



GENERAL INSURANCE
Code Governance Committee

Submission
to the
Insurance Council of Australia
2017 Code Review

30 May 2017

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Executive Summary

On 17 February 2017, the Insurance Council of Australia (ICA) launched its review of the 2014 General Insurance Code of Practice (the Code). This paper sets out the Code Governance Committee's (CGC) submission to the ICA for the purpose of its review of the Code.

The CGC's submission covers various sections of the Code and includes suggested additional standards, ways to address gaps in the existing standards, and provides clarification on the application of standards where this is necessary.

Matters addressed in this submission include:

Extending sections 4 'Buying insurance' and 5 'Standards for our Employees and Authorised Representatives' of the Code to apply to all third party product sellers, including AFSLs and distributors that sell Retail Insurance products on behalf of Code Subscribers.

Addressing gaps in the application of section 6 'Standards for our Service Suppliers' in relation to the conduct of investigators. In this regard, the CGC refers to its 2017 *Own Motion Inquiry on investigation of claims and outsourced services* report and its resultant recommendations in relation to the conduct of investigators

Addressing gaps in section 8 'Financial Hardship' having regard to the CGC's recommendations in its *General Insurance Code of Practice Annual Report 2015-16*.

Clarifying sections 8 'Financial Hardship' and 10 'Complaints and Disputes' to ensure that all individuals who are able to access section 8 may also access section 10.

Replacing the current two stage internal complaints process in section 10 'Complaints and Disputes' with a single stage internal complaints process and so provide consumers with a single point of contact and a single, final decision from a Code Subscriber in response to a complaint.

Standards recognising that some consumers have special needs and ensure that where such consumers have an interest under a policy they are not disadvantaged because of their special needs and are treated with respect and support.

A standard requiring Code Subscribers to provide consumers with easily understood information that provides a plain English overview of the minimum standards of what is and is not covered by their policy – both at inception as well as at each renewal.

Key terms

Code	The 2014 General Insurance Code of Practice
AFSL	Australian Financial Services Licensee
CGC	Code Governance Committee
EDR	External Dispute Resolution
FOS	Financial Ombudsman Service Australia
LI Code	Life Insurance Code of Practice
TOR	Terms of Reference

Summary of the CGC's Recommendations

Recommendation 1 – Strata title

Clarify the meaning of 'Retail Insurance' to ensure that it includes residential strata title general insurance products.

Recommendation 2 – Small business

Extend the application of sections 4, 6, 7, 9 and 10 for small business consumers, to general insurance products that currently fall outside the Code's definition of 'Retail Insurance' but which are covered by the FOS Terms of Reference.

Recommendation 3 – Third party sellers

- Extend the scope of Sections 4 and 5 to all third party sellers of Retail Insurance products that sell such products for Code Subscribers.
- Remove subsection 5.5.
- Amend any related Code standards to reflect new/amended standards, such as but not limited to, Sections 13 and 15.

Recommendation 4 – Underwriters, sales practices and advertising

Underwriters

Amend the Code to provide specific requirements that apply to underwriters, to ensure that underwriting decisions are evidence based and that the sources of information relied upon are up to date, and include the following:

- Standards that apply to the training of underwriters and the monitoring and review of a Code Subscriber's underwriting process.
- Guidelines that apply to assist underwriters when making an underwriting decision.

Pressure selling and other unacceptable sales

Amend the Code to include a standard that requires a Code Subscriber to clearly document its sales rules to ensure that employees, Authorised Representatives and other third party sellers conduct sales appropriately and do not engage in pressure selling and other unacceptable sales practices.

Sales practices and advertising

Amend the Code to include guidelines based on the standards contained in section 4 of the LI Code which cover 'Sales practices and advertising'. These guidelines should apply to a Code Subscriber's Employees, Authorised Representatives and other third party sellers.

Recommendation 5 – Policy design, disclosure and plain language requirements

Effective Product Disclosure

Include a standard that requires Code Subscribers to provide consumers with an easily understood summary of the minimum standards of what is and is not covered by their policy – both at inception as well as at each renewal.

Policy design and customer suitability

Include a standard in the Code that requires a Code Subscriber to define suitable customers when designing a new general insurance product.

Review of commonly used definitions

Include a standard in the Code that requires a Code Subscriber to periodically review commonly used definitions contained in Retail Insurance products which are subject to change. For example, medical definitions contained in Retail Insurance products such as Consumer Credit insurance, Sickness & Accident insurance and Travel insurance.

Plain language in policy design

- Expand subsection 4.5 of the Code so that a Code Subscriber provides all product and policy related information and other communications to consumers in plain language, including examples of when plain language must be used.
- Remove unnecessary capitalisation in the Code, which applies to Subscribers, Service Suppliers, Authorised Representatives, Employees, Retail Insurance, categories of insurance (such as Workers Compensation or Home), Complaints, and so on.

Simplicity and clarity of product disclosure statements (PDS)

Embed simplicity and clarity as key features in PDS to ensure that consumers will read them and aid their understanding of products by:

- Providing guidance in the Code on how Code Subscribers could meet their obligations to provide clear and effective PDS to consumers, in the context of the obligation to conduct sales processes and services in an ‘efficient, honest, fair and transparent manner’ in subsection 4.4 of the Code.
- Alternatively, including specific standards in the Code for ‘clear and effective’ communication with consumers about the purpose and scope of the products they want to buy, to enhance and/or clarify existing legal requirements.

Recommendation 6 – Standards for Service Suppliers

Address existing gaps in section 6 of the Code to:

- Ensure the Code applies to Service Suppliers.
- Implement mandatory standards or best practice guidelines for Service Suppliers that supplement mandatory Code requirements. These should be based on the CGC’s recommendations applicable or relating to Service Suppliers and include but not be limited to:

- 'Code training for Service Suppliers',
- Extending Code standards to subcontractors and agents and
- Setting best practice standards for Investigators.

Recommendation 7 – Partially accepted and withdrawn claims

The Code should include:

- a definition of 'partially accepted claim', and
- a standard that requires a Code Subscriber to confirm a decision to partially accept a claim to a consumer in writing including, which aspects of the claim have been declined and the reasons for doing so, the consumer's right to access information underlying the claim decision, and information about the Code Subscriber's complaints process if unhappy with the claim decision.

The Code should also include:

- a definition of 'withdrawn claim', and
- a standard that requires a Code Subscriber to confirm in writing when it has recorded a consumer's claim as withdrawn, the reasons for doing so, that the consumer has a right to request that their claim is reopened, and that the consumer has a right to access its complaints process if they are unhappy with the reasons that led to the withdrawal of their claim, or if their request to reopen the claim is refused.

Recommendation 8 – Clarification of subsection 7.19

Amend the current wording of subsection 7.19 to clarify that a Code Subscriber is required to provide all the information listed in subsections (a) to (d) to a consumer in writing, not just the information referred to in subsection (a).

Clarify that the obligations to notify contained in subsections 9.3 'Catastrophes' and 10.10 'Complaints and Disputes' should also be in writing.

Recommendation 9 – Standards for Service Suppliers

In relation to investigation of claims and arrangements with Service Suppliers, amend the Code to include standards or guidance that reflect the CGC's recommendations from its Own Motion Inquiry.

Recommendation 10 – Financial hardship

The Code should include standards and/or guidelines that reflect the CGC's recommendations in its *General Insurance Code of Practice Annual Report 2015–16*, relating to how Code Subscribers should deal with consumers who are experiencing financial hardship, including (but not limited to) the following:

- Consumers in financial hardship who are represented.

