



**GENERAL INSURANCE**  
Code Governance Committee

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RE: Flood insurance inquiry: additional questions

I refer to your letter of 19 March 2024, requesting the General Insurance Code Governance Committee's (CGC or Committee) response to several additional questions following our public hearing appearance on 23 February 2024.

My response is enclosed.

If you require any further information, you can contact Joanna Ifield, Senior Manager Code Compliance and Monitoring, at [info@codecompliance.org.au](mailto:info@codecompliance.org.au).

Yours sincerely,

**Veronique Ingram PSM**

**Chair, General Insurance Code Governance Committee**

## Flood insurance inquiry: additional questions

### 1. Which provisions in the GI Code of Practice need to be strengthened?

We are pleased to acknowledge the appointment made by the ICA of a three-person expert panel tasked with conducting a comprehensive review of the Code. Each member of the panel brings a wealth of expertise to this endeavour. We welcome the opportunity to submit a detailed proposal to the panel for their consideration.

Below, we outline key areas within the Code that we believe warrant improvement, aiming to enhance industry standards and ultimately ensure better outcomes for consumers.

Issue	Recommendation
<b>External experts</b>	In the Code, include requirements for insurers to proactively monitor the performance of external experts and quality assure the reports they prepare.
	In the Code, stipulate that External Experts should not be permitted to make recommendations on claims decisions unless they are trained claims assessors.
	In the Code, stipulate that when claims are denied based on wear and tear, insurers must: <ul style="list-style-type: none"> <li>• provide clear evidence of the maintenance that was lacking</li> <li>• explain how that maintenance would have prevented the loss</li> <li>• demonstrate the link between the loss and the wear and tear or lack of maintenance.</li> </ul>
	In the Code, state that the level of maintenance the insurer expects of the insured should be clear, with consideration given to the vulnerabilities of the insured.
	External Experts should be included in the 'service supplier' definition of the Code. This would ensure that the insurer has oversight obligations of External Experts in accordance with Part 5 of the Code.
<b>Claims handling</b>	Paragraph 81b obliges insurers to provide the reasons for their claims decision. The Code should be strengthened by establishing what constitutes sufficient reasoning. Insurers must clearly explain their decision in plain English. Merely noting an exclusion within the PDS or attaching an expert report does not suffice as an explanation.
	Paragraph 81d should be strengthened to guarantee that claims decision communications automatically include copies of service supplier and expert reports that the insurer has relied on when making the decision.
	The Code should stipulate a timeframe in which a subscriber must make a settlement offer on an accepted, or partially accepted, claim.
	The Code should stipulate a timeframe for an insurer to commence actioning repair/recovery work on an accepted claim.

Issue	Recommendation
	<p>We support incorporating the key expectations listed by ASIC in relation to claims handling, as set out in its 7 November 2022 letter to general insurers in relation to severe weather events. In particular:</p> <ul style="list-style-type: none"> <li>• The Code should require an insurer to re-evaluate benefits like temporary accommodation when there have been delays to claims assessment and settling that were beyond the control of the customer.</li> <li>• Insurers should be prepared to periodically conduct a formal audit of their preparedness for severe weather events, including the adequacy of resourcing. The results of such reviews should be shared with ASIC.</li> </ul> <p>The broad discretion at paragraphs 77, 83 and 84 allows insurers to avoid claims timeframe obligations where they consider there is a 'reasonable' basis to do so. This discretion should be removed.</p>
<b>Cash settlements</b>	<p>Paragraph 79 of the Code should be strengthened to oblige insurers to provide consumers with the relevant information and clarity they need to fully understand the implications of, and risks that come with, cash settlements. The obligation should apply to all classes of general insurance. This is particularly important where cash settlements are offered to vulnerable consumers.</p>
	<p>Paragraph 90 of the Code, which covers the review period for property loss claims finalised within one month of a catastrophe causing the loss, should be extended beyond 12 months, and the one-month requirement should be removed where a cash settlement was involved.</p>
	<p>In the Code, stipulate that a complete breakdown (un-redacted) of the costs covered by a cash settlement is included in cash settlement offers. This will allow consumers to make an informed decision.</p>
	<p>In the Code, oblige insurers to ensure the quotations being relied upon when determining cash settlements are actionable for the consumer.</p>
	<p>In the Code, allow consumers the right to request a review of a cash settlement offer within 12 months of the date of accepting the cash settlement offer.</p>
<b>Vulnerable consumers</b>	<p>Paragraph 92 should contain a more contemporary definition of vulnerability. The Code should recognise that vulnerability arises not just from personal characteristics, but also from circumstances (temporary or permanent) that place a person at risk of detriment. This includes the market environment (e.g. where poorly designed products and poorly delivered services place consumers at risk of vulnerability).</p>
	<p>Paragraph 93 should be strengthened to require insurers to use their data capability and develop systems and processes to proactively identify consumers at risk of experiencing vulnerability. As it stands,</p>

