

01 February 2023

By email: info@codecompliance.org.au

Joanna Ifield
Code Compliance & Operations Manager
General Insurance Code Governance Committee

Dear Ms Ifield

CGC 2023-24 Monitoring & Compliance Priorities Consultation

Thank you for the opportunity to provide input to the Code Governance Committee's (CGC) monitoring and compliance program for the 2023-24 financial year.

As you are aware, Consumer Action is an independent, not-for profit consumer organisation with deep 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. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

We recommend that the CGC consider the following areas for monitoring or compliance work, based on trends we see in our casework relating to general insurance products.

Relevant to General Insurance Code Part 6: Buying Insurance

Refusal of cover where insured has been bankrupt or has defaulted recently

Our casework has been demonstrating that an increased number of people are seeking our advice after finding out that they are ineligible for particular insurance products from many insurers due to a past bankruptcy or even simply because they have defaulted on a loan. Discovery of this issue is sometimes at claims time (deeming the insurance and payments made as illusory), while luckier ones learn of it at the time of renewal or in the initial purchase phase. We understand some groups of people have recently learned they were no longer eligible for coverage at the time of renewal, as a result of changes in the underwriters of retail policies.

While we understand that insurers have their own actuarial processes for measuring risk, the basis for denying people an important product like home or motor insurance due to a past bankruptcy is unclear to us, particularly if the policy is fully paid upfront. The link between someone's financial history and their ability to drive safely appears to be tenuous at best, and we would dispute any claimed link between bankruptcy and fraud.

RECOMMENDATION 1. Consider investigating the prevalence across the industry of the blanket denial of coverage for home and motor insurance products by insurers due to a customer's previous bankruptcy, involvement in a debt agreement or default on a loan, and whether the approach is consistent with section 45 of the Code in particular.

Change from duty of disclosure to duty not to make a misrepresentation

It has now been over 12 months since 5 October 2021, when a range of legislative changes arising out of the Financial Services Royal Commission came into effect. These legislative changes included the change from the old duty of disclosure to the duty for an insured to take reasonable care not to make a misrepresentation to an insurer. The CGC should discuss with ASIC whether there would be value in a review of the adoption of this change.

RECOMMENDATION 2. Explore whether (particularly in its oversight of clauses 47 and 49 of the Code) the transition from the duty of disclosure for insureds, to the duty to take reasonable care not to make a misrepresentation to an insurer, is being handled appropriately by industry.

Deferred sales model for add-on insurance

It has also been over 12 months since the commencement of the deferred sales model (**DSM**) for add-on insurance. The Code includes provisions relating to the sale of consumer credit insurance under the DSM, but we consider that compliance with it more generally also relates to the commitments made in clause 21 of the Code, and compliance is important for all add-on product sales, particularly those with poor claims ratios. The DSM was necessary to help address sales practices that were widespread in the industry and caused significant harm to consumers. Ensuring that insurers (and their retail partners) are complying with these reforms should be a priority for industry.

RECOMMENDATION 3. Consider investigating whether the insurance industry (and the companies they work with) are complying with the DSM.

Relevant to General Insurance Code Part 8: Making a claim

Consumer Action has been receiving a steady stream of complaints from clients calling our service about claims handling. Common issues arising relate to:

- delays,
- cash settlement offers (and the difficulty in getting a payout that actually covers repairs)
- problematic reliance on exclusion clauses.

Our casework suggests that these issues can be particularly pronounced not just for claims during catastrophes but also for other claims that are not part of a significant event or catastrophe, but occur soon before or after one. One recent example involved a claimant whose house was still near unlivable 12 months after an extreme weather event. This was due to long delays in the assessment process and lengthy consideration of possible exclusions from coverage by the insurer. While extreme weather events create workload challenges for insurers, we are concerned there are underlying systemic problems with claims handling in general. As these events are unfortunately going to be more frequent insurers should also be increasing their claims handling workforce so significant events don't mean delays for everyone.

Local financial counselling and community legal services dealing directly with clients in regional areas impacted by major extreme weather events also reported that clients who accepted early cash settlements offers often later learned in the weeks or months following that the amounts were not enough for necessary repairs.

We are also concerned by the trend for the number of withdrawn complaints to be increasing.

RECOMMENDATION 4. Consider further work aimed at identifying the systematic barriers that lead to poor claims handling and whether insurers are sufficiently resourced to handle the volume of claims they are receiving.

Relevant to General Insurance Code Part 9: Customers experiencing vulnerability

Our casework has been highlighting inconsistencies in how some insurers have been responding to customers experiencing vulnerability – both in terms of whether they are taking proactive steps to identify customers who may need extra support, and how they handle it after such customers are identified. We acknowledge the CGC did work on this area back in 2021, but encourage the CGC to consider revisiting the issue and building upon this work.

RECOMMENDATION 5. Consider revisiting previous CGC work on insurers' compliance with Part 9 of the Code.

Relevant to General Insurance Code Part 11: Complaints

The number of matters lodged with the Australian Financial Complaints Authority, where insurers are not responding to deadlines in time, have been increasing. We have experienced this issue in our casework also. While we understand that extreme weather events have stretched insurers, we are of the view that insurers, due to the significant profits they have been reporting, have the capacity to provide additional resources to ensure that matters are dealt with fairly. As with claims handling, we question whether insurers are cutting their customer services too thinly to maximise profits, at the expense of the quality of service they are providing.

RECOMMENDATION 6. Explore whether insurers are putting sufficient resources toward complaints handling and dispute resolution.

Further information

Please contact Policy Officer **Tom Abourizk** at **Consumer Action Law Centre** on 03 9670 5088 or at tom.a@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE

Tania Clarke

Tania Clarke | Director of Policy and Campaigns