- A timeframe for assessing hardship assistance requests and notifying consumers about outcomes (National Credit Code).
- Targeted training about vulnerable consumers and consumers in financial hardship.
- Only asking consumers to provide information genuinely necessary to assess their application for financial hardship assistance.
- Identifying as soon as possible what further information is needed and request it.
- Ensuring that any request for information does not unreasonably or unnecessarily delay the assessment of the hardship request, if the information initially provided is insufficient.

In addition the CGC recommends the revised Code includes a standard requiring Code Subscribers to deal with complaints relating to financial hardship matters within 21 calendar days.

Recommendation 11 – Financial hardship and payment of insurance premiums

The Code should include a standard that requires a Code Subscriber to discuss options that may be available to a consumer if they wish to change the terms of their policy or are having trouble meeting their premium payments. Such options may include modifying the level of cover in force, the excess or any applicable limits.

Recommendation 12 – Internal complaints process

Amend section 10 to replace the existing two stage internal complaints process with a single stage internal complaints process and:

- Provide a consumer with a single point of contact.
- Provide a consumer with a single decision that is final in response to the consumer's complaint.
- Ensure that an internal review of a complaint under a single stage process is completed within 20 business days (or 28 calendar days), subject to the ability to agree on an extension of the time with the consumer.

Recommendation 13 – Internal complaints process and consumers in financial hardship

Amend section 10 so that it is clear that any individuals who come within the scope of section 8:

- have access to the internal complaints process described by section 10, and
- that this access is not limited to recovery of money owed in connection with Retail Insurance products.

Recommendation 14 – ‘in accordance with this section’

Amend subsections 4.4, 6.2, 7.2, and 10.4 by removing the words “...in accordance with this section...”, so that it is clear that each of these subsections operates as a stand-alone provision.

Recommendation 15 – The CGC’s role

Set out a short statement of the role of the CGC in the Code. The role of the CGC might be to:

- provide leadership to industry and help Code Subscribers understand and comply with their Code obligations;
- monitor and enforce the Code;
- collect industry data;
- engage with consumers about the Code; and
- liaise with the ICA on relevant matters, including Code compliance, improvements to the Code and how the CGC’s functions could be enhanced.

Recommendation 16 – Expand parties who may report Code breach allegations

Expand who may report a Code breach allegation to enable anyone to report a concern, or alternatively to enable organisations such as community legal centers and regulators to do so.

Recommendation 17 – Adequate CGC funding and resources

Ensure the CGC has adequate funding and resources to fulfil its functions.

Recommendation 18 – Constitute CGC as independent body in own right

Strengthen the independence of the CGC by constituting the CGC as an independent body in its own right.

Recommendation 19 – Extension of term durations

Revise CGC appointment arrangements to implement a standard 3 year term, and provide for the extension of the duration of the maximum number of terms to be served for both industry and consumer representatives beyond the current two terms.

Recommendation 20 – Combine annual and industry data reports into one report

Amend the CGC’s governance documents (currently the Association Constitution and CGC Charter) to enable the CGC to produce a combined annual report and industry data report for publication in the second half of the following reporting year.

Recommendation 21 – Approval by ASIC under RG 183

Seek ASIC’s approval of the revised Code under ASIC RG183.

Recommendation 22 – Reporting to ASIC and FOS and expanded sanctions

- Require the CGC to report to ASIC systemic Code breaches, including significant or serious Code breaches, and serious misconduct
- Require the CGC to report to FOS systemic Code breaches, including significant or serious Code breaches, and serious misconduct, in relation to Code Subscribers who are also members of FOS, and
- Expand the existing sanctions available to the CGC to include formal warnings, reporting to ASIC and suspension or termination of subscription to the Code.

Recommendation 23 – Code Subscribers to collect and report specific data

Include a standard requiring Code Subscribers to collect and report to the CGC specific data and information.

Recommendation 24 – Consumers with special needs

Include in a revised Code:

- Standards that recognise that some consumers have special needs such as persons with a disability and/or mental health concerns, older persons, people from non-English speaking backgrounds, people living in regional and remote communities, Indigenous people, people who suffer abuse, trauma or disadvantage, due to a catastrophe, family violence or socioeconomic disadvantage.
- Standards that recognise that where such consumers are affected by a policy, they are not disadvantaged because of their special needs and are treated with respect and support, including referring such consumers for appropriate additional support where required.
- General guidance to Code Subscribers to assist staff to identify where consumers that require particular support and to engage appropriately with such consumers.

Recommendation 25 – Code modifications should be easier to implement when a need to do so arises

The revised Code should be flexible enough to absorb changes to the general insurance landscape (such as advances in technology or new product offerings) and be capable of being easily modified to respond to changes in consumer needs or industry behaviors as they arise.

Recommendation 26 – The Code should be annotated

The revised Code should be easily accessible on-line and enhanced using annotations, examples, case studies or links to Code related guidelines to help consumers better understand how the Code operates in practice.

Recommendation 27 – The CGC should have its own stand-alone website Code which it independently manages

The CGC that considers that to be a truly independent body in an on-line environment, it is appropriate for it to have its own, dedicated website which it can manage independently.

Section 3 – Application to ‘Retail Insurance’ general insurance products

1. Unclear that ‘Retail Insurance’ includes a residential strata or similar insurance product

Subsection 3.7 states that the Code applies differently to Retail Insurance and Wholesale Insurance. The following sections apply only to Retail Insurance:

- Section 4 – buying insurance
- Section 6 – standards for our service suppliers
- Section 7 – claims
- Section 9 – catastrophes
- Section 10 – complaints and disputes.

Section 15 defines ‘Retail Insurance product’ and includes a product that is “a home building insurance product”.

The CGC highlighted in its *General Insurance Code of Practice 2015–16 Industry Data Report*¹ that while Residential Strata insurance is not specifically listed as a Retail Insurance product in the Code or the relevant Regulations of the Corporations Act 2001 (Cth) (the Act), it will treat it as a Retail Insurance product under the Code because:

- The nature and purpose of the product meet the criteria for what is considered ‘a home building insurance product’ under the Act and Regulations.²
- The Code lists ‘a home building insurance product’ as a ‘Retail Insurance’ product.
- The standards of the Code focus largely on protecting consumers who rely on Retail Insurance products, whether as insureds or as third party beneficiaries.

Recommendation 1 – Strata title

Clarify the meaning of ‘Retail Insurance’ to ensure that it includes residential strata title general insurance products.

2. ‘Small Business’

The Code applies to a small business insured or third party beneficiary if it is receiving products/services that relate to a Retail Insurance product as defined. If the product/service is about a Wholesale Insurance product then the following sections do not apply:

- Section 4 – buying insurance
- Section 6 – standards for our service suppliers
- Section 7 – claims
- Section 9 – catastrophes
- Section 10 – complaints and disputes.

¹ See pages 9–10, General Insurance Code of Practice 2015–16 Industry Data Report available [here](#).

² See section 761G (5), *Corporations Act 2001 (Cth)* and Regulation 7.1.12 (3)(a).

Under the FOS Terms of Reference (TOR), small businesses may access FOS in relation to disputes about Retail Insurance-related services/products as well as several non-Retail Insurance products including 'general property', 'theft' and 'loss of profits/business interruption'.³

Recommendation 2 – Small business

Extend the application of sections 4, 6, 7, 9 and 10 for small business consumers, to general insurance products that currently fall outside the Code's definition of 'Retail Insurance' but which are covered by the FOS TOR.

Section 4 – Buying insurance

Section 5 – Standards for Employees and Authorised representatives

3. Third party sellers of Retail Insurance products

Section 4 sets out standards that apply to the way in which Code Subscribers, their employees⁴ and Authorised Representatives conduct sales processes and services that apply to Retail Insurance products, including for example when consumers first consider buying these products, or when they renew or cancel them. In particular, subsection 4.4 requires them to conduct their sales processes and services in 'an efficient, honest, fair and transparent manner, in accordance with this section.'

