



GENERAL INSURANCE
Code Governance Committee

2014 General Insurance Code of Practice

Own Motion Inquiry
Investigation of Claims and
Outsourced Services

1 May 2017

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Chair's message

I am proud to present the Code Governance Committee's first report on an Own Motion Inquiry examining compliance with the General Insurance Code of Practice. The report is an in-depth look at the claims investigation and outsourcing practices of a selection of Code Subscribers (respondents).

Our interest in this area was sparked in 2014–15, at a time when Code Subscribers were transitioning to the 2014 iteration of the Code. We had been hearing from consumers that they had concerns about how general insurers were outsourcing claims investigations and debt collection services. As a result, we identified this as the focus for our first Own Motion Inquiry. Again in response to consumer feedback, the focus was later expanded to encompass claims investigation practices more generally.

We also felt that there would be enormous benefits to Code Subscribers from a wider survey encompassing both claims investigation practices and outsourced functions, as it is the combination of these that provides a full picture of what happens when fraud is suspected and pursued. This additional information, which we have collected for the first time – in particular about the way general insurers investigate claims – should assist the industry respond more effectively to the number of ongoing external inquiries and reviews into the general and other insurance industries. We have summarised our findings in Appendix 1 of this report.

Most respondents provided some documents to support their responses and several of these respondents gave us extensive supporting documentation. However, it was disappointing that four respondents did not provide any supporting documents. Given the purpose of such inquiries, it is essential that in future all participating Code Subscribers provide relevant supporting documents with their responses. This will enable us to assist Code Subscribers to comply with their Code obligations, including identifying good practice and providing recommendations for improved compliance.

With regard to Code Subscribers and related entity Employees, we found that respondents are managing compliance reasonably well. On the whole, there are processes and procedures in place to support compliance with the Code's standards on claims investigations.

However, once claim-related functions are outsourced to Service Suppliers, compliance is more unpredictable. We uncovered considerable variability in the degree of oversight that respondents exercise over Service Suppliers and we are concerned that in some cases oversight may be inadequate, particularly in relation to claims handling. As well, there is not enough guidance provided to external Investigators when interviewing consumers. We also found that some respondents have authorised Service Suppliers to handle complaints when Code Subscribers are required to perform this function. In addition, some respondents' contracts with Services Suppliers do not align with the Code's requirements.

Most Code Subscribers outsource key claims-related functions to Service Suppliers, and almost always when fraud is considered a possibility. It is critically important, therefore, that Code Subscribers and their Service Suppliers are aware of, and compliant with, the relevant Code obligations. To that end, we have made 30 recommendations – brought together in Appendix 2 of this report – aimed at helping Code Subscribers improve compliance with Code standards. These include several recommendations about Investigators' conduct and as a result, we consider that the

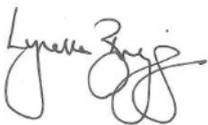
Insurance Council of Australia (ICA) and Code Subscribers should develop a set of best practice standards in relation to the conduct of Investigators that incorporate these recommendations.

The Code itself also contains some gaps. With the Code currently under review by the ICA, there is an opportunity to consider and address such gaps. We will therefore make further recommendations about gaps in current standards in our submission to the ICA's review.

I would like to thank the Code Subscribers who participated in the inquiry. I would like to give a special thank you to Rose-Marie Galea and her team for the enormous amount of detailed work they have put into analysing the material provided by Code Subscribers and supporting our requests for extra information. The extent of practice variability between Code Subscribers and their Service Suppliers added to the task, but the Inquiry provides a rich information source to enable the general insurance industry to inform and improve its future practice.

The General Insurance Code of Practice exists to promote better customer relationships. This goal is only achieved when high standards of service are consistently met. Importantly, Code Subscribers are entitled to ask for relevant information, assess or investigate a claim, to ensure that they are liable for the policy benefits consumers are applying for. At the same time, consumers are entitled to access their policy benefits and Code Subscribers must treat them fairly when making claims.

There is a wealth of information in this report and the appendices on how the general insurance industry conducts investigations and engages with Service Suppliers and consumers on this. Our hope is that the findings of this Own Motion Inquiry will prompt renewed efforts on the part of Code Subscribers to ensure that good industry practice extends to every customer interaction, whether with an Employee or a Service Supplier.



