

The *General Insurance Code of Practice 2014 (Code)* is comprised of a set of standards that govern insurers. Compliance with the Code is mandatory for the 49 companies who are members of the Insurance Council of Australia (ICA).¹ The Code deals with (amongst other things) selling of insurance policies; processing of insurance claims; and handling of customer complaints. The Code is designed to protect the interests of consumers. The Code has been formally reviewed and updated on four occasions, in 1998, 2006, 2009 and 2012.² Currently, a targeted review is being undertaken by the ICA, triggered by external occurrences such as Senate Inquiries and ASIC reports into the general insurance industry.³

The review will, undoubtedly, require insurers to be ever more vigilant and careful in their treatment of consumers.

The Review: at a Glance

An interim report from the review was released in 2017. The report proposes strengthening the standards to which insurers are currently being held accountable, including as follows⁴:

<i>Proposal 1</i>	<i>The Code should strengthen standards relating to vulnerable consumers including:</i> <ul style="list-style-type: none"> • <i>A new Code section on vulnerable consumers</i> • <i>The provision of guidance on best practice mental health principles</i> • <i>The provision of guidance on recognising and responding to instances of family violence</i> • <i>Stronger Code standards on financial hardship</i>
<i>Proposal 2</i>	<i>The Code should provide guidance on best practice disclosure principles</i>
<i>Proposal 3</i>	<i>The Code should include product design and distribution principles and provide guidance to insurers</i>
<i>Proposal 4</i>	<i>The Code should provide product design and</i>

¹ Insurance Council of Australia, *Member Companies* (18 April 2018) <<http://www.insurancecouncil.com.au/about-us/our-members>>

² Insurance Council of Australia, *About the Code* (18 April 2018) <<http://www.codeofpracticereview.com.au/about-the-code>>

³ Insurance Council of Australia, *The Review* (18 April 2018) <<http://www.codeofpracticereview.com.au/about-the-code>>

⁴ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 3

	<i>distribution guidance specific to add-on insurance products</i>
<i>Proposal 5</i>	<i>The Code should strengthen standards relating to third-party distributors</i>
<i>Proposal 6</i>	<i>The Code should strengthen standards relating to Service Suppliers</i>
<i>Proposal 7</i>	<i>The Code should include mandatory standards for Investigations</i>
<i>Proposal 8</i>	<i>The revised Code should meet the requirements for ASIC approval</i>

The abovementioned proposals will be discussed in this paper.

Standards for Servicing Vulnerable Consumers

The ICA proposes that a new section, which deals exclusively with vulnerable consumers, be inserted into the Code. The section would address the difficulties experienced by consumers who are disadvantaged in dealing with insurers, due to factors such as age, disability, mental health complications, living in remote communities (including Indigenous communities), non-English speaking backgrounds, histories of trauma, and family violence.⁵

This section would, in part, require insurers to take steps as follows:

1. **Smoothing consumers’ engagement of third parties who assist with alleviating the effects of their vulnerability** - This would require quality controls, such as training all customer-facing staff members to recognise when consumers need assistance from third parties (such as interpreters), and know how to provide that access.⁶
2. **Implementing policies to support consumers who have self-identification difficulties** – This would particularly assist consumers who originate from remote communities and cannot provide conventional identification documentation.⁷
3. **Making interpreters available** – Interpreters should be available to all consumers who request them, and all staff members who require them in order to communicate effectively with consumers.⁸

⁵ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 5

⁶ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 5

⁷ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 7

⁸ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 7

4. **Adopting best practice prescribed by the Code in relation to consumers who suffer from mental health illnesses** – This would, in part, require insurers to exhaust attempts to provide tailored cover to consumers with mental health illnesses, rather than denying them access.⁹
5. **Increasing transparency in relation to mental health discrimination data** – When an insurer relies on the *Disability Discrimination Act 1992* (Cth) in order to deny cover, quantify a premium or make any other decision in relation to a person suffering from a mental health condition, they would be required to release a summary explaining the nature and relevance of the data they relied upon in coming to the decision.¹⁰
6. **Improving dealings with consumers who experience family violence through an ICA guidance document** – This would deal with current problems such as violence perpetrators being able to exclude their partners from insurance policies by organising cover over the telephone.¹¹
7. **Mandatory training on financial hardship** – Insurers would be required to undertake compulsory training and become equipped to identify consumers that face financial hardship, and deal with them in compliance with the insurers’ obligations.¹²
8. **Timely responses to financial hardship applications** – The Code might be amended to require insurers to respond to consumers’ financial hardship applications within timeframes mirroring those of the *National Credit Code*. This would mandate that an insurer respond to any financial hardship application within 21 days, with an acceptance, a rejection, or a request for further information. Within 21 days of the consumer providing the insurer with any requested information, the insurer must inform the consumer of its decision. If the consumer does not provide information as requested, the insurer must make a decision nonetheless, within 28 days of the date the information was requested. The ICA is considering whether the Code should prohibit insurers from refusing a request to pay in instalments from a consumer in financial hardship, and welcomes submissions from stakeholders on this issue. Further, there is a possibility of including a requirement that financial hardship complaints be handled within 21 days.¹³

It will be vital for insurers to continuously work on improving their training, policies and procedures to cater to the needs of vulnerable consumers, particularly with respect to mental illness.

