consumer action law centre

Level 6, 179 Queen Street
Melbourne, VIC 3000

info@consumeraction.org.au
consumeraction.org.au
T 03 9670 5088
F 03 9629 6898

12 February 2024

By email: info@codecompliance.org.au

General Insurance Code Governance Committee

Dear Committee

General Insurance Code Governance Committee 2024-25 monitoring priorities

Thank you for the opportunity to respond to the General Insurance Code Governance Committee's (Committee) consultation on monitoring and compliance priorities for the 2024-2025 year. This is a joint submission from **Consumer Action Law Centre** and **WEstJustice**.

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.

WEstjustice provides free legal services and financial counselling to people who live, work, or studying in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray, as well as youth legal branch in Sunshine, and outreach across the west. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, and law reform and advocacy.

Together, Consumer Action and WEstJustice recommend that the Committee consider the following areas for monitoring or compliance work, based on trends we see in our casework relating to general insurance products.

Claims handling misconduct

We note the Committee intends to commence or progress targeted investigations in claims handling for the rest of the financial year. We encourage the Committee to continue this important work into 2024-2025. Claims handling misconduct is systemic and multifaceted. It has a significant impact on a consumer's journey to seek redress. Poor claims handling leads to poor claims decisions – policy holders are prevented from fully engaging in the process and frequently accept outcomes that are less than they deserve.

<u>Failing to provide interpreters – Paragraph 101 of the General Insurance Code of Practice</u>

Westjustice's 2023 response to the Committee's monitoring and compliance priorities for 2023-24 noted a number of issues associated with the failure to provide interpreters where a General Insurance Code of Practice (**Code**) Subscriber is unable to otherwise effectively communicate with the client, in breach of Paragraph 101 of the Code. We have unfortunately continued to see clients not being provided with interpreters, particularly at the crucial stage of needing to make a claim. This has resulted in a client being unable to clearly convey the information and the circumstances of the claim (potentially exposing them to the accusation that they have not been accurate or honest in their dealings with the insurer) or are simply unable to make a claim at all.

We believe an investigation into Subscribers compliance with this obligation would be a valuable opportunity to identify recurring issues (and also good practice) in the insurance industry with interpreter access, including the conduct of service suppliers.

Issues with accepting authorities – Paragraph 98 of the Code

Increasingly we encounter fundamental issues with Subscribers accepting our authorities as lawyers and financial counsellors. This causes unacceptable delay and confusion for our clients, particularly as the majority have multiple vulnerabilities and do not have the capacity to advocate for themselves. Subscribers are committed to ensuring their processes are flexible to recognise the authority of a lawyer, consumer advocate, interpreter or friend in Paragraph 98 of the Code. In our casework, this is frequently not what occurs.

We have encountered frustrating instances such as:

- Authorities on file are not accessible by the insurer or their third-party contractor – for example, when our services call through to the insurer's call centre, who are unable to confirm the authority of the caller and consequently refuse to progress our client's claim;
- Inappropriate requirements that an authority is for an individual lawyer or financial counsellor rather than the common practice of an organisation (including demands that the caseworkers supply their personal information (including individual lawyer's date of birth) and/or identity documents);
- Refusing to accept our standard authorities and requiring bespoke forms to be completed, including by clients who do not have access to a computer or printer.

In contrast, we query whether insurers even request authority forms from private law firms representing their insureds. For years consumer advocates have persistently raised concerns about these issues with senior executives of Subscribers, however we have seen little to no improvement in our day-to-day dealings. All of the above draw out the process of a claim and lead to worse outcomes for consumers.

Delays in claims handling and communication

2022 was a 'disaster year' for insurance and we acknowledge the huge impact on the insurance industry from an unprecedented number of claims. The evidence presented to the House Economics Committee's inquiry into the 2022 floods clearly demonstrated this fact.[1]

WestJustice and Consumer Action continue to assist clients who have not recovered from events in 2022 due to extended processing in claims handling.

We often see communications with policy holders that are automated and do not provide meaningful updates about their claims, or the steps they need to progress. These are particularly difficult for consumers who are recently arrived or from culturally and linguistically diverse backgrounds.

One client with a contents claim received communications that requested further information each time – multiple lists of items that were damaged; then lists of items which were not damaged; then photos; then quotes for replacements. If the full information had been requested from the outset the client would have been able to finalise the process much faster.

Issues with claims outcomes

Reliance on broad exclusions

[1] Please refer to the Hansard record of the hearings on 31 January 2024

The use of pre-existing damage, inadequate maintenance or wear and tear exclusions by insurers has been well-discussed by consumer groups,[2] ASIC,[3] the Deloitte report,[4] and by the Committee.[5] We believe the over-reliance of these exclusions may be in breach of Code paragraphs 21 and 81 and we encourage the Committee to continue investigating this issue. This over-reliance on exclusions causes direct harm to policy holders, who generally have to source their own expert reports at significant cost and grapple with complex factual circumstances to resolve this issue.

This issue arises particularly in relation to property claims. We have seen insurers identify pre-existing damage that appears unrelated to the actual claim, or significantly overstate their likely contribution to the overall damage.

We note that the issues presenting when these exclusions are relied on contribute to the above issues of **communication and claims handling delays**.

Failing to offer uplift payments

Many of the clients who contacted Consumer Action following the 2022 floods were offered a cash settlement from their insurer. Paragraph 79 of the Code includes a commitment to providing policy holder information about how settlements work.