Lynelle Briggs AO
Independent Chair
General Insurance Code Governance Committee
May 2017

Executive summary

This Code Governance Committee (CGC) report documents the findings of its Own Motion Inquiry¹ (Inquiry) into selected Code Subscribers' claims investigation practices and policies and their outsourced claims-related services.

The report is divided into two parts:

Part one – Claims investigations: This part of the report focuses on the policies and procedures underlying the conduct of claims that are identified as high risk and potentially fraudulent because of the presence of claims anomalies.

Part two – Outsourced functions: This part of the report focuses on the policies and procedures respondents have in place that govern the outsourcing of claims-related functions to Service Suppliers and how they monitor Service Suppliers' compliance with the Code.

During the Inquiry, the CGC engaged with a sample of 27 respondents, comprising 23 general insurers and 4 coverholders and claims administrators.² It also invited several community legal centres and financial counselling groups to provide information about their experiences dealing with Code Subscribers. The Inquiry has led to a number of findings and the CGC has summarised these in **Appendix 1** of this report.

The CGC thanks all stakeholders for their contributions and the time and commitment taken to respond to this Inquiry.

Key messages

Deciding whether to investigate a claim

Respondents rely on claims anomalies – 'fraud investigation indicators' – that suggest a claim is 'high risk'. When a claim has fraud investigation indicators, respondents apply a triage process to determine whether the claim requires further enquiries or closer examination, which is typically done via an external Investigator.³ The presence of fraud investigation indicators, however, is not evidence of fraud and does not determine that a claim is fraudulent. Code Subscribers should ensure that they regularly review fraud investigation indicators for continued relevance.

Being transparent about claims investigations

Code Subscribers are entitled to investigate a claim. Investigation by Employees or external Investigators enables Code Subscribers to verify a claim's circumstances and ensure that they are liable for the claim. This includes the entitlement to investigate claims where fraud is suspected. At

¹ The CGC conducted the Inquiry in accordance with section 1.1(b) of The Code Governance Committee Charter.

² These are service companies of Lloyd's Australia Limited.

³ In this report, we have used 'external Investigator' to describe a Service Supplier who is an Investigator as defined by the Code.

the same time, consumers are entitled to access their policy benefits and to be treated fairly when making claims. Code Subscribers can facilitate transparency by informing consumers that their claim will be investigated and why; of what to expect; and of what their rights and responsibilities are. In addition, Code Subscribers should explain the investigation roles and responsibilities of their Employees and external Investigators.

Interviewing consumers

The CGC found that respondents vary considerably in the level of guidance they give external Investigators on interviewing consumers. Code Subscribers should provide clearer guidance about interviewing minors. In addition, some respondents do not provide any guidance to external Investigators about the duration of interviews and access to rest breaks. In the CGC's view, Code Subscribers should ensure that interviews include regular rest breaks and are no longer than two hours unless the Code Subscriber has approved a longer period and the consumer has agreed to that approach.

Access to interpreters and support persons

While all respondents reported that they provide consumers with access to an interpreter or support person during interviews, there are variations in the level of internal and external guidance on assessing consumers' special needs. Some respondents require their Employees to assess consumers' special needs and to provide additional support before requiring them to participate in an interview. Code Subscribers or their external Investigators should never deny a consumer's request for a support person and must ensure that only independent and qualified interpreters are used.

Best practice standards for Investigators

The CGC has made a number of recommendations in this report that respond to various findings about the conduct of Investigators within a claims environment. As a result, it is the CGC's view that Code Subscribers and the ICA should work together to develop a set of best practice standards in relation to the conduct of Investigators that incorporate these recommendations.

Contracts with Service Suppliers

The CGC found that some respondents' contracts with their Service Suppliers comply with the Code's requirements while other respondents' contracts do not align with the relevant standards. It is important that all Code Subscribers review their existing contractual arrangements and ensure their Service Suppliers are aware of the obligations that apply to the services they are providing.

Complaints about Service Suppliers must be handled by Code Subscribers

Several respondents reported that they authorise some of their Service Suppliers to handle their own complaints, even though the Code requires Code Subscribers to handle all complaints themselves – including those relating to their Service Suppliers – under their own complaints process. The Code acknowledges that the use of Service Suppliers is a standard business practice. However, to strengthen consumers' trust and confidence in the general insurance industry, the Code places a high onus on Code Subscribers to take full responsibility for the internal review of complaints that relate to their Service Suppliers.

