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Code Review Panel
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Dear Code Review Panel

Submission of Legal Aid NSW into the Independent Review of the General Insurance Code of Practice's initial consultation paper, April 2024.

Legal Aid NSW welcomes the opportunity to provide a submission to the Code Review Panel's independent review of the General Insurance Code of Practice (GICOP) initial consultation paper.

This submission is informed by Legal Aid NSW's insurance casework and our clients' lived experience. While Legal Aid NSW offices across the state have various insurance casework, most of our recent work in insurance has been a result of the catastrophic extreme weather events over the last several years such as the 2019/2020 Black Summer Bushfires and the 2022 Flooding events across NSW.

We will now provide our response to the questions set out in the consultation paper.

Financial Hardship

2.1 Does the Code provide adequate protections to ensure customers facing financial difficulties are obtaining suitable and appropriate assistance from insurers? If not, how can it be improved?

For example:

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

(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?

The Code's existing framework acknowledges the importance of supporting customers in financial hardship, but the mechanisms in place are not comprehensive enough to address the varied and complex needs of these customers. There is room for the Code to be improved by the inclusion of explicit and detailed guidelines on the types of support insurers should offer, and how these supports should be implemented consistently across the industry.

Adoption of the Australian Securities and Investments Commission (ASIC) expectations

ASIC has outlined specific expectations regarding financial hardship, which include clear guidelines on identifying and assisting customers experiencing financial difficulties. The Code should adopt these ASIC expectations to ensure a standardised approach across the industry. This would help in creating a more consistent and transparent process for assessing and providing assistance to customers in financial hardship. Adopting these expectations would ensure that insurers implement minimum standards and practices that are well-defined and enforced.

Premium Hardship

Insurance is crucial for protecting consumers against unexpected events. Addressing premium hardship helps ensure that consumers do not lose their coverage during times of financial stress, which could leave them vulnerable to significant financial losses. Including premium hardship provisions aligns with broader consumer protection principles, ensuring that all consumers, especially those in vulnerable situations, are treated fairly and with respect. Providing flexible payment options and support can help prevent consumers from falling into deeper financial difficulties, promoting overall financial stability and resilience.

The Code should explicitly address premium hardship to ensure that consumers facing financial difficulties can maintain essential insurance coverage and it can do this by:

- *Defining Premium Hardship* - The Code should include a clear definition of premium hardship, outlining circumstances where a consumer is unable to meet premium payments due to their financial circumstances.
- *Notification and Communication* - Insurers should proactively inform customers about available premium hardship options when a missed payment occurs or when customers reach out with financial difficulties. They should provide clear, accessible information on their website and in policy documents about the steps customers can take if they are experiencing premium hardship.
- *Flexible Payment Options* - Allow for the adjustment of payment schedules, including payment deferrals, reduced instalments, or the extension of payment terms. Offer alternative payment arrangements such as monthly or fortnightly payments to reduce the immediate financial burden.
- *Temporary Suspension of Coverage* - Provide options for temporarily suspending coverage without cancelling the policy, giving customers time to recover financially without losing their insurance protection.
- *Policy Review and Adjustments* - Allow customers to review and adjust their coverage levels to reduce premiums without penalising them with additional fees or charges. It will be important to ensure that any changes made to

policies are communicated clearly and do not result in a significant loss of necessary coverage.

- *Support Services and Referrals* - Provide access to financial counselling and support services to help customers manage their financial situation. This can include referrals to external support services providing these types of assistance e.g., the National Debt Hotline or to free local financial counselling services.
- *Dedicated Hardship Teams* - Insurers to establish dedicated hardship teams trained to handle premium hardship cases with empathy and understanding. Ensure these teams are easily accessible and can make swift decisions to provide timely assistance.

Differentiation between Short-term and Long-term Hardship

Financial hardship can vary significantly in duration and severity. Customers experiencing short-term financial difficulties may need different types of support compared to those with entrenched, long-term financial hardship.

The Code should distinguish between short-term and long-term financial hardship and outline tailored assistance options for each. For short-term hardship, measures such as temporary payment deferrals or short-term payment plans might be appropriate. For long-term hardship, more comprehensive solutions like restructuring policies, long-term payment arrangements, or even product changes might be necessary.

Other recommendations regarding the Financial Hardship provisions of the Code

- *Identification and Communication* - Insurers commit to having clear processes for identifying customers in financial hardship and communicating available support options effectively and proactively. This might include training for customer service representatives and proactive outreach to customers showing signs of financial distress.
- *Comprehensive Hardship Policies* - Insurers commit to developing and implementing comprehensive financial hardship policies that are transparent and accessible. These policies should outline the steps customers can take to seek assistance, the types of support available, and the criteria for eligibility.
- *Monitoring and Reporting* - The Code should include provisions for monitoring and reporting on how insurers are managing financial hardship cases. This would ensure accountability and allow for continuous improvement based on feedback and outcomes.
- *Consumer Education* - The Code should encourage insurers to educate consumers about their rights and the support available under the Code. This can be achieved through various channels, including policy documentation, websites, and customer service interactions.

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?

Ensuring compliance with financial hardship obligations, especially when third-party debt collectors are involved, is crucial for protecting vulnerable customers. The Code should include specific provisions and mechanisms to enhance compliance and ensure that third-party debt collectors adhere to the same standards as insurers. We recommend the following:

Strengthening the Code's Provisions

- *Clear and Detailed Guidelines* - The Code should include explicit guidelines for managing financial hardship, ensuring that both insurers and third-party debt collectors understand their obligations. This could involve detailing the processes for identifying financial hardship, communicating with customers, and providing appropriate assistance.
- *Mandatory Training and Accreditation* - Require mandatory training and accreditation for all third-party debt collectors working with insurers. This training should focus on financial hardship obligations, ethical collections practices, and customer communication skills.
- *Incorporation of Third-party Obligations* - The Code should explicitly state that third-party debt collectors must comply with the same financial hardship obligations as the insurers themselves. This would create a uniform standard of practice across the industry.

Enhanced Administration and Oversight

- *Regular Audits and Reviews* - Implement regular audits and reviews of both insurers and their third-party debt collectors to ensure compliance with financial hardship obligations.
- *Reporting and Accountability* - Establish robust reporting requirements for insurers and their third-party debt collectors. This should include detailed reports on how financial hardship cases are handled, the types of assistance provided, and the outcomes for customers. Transparent reporting will enhance accountability and allow for the identification of areas needing improvement.
- *Complaint Resolution Mechanism* - Strengthen the existing complaint resolution mechanisms to ensure that customers have an effective and accessible way to raise issues related to financial hardship and debt collection practices. Ensure that there is a clear pathway for customers to escalate their complaints if they are not satisfied with the initial resolution.

Legal and Contractual Measures

- *Strict Contractual Obligations* - Insurers should include strict contractual obligations in their agreements with third-party debt collectors, stipulating

compliance with the Code's financial hardship provisions. Failure to comply should result in penalties or termination of the contract.

Consumer Education and Awareness

- *Consumer Awareness Campaigns* - Conduct consumer awareness campaigns to inform customers of their rights under the Code, particularly regarding financial hardship and debt collection practices. Well-informed customers are better equipped to advocate for themselves and seek assistance when needed.