Section 5 sets out the standards that apply when employees and Authorised Representatives are acting on behalf of Code Subscribers, including:

- Subsection 5.1 – it contains several requirements that relate to the competency and professionalism of employees and Authorised Representatives, including the need for Code training, among other matters.
- Subsection 5.2 – requires Authorised Representatives to notify Code Subscribers of any complaint they receive and Code Subscribers to handle such complaints.

As a result, a Code Subscriber will be in breach of the Code if their employees or their Authorised Representatives fail to comply with the relevant standards.

Subsection 5.5 refers to arrangements that Code Subscribers have with other persons or entities who are not their Authorised Representatives, but who are AFSLs and are licensed by ASIC to sell general insurance products for Code Subscribers. However, subsection 5.5 exempts such third party sellers from the scope of the Code and as a result, they are not required to comply with section 4 or section 5. Third party product sellers include (but are not limited to):

- AFSLs – such as insurance brokers, banks, credit unions and car dealers.
- Distributors – such as real estate agents or travel agents. A distributor is a person who has been appointed by a company under its own AFSL to sell its general insurance products, without having to appoint the distributor as its Authorised Representative.

³ See FOS TOR pages 41 to 43 available [here](#) for other types of policies that fall within FOS's Small Business jurisdiction.

⁴ The term 'employees' includes employees of a Code Subscriber's related entity that provides services to which the Code applies, as defined by the Code (see section 15 'Definitions').

Recommendation 3 – Third party sellers

- Extend the scope of Sections 4 and 5 to all third party sellers of Retail Insurance products that sell such products for Code Subscribers.
- Remove subsection 5.5.
- Amend any related Code standards to reflect new/amended standards, such as but not limited to, Sections 13 and 15.

4. Conduct of sales processes and services

Sections 4 and 5 of the Code do not specify what Code Subscribers, their employees (including employees of related entities) and Authorised Representatives should do in practice, to ensure that they conduct sales processes and services efficiently, honestly, fairly and transparently. In particular, the Code does not contain standards specifically about sales practices, the advertising and marketing of policies, or a requirement that Authorised Representatives monitor their own conduct. In addition, there are no standards that expressly relate to the training and competency of underwriters or to the monitoring and reviewing of a Code Subscriber's underwriting process including the questions asked and decisions made by underwriters.

As a result, the CGC suggests that the ICA should address existing gaps in Sections 4 and 5 of the Code having regard to the approach adopted by the LI Code and the following recommendations.

Recommendation 4 – Underwriters, sales practices and advertising

Underwriters

Amend the Code to provide specific requirements that apply to underwriters, to ensure that underwriting decisions are evidence based and that the sources of information relied upon are up to date, and include the following:

- Standards that apply to the training of underwriters and the monitoring and review of a Code Subscriber's underwriting process.
- Guidelines that apply to assist underwriters when making an underwriting decision.

See section 5 'When you buy insurance' of the LI Code, in particular subsections 5.1(c), 5.15 – 5.19.

Pressure selling and other unacceptable sales

Amend the Code to include a standard that requires a Code Subscriber to clearly document its sales rules to ensure that employees, Authorised Representatives and other third party sellers conduct sales appropriately and do not engage in pressure selling and other unacceptable sales practices. See subsection 4.3 of the LI Code.

Sales practices and advertising

Amend the Code to include guidelines based on the standards contained in section 4 of the LI Code which cover 'Sales practices and advertising'. These guidelines should apply to a Code Subscriber's Employees, Authorised Representatives and other third party sellers.

5. Policy design and disclosure, and plain language requirements

There is no standard in the Code that relates to policy design or that requires a Code Subscriber to define suitable customers when designing a new general insurance product. There is also no standard that requires a Code Subscriber to regularly review its on sale products to ensure they remain generally suitable for the relevant customers. In addition, although subsection 4.5 requires a Code Subscriber to take reasonable steps to ensure that its communications with consumers are in plain language, it does not address the issues that consumers must be informed about in plain language. Excessive use of capital letters in the Code should be removed for ease of reading and comprehension.

Section 3 of the LI Code provides extensive standards that apply to policy design and disclosure of life insurance products. These standards include a requirement that when designing and introducing a new life insurance product, a LI Code Subscriber must define suitable customers for the product. New products must also include specific features such as benefits intended to cover genuine risks that generally affect the relevant customers. In addition, when consumers buy life insurance products, LI Code Subscribers must provide documentation that clearly explains specified key information in key language.

As a result, the CGC suggests that the ICA should address existing gaps in section 4 of the Code having regard to the approach adopted by the LI Code and the following recommendations.

Recommendation 5 – Policy design, disclosure and plain language requirements

Effective Product Disclosure

Include a standard that requires Code Subscribers to provide consumers with an easily understood summary of the minimum standards of what is and is not covered by their policy – both at inception as well as at each renewal.

Policy design and customer suitability

Include a standard in the Code that requires a Code Subscriber to define suitable customers when designing a new general insurance product. See section 3.1 of the LI Code.

Review of commonly used definitions

Include a standard in the Code that requires a Code Subscriber to periodically review commonly used definitions contained in Retail Insurance products which are subject to change. For example, medical definitions contained in Retail Insurance products such as Consumer Credit insurance, Sickness & Accident insurance and Travel insurance. See subsection 3.2 of the LI Code.

Plain language in policy design

- Expand subsection 4.5 of the Code so that a Code Subscriber provides all product and policy related information and other communications to consumers in plain language, including examples of when plain language must be used.
- Remove unnecessary capitalisation in the Code, which applies to Subscribers, Service Suppliers, Authorised Representatives, Employees, Retail Insurance, categories of insurance (such as Workers Compensation or Home), Complaints, and so on.

Simplicity and clarity of product disclosure statements (PDS)

Embed simplicity and clarity as key features in PDS to ensure that consumers will read them and aid their understanding of products by:

- Providing guidance in the Code on how Code Subscribers could meet their obligations to provide clear and effective PDS to consumers, in the context of the obligation to conduct sales processes and services in an 'efficient, honest, fair and transparent manner' in subsection 4.4 of the Code.
- Alternatively, including specific standards in the Code for 'clear and effective' communication with consumers about the purpose and scope of the products they want to buy, to enhance and/or clarify existing legal requirements.

See subsections 3.1 and 3.4 of the LI Code.

Section 6 – Standards for our Service Suppliers

Section 6 of the Code sets out the standards that apply to Service Suppliers when acting on behalf of Code Subscribers. There are gaps in section 6 such as:

- Section 6 does not require service suppliers to complete Code training, even though they are required to comply with applicable Code standards when acting on behalf of Code Subscribers.
- Section 6 (or any other part of the Code) does not contain standards that apply specifically to the conduct of investigators, including when they interview individuals for the purpose of verifying the circumstances of a claim.

On 4 May 2017, the CGC released its Own Motion Inquiry report, providing an in-depth look at the claims investigation and outsourcing practices of a selection of general insurers who subscribe to the Code.⁵

The CGC's Own Motion Inquiry resulted in 30 recommendations aimed at helping Code Subscribers to improve compliance. These recommendations include several in relation to the conduct of investigators within a claims environment, including a recommendation that Code Subscribers work with the ICA to develop a set of best practice standards. The CGC's recommendations are summarised in the tables on the following page and the full recommendations are contained in Appendix 1 of this submission.

Recommendation 6 – Standards for Service Suppliers

Address existing gaps in section 6 of the Code to:

- Ensure the Code applies to Service Suppliers.
- Implement mandatory standards or best practice guidelines for Service Suppliers that supplement mandatory Code requirements. These should be based on the CGC's recommendations applicable or relating to Service Suppliers and include but not be limited to:

⁵ The CGC's Own Motion Inquiry – Investigation of Claims and Outsourced Services Report is available [here](#).