Maintaining oversight of Service Suppliers

Outsourcing claims-related functions to Service Suppliers means that Code Subscribers must work hard at maintaining oversight as the Code holds them accountable for their Service Suppliers' conduct. The CGC found that some respondents do not maintain adequate oversight of their Service Suppliers, particularly in relation to claims handling. Code Subscribers must proactively monitor their Service Suppliers' compliance with the Code. It is not enough to rely on the reputation of Service Suppliers or the absence of complaints about their conduct as a means of assessing their level of compliance.

Recommendations

The CGC has made 30 recommendations to Code Subscribers to assist them to comply with the Code, based on the CGC's understanding of good industry practice and how the relevant standards are intended to operate. These recommendations are summarised in the tables below and the full recommendations are contained in **Appendix 2** of this report.

The CGC intends to develop guidance notes related to these recommendations to ensure that stakeholders are aware of the CGC's likely approach to such matters. Apart from these recommendations, the CGC's submission to the ICA's current review of the Code will include additional recommendations about gaps in current standards identified through the Inquiry.

The CGC will also continue to monitor Code Subscribers' compliance with the standards that underlie claims handling and outsourced arrangements through its investigation of Code breach allegations, and its annual compliance statement and breach reporting programs.

Summary of recommendations

Part one – Claims investigations
Recommendation 1 – Regular review of fraud investigation indicators for continued relevance
Recommendation 2 – Maintain a register of external Investigators' licences
Recommendation 3 – External Investigators to obtain authority before alleging fraud
Recommendation 4 – Code training for Service Suppliers
Recommendation 5 – Service Suppliers should monitor and report on compliance with the Code
Recommendation 6 – Updating existing contracts with Service Suppliers
Recommendation 7 – Extend Code standards to subcontractors and agents
Recommendation 8 – Timeframe for Service Suppliers reporting complaints
Recommendation 9 – Transparency about why a claim is being investigated and what to expect
Recommendation 10 – Deciding as early as practical whether further enquiries/more information is needed and making a claim decision within Code timeframes
Recommendation 11 – Location of interviews
Recommendation 12 – Informing Code Subscribers about interview arrangements

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

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

Recommendation 15 – Monitoring interview duration

Recommendation 16 – Guidance on length of interview and interview breaks

Recommendation 17 – Interviewing consumers with special needs

Recommendation 18 – Independent and qualified interpreters

Recommendation 19 – Clarity and guidance needed for interview of minors

Recommendation 20 – Complying with privacy obligations

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

Recommendation 22 – Best practice standards for Investigators

Part two – Outsourced functions

Recommendation 23 – Review suitability of Service Suppliers regularly

Recommendation 24 – Proactive monitoring of Service Suppliers is needed

Recommendation 25 – Oversight of approved subcontractors

Recommendation 26 – Active oversight of Collection Agents

Recommendation 27 – Collection Agents to monitor their Code compliance

Recommendation 28 – Code Subscribers must handle complaints about Service Suppliers

Recommendation 29 – Providing feedback to Service Suppliers

Recommendation 30 – Revising breach incident identification and reporting systems

Introduction

Own motion inquiries as a compliance tool

The CGC may undertake an Own Motion Inquiry to assess Code Subscribers' compliance with the Code. Own Motion Inquiries are targeted and focused investigations into how effectively Code Subscribers are complying with a particular section or area of the Code, usually considered high or emerging areas of risk.

Own Motion Inquiries are evidence-based, proportionate and practical. Their purpose is to produce guidance and recommendations for Code Subscribers about how to improve service standards and compliance.

To facilitate the exchange of information and data between Code Subscribers and the CGC for the purpose of an Own Motion Inquiry, the CGC may ask Code Subscribers to provide access to such information, documents and systems it considers necessary to discharge this function.

Inquiry objectives

The CGC's decision to undertake an Own Motion Inquiry into Code Subscribers' outsourced services and claims investigation practices and policies was prompted by consumer feedback about problems in this area.

The CGC felt that the Inquiry would benefit Code Subscribers enormously because it would:

- provide a full picture of what happens when fraud is suspected and pursued, within a broader context of honesty, fairness, transparency and timeliness in claims handling and decision making under the Code
- identify gaps between Code Subscribers' processes and procedures and the relevant Code standards
- give the CGC and key stakeholders a broader understanding of trends and issues concerning compliance with the Code standards that apply to the outsourcing of claims and claims-related functions
- assist Code Subscribers to develop their service offerings and comply with the Code by identifying good practice and providing recommendations for improved compliance, and
- assist the general insurance industry to respond more effectively to ongoing external inquiries and reviews into the general and other insurance industries.