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?

While the Code plays a crucial role in setting standards for assisting customers in financial hardship, additional mechanisms can enhance its effectiveness. Regulatory oversight, legislative measures, and independent dispute resolution can provide stronger enforcement and accountability. Industry collaboration and consumer education can promote best practices and fair treatment. Finally, leveraging technology can improve efficiency and customer engagement. Together, these mechanisms can ensure that customers facing financial hardship receive comprehensive, timely, and appropriate assistance from insurers.

Regulatory Oversight and Legislative Measures

- *Enhanced Regulatory Oversight by ASIC* - ASIC has the authority to enforce compliance across the financial sector, including insurers. Enhanced regulatory oversight by ASIC could ensure more rigorous enforcement of financial hardship provisions. ASIC could implement more stringent regulations specifically targeting financial hardship assistance, conduct regular audits, and impose penalties for non-compliance. This would create a strong deterrent against neglecting financial hardship obligations.
- *Legislative Framework* - A legislative framework would provide a robust, enforceable set of standards for financial hardship assistance, ensuring that all insurers comply uniformly. Legislation could be introduced mandating specific financial hardship assistance requirements for insurers, such as deferral options, structured payment plans, and prohibition of certain collection practices during hardship periods. Legislation would also offer legal recourse for customers whose financial hardship needs are not met. Critically, it would also mandate that insurers are to proactively communicate that financial hardship assistance is available and explain the options available including the option to escalate to External Dispute Resolution where a customer is unsatisfied with an outcome from the insurer.

Ombudsman and External Dispute Resolution

- *Role of the Australian Financial Complaints Authority (AFCA)* - Strengthening the role of AFCA by ensuring it has sufficient resources and authority to handle a higher volume of financial hardship cases and enforce resolutions. AFCA would also proactively monitor trends in complaints to identify systemic issues and recommend industry-wide improvements.

Industry Collaboration and Best Practices

- *Industry Codes and Best Practice Guidelines* - Developing comprehensive industry-wide guidelines on financial hardship can promote consistency and encourage best practices beyond the minimum standards set by the Code. Collaboration between insurers, consumer advocacy groups, and industry bodies to create detailed guidelines and best practices for managing financial hardship. These guidelines could cover innovative assistance programs, effective communication strategies, and fair treatment principles.

Consumer Education and Support

- *Financial Literacy and Support Programs* - Empowering customers with knowledge and resources can help them navigate financial hardship more effectively and seek appropriate assistance. Financial literacy programs should be developed and implemented that educate customers about their rights and available support under the Code and other mechanisms. Additionally, provision of access to financial counselling services to assist customers in managing their finances and understanding their options. Sustainable and consistent funding for legal assistance and financial counselling bodies with expertise supporting consumers would be crucial and would enhance the effectiveness of these programs.

Technological Solutions

- *Digital Platforms for Financial Hardship Management* - Utilising technology can streamline the process of identifying and assisting customers in financial hardship, making it more efficient and transparent. Insurers could develop digital platforms that enable customers, who are able and willing to use such platforms, to easily report financial hardship, apply for assistance, and track the status of their applications. These platforms can also provide automated notifications, improving the customer experience and ensuring timely assistance.

Customer vulnerability

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

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

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

(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 includes provisions to protect vulnerable customers, but community expectations are evolving, and there is increasing demand for more inclusive and comprehensive measures. Vulnerability can arise from various factors including financial hardship, disability, age, mental health issues, and experiences of trauma. Therefore, the Code must continually adapt to address these diverse and complex needs adequately. Our recommendations for improvement include:

- *Inclusive Product and Service Design* - Products and services designed inclusively can better meet the needs of vulnerable customers, ensuring accessibility and fairness. The Code should require insurers to incorporate principles of inclusive design into their product and service development. This can be achieved by:
 - Conducting regular consultations with a diverse range of consumer groups, particularly those representing vulnerable populations.
 - Implementing design thinking and user-centric approaches to understand and address the specific needs of vulnerable customers.
 - Creating flexible products that can be tailored to individual circumstances, such as customizable coverage options and payment plans.
- *Addressing Different Types of Vulnerability* - Vulnerability can manifest in many forms beyond financial hardship, such as cognitive impairments, language barriers, and domestic violence. The Code should explicitly identify and address a broader range of vulnerabilities by:
 - Defining various types of vulnerability within the Code and providing specific guidelines on how insurers should assist customers facing these challenges.
 - Training staff to recognise and respond to different types of vulnerabilities sensitively and appropriately.
 - Partnering with specialised organisations to develop targeted support programs for customers with specific needs.
- *Identification of Potential Vulnerabilities* - Early identification of vulnerability can lead to timely and appropriate support, improving customer outcomes. The Code should be amended to encourage proactive identification of vulnerabilities by:
 - Implementing routine vulnerability assessments at multiple customer touchpoints, not just at the point of claim. This includes during policy purchase, renewal, and any customer interactions.
 - Encouraging insurers to develop sophisticated data analytics tools to identify potential signs of vulnerability, such as missed payments or frequent inquiries about coverage.

- Reversing the assumption of vulnerability in certain situations, such as cases involving trauma or catastrophic events. This means assuming customers are vulnerable unless there is clear evidence to the contrary.
- Any proactive identification of vulnerability should be supported by internal flagging within the insurer's systems to limit the need for consumers to repeat their vulnerability/support required.
- *Enhanced Responses During Catastrophes* - Customers often experience heightened levels of vulnerability during catastrophes, requiring more robust support from insurers. The Code should promote enhanced responses during catastrophes by:
 - Mandating that insurers have dedicated catastrophe response plans that prioritise the needs of vulnerable customers. These plans should include rapid response teams, streamlined claim processes, and additional support resources.
 - Encouraging insurers to collaborate with government agencies, non-profits, and community organisations to provide comprehensive assistance during and after catastrophic events.
 - Providing clear communication and regular updates to affected customers, ensuring they are informed and supported throughout the recovery process.

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

Ensuring greater compliance with vulnerability obligations within the Code is essential for protecting and supporting customers who are vulnerable. To encourage greater compliance, the Code and its administration can implement several strategies, ranging from enhanced oversight and accountability measures to better training and support for insurers.

Enhanced Oversight and Accountability

- *Regular Audits and Assessments* - Conducting regular and thorough audits of insurers to assess their compliance with vulnerability obligations. These audits should be carried out by independent bodies and should include reviews of policies, procedures, and actual case studies. This ensures that insurers are consistently meeting their obligations and allows for the identification of areas needing improvement.
- *Public Reporting and Transparency* - Require insurers to publicly report on their compliance with vulnerability obligations. This can include publishing annual compliance reports that detail how they have met these obligations, the challenges they faced, and the steps taken to address them. The regulator and/or the Insurance Council of Australia (ICA) could publish industry reports which compare outcomes and compliance across insurers. Transparency in reporting can drive accountability and encourage insurers to maintain high standards in handling vulnerable customers.