Issue	Recommendation
	the onus is on the consumer to identify themselves as vulnerable, which we believe is inappropriate.
	Paragraph 96 should be strengthened to ensure that consultants dealing with vulnerable consumers have the required level of expertise. Specialised teams designed to support vulnerable consumers should be established. These teams should be well-trained to ensure they have the necessary level of expertise.
<b>Financial hardship support</b>	Code protections for vulnerable consumers in Part 10 should use more positive and inclusive language (e.g. consumer wellbeing, consumer safety or payment assistance).
	Payment assistance obligations that currently sit in Part 10 of the Code, should be moved to the 'buying insurance' section (Part 6) so it is clear that the assistance can be accessed by all policyholders when needed.
	In the Code, include obligations for insurers to consider premium hardship support options to help consumers maintain cover. Policy cancellation should be a last resort. Options could include providing short-term premium waivers and discounts, deferral of premium payments, and removing the loading for monthly premiums.
	Paragraph 108 of the Code should be removed and replaced with obligations for insurers to consider premium hardship support options to help consumers maintain cover.
<b>Inclusivity and accessibility</b>	Paragraphs 103c and 103d should be strengthened to ensure that key information is translated and available on the insurer's website. For clarity, 103a should specify that this includes translating and interpreting services for First Nations consumers.
	Introduce specific obligations regarding inclusivity and additional support for Aboriginal and Torres Strait Islander consumers. The Banking Code of Practice already contains such provisions.
<b>Third party suppliers</b>	The definition of 'service suppliers' should be extended to include third parties that are involved in the insurer's claims settlement process (e.g. storage providers, cleaners, removalists etc.). This would ensure that the insurer has oversight obligations in accordance with Part 5 of the Code.
<b>Claim and complaint updates</b>	Paragraphs 70 and 146 should be strengthened to ensure that meaningful updates are provided to consumers, particularly where these communications are automated.

More broadly, the Code Governance Committee must be given the power to publicly name insurers in our reports. The ability to name insurers is essential for transparency and accountability and aligns with contemporary practice. Transparency would create stronger incentives for insurers to comply with obligations and would allow consumers to scrutinise the performance of insurers. The Australian Banking Association has committed to named



reporting, and we would like to see the same level of transparency applied to general insurers.

It is vital that the ICA seeks ASIC approval for the Code of practice, something that is not currently required. This would bolster confidence in both the Code itself and the independent oversight we provide, further ensuring consumer protections and industry accountability.

**2. What key information do you need from insurers that you are not getting now, or not getting consistently, that would help you better monitor compliance with the code of conduct?**

We are empowered by our [Charter](#), under clause 9.1, to collect and analyse data about the industry's compliance with the Code.

We retain ultimate discretion on the data we collect to effectively monitor compliance with the Code. To date, the industry has been responsive to these requests.

As set out in our response to question one, the broad discretion not to report breaches of the Codes timeliness obligations need to be removed from the Code (paragraphs 77, 83 and 84). Removing this discretion will ensure we have a clear picture of the true scale of breaches of claims handling and communications obligations.

**3. Would the committee benefit from broader powers to require information from insurers, rather than having to ask for it?**

We feel the existing powers are sufficient and we have not had any issues with insurers failing to comply with our requests for data or information.

Paragraph 182 of the Code states:

*We will cooperate with the Code Governance Committee in its review of our compliance with the Code and its investigations of any breaches of the Code.*

Under this Code obligation, we would expect insurers to respond appropriately to reasonable requests for information from us. If they fail to do this, we can exercise our sanction powers.

**4. Many insurers did not meet the assessment and claim timeframes in the code. What penalties or consequences do such breaches incur?**

We carefully review all significant breach reports to understand the root causes of breaches and satisfy ourselves that the insurer is taking appropriate remediation action. We are not resourced to investigate every significant breach. We prioritise those matters that pose serious consumer detriment.

In the past 12 months, we have investigated 67 significant breach matters. Significant breach matters that do not progress to formal investigation are analysed and monitored at a thematic level and they inform our future thematic inquiries which are conducted at an industry wide level.

We actively monitor and hold insurers to account for completing their remediation actions. A key part of this includes undertaking remediation audits. These audits also allow us to confirm whether the remediation actions have delivered sustainable improvement.

During the past year we have undertaken 16 remediation audits, with another round commencing shortly.

We have also reported 115 significant breach matters to ASIC since 1 October 2023.

Where we are not satisfied that an insurer is addressing its breaches, we will consider imposing sanctions.

The sanction powers available to us are set out in paragraphs 173 and 174 of the Code:

*Paragraph 173. As a sanction for our breach of the Code, the Code Governance Committee may require us to do any one, or more, of the following:*

- a. take particular rectification steps within a set timeframe;*
- b. audit our compliance with the Code at our own cost;*
- c. advertise to correct something that the Code Governance Committee decides needs correcting.*

*Paragraph 174. The Code Governance Committee may impose additional sanctions for Significant Breaches of the Code, including requiring us to do any one or more of the following:*

- a. compensate an individual for any direct financial loss, or damage, we caused them arising from a Significant Breach;*
- b. publish the fact that we have committed a Significant Breach of the Code;*
- c. pay a community benefit payment for a Significant Breach up to a maximum of \$100,000. The size of the community benefit payment must be in proportion to our gross written premium and number of customers.*

There had previously been impediments to the imposition of sanctions. This is no longer the case and sanctions are being considered in a number of active investigations.