A cash settlement transfers all the risk of rebuilding onto a client, as well as the labour involved in managing a rebuild. An insurer has access to economies of scale and a stronger bargaining position that are not available to policy holders. Clients who have been offered these settlements are typically experiencing a crisis, living in temporary accommodation, financially stretched, and are unlikely to have the skills and knowledge to manage a rebuild. AFCA typically awards uplift payments to recognise the increased cost to the policy holder, however we frequently see cash settlements that include no uplift payment or any indication that the risk to the consumer has been priced into the offer.

We feel that not including uplift payments in recognition of the increased cost and difficulty to an insured falls well short of best practice and may amount to a breach of the Code in some circumstances.

Emerging innovations

Collecting money

Our services are identifying concerning conduct in seeking recoveries against uninsured third parties for costs that are not fair and reasonable. We consider this conduct may amount to a breach of Paragraph 133 and 'Standards for collecting money' in the Code in many circumstances. A detailed study of a typical and concerning case is included in **Appendix A**.

In these cases, we see insurers:

- Not providing the totality of relevant evidence used to calculate the amount they are seeking to recover;
- Seeking to recover more than the reasonable costs of repairs (i.e. where a repair has been poorly done so that it increases the overall costs).

Uninsured consumers are at a significant disadvantage when engaging with an insurer recovering on behalf of a policyholder. They are also typically uninsured because they could not afford the relevant cover, which means they are likely vulnerable in other ways due to their income or visa status for example. Without resource-intensive advocacy from a free service on their behalf, they end up paying a significant and unjust amount.

Other emerging areas

[2] CHOICE, Weathering the Storm: Insurance in a changing climate
[3] ASIC, Rep 768 Navigating the storm: ASIC's review of home insurance claims
[4] Insurance Council of Australia, The New Benchmark for Catastrophe Preparedness in Australia
[5] CGC Thematic Inquiry: Oversight of External Experts

We refer to WestJustice's submission to the 2023-2024 consultation and note several non-code specific industry issues continue to impact our clients at both services. Particularly:

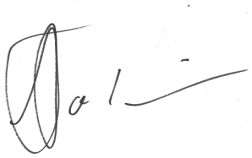
- "Carnapping" behaviour, which can interact with the legitimate insurance market insofar as insured parties are being misled into commencing repair or recovery actions without a claim being properly notified to the insurer;
- "Self-insured" car or fleet rental companies for personal or small business use by lessors, which often operates to the detriment of the lessor and undermines industry standards.

We encourage the Committee to consider how they can guide industry in responding to this concerning conduct. Further details are contained in parts 5 and 6 of Westjustice's previous submission (**Appendix B**). We are able to provide recent client stories to the Committee on request.

Thank you again for the opportunity to respond to this consultation. Please contact Rose Bruce-Smith at rose@consumeraction.org.au or on 03 8554 6983 or Joseph Nunweek at joe@westjustice.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Stephanie Tonkin
Chief Executive Officer
Consumer Action Law Centre

WEstJustice

Joseph Nunweek
Legal Director
Economic Justice Program

APPENDIX A – ALI'S STORY

Ali (name changed), a recently arrived refugee who speaks limited English, was involved in a minor car accident in which he scraped the side of a stationary vehicle parked next to in a car park. Ali, who was uninsured, was contacted several months later by the insurer of the damaged vehicle. The insurer's debt collection correspondence demanded a payment of more than $12,000 from Ali. Ali was shocked by this figure, as the damage to the other car was only a small scratch. The photographs of the damaged vehicle that the insurer sent to Ali were consistent with the scratch being very small. Ali, who fled an authoritarian regime, was very frightened of the prospect of going to court, which was threatened in the debt collection correspondence. Ali earned only a low wage in unskilled employment and had no capacity to pay the alleged debt.

On Ali's request, the insurer sent Ali documents which the insurer claimed substantiated the $12,000 quantum. The documents consisted of repair receipts from two different mechanics, which listed items replaced and repaired plus labour costs on two different occasions. The 'first' mechanical repair invoice was for a figure of less than $1,500. The second invoice was for a figure of more than $11,000. An invoice for a period of car hire which appeared to correlate to the 'second' repair was also provided.

Westjustice assisted Ali to write to the insurer asking for an explanation as to why the Vehicle had been repaired by two separate mechanics, noting that several items that invoiced for repair were to parts of the vehicle that seemed to be unrelated to the scratched panel, and that there appeared to be duplication in the itemised repairs performed by the 'first' mechanic in the invoice of the 'second' mechanic. Westjustice asked the insurer to specify how it alleged the invoiced repairs related to the damage caused by Ali. The insurer responded to Westjustice by claiming that the existence of the invoices was evidence that the repairs were necessary. The insurer declined to explain how these repairs were alleged to have been required due to Ali's accident.

Westjustice then assisted Ali to engage an independent mechanic to review the repair receipts and provide an opinion on whether the repairs invoiced reasonably arose from Ali's accident. Ali had to pay around $450 for this independent review.

In investigating the matter, the independent expert spoke to the 'second' mechanic, who confirmed that they had been engaged by the insurer to repair damage to the vehicle that had been caused by the 'first' mechanic in its attempted repairs. The independent expert produced a report of their findings, which Westjustice sent to the insurer. Westjustice argued that Ali's liability should be limited to the quote provided by the first mechanic, which had been accepted by the insurer, and that Ali should not be liable for extra repairs that were required because of damage caused by the first mechanic.

On receiving the expert report, the insurer agreed to settle the case for by accepting a sum of less than $2,000: less than 20% of the original quantum sought. Ali agreed to this offer as he wanted the case finished. He had found the matter very stressful and wanted to be sure of avoiding any risk of going to court. Ali was still left out of pocket $450 for the independent expert report he had to commission. The insurer has never explained to Ali or Westjustice why it was that it attempted to recover the cost of repairs conducted by the second mechanic from Ali.