- *Stronger Enforcement Mechanisms* - Introduce stricter enforcement mechanisms for non-compliance, such as financial penalties, restrictions on business activities, or other regulatory actions. These measures should be clearly outlined in the Code and enforced consistently. Stronger enforcement acts as a deterrent against non-compliance and emphasises the importance of adhering to vulnerability obligations.

Training and Support for Insurers

- *Mandatory Training Programs* - Require insurers to provide mandatory, regular training programs for all employees, focusing on identifying and supporting vulnerable customers. This training should cover the specific needs of different types of vulnerable customers and best practices for addressing those needs. Well-trained staff are better equipped to recognise vulnerability and provide appropriate assistance, leading to better customer outcomes.
- *Development of Best Practice Guidelines* - Collaborate with consumer advocacy groups and industry experts to develop comprehensive best practice guidelines for supporting vulnerable customers. These guidelines should be disseminated to all insurers and regularly updated based on new research and feedback. Best practice guidelines provide a clear framework for insurers to follow, ensuring consistency and effectiveness in their approach to vulnerability.

Enhanced Consumer Engagement

- *Customer Feedback Mechanisms* - Establish robust mechanisms for gathering and acting on customer feedback, particularly from vulnerable customers. This can include regular surveys, focus groups, and direct feedback channels. Customer feedback helps insurers understand the effectiveness of their support measures and identify areas for improvement, ensuring that services are responsive to customer needs.
- *Consumer Education Initiatives* - Launch consumer education initiatives to inform customers about their rights under the Code, particularly regarding vulnerability. These initiatives can include informational brochures, online resources, and community outreach programs. Educated consumers are more likely to recognise when they are not receiving appropriate support and can hold insurers accountable.

Strengthening the Code's Provisions

- *Clearer Definitions and Obligations* - Revise the Code to include clearer and further definitions of vulnerability and specific obligations for insurers. This should cover a wide range of vulnerabilities and provide detailed guidance on the required support measures. Clearer definitions and obligations reduce ambiguity and ensure that all insurers have a consistent understanding of their responsibilities.

- *Tailored Support Requirements* - Include provisions in the Code that require insurers to offer tailored support for different types of vulnerabilities. For example, specific protocols for dealing with customers experiencing financial hardship, mental health issues, or trauma. Tailored support ensures that the unique needs of each vulnerable customer are met effectively.

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?

While the Code plays a critical role in setting standards for the treatment of vulnerable customers, other mechanisms may be more appropriate or effective in certain areas. Enhanced regulatory oversight, legislative measures, independent oversight bodies, industry-wide best practices, consumer advocacy, and technological solutions can all contribute to a more robust and comprehensive framework for supporting vulnerable customers. By integrating these mechanisms with the Code, insurers can better meet the needs of vulnerable customers and ensure they receive the protection and assistance they need including being flexible enough to adapt to changing concepts of vulnerability.

Enhanced Regulatory Oversight

- *Regulatory Frameworks by ASIC* - ASIC has broader regulatory powers and can enforce compliance through legal and financial penalties. ASIC could establish specific regulations focused on the treatment of vulnerable customers, ensuring that all insurers adhere to these standards. Regular audits, compliance checks, and the ability to impose significant penalties for non-compliance would provide a stronger deterrent against poor practices.

Legislative Measures

- *Legislative Requirements* - Legislation provides a legally binding framework that can mandate specific protections and support for vulnerable customers. Introducing legislation that requires insurers to follow stringent guidelines in their treatment of vulnerable customers can ensure uniformity and enforceability. Such legislation could include requirements for clear communication, tailored support services, and mandatory reporting of how vulnerable customers are assisted.

Independent Oversight Bodies

- *External Dispute Resolution* - External Dispute Resolution can provide impartial dispute resolution and hold insurers accountable for their treatment of vulnerable customers. Strengthening the role of AFCA in handling complaints related to the treatment of vulnerable customers can ensure that issues are resolved fairly and transparently. AFCA can also identify systemic issues and recommend industry-wide improvements.

Industry-Wide Best Practices and Collaboration

- *Industry Standards and Guidelines* - Industry collaboration can lead to the development of best practices that go beyond the minimum requirements of the Code. Establishing industry-wide standards and guidelines through collaboration between insurers, consumer advocacy groups, and regulatory bodies can ensure that the needs of vulnerable customers are comprehensively addressed. These standards can be updated regularly to reflect new challenges and best practices.

Consumer Advocacy and Support

- *Consumer Advocacy Groups* - Advocacy groups can provide specialised support and represent the interests of vulnerable customers more effectively. Ensuring sustainable funding of consumer advocacy groups such as Legal Aid Commissions, Community Legal Centres and Financial Counselling services, in supporting vulnerable customers can ensure customers receive tailored assistance. These groups can offer resources, advice, and representation, helping customers navigate complex insurance issues and hold insurers accountable.
- *Public Awareness Campaigns* - Educating consumers about their rights and the support available to them can empower vulnerable customers to seek assistance. Launching public awareness campaigns to inform consumers about the protections available under the Code and other mechanisms can ensure they are aware of their rights and how to access support. This can include educational materials, workshops, and online resources.

Technological Solutions

- *Digital Platforms for Vulnerability Management* - Technology can streamline the process of identifying and assisting vulnerable customers, making support more accessible and efficient. Developing digital platforms that enable customers to self-identify as vulnerable and access tailored support services can improve the customer experience. These platforms can use data analytics to proactively identify signs of vulnerability and provide automated support options. We note though that this would only be a viable option for customers with access to technology.

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?*
- (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?*

The Code serves as a supplement to existing legal frameworks, providing guidelines that aim to exceed legal requirements in certain areas. However, its effectiveness relies on how well it integrates with and complements the law.

Paragraphs 18 and 20 of the Code

- **Paragraph 18:** This paragraph states that the Code will not limit the rights or remedies available to individuals under law.
- **Paragraph 20:** This paragraph ensures that where the Code imposes higher standards than the law, the Code's higher standards will apply.

We propose the following changes:

- *Clarification and Specificity* - To prevent any ambiguity regarding conflicts between the Code and the law, Paragraph 18 should be amended to explicitly state that in any case of conflict or inconsistency, the provisions of the law shall prevail, while the Code will still strive to apply its higher standards wherever possible.
- *Regular Updates* - Ensure that the Code remains aligned with evolving legal standards. Paragraph 20 should incorporate a mechanism for periodic reviews and updates to align with legislative changes.

Amendments Due to Regulatory Changes

We propose the following change:

- *Integration with Regulatory Guides* - Aligning the Code with regulatory guides like ASIC's RG 271 can enhance consumer protection by amending specific paragraphs to explicitly reference relevant regulatory guides, ensuring that the practices prescribed in the Code are not only compliant but also exemplary.

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

For example:

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

(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.

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

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

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

The Code should aim to exceed legal obligations where it can promote best practices and consumer trust. Examples of how the Code could go beyond the law include:

- *Paragraph 21, aligning with AFS Licensees' general obligations* - Require more detailed reporting on how insurers are ensuring efficiency, honesty, and fairness in their services.

- *Paragraphs 28 and 38, training and competence* - Implement mandatory, ongoing professional development programs for representatives, including specific modules on emerging issues and customer care.
- *Paragraph 43, product design and distribution* - Establish a framework within the Code for regular consumer feedback and product testing to ensure products meet the needs of retail clients.
- *Paragraph 79: Cash Settlement Fact Sheet* - Include detailed scenarios and case studies to help consumers understand their rights and options better.