- 'Code training for Service Suppliers' (R4 in the table below),
- Extending Code standards to subcontractors and agents (R7 in the table below) and
- Setting best practice standards for Investigators (R22 in the table below).

See also part 'Section 7 Claims' below.

CGC's OMI Report: Recommendations (R) in Part one – Claims investigations

R1	Regular review of fraud investigation indicators for continued relevance
R2	Maintain a register of external Investigators' licences
R3	External Investigators to obtain authority before alleging fraud
R4	Code training for Service Suppliers
R5	Service Suppliers should monitor and report on compliance with the Code
R6	Updating existing contracts with Service Suppliers
R7	Extend Code standards to subcontractors and agents
R8	Timeframe for Service Suppliers reporting complaints
R9	Transparency about why a claim is being investigated and what to expect
R10	Deciding as early as practical whether further enquiries/more information is needed and making a claim decision within Code timeframes
R11	Location of interviews
R12	Informing Code Subscribers about interview arrangements
R13	Ensuring interview questions are relevant, fair and transparent
R14	Not to exceed scope of investigation without prior consent
R15	Monitoring interview duration
R16	Guidance on length of interview and interview breaks
R17	Interviewing consumers with special needs
R18	Independent and qualified interpreters
R19	Clarity and guidance needed for interview of minors
R20	Complying with privacy obligations
R21	Scope of signed authorities for information held by third parties
R22	Best practice standards for Investigators

CGC's OMI Report: Recommendations in Part two – Outsourced functions

R23	Review suitability of Service Suppliers regularly
R24	Proactive monitoring of Service Suppliers is needed
R25	Oversight of approved subcontractors

R26	Active oversight of Collection Agents
R27	Collection Agents to monitor their Code compliance
R28	Code Subscribers must handle complaints about Service Suppliers
R29	Providing feedback to Service Suppliers
R30	Revising breach incident identification and reporting systems

Section 7 – Claims

Section 7 of the Code outlines extensive standards that apply to claims including in relation to decision making and when claims are denied.

6. Partially accepted claims and withdrawn claims

In its 2015–16 Industry Data Report the CGC highlighted that Code Subscribers should extend their data about retail insurance claims to include data about partially accepted claims.⁶ The CGC stated that a first step toward accurate and consistent recording and reporting of partially accepted claims data, is the development of a consistent definition of ‘partially accepted claims’.

The industry data also shows that many claims are withdrawn and their number is increasing year to year. However, the Code is silent on consumers’ rights when claims are withdrawn.⁷

The CGC suggests that the ICA should address these gaps in section 7 of the Code having regard to the following recommendations.

Recommendation 7 – Partially accepted and withdrawn claims

The Code should include:

- a definition of ‘partially accepted claim’, and
- a standard that requires a Code Subscriber to confirm a decision to partially accept a claim to a consumer in writing including, which aspects of the claim have been declined and the reasons for doing so, the consumer’s right to access information underlying the claim decision, and information about the Code Subscriber’s complaints process if unhappy with the claim decision.

The Code should also include:

- a definition of ‘withdrawn claim’, and
- a standard that requires a Code Subscriber to confirm in writing when it has recorded a consumer’s claim as withdrawn, the reasons for doing so, that the consumer has a right to request that their claim is reopened, and that the consumer has a right to access its complaints process if they are unhappy with the reasons that led to the withdrawal of their claim, or if their request to reopen the claim is refused.

⁶ See pages 2 and 15, the 2015–16 Industry Data Report available [here](#).

⁷ See pages 1, 4 – 5, 15 and footnote 6 above the report’s web address.

7. Declined claims

Subsection 7.19 (a) to (d) of the Code specifies the information that a Code Subscriber must provide to a consumer when it has denied their claim. A Code Subscriber recently suggested that it must provide the reasons for the claim denial in writing as set out in part (a) but that subsection 7.19 did not explicitly state that it was also required to provide the information in parts (b), (c) and (d) in writing.

The CGC expects Code Subscribers to provide all of the information in parts (a) to (d) in writing and recommends that the ICA clarifies the wording in subsection 7.19 to ensure that this occurs.

Similarly, the CGC recommends that the ICA clarifies that the obligations to notify contained in subsections 9.3 'Catastrophes' and 10.10 'Complaints and Disputes' should also be in writing.

Recommendation 8 – Clarification of subsection 7.19

Amend the current wording of subsection 7.19 to clarify that a Code Subscriber is required to provide all the information listed in subsections (a) to (d) to a consumer in writing, not just the information referred to in subsection (a).

Clarify that the obligations to notify contained in subsections 9.3 'Catastrophes' and 10.10 'Complaints and Disputes' should also be in writing.

Recommendation 9 – Standards for Service Suppliers

In relation to investigation of claims and arrangements with Service Suppliers, amend the Code to include standards or guidance that reflect the CGC's recommendations from its Own Motion Inquiry.

See 'Section 6' above and the tables in that part summarising the CGC's 30 recommendations. The full recommendations are contained in Appendix 1 of this submission.

The ICA should also ensure that it amends any related Code standards such as but not limited to Sections 5, 6, 7, 13 and 15.

Section 8 – Financial hardship

On 1 July 2015 the Code's enhanced financial hardship obligations in section 8 became operational. For the first time these obligations extended protection beyond uninsured third parties in financial hardship to an individual insured or third party beneficiary who owes a Code Subscriber money under an insurance policy it has issued.

Some of the key standards require that Code Subscribers and their Service Suppliers:

- supply a financial hardship assistance application form and financial counselling hotline number when a consumer says that they are in hardship (subsection 8.4)
- only request information that is reasonably necessary to assess an application for assistance (subsection 8.5)
- notify consumers of the outcome of an application for assistance as soon as reasonably practicable (subsection 8.6).

However, the Code does not specify a timeframe for the Code Subscriber's assessment of a consumer's request for financial hardship assistance, or define what 'reasonably practicable' means when notifying the consumer of its decision.

In addition, subsection 8.2 excludes requests for financial hardship that relate to unpaid insurance premiums under an insurance policy. The LI Code responds to financial hardship in these circumstances by requiring a Code Subscriber to discuss options that may be available to a consumer if they wish to change the terms of their policy or are having trouble meeting their premium payments (subsection 6.5).

The GC suggests that the ICA should address existing gaps in section 8 having regard to the LI Code and the following recommendations.

Recommendation 10 – Financial hardship

The Code should include standards and/or guidelines that reflect the CGC's recommendations in its *General Insurance Code of Practice Annual Report 2015–16*, relating to how Code Subscribers should deal with consumers who are experiencing financial hardship, including (but not limited to) the following:

- Consumers in financial hardship who are represented.
- A timeframe for assessing hardship assistance requests and notifying consumers about outcomes (National Credit Code).
- Targeted training about vulnerable consumers and consumers in financial hardship
- Only asking consumers to provide information genuinely necessary to assess their application for financial hardship assistance.
- Identifying as soon as possible what further information is needed and request it.
- Ensuring that any request for information does not unreasonably or unnecessarily delay the assessment of the hardship request, if the information initially provided is insufficient.⁸

In addition the CGC recommends the revised Code includes a standard requiring Code Subscribers to deal with complaints relating to financial hardship matters within 21 calendar days⁹.

Recommendation 11 – Financial hardship and payment of insurance premiums

The Code should include a standard that requires a Code Subscriber to discuss options that may be available to a consumer if they wish to change the terms of their policy or are having trouble meeting their premium payments. Such options may include modifying the level of cover in force, the excess or any applicable limits.

See subsection 6.5 of the LI Code.

The ICA should also ensure that it amends related Code standards such as but not limited to Sections 5, 6, 13 and 15.