To achieve these objectives, the CGC's Inquiry examined the following areas, focusing on Retail Insurance products:

Part one – Claims investigations

Part one examined the conduct of claims handling by Code Subscribers in the context of fraud or suspicion of fraud, looking at how Code Subscribers ensure that their Employees and/or Service Suppliers conduct claims handling in accordance with the relevant standards of Section 7 Claims and related Code standards.

Part two – Outsourced functions

Part two investigated the outsourcing of claims-related services by Code Subscribers to Service Suppliers, examining how Code Subscribers ensure that Service Suppliers comply with the Code standards that relate to the services they are providing for Code Subscribers. These services comprise:

- claims management
- verification of the circumstances of a claim
- loss adjusting and loss assessing, and
- collection of money owed to Code Subscribers.

Methodology

The CGC conducted the Inquiry between June and November 2016 in the following two stages.

Stage one – Data gathering

Stage one comprised:

- distribution of a questionnaire (at **Appendix 3**) to 27 Code Subscribers, with a request to provide all supporting documentation and specific examples
- a desktop audit of supporting evidence provided by Code Subscribers, including further clarification/information where necessary
- distribution of a questionnaire (at **Appendix 4**) to eight consumer advocacy groups, comprising community and legal aid centres and peak bodies. This included a request to provide specific de-identified examples of cases highlighting consumers' experiences with Code Subscribers' Employees and Service Suppliers.

Stage two – Data analysis and assessment

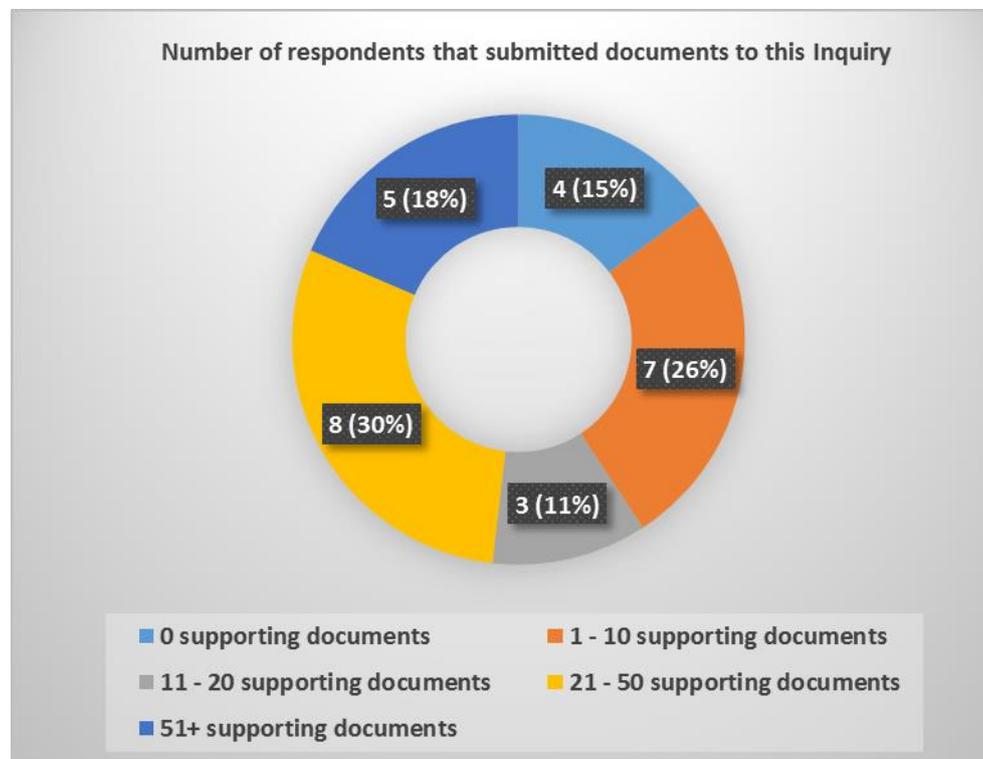
Stage two comprised:

- collation, analysis and assessment of the gathered information
- review of any other relevant information that could provide insights into the matters under consideration.