Complaints Handling and Regulatory Compliance

- *Alignment with RG 271* - Ensure that the complaints handling process outlined in the Code is fully compliant with the enforceable paragraphs of ASIC's RG 271. This could be done by including provisions for independent audits of the complaints handling process and publishing the results to promote transparency and accountability.

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

- *Consumer Communication* - Develop guidelines for clear, concise, and transparent communication, ensuring that customers fully understand policy terms, conditions, and their rights.
- *Claims Processing* - Establish best practice benchmarks for the speed and fairness of claims processing, including regular training for claims assessors on dealing with vulnerable customers. The training should include trauma-informed approaches and First Nations cultural awareness.
- *Data Protection and Privacy* - Set higher standards for data protection than those legally required, ensuring customer information is handled with the utmost care and security.

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?

The application of the Code to both retail and wholesale insurance is crucial in ensuring comprehensive protection across different types of customers, including small and medium-sized enterprises (SMEs). Given the unique challenges and needs of SMEs, a review of how the Code applies to this segment is warranted.

SMEs often have different insurance needs compared to individual consumers and larger enterprises. They face unique risks and may lack the resources to fully understand complex insurance products. Ensuring SMEs receive appropriate support and protection can help mitigate risks and contribute to their sustainability and growth.

We propose the following review is required:

- *Assessment of Current Provisions* - Conduct a comprehensive assessment of how the current Code provisions apply to SMEs. This review should involve consultations with SME owners, industry experts, and consumer advocacy groups to understand the specific challenges faced by SMEs.
- *Customising Code Provisions* - Develop tailored provisions within the Code that address the specific needs of SMEs. These could include simplified policy documentation, tailored risk assessment tools, and dedicated support services.

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?

Adopting a clear and consistent definition of an SME, such as the one used by AFCA, which defines an SME as an organisation with less than 100 employees, provides clarity and ensures that the protections are appropriately targeted. We propose the following method for adoption of the AFCA definition:

- *Incorporation into the Code* - Amend the Code to explicitly adopt the AFCA definition of an SME. This will ensure that all SMEs, as defined, receive the benefits and protections under the Code.
- *Tailored Guidelines and Protections* - Develop guidelines within the Code specifically for SMEs, ensuring that the products and services offered meet their unique needs. This could include specialised customer service training for insurers to better understand and support SME customers.

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?

The dynamics of dealing directly with an insurer versus through an intermediary, such as an insurance broker, differ significantly. Direct dealings often involve more straightforward communication, while intermediaries can offer additional advice and support but might also introduce complexity. We propose that the following distinction needs to be made:

- *Clearer Roles and Responsibilities* - Clearly define the roles and responsibilities of insurers when dealing directly with customers versus through intermediaries. This distinction should be explicitly outlined in the Code, ensuring transparency and accountability.
- *Enhanced Training for Intermediaries* - Ensure that intermediaries, including insurance brokers, are adequately trained and aware of their obligations under the Code. This can be achieved through mandatory training programs and certification requirements.

- *Transparency and Communication* - Mandate that insurers provide clear and transparent communication to customers, regardless of whether they are dealing directly or through an intermediary. This includes clear disclosures about the role of the intermediary and any potential conflicts of interest.
- *Complaint Resolution* - Establish distinct pathways for complaint resolution depending on whether the customer dealt directly with the insurer or through an intermediary. This ensures that customers have a clear understanding of how to resolve issues and who to approach in different scenarios.

Other parts of the Code

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?

Paragraph 21 of the Code establishes an overarching obligation for insurers to act in an "honest, efficient, fair, transparent, and timely" manner. This is fundamental to ensuring trust and confidence in the insurance industry. However, for this obligation to be practically effective, it must be clearly defined and actionable. We recommend expanding these key terms in the following way:

- *Honest* – should be defined as acting with integrity and truthfulness in all interactions with customers. Insurers should ensure full disclosure of all relevant information, avoid misleading representations, and correct any errors promptly.
- *Efficient* – should be defined as providing services in a competent and effective manner, minimising unnecessary delays or bureaucratic hurdles. It necessarily requires streamline processes for claims handling, policy issuance, and customer inquiries. Adopt technology to improve service delivery and reduce processing times.
- *Fair* – should be defined as ensuring impartiality and equity in all dealings, treating all customers with respect and without discrimination. This can be implemented by developing clear and consistent policies for underwriting, claims assessment, and dispute resolution. Regularly review these policies to ensure they do not unfairly disadvantage any group of customers.
- *Transparent* – should be defined as maintaining openness in communication, providing clear, accurate, and comprehensive information. This can be implemented by using plain language in all customer communications, including policy documents and marketing materials. Regularly update customers on the status of their claims or inquiries.
- *Timely* – should be defined as responding to customer needs and inquiries promptly, adhering to agreed timelines. This can be implemented by setting and publishing specific timeframes for key processes such as claims

processing and policy issuance. Also, monitoring performance against these timeframes and taking corrective action when delays occur.

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?

Paragraph 22 of the Code states that "in meeting this obligation, we will comply with our legal obligations."

Insurers might interpret paragraph 22 as a caveat that narrows their duty to act beyond mere legal compliance, therefore limiting the broader, ethical obligations outlined in paragraph 21. Paragraph 22 should be amended to clarify that compliance with legal obligations is the minimum standard, and the principles of honesty, efficiency, fairness, transparency, and timeliness are expected to be applied beyond just legal requirements. Suggested amendment:

- "In meeting this obligation, we will comply with our legal obligations. Additionally, we commit to exceeding these legal requirements by adhering to the principles of honesty, efficiency, fairness, transparency, and timeliness in all our dealings."

In addition, the Code should also include guidance and practical examples on how insurers can apply these principles in various scenarios. This can help insurers understand and implement these obligations more effectively.

Enhancing the practical operation of this would require:

- *Regular Training and Audits* - Mandate regular training for all insurance staff on the principles of paragraph 21. Conduct periodic audits to ensure these principles are being upheld in practice.
- *Customer Feedback Mechanisms* - Establish robust feedback mechanisms to gather customer experiences related to the principles of honesty, efficiency, fairness, transparency, and timeliness. Use this feedback to continuously improve practices.
- *Public Reporting* - Require insurers to publicly report on their adherence to the principles of paragraph 21. This can include metrics on claims processing times, customer satisfaction scores, and instances of non-compliance.

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?

Part 4 of the Code addresses the conduct of employees and distributors, ensuring that Code subscribers are accountable for their actions. While this part of the Code establishes important standards, there are areas where its practical operation can be improved to ensure greater accountability and consistency across the industry.

We suggest the following improvements are needed to address these challenges:

- *Clearer Accountability Mechanisms* - Introduce specific mechanisms for monitoring and reporting on the conduct of employees and distributors. This can include regular audits, mystery shopping, and customer feedback surveys. One solution could be to establish a centralised system for tracking complaints and incidents related to employee and distributor conduct, ensuring that issues are addressed promptly and systematically.
- *Stronger Enforcement Provisions* - Strengthen the enforcement provisions to hold insurers accountable for breaches of the Code by their employees and distributors. This can involve more stringent penalties and public reporting of non-compliance.