⁸ See pages 13–14 of the CGC's [General Insurance Code of Practice Annual Report 2015–16](#).

⁹ This would align with the maximum IDR timeframes set out for hardship variations as set out in [ASIC Regulatory Guideline 165](#). The CGC recommends the ICA retains the obligation on Code Subscribers to provide a response in writing in a complaint is resolved within 5 days where the complaint relates to a declined claim, the value of a claim or is about financial hardship.

Section 10 – Complaints and Disputes

Section 10 of the Code outlines the standards that apply to a Code Subscriber's handling of internal complaints and disputes.

8. Two stage internal complaints process and timeframe for review of a complaint

Currently, section 10 consists of two stages and an internal review of a complaint must be completed within a period of 45 calendar days overall. The CGC is of the view that the timeframe to internally review a complaint is too long and the current two-stage framework is confusing and complex for consumers to navigate.

Recommendation 12 – Internal complaints process

Amend section 10 to replace the existing two stage internal complaints process with a single stage internal complaints process and:

- Provide a consumer with a single point of contact.
- Provide a consumer with a single decision that is final in response to the consumer's complaint.
- Ensure that an internal review of a complaint under a single stage process is completed within 20 business days (or 28 calendar days), subject to the ability to agree on an extension of the time with the consumer.

9. Access to internal complaints process for consumers within the scope of section 8 of the Code

In part 'Section 8 Financial hardship' (above), the CGC highlighted that section 8 contains several standards that apply to Code Subscribers and their Service Suppliers when dealing with consumers – insureds and third party beneficiaries (customers) and uninsured third parties – in financial hardship.

In addition, several standards within section 8 require Code Subscribers to give their customers and uninsured third parties access to the enhanced framework for internal complaints handling in section 10.

Section 8 ensures that uninsured third parties have access to a Code Subscriber's internal complaints process by using an expanded meaning of 'you'. The availability of the Code's internal complaints process is a critical right for uninsured third parties in financial hardship and one that has been available to them since the 2006 edition of the Code.

However, as noted in the CGC's General Insurance Code of Practice 2015–16 Industry Data Report (2015–16 Industry Data Report), several Code Subscribers have suggested that uninsured third parties are not entitled to access the internal complaints process within section 10 of the Code. In response to this serious and concerning development, the CGC reminded Code Subscribers that section 10 unequivocally extends to uninsured third parties who have a complaint about them because of matters that come within the scope of section 8 of the Code (see pages 41 –42 of the 2015–16 Industry Data Report).¹⁰

¹⁰ The 2015–16 Industry Data Report which is available [here](#).

Some Code Subscribers have also suggested that even if customers, third party beneficiaries and uninsured third parties within the scope of section 8 are entitled to access the internal complaints process under section 10, this access only applies if the Code Subscriber's rights to pursue the recovery of money owed flow from a Retail Insurance product.

Recommendation 13 – Internal complaints process and consumers in financial hardship

Amend section 10 so that it is clear that any individuals who come within the scope of section 8:

- have access to the internal complaints process described by section 10, and
- that this access is not limited to recovery of money owed in connection with Retail Insurance products.

Subsections 4.4, 6.2, 7.2 and 10.4 – ‘...in accordance with this section’

Each of the following subsections describe an overarching obligation that requires a Code Subscriber, its Employees, Authorised Representatives or Service Suppliers to conduct the relevant activities in an:

- subsection 4.4 – ‘...efficient, honest, fair and transparent manner, **in accordance with this section.**’
- subsection 6.2 – ‘...honest, efficient, fair and transparent manner, **in accordance with this section.**’
- subsection 7.2 – ‘...honest, fair, transparent and timely manner, **in accordance with this section.**’
- subsection 10.4 – ‘in a fair, transparent and timely manner, **in accordance with this section.**’¹¹

In relation to the operation of subsection 4.4, one Code Subscriber suggested to the CGC that the CGC could only find it in breach of subsection 4.4 if the CGC had also found the Code Subscriber to have breached one of the other subsections within section 4, because of the effect of the words ‘...in accordance with this section’.

The CGC notes subsection 4.4 is one of the few ‘principles based’ standards in the Code and in the relevant matter, it determined that subsection 4.4 operates as a stand-alone provision. In reaching its decision the CGC noted that:

- In his foreword to the 2014 Code, Mr Mark Milliner, President of the Insurance Council of Australia, had stated that:

The current Code follows a wide-ranging ... review of the Code’s efficacy and its position within the general insurance industry.....

The changes made to the Code in 2014 enhance and clarify the rights of consumers...

The ICA is responsible for making sure the content of the Code meets its objectives

¹¹ Bold font has been used for emphasis.

to commit insurers to high standards of service and to promote better and more informed relationships between insurers and their customers...

That the ICA Board believes that the ... Code sets the benchmark for industry self regulation in Australia...[and] will continue to be a significant change agent for general insurers in continuously improving customer service.

- The core principle underpinning the Code as set out in subsection 1.3 which states:

The terms of this Code require us to be open, fair and honest in our dealings with you.

This core principle is reinforced in the following Code provisions:

- Subsection 1.4 'Introduction':

This Code aims to work with the many laws covering our conduct and in no way limits your rights under such laws against us. This Code also deals with issues not dealt within legislation.

- Subsection 2.1 'Objectives' (extracts):

The objectives of this Code are:

- a) to commit us to high standards of service;*
- b) to promote better, more informed relations between us and you;*
- c) to maintain and promote trust and confidence in the general insurance industry;....*
- e) to promote continuous improvement of the general insurance industry through education and training.*

- Subsection 2.2 'Objectives':

The objectives of this Code will be pursued having regard to the law, and acknowledging that a contract of insurance is a contract based on the utmost good faith.

- Subsection 13.4 'Monitoring, Enforcement and Sanctions':

We will be in breach of this Code if our Employees, our Authorised Representatives, or our Service Suppliers fail to comply with this Code when acting on our behalf.

These provisions in turn build on and enhance the obligations established by [section 912A\(1\)\(a\)](#) of the *Corporations Act 2001* (Cth) and which apply to all financial services licensees, namely that:

- (1) A financial services licensee must:
 - (a) do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly;

The CGC considers that to read the words in subsection 4.4 in the way one Code Subscriber proposed would unintentionally narrow and limit the operation of that subsection in such a way that a Code Subscriber could only be found to have breached the obligation to be “efficient, honest, fair and transparent” if one of the other subsections in section 4 were also breached. It follows that this would mean the principles based obligations in subsections 6.2, 7.2 and 10.4 would be similarly limited.

The CGC considers that honesty, efficiency, fairness, transparency and timeliness represent core principles that underpin the Code. The CGC would be disappointed if Code Subscribers sought to limit their commitment to these principles solely to the operation of the other subsections in sections 4, 6, 7 and 10 respectively.

Recommendation 14 – ‘in accordance with this section’

Amend subsections 4.4, 6.2, 7.2, and 10.4 by removing the words “...in accordance with this section...”, so that it is clear that each of these subsections operates as a stand-alone provision.

Section 13 – Monitoring, enforcement and sanctions

The CGC is the independent body responsible for monitoring and enforcing compliance with the Code. In this role, it aligns its approach with the Code’s objectives and takes a broad and inclusive approach to the enhanced consumer protection framework the Code represents. To achieve these objectives the CGC uses the tools at its disposal which include monitoring, data collection, own motion inquiries and investigations.

Given its unique role, the Committee also seeks to add value by:

- providing leadership and helping educate Code Subscribers about their obligations and
- engaging with the ICA on a range of matters including how the Code can be improved and how the CGC’s functions can be enhanced.

In this context the CGC makes the following recommendations to improve and strengthen the Code’s existing governance framework.