Self-reported breach data for 2022-23 indicates that many insurers have reduced breaches of the claims handling timeframe obligations. However, we have engaged directly with insurers that have reported a continued increase in breaches.

**5. Your 2022-23 annual report, released in late 2023, says that you had reported 86 significant breaches to ASIC since the end of 2022. What sorts of behaviour by insurers constitute a significant breach?**

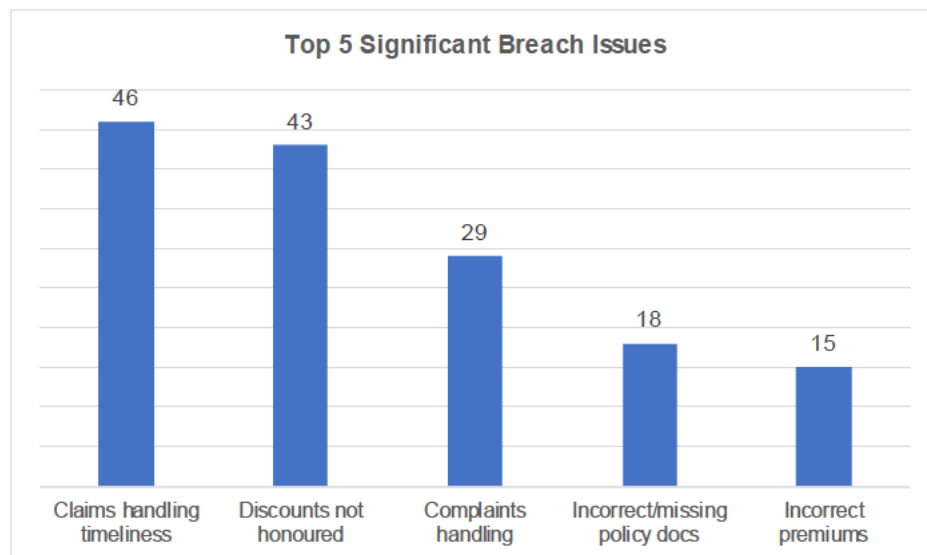
A significant breach is defined in the Code as:

*“a breach that is determined to be significant by reference to:*

- a. the number and frequency of similar previous breaches;*
- b. the impact of the breach, or likely breach, on our ability to provide our services;*
- c. the extent to which the breach, or likely breach, indicates that our arrangements to ensure compliance with the Code are inadequate;*
- d. the actual, or potential, financial loss caused by the breach; and*
- e. the duration of the breach.”*

A significant breach only needs to meet one of these criteria to be considered significant.

The following chart identifies the most common issues identified in significant breaches, as reported in our FY23 Annual Report:



#### **6. Do insurers ever self-report serious breaches of the code?**

The Code requires insurers to report significant breaches within 10 business days of identification, as outlined in paragraph 181 of the Code.

#### **7. If they do, what serious breaches have they reported since the start of the 2022 financial year?**

Since the start of the 2022 financial year, we have received 337 reports containing 632 self-reported significant breaches. The 337 significant breach matters span 632 individual obligations of the 2010, 2012, 2014 and 2020 Code. The top three significant breach issues related to the following obligations:

1. Honest, efficient, fair, transparent and timely dealings
2. Claims handling
3. Complaints handling

#### **8. What were the consequences for those breaches?**

See Question 4 above.

#### **9. The CGC website says the committee has the power 'to impose sanctions on insurers who breach the Code'. It can require an insurer to make a community benefit payment of up to \$100,000 in response to a significant breach. Based on many of the case examples presented by AFCA and consumer groups, why has this payment not been imposed on insurers? Are there impediments to it being imposed? If so, what are they?**

Until recently, there was an impediment to imposing sanctions. However, this has now been resolved. We have several well-progressed cases in which sanctions are actively being considered.

The current Code, effective from July 2021, contains enhanced sanctioning powers. This includes a Community Benefit Payment sanction which has been referred to above. Previous iterations of the Code limited sanctions to instances where insurers failed to rectify breaches. We now have greater discretion to apply sanctions and can consider a wider range of factors, beyond what action an insurer has taken to address the breach.

When these enhanced powers were introduced, it came to our attention that the ICA needed to strengthen the professional indemnity cover for the Committee. Given some of the legal complexities, this took longer than we, and the ICA, would have liked.

Sanctions are an important part of an effective compliance monitoring role. We will not hesitate to sanction insurers in the appropriate circumstances. Industry and consumers should expect to see sanctions being applied in the near term.

**10. You put out an information request in Oct 2023 as part of your inquiry into oversight of external experts. How many insurers have responded to your questions?**

All six participants that were contacted have responded.

**11. How long do they have to respond?**

Participants had eight weeks to respond.

**12. How helpful, or transparent, is the information insurers have given you so far?**

We have reviewed the information provided and responses have been transparent and helpful.

We have since issued a second information request to participants. The purpose of the second request is to test their systems, processes and framework based on specific case examples that we have provided.

Responses are due by 23 April 2024.