Definitions in Part 16

The definitions in Part 16 provide a clear framework for understanding key terms related to the conduct of employees and distributors. However, some definitions may be too broad or lack specificity, leading to potential ambiguity in their application. Improvements that are needed include:

- *Refinement of Definitions* - Review and refine definitions to ensure they are specific and unambiguous. This can help in better delineating the roles and responsibilities of employees, distributors, and service suppliers. One way this could be done is to provide detailed definitions that distinguish between different types of distributors (e.g., brokers, agents) and their respective obligations under the Code.

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?

Given the varied roles across the industry, prescriptive training requirements can ensure that all employees, distributors, and service suppliers meet a consistent standard of knowledge and competency. However, the diversity of roles necessitates tailored training programs to address specific needs and responsibilities. Possible approaches could include:

- *Role-Specific Training Modules* - Develop role-specific training modules that address the unique responsibilities and challenges faced by different industry participants. These modules should cover core topics such as ethical behaviour, customer service standards, and compliance with legal and Code requirements. This could mean, for example, creating separate training tracks for claims adjusters, customer service representatives, and

brokers, each tailored to the specific skills and knowledge required for those roles.

- *Mandatory Certification and Recertification* - Introduce mandatory certification and recertification programs for all employees, distributors, and service suppliers. This ensures that individuals remain up-to-date with industry standards and regulatory changes. One way to do this could be to require annual recertification for all employees and distributors, with assessments to test their understanding of the Code and relevant laws.
- *Ongoing Professional Development* - Mandate ongoing professional development (OPD) as a requirement under the Code. This can include attending workshops, completing online courses, and participating in industry conferences. The Code could establish a minimum number of OPD hours that must be completed each year, tailored to the individual's role and level of responsibility.
- *Centralised Training Oversight* - Create a centralised oversight body within the insurance industry to standardise training content, monitor compliance, and ensure consistency across different organizations. This could be done by forming an industry council responsible for developing standardised training materials, accrediting training providers, and auditing training programs to ensure they meet the required standards.

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?

Part 5 of the Code focuses on the responsibilities of Code subscribers concerning their Service Suppliers. Ensuring that these Service Suppliers adhere to the same standards as the insurers themselves is crucial for maintaining trust and consistency in customer service.

Definition of Service Supplier in Part 16

The definition of a Service Supplier in Part 16 includes any entity that performs functions or services on behalf of the insurer. This encompasses a wide range of activities, from claims handling to underwriting and customer service. The broad nature of this definition can sometimes lead to ambiguities about the extent of accountability for different types of service providers. This can be addressed in the following ways:

- *Clarification of Scope* - Refine the definition to explicitly list key categories of Service Suppliers and their specific roles. This can help clarify expectations and responsibilities. For example, the Code could provide a more detailed breakdown, such as differentiating between third-party claims handlers,

repairers, and call centre operators, with specific guidelines for each category.

- *Enhanced Accountability Provisions* - Include specific accountability measures for Service Suppliers, such as mandatory compliance with the Code's standards and regular performance audits. Insurers could do this by establishing contractual obligations that require Service Suppliers to adhere to the Code and set out clear consequences for non-compliance.

Ensuring Accountability for Service Suppliers

Part 5 ensures that Code subscribers are accountable for the conduct of their Service Suppliers, aiming to maintain high standards of service throughout the supply chain. In practice, ensuring consistent compliance among diverse Service Suppliers can be difficult. Ways in which this could be addressed include:

- *Regular Monitoring and Audits* - Implement regular monitoring and auditing of Service Suppliers to ensure ongoing compliance with the Code's standards. This could be done by requiring quarterly reports from Service Suppliers detailing their compliance activities and performance metrics.
- *Training and Support* - Provide training and support for Service Suppliers to help them understand and comply with the Code's requirements. This could be done by developing standardised training modules for Service Suppliers, focusing on key aspects of the Code relevant to their functions.

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?

The inclusion of claims handling and settling services as a 'financial service' under the Corporations Act 2001 has brought these activities under stricter regulatory oversight. This change has likely increased the compliance burden on insurers and their Service Suppliers. Some improvements to the Code include:

- *Alignment with Legal Requirements* - Review and amend Part 5 to ensure it aligns with the new regulatory requirements. This includes ensuring that claims handling practices meet the standards set out in the Corporations Act. This could be done by updating Code to explicitly reference the relevant sections of the Corporations Act and incorporate specific compliance requirements into Part 5.
- *Enhanced Training on Regulatory Changes* - Provide targeted training for employees and Service Suppliers on the implications of these regulatory changes and how to ensure compliance. This could be done by developing training programs that focus on the new legal obligations for claims handling and settling services, including case studies and best practices.

- *Stricter Oversight and Reporting* - Introduce stricter oversight mechanisms and more detailed reporting requirements for claims handling and settling services. For example, by requiring detailed quarterly reports on claims handling activities, including compliance with the Corporations Act provisions.

We propose the following amendments to Part 5 of the Code:

- *Explicit Reference to Legal Standards* - Amend Part 5 to explicitly reference the relevant provisions of the Corporations Act concerning claims handling and settling services. It should outline the specific legal obligations under the Corporations Act and how they apply to Service Suppliers.
- *Increased Transparency* - Enhance transparency by requiring Service Suppliers to publicly disclose their compliance with the Code and the Corporations Act.
- *Detailed Compliance Framework* - Develop a detailed compliance framework within Part 5 that sets out specific steps for ensuring adherence to the new legal standards. This could be done by creating a checklist or toolkit for Service Suppliers to help them implement and monitor compliance with the updated regulatory requirements.

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?

Both Part 6 and Part 7 are effective in addressing consumer concerns by providing clear guidelines on transparency, suitability, and fair treatment. These parts work well in conjunction with the Insurance Contracts Act 1984 (The Act) to ensure that consumers are informed and protected throughout their insurance journey. The effectiveness of these parts relies heavily on consistent and rigorous implementation by insurers. While the Code sets out strong principles, the actual consumer experience can vary depending on how well these principles are integrated into the daily operations of insurance companies.

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

- *Design and Distribution Obligation (DDO)* - The DDO requires insurers to ensure their products are designed and distributed in a manner that meets the needs of the target market. This has led to improved product suitability and consumer protection. The Code should align with the DDO by incorporating specific guidelines on how insurers should identify and define their target markets and ensure their distribution practices meet these obligations.

- *Deferred Sales Model for Add-on Insurance* - This model requires a mandatory pause between the sale of a primary product and any add-on insurance products, helping consumers make informed decisions without pressure. The Code should explicitly reference the deferred sales model and provide guidelines on implementing this pause effectively, ensuring consumers have adequate time to consider their options.
- *Phasing Out of Cheques* - As cheques are phased out, consumers need alternative methods for premium payments and receiving claim payouts.
 - *Alternative Payment Methods* - Encourage insurers to offer multiple payment options, such as direct debit, credit card, and electronic funds transfer, ensuring consumers have convenient and secure methods for making payments. Develop guidelines for insurers to transition away from cheques and adopt digital payment solutions that are user-friendly and widely accessible.
 - *Digital Claims Payments* - Promote the use of electronic funds transfer (EFT) and other digital payment methods for claim settlements, ensuring faster and more efficient payments to consumers. Require insurers to provide EFT as a standard option for claim payouts and educate consumers on how to set up and receive electronic payments.