Recommendation 15 – The CGC’s role

Set out a short statement of the role of the CGC in the Code. The role of the CGC might be to:

- provide leadership to industry and help Code Subscribers understand and comply with their Code obligations;
- monitor and enforce the Code;
- collect industry data;
- engage with consumers about the Code; and
- liaise with the ICA on relevant matters, including Code compliance, improvements to the Code and how the CGC’s functions could be enhanced.

In the CGC's experience, apart from FOS referrals, referrals from consumer advocates such as community legal centres and financial counselling bodies represent a valuable source of information about the performance of Code Subscribers.

Subsection 13.1 of the current Code limits the source of breach allegations to consumers that meet the definition of 'you' under the Code. Under that definition, the CGC would be unable to receive allegations unless that allegation is being made on behalf of a consumer that fits the definition of 'you'. In the CGC's view, this limitation represents a barrier to consumer organisations wanting to raise concerns with the CGC without making a specific breach allegation on behalf of a consumer.

Recommendation 16 – Expand parties who may report Code breach allegations

Expand who may report a Code breach allegation to enable anyone to report a concern, or alternatively to enable organisations such as community legal centers and regulators to do so.

The CGC has considered the current governance structure in which it operates namely as sub-committee of an incorporated association. The CGC considers that this current framework does not add value to the CGC's work, in particular because its reporting and funding arrangements are managed directly with the ICA. In this context the CGC considers that revising the current governance arrangements by constituting the CGC as an independent body in its own right would help promote the CGC's efficiency and effectiveness.

The current arrangements regarding CGC member appointments are complex (2 year terms with one renewal for the inaugural members, and 3 year terms with one renewal thereafter) and fail to recognise the contribution of quality industry and consumer members. The CGC will lose both its consumer and industry representatives by end June 2018 unless these arrangements are changed. The current committee has overseen the introduction of the current Code, and there is an opportunity to build on that momentum to take the CGC's work forward through new Code revisions. In the CGC's view, significant gains would be achieved in terms of preserving the continuity, experience and knowledge held by the CGC if terms were a uniform 3 years and options were available to retain quality industry and consumer representatives beyond two short inaugural terms. In particular, the reappointment of the current industry representative would add genuine value to the ongoing work of the CGC.

Recommendation 17 – Adequate CGC funding and resources

Ensure the CGC has adequate funding and resources to fulfil its functions.

Recommendation 18 – Constitute CGC as independent body in own right

Strengthen the independence of the CGC by constituting the CGC as an independent body in its own right.

Recommendation 19 – Extension of term durations

Revise CGC appointment arrangements to implement a standard 3 year term, and provide for the extension of the duration of the maximum number of terms to be served for both industry and consumer representatives beyond the current two terms.

Recommendation 20 – Combine annual and industry data reports into one report

Amend the CGC's governance documents (currently the Association Constitution and CGC Charter) to enable the CGC to produce a combined annual report and industry data report for publication in the second half of the following reporting year.

A General Insurance Code of Practice has been in force since 1996. Subsequent revisions over the last 20 years have resulted in a mature and comprehensive document that now forms an important part of the Australian consumer protection framework and is defined by high levels of industry compliance in the industry. Accordingly, the CGC considers the time is right for the ICA to submit the Code to ASIC for approval under ASIC Regulatory Guideline 183 'Approval of financial services sector codes of conduct' (RG183).

Recommendation 21 – Approval by ASIC under RG 183

Seek ASIC's approval of the revised Code under ASIC RG183¹².

Recommendation 22 – Reporting to ASIC and FOS and expanded sanctions

- Require the CGC to report to ASIC systemic Code breaches, including significant or serious Code breaches, and serious misconduct
- Require the CGC to report to FOS systemic Code breaches, including significant or serious Code breaches, and serious misconduct, in relation to Code Subscribers who are also members of FOS, and
- Expand the existing sanctions available to the CGC to include formal warnings, reporting to ASIC and suspension or termination of subscription to the Code.

Recommendation 23 – Code Subscribers to collect and report specific data

Include a standard requiring Code Subscribers to collect and report to the CGC specific data and information.

The ICA should also ensure that it amends any related standards or governance instruments.

¹² ASIC RG 183 (Approval of financial services sector codes of conduct) can be found [here](#).

Consumers requiring additional support

There is no standard in the Code that recognises that some consumers have special needs and the potential barriers that might confront them when these needs are not addressed in relation to:

- consumers who need financial hardship assistance
- when consumers are buying insurance, making a claim, inquiry or complaint, communicating with the insurer.

Section 7 of the LI Code recognises that some groups of individuals may have unique needs, such as older persons, consumers with a disability, people from non-English speaking backgrounds and Indigenous people, when accessing insurance, making an inquiry, claiming on their insurance, making a complaint and communicating with the LI Code Subscriber. Where the LI Code Subscriber identifies that a consumer requires additional support, the LI Code requires the Code Subscriber to take reasonable measures to ensure that it provides additional support.

The LI Code Subscriber is also required to have processes in place to train its staff to help identify and engage appropriately with consumers who are having particular difficulty with the process of buying insurance, making an inquiry, making a claim or making a complaint or who may not be capable of making an informed decision, and to refer these consumers for appropriate additional support where required. The Code Subscriber will also take into account someone's capability when making decisions that impact them.

In addition, the recent *Report of the Independent Review of the Code of Banking Practice 2017* recommended¹³ the development of industry guidelines for subscribing banks relating to the special needs of some groups of consumers, having regard to a range of factors and circumstances including consumers' "...experience of trauma, abuse or disadvantage including a natural disaster, family violence or socioeconomic disadvantage."

Recommendation 24 – Consumers with special needs

Include in a revised Code:

- Standards that recognise that some consumers have special needs such as persons with a disability and/or mental health concerns, older persons, people from non-English speaking backgrounds, people living in regional and remote communities, Indigenous people, people who suffer abuse, trauma or disadvantage, due to a catastrophe, family violence or socioeconomic disadvantage.
- Standards that recognise that where such consumers are affected by a policy, they are not disadvantaged because of their special needs and are treated with respect and support, including referring such consumers for appropriate additional support where required.
- General guidance to Code Subscribers to assist staff to identify where consumers that require particular support and to engage appropriately with such consumers.

See section 7 of LI Code.

¹³ Recommendation 70, [Report of the Independent Review of the Code of Banking Practice 2017](#).

Additional matters: Code modification and a dedicated CGC website

The CGC considers that to remain relevant and effective the Code needs to be a responsive, principle-based 'living document'. In this regard, the CGC considers the revised Code should be flexible enough to absorb changes to the general insurance landscape (such as advances in technology or new product offerings) and be capable of being easily modified to respond to changes in consumer needs or industry behaviors as they arise.

Recommendation 25 – Code modifications should be easier to implement when a need to do so arises

The revised Code should be flexible enough to absorb changes to the general insurance landscape (such as advances in technology or new product offerings) and be capable of being easily modified to respond to changes in consumer needs or industry behaviors as they arise.

The CGC considers that a key ingredient of a relevant and accessible Code is that it should speak to consumers as well as industry. Unlike Code Subscribers, consumers often only have limited experience with insurance products and may therefore not fully appreciate the context in which the Code operates, how individual obligations apply in practice or the intention of specific sections. This can, in turn lead to misunderstandings by consumers of their rights and of Code Subscribers' obligations.

To that end, the CGC recommends that when revising the Code, the ICA include tools and features to help explain the operation of Code obligations more clearly. In the CGC's view, this could be achieved by publishing a web-based, user friendly copy of the Code enhanced with annotations, examples or case studies and containing links to Code related guidelines.