⁹ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 8-9

¹⁰ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 9

¹¹ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 10-11

¹² Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 11-12

¹³ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 12-15

Best Practice Disclosure Principles

The ICA has previously recommended raising the bar for disclosure of policy features so that consumers can be better informed of how a particular policy might meet their needs. It is likely that minimum disclosure requirements will be replaced with a principle of best practice transparency. This would involve a set of principles and concepts that insurers can apply flexibly, rather than a rigid set of mandatory disclosures. For example, one principle would probably require that the “*disclosure promotes consumer engagement*” through tools such as worked examples of claims that are most common amongst general insurance customers.¹⁴

There is also a possibility that, in line with submissions made by Legal Aid NSW, the requirement for insurers to take “*reasonable steps*” to communicate in plain language, be strengthened to require that the language be consumer-tested to ensure it is plain enough for a reasonable consumer to make an informed decision about whether a policy suits them.¹⁵

The ICA has recognised that, in recent times, insurers have invested into improving the quotation process by including “sum insured” calculators so as to assist consumers with understanding the effects of their policy. The ICA has stated that this development is to be encouraged and expanded, particularly digitally, through the insurance company websites or links to an industry calculator.¹⁶

New Standards for Design of Insurance Policies

Several stakeholder groups have stated that a predominant issue in the insurance industry has been consumers’ concern with suitability of general insurance products for their specific requirements. In response, the ICA is currently working with ASIC to develop a set of comprehensive principles that insurers must apply when designing products. The principles would include requirements such as:

1. articulating a target market for each policy, and considering which consumers would not fit into it, then designing the product accordingly;
2. designing each product such that communications would allow the target market to understand its features and suitability; and

¹⁴ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 16

¹⁵ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 16

¹⁶ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 17

3. reviewing and improving each product design regularly.¹⁷

These new standard demonstrate that the Code is increasingly changing to encroach upon all aspects of insurers’ business, even those that would traditionally be considered commercial, rather than ethical or legal.

Standards on Third-Party Distributors

Third parties who are engaged to sell products for insurers, but are not members of the ICA, are currently not required to abide by the Code. The ICA has not advocated the suggestion that such third parties should be made subscribers to the Code, but has instead proposed that their sale agreements obligate them as follows:

- a) *Sales to be conducted in an efficient, honest, fair and transparent manner*
- b) *All salespeople to be appropriately trained and educated, their conduct monitored by their employer and problems with conduct addressed*
- c) *Insurers to notify their distributors of the identified target and non-target market for the product*
- d) *Pressure selling is not permitted*
- e) *Distributors to notify insurers of any complaints and tell consumers the identity of the relevant insurer¹⁸*

This approach creates additional operational requirements for insurers. The result is an arrangement whereby third parties answer to insurers, rather than the ICA, with respect to their compliance with obligations.

Should this approach go ahead, it would mean that insurers should take all necessary steps, including engaging legal services, to ensure their contracts with third party sellers are more comprehensive, compliant and clear.

Service Suppliers Engaged by Insurers

Clause 13.4 of the Code states that its subscribers are in breach if any of their employees, authorised representatives or service suppliers engage in conduct that would constitute a failure to comply with the Code (when acting on behalf of the subscribers). There is consideration as to whether there should be an elaboration on this clause, in the form of explicit requirements, including a requirement that insures “*have measures in place to ensure that due skill and care is taken in choosing suitable Service Suppliers*” and “*appropriately address any actions by Service*

¹⁷ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 18

¹⁸ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 20

*Suppliers that breach the Code, Service Level Agreements or licence obligations”.*¹⁹

It should be noted that, correctly, the ICA has rejected the suggestion that external experts should be included in the definition of service suppliers on the basis that their independence should not be compromised. The ICA has, however, left this matter open for further discussion.²⁰

Investigations of Potentially Invalid Insurance Claims

The ICA has proposed, and is currently working on, a set of mandatory standards to be applied by insurers in respect of investigators (both internal and external) and investigations of suspicious insurance claims.²¹ These standards will likely cause most insurers to incur costs in thoroughly revamping their investigation procedures and departments; however, if the standards are reasonable, in that they mandate actions such as regularly reviewing the investigation policies and closely scrutinising external investigations, then the revamp might lead to increased consumer satisfaction and positive long-term results with respect to branding. The balancing act is summarised by Peter Kell, Deputy Chair of ASIC, in his March 2018 speech at the ICA Forum, "*We certainly recognise the need for insurers to confirm the facts of a claim and ensure that only valid claims are paid. This ultimately reduces costs for all legitimate claimants. But insurers also need to ensure that the risk of consumer detriment caused by fraud investigation techniques does not lead to poor outcomes and inappropriate decisions around claims.*"²²

Conclusion

It is an important time for insurers to review their existing compliance frameworks, and consult with their trusted advisers as they prepare for significant change.

¹⁹ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 26

²⁰ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 27

²¹ Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017), 28

²² Peter Kell, *Regulatory update to the general insurance industry* (7 March 2018) ASIC <<http://download.asic.gov.au/media/4665322/peter-kell-ica-annual-forum-published-8-march-2018.pdf>>

Resources

- Insurance Council of Australia, *Interim Report: Review of the General Insurance Code of Practice*, (2017)
- Insurance Council of Australia, *Member Companies* (18 April 2018) <<http://www.insurancecouncil.com.au/about-us/our-members>>
- Insurance Council of Australia, *About the Code* (18 April 2018) <<http://www.codeofpracticereview.com.au/about-the-code>>
- Peter Kell, *Regulatory update to the general insurance industry* (7 March 2018) ASIC <<http://download.asic.gov.au/media/4665322/peter-kell-ica-annual-forum-published-8-march-2018.pdf>>