Claims Handling

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?

Part 8 of the Code addresses the claims process, aiming to protect consumers and ensure fair and timely handling of claims. Recent law reforms, such as the inclusion of claims handling as a financial service, necessitate a review of Part 8 to enhance its effectiveness and consumer protection.

Part 8 outlines clear guidelines for the claims process, providing a framework that promotes fairness and transparency. The Code sets specific timeframes for responding to and resolving claims, ensuring that consumers receive timely decisions. However, there can be inconsistencies in how insurers handle claims, particularly regarding cash settlements and external experts' reports. It has been our experience that the claims process can be complex and confusing for consumers, leading to misunderstandings and dissatisfaction.

Case Study: Miranda's story

Miranda's home was impacted by flood waters. She immediately lodged a claim but after more than four months the insurer still had not made a decision about her claim. Miranda made numerous calls to her insurer to seek updates about the status of her claim, often spending two to three hours on each call, but she never heard back from them. The insurer was insisting she prepare a detailed and itemised list of all her damaged possessions and have further requested photos and proof of

ownership. In the wake of the floods, Miranda took up the offer of clean up assistance from the Australian Defence Force who disposed of most of her possessions without her having taken photos. Further, because all her records and her computer were damaged in flood waters, she was unable to provide proof of ownership. Out of frustration and after many failed attempts to resolve this on her own, she attended a recovery centre at Lismore and with the help of a Legal Aid NSW lawyer, spoke to a representative of the insurer who agreed the claims manager was being unreasonable. Following this advocacy by the lawyers, the insurer agreed to assess the Miranda's claim as a total loss and paid the full sum insured.

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

Ways in which the Code could be enhanced to improve understanding and better protect customers where cash settlements are used include:

- *Enhanced Guidelines for Cash Settlements* - Develop more detailed guidelines for administering cash settlement payments, ensuring that consumers are fully informed and protected. These guidelines should outline specific steps insurers must take to explain cash settlements, including the potential risks and benefits, and encourage consumers to seek independent advice.
- *Extension of Paragraph 79* - Extend paragraph 79 to cover all cash settlement payments, not just those resulting from a total loss. It should require insurers to provide a Cash Settlement Fact Sheet for all cash settlements, detailing how the payment was calculated and any factors that may affect the final settlement amount.
- *Contingency Uplift Factor* - Mandate the consideration of a contingency uplift factor for cash payments over a certain dollar value to account for potential future increases in repair costs particularly where quotes for which the cash settlement offer is based were obtained months earlier. The Code could establish a threshold (e.g., \$10,000) above which a standard contingency uplift (e.g., 10%) must be applied to cash settlements to cover unforeseen cost increases.

It is standard procedure for AFCA to award a contingency amount which can range from 10-40% to account for the transfer in risk to the customer who will need to arrange for their own repairs.

- *Consumer Education and Understanding* - Enhance consumer understanding of cash settlement payments by providing clear, accessible information and encouraging independent advice. Develop educational materials, such as brochures and online resources, explaining cash settlements, the associated risks, and the importance of obtaining independent advice before accepting a settlement.

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

The Code should prescribe minimum content requirements for external experts' reports to ensure quality, consistency, and accessibility. This could be done by standardising the content of Scope of Works and other expert reports, including detailed descriptions of the damage, recommended repairs, and cost estimates.

The Code should also ensure that expert reports are written in clear, understandable language and are accessible to consumers by requiring that reports be provided in plain English, with technical terms explained or avoided where possible.

Other mechanisms could include: systemic issues investigations from AFCA regarding repeat issues or deficits with insurers expert reports, guidelines produced by ICA regarding points to consider or to include in expert reports and an AFCA Approach Paper explaining how they consider expert evidence.

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?

The prescribed timeframes in paragraphs 68-71 and 76-77 set clear expectations for timely claims handling.

It has been our experience that insurers often fail to comply with timeframes set out in the Code and of particular concern is the all too frequent failure of insurers to comply with paragraph 70 in keeping customers updated at least every 20 days. Where there has been a catastrophe, our experience is that our clients often expect that there will be delays but really need regular updates on what is happening for certainty that they haven't been forgotten. We have had clients who had not received any update or communication until a dispute had been raised.

Case Study: Sam and Jane's story

Sam and Jane are an elderly couple residing on a farm. They have various health conditions. Floods severely damaged their home and property. Sam and Jane immediately lodged an insurance claim. However, despite spending hours on the phone and making multiple requests for their insurer to allocate a hydrologist, it took five months for this to occur. The insurer told Sam and Jane that they had to wait on the outcome of the hydrologist's assessment before any funds could be released for make safe works and cleaning, despite clause 64b of the GICoP. During this time black mould rapidly enveloped their home causing additional damage. After the hydrologist finally inspected their property, the insurer engaged contractors to strip

the walls. This could have been avoided if the insurer had processed their claim more quickly, or fast-tracked payment of some benefits to allow Sam and Jane to clean their home.

Given the number of disasters experienced in the last few years, we consider insurers have enough data and experience of what surge capacity would be needed to respond to scale events and should have a strategy plan in place for any future event. Variations to the timeframes can disadvantage consumers or reduce the overall quality of service. Insurers should make every effort possible to meet the timeframes set out in the Code unless there are matters outside of their control (eg, time for international shipping of materials/parts). Where there are delays outside of their control, insurers should be providing interim support measures, such as temporary accommodations or advance payments.

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?

Part 11 of the Code addresses the handling of consumer complaints, aiming to ensure that complaints are managed promptly, fairly, and transparently. With the recent changes to ASIC's guidance on internal dispute resolution (IDR), there is a need to review and enhance Part 11 to align with new standards and further benefit consumers.

Part 11 ensures that consumers have access to a clear and structured complaints process. The Code sets timeframes for acknowledging and resolving complaints, which helps in providing timely responses to consumers. However, there may be variations in how different insurers implement and adhere to the complaints process and some consumers may not be fully aware of their rights and the complaints process under the Code.

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?

To enhance Part 11, the Code commitments related to complaints should be amended to ensure alignment with ASIC's new guidance on IDR and the enforceable standards. The Code should be updated to reflect the latest timeframes, reporting requirements, and procedural standards outlined in ASIC's Regulatory Guide 271 (RG 271). To further support this, we recommend the following:

- *Improved consumer awareness* – which can be achieved through enhanced efforts to educate consumers about their rights and the complaints process would further enhance the benefit for consumers. The Code could require insurers to provide clear information about the complaints process in policy documents, renewal notices, and on their websites. This could include a

simplified guide on how to lodge a complaint and what to expect during the process.