Recommendation 26 – The Code should be annotated

The revised Code should be easily accessible on-line and enhanced using annotations, examples, case studies or links to Code related guidelines to help consumers better understand how Code obligations operate in practice.

The key principle of the CGC is its independence. To maintain that position, it is important for CGC alone to be able to control its publications, communications and public presence. In an on-line world a dedicated CGC web page would represent an important tool for the Committee to independently publish, communicate and connect with consumers, industry and other key stakeholders.

Unlike some other code compliance monitoring bodies¹⁴, the CGC does not currently have its own, independent website and its current on-line presence is hosted via the ICA at the following website <http://codeofpractice.com.au/>.

The CGC considers that to be truly independent in the on-line environment, it is appropriate for it to have its own, dedicated website which it can manage independently.

¹⁴ For example the Code Compliance Monitoring Committee (CCMC) which oversees the Code of Banking Practice (www.ccmc.org.au) and the Customer Owned Banking Code Compliance Committee which oversees the Customer Owned Banking Code of Practice (www.cobccc.org.au)

This would also help reduce any confusion about the separate roles of the ICA (as the industry body and owner of the Code) and the CGC as the body that oversees the operation of the Code.

Recommendation 27 – The CGC should have its own stand-alone website Code which it independently manages

The CGC that considers that to be a truly independent body in an on-line environment, it is appropriate for it to have its own, dedicated website which it can manage independently.

Appendix 1: The CGC's Own Motion Inquiry into investigation of claims and outsourced services – recommendations to improve compliance

Recommendations: Part one – Claims Investigations

Recommendation 1 – Regular review of fraud investigation indicators for continued relevance

Code Subscribers should review fraud investigation indicators at least annually to ensure they remain relevant.

Recommendation 2 – Maintain a register of external Investigators' licences

Code Subscribers should maintain a register of external Investigators' licences (including the expiry dates) or require proof of licencing at the time that external Investigators are allocated to a claim investigation to ensure that licences are current.

Recommendation 3 – External Investigators to obtain authority before alleging fraud

Code Subscribers should require external Investigators to obtain their express and written authority before putting a fraud allegation to a claimant. This requirement should be included in Code Subscribers' contracts with external Investigators and in their written instructions to external Investigators.

Recommendation 4 – Code training for Service Suppliers

Code Subscribers should provide Service Suppliers with, or require Service Suppliers to receive, training on the requirements of the Code. This includes external Investigators and extends to those engaged by Code Subscribers' Claims Management Services. The training should focus on the standards that apply to the services that Service Suppliers provide on behalf of Code Subscribers.

Recommendation 5 – Service Suppliers should monitor and report on compliance with the Code

Code Subscribers should include in contracts with Services Suppliers a requirement to develop their own systems and processes to ensure compliance with applicable Code obligations. This includes prompt reporting of actual or possible Code breaches and corrective actions.

Recommendation 6 – Updating existing contracts with Service Suppliers

Code Subscribers who have contracts with Services Suppliers pre-dating 1 July 2015, should inform them in writing about the Code, the specific Code standards that apply to their services when acting on behalf of Code Subscribers, and their requirement to comply with it.

Recommendation 7 – Extend Code standards to subcontractors and agents

Code Subscribers who have authorised a Service Supplier to use subcontractors or agents, should ensure that:

- the Service Supplier's arrangements with a subcontractor or agent are in writing and reflect the Code standards that apply to the services provided by the subcontractor or agent
- the Service Supplier's arrangements require the subcontractor or agent to report to the Service Supplier complaints about them or the matters they are dealing with, by the next business day

- the Code Subscriber's contract with the Service Supplier requires it to report to the Code Subscriber complaints about its subcontractor or agent, by the next business day
- the Service Supplier does not engage the services of an agent or subcontractor in the investigation of a 'sensitive claim' – for instance, where the claim includes death or serious injury. If this is not practical, the Code Subscriber should increase its oversight of such matters.

Recommendation 8 – Timeframe for Service Suppliers reporting complaints

Contracts with Service Suppliers should include a requirement to report to Code Subscribers any complaints about a matter under the Code when acting on their behalf either immediately or at least by the next business day.

Recommendation 9 – Transparency about why a claim is being investigated and what to expect

Code Subscribers should:

- initially inform a consumer by telephone that their claim will be investigated and why, and that an external Investigator will interview them
- provide staff with clear guidance on the content of such conversations
- confirm that an investigation will occur and why in writing (letter or email), including information about the following:
 - the purpose of the investigation, what to expect and that the consumer should not draw an adverse inference from this decision
 - the consumer's primary contact during an investigation, the role and responsibilities of the claims consultant and the external Investigator
 - the external Investigator's contact details, when to expect to hear from them and what to do if they are not contacted within that timeframe
 - the consumer's rights and responsibilities during the investigation and interview, including who they can contact if they have any questions about the investigation or process including or if they are unhappy with the external Investigator's conduct, how their personal information will be handled and their rights after a claim decision has been made
 - the timeframe for making a claim decision after completing the investigation and information gathering, information about the complaints process and other resources to assist the consumer during the investigation such as the Financial Ombudsman Service Australia (FOS) and key consumer advocates.

Recommendation 10 – Deciding as early as practical whether more information is needed and making a claim decision within Code timeframes

Code Subscribers should pay close attention to their compliance with subsections 7.16 and 7.18 of the Code by including in quality assurance programs:

- regular reviews of current and closed claim files, including denied claims
- review of complaints about delays in making a claim decision, including disputes referred to FOS.

Recommendation 11 – Location of interviews

Code Subscribers should ensure that:

- an interview is conducted at an appropriate location that the consumer has consented to

- external Investigators cannot insist on holding the interview in a location that the consumer is uncomfortable with
- they or their external Investigators inform the consumer that it is not compulsory to conduct the interview at the consumer's home.

Recommendation 12 – Informing Code Subscribers about interview arrangements

Code Subscribers should:

- require external Investigators to notify them of interview arrangements and contact them if unable to arrange an interview
- provide guidance to external Investigators on arrangements for interviews, which must have regard to the interviewee's circumstances as well as the likely length of the interview.

Recommendation 13 – Ensuring interview questions are relevant, fair and transparent

Code Subscribers should pay close attention to their compliance with the Code by including in quality assurance programs:

- regular reviews of current and closed claim files, including denied claims
- audit external Investigator running sheets, interview transcripts or recordings for procedural fairness
- review of complaints about interviews, including disputes referred to FOS.

Recommendation 14 – Not to exceed scope of investigation without prior consent

Code Subscribers should:

- define the scope of an investigation in instructions to external Investigators
- not allow external Investigators to exceed instructions without prior written consent
- confirm in writing changes to instructions, including when expanding the scope of investigation.

Recommendation 15 – Monitoring interview duration

Code Subscribers should include in quality assurance programs measures to monitor interview duration and compliance with the Code through:

- regular reviews of current and closed claim files, including denied claims
- for Employees who conduct telephone interviews – call audit reviews and review interview transcripts or recordings
- audit Investigator running sheets, interview transcripts or recordings to check the duration of interviews
- review of complaints about interviews, including disputes referred to FOS.

Recommendation 16 – Guidance on length of interview and interview breaks

Code Subscribers should provide guidance to staff who interview consumers and external Investigators about the length of an interview and regularity of breaks including that:

- interviewees should be offered breaks at least every half an hour
- an interviewee's request for a break should be adopted in the record of interview (usually audio recorded)

- an interview should not exceed two hours (excluding breaks) in length
- if more time is needed, the interview should be suspended and arrangements made to continue the interview at a later date, subject to the Code Subscriber authorising the continuation of the interview and the consumer's consent.
- if an interviewee decides that they prefer to continue with the interview beyond two hours, then it should be clearly explained that the interviewee may continue the interview at a later date.
- the interviewee's acknowledgement and their agreement to continue the interview in these circumstances should be recorded in writing and by audio recording.

