management.

### 5. Fraudulent claims

We note the report of Financial Rights Legal Centre, *Guilty until proven innocent: Insurance investigations in Australia*.<sup>26</sup> That report details the sometimes-harrowing experiences of consumers whose insurance claims are subjected to fraud investigations. The GICOP does not currently include standards in relation to fraud investigation. We warmly welcome the ICA proposal to adopt mandatory standards for investigators in the next revision of the GICOP.<sup>27</sup>

Paragraph 5.2 of the Background Paper characterises section 56 of the IC Act as a 'concession' which UK legislations have 'at the insistence of the insurance industry, resisted'. Section 56 acknowledges there is situations where it would be harsh and unjust to refuse payment of a fraudulent claim. In our casework situations, there are situations where it is harsh or unfair to refuse a claim, for example, where a victim of family violence has a claim declined because an abusive partner/ex-partner fraudulently exaggerates a specific part of the claim.

### 6. Amount recoverable

Paragraph 6.3 of the Background Paper refers to section 54 of the IC Act, which provides that if an insurer would have been prepared to give the policyowner for the same premium greater cover—had that cover been requested—than in fact provided, then he insurer is bound to provide greater cover. We have not seen section

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<sup>24</sup> *Corporations Regulations 2001* (Cth) reg 7.1.33 provides an exemption under s 766A of the Corporations Act.

<sup>25</sup> Peter Kell, 'Life Insurance Claims Handling' (Speech delivered at Money Management's Claims Handling Breakfast, Sydney, Australia, 16 March 2017), 4.

<sup>26</sup> (March 2016) <<http://financialrights.org.au/wp-content/uploads/2016/03/Guilty-until-proven-innocent.pdf>>.

<sup>27</sup> Insurance Council Australia, *Final Report: Review of the General Insurance Code of Practice* (2018)

<[http://codeofpracticereview.com.au/assets/Final%20Report/250618\\_ICA%20Code%20Review\\_Final%20Report.pdf](http://codeofpracticereview.com.au/assets/Final%20Report/250618_ICA%20Code%20Review_Final%20Report.pdf)>.



42 operate in the way described here, i.e. to pay out more than the sum insured. We are unsure how an individual insured would be able to identify this.

## **Part 15—Dispute resolution**

*General comment: Increase in disputes*

We note that general insurance internal and external disputes have increased significantly recently.<sup>28</sup>

### **3. IDR**

In our view, the two-stage IDR process under the GICOP is confusing and may be operating as a deterrent for consumer pursuing complaints. A two-stage process protracts the time taken up by internal disputes, for both insurers and consumers, particularly for less complex disputes. It also operates to damage consumer trust, as people feel confused and unheard. Insurance is the only area of financial services that we are aware of that uses a two-stage IDR process.

### **4. EDR**

Paragraph 4.5 refers to the role of FOS. FOS does not monitor and enforce the GICOP. The independent CGC is co-located with FOS, but the two bodies are distinct.

### **5. Litigation**

We strongly agree that the need for an Ombudsman in insurance disputes is clear. Paragraph 5.2 quotes the Ramsay Report, noting the complexity of insurance law and the information asymmetry and power imbalance between insurers and their customers in disputes means that the Ombudsman does not negate the need for a lawyer.

Please contact Ursula Noye at Consumer Action Law Centre on 03 9670 5088 or at [ursula@consumeraction.org.au](mailto:ursula@consumeraction.org.au) if you have any questions about this submission.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**



**Gerard Brody**

Chief Executive Officer

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<sup>28</sup> General Insurance Code Governance Committee, *General Insurance Code of Practice Industry Data Report 2015-16* (2017)

<http://codeofpractice.com.au/assets/documents/March%202017%20General%20Insurance%20Code%20Governance%20Committee%20-%202015-16%20Industry%20Data%20Report%20FINAL.pdf>; Financial Ombudsman Service, *Annual Review 2016-17* <http://fos.org.au/publications/annual-review.jsp>.