- *Consistency in handling complaints* – can be achieved by standardising the complaints handling process across all insurers to ensure a consistent and fair approach would further enhance the operation of part 11 of the Code. This will ensure that all insurers engage appropriately with the IDR process rather than it being a tick-a-box exercise. A uniform set of guidelines and templates for handling complaints could be developed, including standard acknowledgment letters, investigation procedures, and resolution communications.
- *Enhanced reporting and monitoring mechanisms* - which would ensure compliance with the updated complaints handling standards. The Code could require insurers to submit regular reports on their complaint handling performance, including metrics on response times, resolution rates, and consumer satisfaction. The Code Governance Committee (CGC) could then use this data to identify trends and areas for improvement.
- *Independent review and oversight mechanisms* - could be introduced to provide additional oversight and ensure the integrity of the complaints process. An independent panel could be established to review a sample of resolved complaints annually to assess compliance with the Code and identify any systemic issues.

Other Feedback

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

A couple of areas that we've mentioned earlier, including:

- *Consumer vulnerability* - strengthen provisions to identify and support vulnerable consumers throughout their interaction with insurers, particularly during the complaints process. This could be done by including specific guidelines for handling complaints from vulnerable consumers, ensuring they receive appropriate support and accommodations, such as access to interpreters or advocates.
- *Digital transformation* - encourage the use of digital tools to enhance the efficiency and accessibility of the complaints process. This could be done by promoting the development of online complaint submission and tracking systems that allow consumers (and their representatives) to lodge and monitor their complaints easily. We note that this may not apply to some customers due to lack of access to any digital platform.
- *Feedback mechanisms* - should be established for consumers to provide feedback on the complaints process itself, ensuring continuous improvement.

After a complaint is resolved, insurers could send a follow-up survey to assess consumer satisfaction with the process and identify areas for improvement.

Emerging issues

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?

Addressing affordability issues and encouraging insurers to respond to consumers' risk-mitigation efforts are critical components in enhancing the Code. These initiatives can promote fair access to insurance and incentivise risk reduction among consumers. However, these measures must be carefully designed to avoid competition law concerns and the expectation of providing regulated personal financial advice.

Including provisions to address affordability is appropriate as it aligns with the broader goal of consumer protection and access to essential insurance services. The primary challenge is balancing affordability initiatives with competitive neutrality and avoiding the provision of regulated personal financial advice. We suggest the following ways in which affordability issues could be addressed:

- *Promote Transparency and Comparability* - The Code can include provisions that require insurers to provide clear and comparable information about policy costs, allowing consumers to make informed decisions without the need for regulated personal financial advice. One way this could be done is by introducing standardised policy summary documents that highlight key coverage elements and costs, like the Key Facts Sheets required for home and contents insurance.
- *Encourage Flexible Payment Options* - The Code could encourage insurers to offer flexible payment options to ease the financial burden on consumers. It could mandate that insurers offer monthly, quarterly, and annual payment plans without additional fees or penalties, making it easier for consumers to manage their budgets.
- *Support for Vulnerable Consumers* - Provide guidelines for insurers to identify and support consumers facing financial hardship, ensuring they maintain access to necessary insurance coverage. The Code could require insurers to offer premium deferral or reduction options for consumers experiencing temporary financial difficulties, with clear criteria and processes for accessing this support.

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?

Recognising and responding to consumers' risk-mitigation efforts can lead to reduced risk for insurers and lower premiums for consumers, fostering a mutually beneficial relationship. However, there'll need to be a balance of ensuring these measures are fair, transparent, and do not lead to unintended competitive advantages. We suggest that the Code could encourage or require insurers to respond in the following ways:

- *Risk-Mitigation Discounts* - The Code can include provisions that encourage insurers to offer premium discounts for documented risk-mitigation efforts by consumers. It should provide guidelines for insurers to offer discounts for actions such as installing security systems, fire alarms, or undertaking flood protection measures, with clear criteria and documentation requirements. Where qualifying for risk-mitigation discount requires the consumer to provide data to the insurer (e.g., through a Smart device - FitBit, Apple watch), the insurer is required to advise the consumer in plain English and in writing about what that data will be used for, and how it may affect future premium prices.
- *Publicise Risk-Mitigation Measures* - Require insurers to publicise which risk-mitigation measures are recognised and the associated premium discounts, ensuring transparency and encouraging consumer participation. Insurers could include information on recognised risk-mitigation measures and potential discounts in policy documents and on their websites. Any campaign should be done in conjunction with federal and state/territory consumer regulators (eg ACCC, NSW Fair Trading) to avoid consumers being exploited by traders marketing all manner of "risk mitigation" measures/products of poor quality and limited actual effectiveness.
- *Incentivise Preventive Actions* - Encourage insurers to proactively engage with consumers to promote and incentivise preventive actions that reduce risk. They could develop educational campaigns and resources that inform consumers about effective risk-mitigation strategies and how these can lead to lower premiums.
- *Standardised Risk Assessment* - The Code could introduce a standardised approach to assessing and recognising risk-mitigation efforts to ensure consistency and fairness across the industry. The Code could outline a framework for evaluating risk-mitigation measures, including criteria for assessing the effectiveness of different actions and standardising the discounts applied.

Code structure, enforceability and governance

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 Code serves multiple stakeholders, including insurers, consumers, and other entities involved in the insurance industry. Identifying the primary audience is crucial for determining the structure and content of the Code to ensure it meets the needs of all parties effectively. The primary audience considerations include:

- *Insurers* - The Code provides a framework for insurers to operate ethically, transparently, and in compliance with industry standards.
- *Consumers* - Consumers rely on the Code for protection, understanding their rights, and knowing the standards insurers must adhere to.
- *Other Stakeholders* - Intermediaries, regulators, and consumer advocacy groups also interact with the Code and have specific needs for information and guidance.

Given the diverse stakeholders, the Code should be structured to address the needs of all these groups, providing clarity and detailed guidance where necessary. This can be done in the following way:

- *Revising the Code* - Revise the Code to clearly delineate sections tailored to different audiences, ensuring each group can easily access relevant information. This could be done by dividing the Code into distinct parts, with sections specifically for insurers, consumers, and other stakeholders. For instance, include an introductory section that outlines the purpose and scope of the Code for all readers, followed by detailed sections for each audience.
- *Consumer-Friendly Language* - Use plain language in sections aimed at consumers to ensure clarity and accessibility by simplifying any legal and technical terms in consumer-facing sections and provide explanations or glossaries for any necessary technical language.
- *Detailed Guidance for Insurers* - Provide more detailed guidelines for insurers in specific areas where clarity and precision are essential for compliance and implementation. Like Part 15, include detailed guidance on the conduct of employees, distributors, and service suppliers, outlining expectations, best practices, and compliance measures.

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?

Sections of the Code that require more details include:

- *Conduct of Employees, Distributors, and Service Suppliers* - Detailed guidance ensures consistent and ethical behaviour across all interactions with consumers, enhancing trust and accountability. Like Part 15, provide a dedicated section detailing the expected conduct, training requirements, and accountability mechanisms for employees, distributors, and service suppliers.
- *Complaints Handling* - Given the importance of effective complaints handling in consumer protection, more detailed guidelines can improve transparency and efficiency. This can be done by expand Part 11 to include step-by-step procedures for handling complaints, timelines, and examples of best practices.
- *Claims Process* - The claims process is a critical area where consumers interact with insurers, and clarity here can significantly impact consumer satisfaction. The Code could provide more detailed explanations and examples in Part 8 regarding claims assessment, communication standards, and timelines for different types of claims.
- *Risk-Mitigation and Affordability* - Clear guidance on how insurers can support consumers' risk-mitigation efforts and address affordability issues can enhance consumer protection and engagement. The Code should introduce a new section detailing the ways insurers should respond to consumer risk-mitigation efforts, including specific discounts, educational initiatives, and support mechanisms for consumers facing financial hardship.