Recommendation 17 – Interviewing consumers with special needs

Code Subscribers should:

- ask interviewees (consumers) to complete an interview consent form which also asks whether they need an interpreter or support person
- assess whether consumers have special needs and provide additional support to such consumers before authorising an Employee or external Investigator to interview them
- ensure that their Employees or their external Investigators never deny a consumer's reasonable request for support person
- ensure that Employees are appropriately trained to identify such consumers and their support needs and that interviews should only be conducted by Employees who have appropriate training or experience
- provide external Investigators with, or require them to receive, appropriate training to assist in identifying and supporting consumers with special needs
- specify in contracts with external Investigators that consumers are entitled to have a representative or support person with them during an interview
- if an agreement about support cannot be reached, require external Investigators to contact them
- specify in contracts with external Investigators their expectations and requirements, or provide guidelines, about consumers with special needs.

Recommendation 18 – Independent and qualified interpreters

Code Subscribers should ensure that if an interpreter is required for an interview or when obtaining a witness's statement on matters relevant to a claim, only appropriately qualified/accredited and independent interpreters are used. This will ensure the integrity and reliability of the information obtained during the interview.

Recommendation 19 – Clarity and guidance needed for interview of minors

Code Subscribers should:

- establish clear guidelines for the interview of minors, including assessing whether it is necessary to interview them, they are capable of distinguishing truth from fiction, and setting a minimum age for minors who may be interviewed
- ensure that the external Investigator conducts the interview of a minor in the presence of a responsible adult, such as a parent or guardian

- ensure that the external Investigator suspends the interview if at any time the minor is distressed by the interview process or at the request of the parent or guardian
- ensure that a senior staff member with appropriate experience and training determines whether it is necessary to interview a minor – this includes assessing whether the minor is capable of distinguishing a truth from a lie
- if the senior staff member decides that it is necessary to interview a minor, the interview should be conducted by an external Investigator with appropriate experience and training
- instructions to an external Investigator must clearly set out the scope of the interview and ensure that the external Investigator will obtain prior written approval to expand the scope of the interview
- a request to expand the scope of an interview must also be assessed by a senior staff member with appropriate experience and training.
- if in the course of an investigation the external Investigator determines that it is necessary to interview a minor, require the external Investigator to obtain prior written approval – such a request should be assessed as described above
- if the external Investigator is required to determine whether the minor has the capacity to distinguish a truth from a lie, provide clear guidance to the external Investigator on how to determine this – this assessment should be recorded.

Recommendation 20 – Complying with privacy obligations

Code Subscribers should:

- ensure that external Investigators have processes and systems in place that enable them to comply with their obligations under the *Privacy Act 1988 (Cth)*
- require external Investigators to provide a privacy statement to a consumer before commencing an interview
- require external Investigators to record an individual's acknowledgement that they have been provided with a copy of its privacy statement before starting an interview
- ensure that management frameworks for external Investigators include scheduled and regular (at least annually) monitoring of compliance with obligations under the *Privacy Act 1988 (Cth)*.

Recommendation 21 – scope of signed authorities for information held by third parties

Code Subscribers should:

- ensure that requests for additional information or documents are reasonable and relevant to the claim under investigation
- require external Investigators to record requests to individuals for written authorisation to access personal information held by other parties
- require external Investigators to surrender to Code Subscribers the original signed authorities at the conclusion of their investigation
- clearly limit the purpose of the authority to the investigation of the claim in question
- define the scope of the authority in terms of the type of information that is being requested and the period covering the request – in other words the authority should not be couched in blanket terms or for an indefinite period
- clearly state on the authority the date of issue and expiry.

Recommendation 22 – Best practice standards for Investigators

Code Subscribers and the ICA should develop a set of best practice standards in relation to the conduct of Investigators that incorporate the recommendations made in this report.

Recommendations – Part two: Outsourced functions

Recommendation 23 – Review suitability of Service Suppliers regularly

Code Subscribers should re-assess the suitability of their Service Suppliers regularly and including in response to:

- feedback from consumers and Employees – this provides Service Suppliers with an opportunity to revise and improve their services if needed and to promote and reinforce good practices among staff
- complaints from consumers – analysis and evaluation of complaints helps to identify issues in a timely way, enabling Code Subscribers to identify and address underlying causes.

Recommendation 24 – Proactive monitoring of Service Suppliers is needed

Code Subscribers should:

- not rely solely on complaints from consumers as a means of monitoring their Service Suppliers' compliance with Code obligations
- include analysis and evaluation of complaints as part of a broader and proactive approach to compliance monitoring which includes quality assurance and audit programs
- ensure that contracts with Service Suppliers require them to:
 - monitor their own compliance with the Code standards that apply to the services they provide
 - provide regular reports to Code Subscribers on their compliance with the Code
 - have an incident and breach reporting system and encourage Employees to report incidents and potential Code breaches
 - report self-identified breaches or potential breaches of the Code, including significant or likely significant Code breaches, to the Code Subscriber.

Recommendation 25 – Oversight of approved subcontractors

In addition to Recommendation 7 Code Subscribers who have authorised a Service Supplier to use subcontractors or agents, should ensure that:

- the subcontractor notifies the Service Supplier of any Code breaches by the next business day, and that these breaches are referred to the Code Subscriber by the next business day
- the Service Supplier retains responsibility for the subcontractor's acts or omissions and/or ensures that the subcontractor complies with the same obligations that apply to the Service Supplier
- the Service Supplier monitors the subcontractor's conduct.

Recommendation 26 – Active oversight of Collection Agents

Code Subscribers should actively and directly monitor Collection Agents' compliance with Code obligations by:

- ensuring that their compliance frameworks include the monitoring of Collection Agents' compliance with the Code
- including quality assurance and audit programs that assess Collection Agents' files and call monitoring, in addition to the analysis and evaluation of complaints.

Recommendation 27 – Collection Agents to monitor their Code compliance

Code Subscribers' agreements with Collection Agents should require them to:

- monitor their own compliance with their Code obligations including compliance with the ACCC & ASIC Debt Collection Guidelines: for collectors and creditors
- provide regular reports to the Code Subscriber on their compliance with the Code
- implement an incident and breach reporting system and encourage Employees to report incidents and potential Code breaches
- report self-identified breaches or potential breaches of the Code, including significant or likely significant Code breaches, to the Code Subscriber
- complete refresher Code training at least annually.

Recommendation 28 – Code Subscribers must handle complaints about Service Suppliers

All Code Subscribers who use Service Suppliers should review existing arrangements to ensure that existing and future agreements comply with the Code and in particular:

- take all necessary steps to ensure that the relevant Service Suppliers notify them of complaints by the next business day
- monitor the referral of complaints by Service Suppliers
- ensure that such complaints are being handled internally in accordance with the Code's standards.

Recommendation 29 – Providing feedback to Service Suppliers

Code Subscribers should ensure that they provide regular feedback to Service Suppliers about their conduct, particularly as a result of:

- identified non-compliance with the Code
- complaints from consumers
- adverse findings by FOS in disputes.

Recommendation 30 – Revising breach incident identification and reporting systems

Code Subscribers should ensure that their breach incident identification and reporting systems:

- are not relying on 'materiality' as a factor in whether Code related incidents are captured and in their subsequent identification and reporting as a breach of the Code
- assess whether matters are significant breaches of the Code by reference to the Code's definition of 'significant breach'
- review matters that may be or have been reported to other regulators against Code obligations

- link to findings in FOS determinations that may be indicative of Code non-compliance
- include the capacity to capture incidents that may have a bearing on compliance with Code obligations
- can distinguish Code non-compliance specifically from other types of non-compliance.