Respondents

The CGC invited 27 companies (respondents) to participate in the Inquiry. These 27 companies comprised 23 general insurers and 4 Lloyd's Australia Limited claims administrators. The CGC

received 30 responses for Part one of the Inquiry and 38 responses for Part two. This was because two companies provided multiple responses due to operational divisions within their organisations, reflecting that procedures varied across the divisions. Most but not all respondents provided supporting documents as shown in the chart below:



Definitions

Except for 'Code Subscriber/s' and 'Employee-Investigator/s', the terms used in this report that begin with a capital letter are defined by the Code.

Code Subscriber

The term 'Code Subscriber/s' has the same meaning as 'we', 'us', 'our' in the Code, namely an organisation that has adopted the Code.⁴

Employee

When the Code became operational on 1 July 2015, it introduced an expanded definition of 'Employee' which now comprises a person employed by:

- a Code Subscriber, or
- a Code Subscriber's related entity,⁵ if the related entity provides services that the Code applies to.

⁴ See **Appendix 5** of this report for a list of current Code Subscribers.

⁵ The meaning of 'related entity' is the same as that used in section 9, *Corporations Act 2001 (Cth)*.

As a result, the Code obligations that apply to a Code Subscriber and to its Employees apply in the same way to a related entity's Employees, if that related entity is providing services covered by the Code.

In this report, wherever possible the CGC has used 'staff', 'claims staff', 'specialist claims consultant/staff', 'investigations specialist/staff' instead of 'Employees' to minimise confusion.

Service Supplier

The Code defines a 'Service Supplier' as '...an **Investigator**, **Loss Assessor** or **Loss Adjuster**, **Collection Agent**, **Claims Management Service** (including a broker who manages claims on behalf of an insurer) or its approved subcontractors' acting on behalf of a Code Subscriber, where a:

- **Claims Management Service** means a person or company who is not an Employee of a Code Subscriber, which it has contracted to manage a customer's claim on its behalf.
- **Collection Agent** means a person or company who is not an Employee of a Code Subscriber, which it has contracted to recover money owing to it.
- **Investigator** means a person or company who is not an Employee of a Code Subscriber, which it has contracted to verify the circumstances relating to a customer's claim.
- **Loss Assessor** or **Loss Adjuster** means a person or company who is not an Employee of a Code Subscriber, which it has contracted to examine the circumstances of a customer's claim, assess the damage or loss, determine whether the policy covers the customer's claim, assist in obtaining repair/replacement quotes and help settle the claim.

Retail general insurance products

The Code primarily applies to Retail Insurance⁶ (not wholesale) general insurance products, which comprise the following products:

- a motor vehicle insurance product
- a home building insurance product or a home contents insurance product or a product that combines both of these products
- a sickness and accident insurance product
- a consumer credit insurance product
- a travel insurance product, or
- a personal and domestic property insurance product.

See **Appendix 6** of this report for other definitions from the Code used in this report.

⁶ See **Appendix 6** of this report for the Code's definition of 'Retail Insurance'.

Consumer views

To develop a full appreciation of how general insurers investigate claims and how their outsourced services operate, the CGC invited several community legal centres and consumer advocacy groups (consumer advocates) to share their clients' experiences and identify any areas for improvement. Some of these consumer advocates responded to this Inquiry. The information they shared provides a helpful context for the detailed compliance discussion that follows. These Consumer views are summarised below and in 'Consumer experience' boxes throughout this report.

Concerns and recommendations

Consumer advocates raised a number of general concerns about claims handling and investigation processes. The way in which Code Subscribers or Service Suppliers have handled some claims has caused unnecessary difficulties and forced clients to obtain legal representation. These clients are vulnerable and may not have the resources or capacity to challenge such outcomes.

Consumer advocates also said that Code Subscribers sometimes pursued investigations with little or no evidence. Claims are sometimes refused without supporting evidence or on the basis of policy wordings that have been incorrectly applied. Code Subscribers and external Investigators must ensure that investigations are conducted satisfactorily, with all relevant information gathered and correctly analysed, and inconsistencies and conclusions based on a thorough examination of the evidence.

One encompassing recommendation from consumer advocates was that Code Subscribers should establish a set of best practice standards setting out expectations of external Investigators, including how they should conduct investigations and interviews, particularly with vulnerable persons and what they should inform consumers about when their claims are under investigation. These best practice standards should also address issues relating to timeframes, document requests, privacy, complaints and claims decisions.