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?

(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?

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

(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? Should this additional sanction apply to all Code breaches? What other transparency mechanisms may better promote Code compliance?

To ensure the Code effectively governs insurer behaviour and promotes compliance with its commitments, several measures can be implemented. These measures should enhance the enforcement mechanisms and ensure that breaches are appropriately managed and deterred.

- *Strengthening Sanctions and Deterrents* - The sanctions currently outlined in Part 13 may not be a sufficient deterrent for misconduct if they are perceived as too lenient or infrequently applied. The sanctions need to be strengthened to ensure they effectively deter non-compliance and misconduct. To enhance the sanctions would require an increase in the range and severity of sanctions available for breaches of the Code, including financial penalties and mandatory corrective actions. An example of how this could be done is by introducing escalating penalties for repeated breaches, such as higher fines or more stringent corrective measures for insurers with a history of non-compliance.
- *Applying Sanctions to All Breaches* - Sanctions are currently restricted to significant breaches as defined in Part 16. This limitation may prevent effective enforcement of minor or initial breaches that could escalate if not addressed. We recommend applying additional sanctions in paragraph 174 to any breach of the Code, not just significant breaches. Removing the restriction on sanctions to significant breaches, would allow the CGC to impose sanctions for all breaches. The Code could allow the CGC to impose corrective actions, fines, or public reprimands for any breach to ensure consistent enforcement and compliance.
- *Aligning the Definition of Significant Breach* - Aligning the definition of a significant breach with the ASIC reportable situations regime (as outlined in RG 78) can standardise the reporting and enforcement processes. The definition of a significant breach in the Code should be revised to align with ASIC's criteria. The Code should adopt ASIC's criteria for significant breaches, including the thresholds for impact and frequency, to ensure consistency and clarity. Modifying the Code's definition of a significant breach to match the definitions in ASIC's RG 78, would ensure that both the CGC and ASIC have a uniform understanding and approach to breaches.
- *Naming and Shaming for Transparency* - The CGC currently requires public disclosure of significant breaches only. Expanding this to substantial breaches or all breaches could enhance transparency and accountability. The Code could allow the CGC to name subscribers who commit substantial breaches and consider extending this to all breaches to increase public accountability. Broadening the scope of public disclosure to include all substantial breaches, and potentially all breaches, would increase the pressure on insurers to comply. The CGC could publish an annual report detailing all breaches, with specific naming of insurers involved in substantial breaches, similar to public regulatory reports in other sectors.

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?

Reporting significant breaches to both the CGC and ASIC can create inefficiencies and administrative burdens. We recommend the streamlining of the reporting processes to avoid duplication while ensuring both bodies receive necessary information.

This could be done by establishing a coordinated reporting mechanism where significant breaches reported to ASIC are automatically shared with the CGC. This would require the creation of a unified reporting system where insurers submit breach reports to a central portal that distributes the information to both ASIC and the CGC, ensuring both bodies have access to relevant data without redundant reporting.

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?

Designating certain provisions of the Code as Enforceable Code Provisions (ECPs) can enhance regulatory oversight and ensure stronger compliance. ECPs are provisions that, if breached, can result in regulatory action. This mechanism can provide a more robust framework for consumer protection and industry accountability.

To identify which provisions of the Code should be designated as ECPs, we suggest that the following criteria should be considered:

- *Consumer Protection* - Provisions that are critical to safeguarding consumer rights and interests.
- *High-Risk Areas* - Provisions related to areas with high potential for consumer harm or significant financial impact.
- *Compliance Challenges* - Provisions where compliance has historically been problematic, indicating a need for stronger enforcement.
- *Regulatory Alignment* - Provisions that align with existing regulatory requirements and standards.

We suggest that the key provisions to consider for ECP designation include:

- *Claims Handling and Settling* - Part 8 of the Code outlines the process and timelines for claims handling and settling. Claims handling is a critical consumer touchpoint with significant potential for harm if mismanaged. Proposed changes include specifying detailed requirements for fair and timely claims assessment, transparent communication, and the provision of reasons for claim denials.

- *Financial Hardship* - Part 10 covers assistance for customers facing financial hardship. Ensuring fair treatment of customers in financial difficulty is essential for consumer protection. The Code should include explicit obligations for insurers to provide clear information on available hardship options, timely processing of hardship applications, and tailored assistance plans.
- *Complaint Handling and Dispute Resolution* - Part 11 addresses the handling of consumer complaints. Effective complaint handling is vital for resolving consumer issues and maintaining trust in the insurance industry. The Code should mandate specific timelines for complaint resolution, detailed record-keeping, and transparency in the complaint process.
- *Conduct of Employees, Distributors, and Service Suppliers* - Part 4 of the Code includes provisions related to the conduct of those representing insurers. The behaviour of representatives directly impacts consumer experiences and trust. Proposed changes include requiring rigorous training, clear conduct standards, and regular audits to ensure compliance with the Code's principles.
- *Disclosure and Transparency* - Various parts of the Code address the need for clear and transparent communication with consumers. Transparency in policy terms, conditions, and changes is fundamental to consumer understanding and trust. Proposed changes include enforcing strict guidelines on pre-contractual disclosures, ongoing communication, and updates on policy changes.

To support the designation of ECPs, the following changes to the Code should be considered:

- *Clear Definition and Scope* -
 - Clearly define what constitutes an Enforceable Code Provision within the Code.
 - Specify the criteria and process for determining which provisions qualify as ECPs.
- *Enhanced Monitoring and Reporting* -
 - Establish robust mechanisms for monitoring compliance with ECPs.
 - Require regular reporting from insurers on their adherence to these provisions.
- *Stronger Sanctions and Penalties* -
 - Introduce specific sanctions for breaches of ECPs, including fines, corrective actions, and public naming.
 - Ensure that these sanctions are proportionate to the severity and frequency of breaches.

- *Regulatory Collaboration -*
 - Foster collaboration between the CGC and regulatory bodies like ASIC to ensure consistent enforcement.
 - Streamline reporting processes to avoid duplication and ensure efficient handling of breaches.

- *Consumer Education and Awareness -*
 - Implement initiatives to educate consumers about their rights under the Code and the protections offered by ECPs.
 - Provide accessible resources and support to help consumers understand and utilize the complaints and dispute resolution processes.

Thank you for the opportunity to provide a submission to the Review consultation. If you have any questions or would like to discuss our submission, please contact [REDACTED] [REDACTED] Senior Solicitor, Disaster Recovery and Insurance, Legal Aid NSW Disaster Response Legal Service at [REDACTED] or on [REDACTED].

Yours sincerely

[REDACTED]

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