Informing consumers

According to consumer advocates, there are significant inconsistencies in the way Code Subscribers inform clients that they are under investigation and in what they are told when an investigation has been initiated. Some clients are unaware that their claim is being investigated for suspected fraud until they obtain legal representation. Code Subscribers do not clearly explain their role or obligations to clients, and fail to tell them that they are entitled to obtain independent legal advice when claims are or have been investigated, which can make them feel pressured to discontinue their claims.

Interviews

Consumer advocates raised several concerns regarding interviews. Some interviews have been unreasonably long, and interview location may be an issue. Some external Investigators have behaved aggressively, disrespectfully or in an intimidating manner, including unethical behaviour such as racial profiling. Some clients have also been asked to respond to highly personal questions or have received unreasonable requests for information and/or documents.

Consumers with special needs

Consumer advocates also described specific concerns about how migrants and people from Culturally and Linguistically Diverse (CALD) backgrounds are treated by Code Subscribers and their Service Suppliers throughout claims investigation processes. According to consumer advocates, Code Subscribers tend not to recognise that new migrants, in particular, often have little or no experience with the concept of insurance. As a result, they have difficulty understanding how it works and can misinterpret things.⁷

Consumer advocates said the special needs of these customers are often not understood or accommodated in the interview process. They described instances in which clients with no or limited English were not informed of their right to an interpreter or legal advice, and completed interviews without the assistance of an interpreter. Clients' lack of English language and poor knowledge of insurance concepts are ignored and they are accused of misleading Code Subscribers. As well, many interview questions come from a standard list of questions and are not adjusted according to the customer's cultural background. For example, it may be inappropriate to ask a client who is a refugee whether they imported their car. This raises issues about the appropriateness of questions and the interview process generally.

To address these issues, consumer advocates recommended that the training Code Subscribers provide their Employees and Service Suppliers includes dealing with CALD and newly arrived clients. They also suggested that Code Subscribers and their Service Suppliers communicate insurance concepts more clearly and effectively.

Communication and delays

More generally, consumer advocates described inconsistent or poor communication and delays in claims handling. Code Subscribers may fail to communicate with clients in a timely way where clients have urgent enquiries about their claims. Code Subscribers do not provide alternative contact details when there are delays with nominated contact points – this is particularly problematic for insurers that operate exclusively online.

Financial hardship

Consumer advocates said that financial hardship was an important issue. In their experience, some Code Subscribers ignore financial hardship when investigating claims, placing more stress on clients who are already under severe financial pressure.

Consumer advocates recommended that Code Subscribers improve the consistency of decision-making in financial hardship cases and in their responses to debt waiver requests from uninsured third parties. Collection Agents and Code Subscribers should actively identify cases of financial hardship where debt repayments and waivers are options rather than waiting for consumers to trigger this process by stating they are in hardship or referring to the Code. Similarly, they should proactively offer to deduct an excess from a claim instead of waiting for consumers to ask for this.

Complaints

When claims are refused, Code Subscribers are not always advising clients of the decision to refuse the claim or their right to complain. Internal complaints handling can be unsatisfactory and not adhere to required timeframes.

⁷ For example, clients from the Sahara do not understand what 'hail' is unless described as 'ice rain'.

Part one – Claims investigations

Part one of this report focuses on the policies and procedures underlying the conduct of claims that respondents identify as high risk and potentially fraudulent because of the presence of claims anomalies.

Insurance claims and ‘utmost good faith’

All contracts of insurance are based on a statutory duty of utmost good faith – a duty that applies equally to insurers, policyholders and third party beneficiaries.⁸ In the context of claims handling, this means that insurers are required to honour the terms and conditions of the contract of insurance. Similarly, consumers, who are policyholders or third party beneficiaries, must act honestly in relation to the claims they make.

Fraud allegations made by insurers are serious and can have significant, long-lasting adverse consequences for consumers, including an inability to recover under a contract of insurance and being denied insurance in the future.

As a result, the law places a high onus of proof on insurers to show that it is entitled to refuse to pay a claim on the basis of fraud. This means that fraud allegations should not be based upon speculation or ‘inexact proofs, indefinite testimony, or indirect inferences.’⁹

The Code requires Code Subscribers to ensure that they, their Employees and Service Suppliers conduct claims handling and related services efficiently, fairly, honestly and transparently. Code Subscribers are entitled to clarify and validate the circumstances of a claim to ensure that it comes within the scope of the relevant policy wording, and that they are liable for the policy benefits consumers are applying for. This also means that Code Subscribers are entitled to investigate claims where they suspect fraud. At the same time, consumers are entitled to access their policy benefits and to be treated fairly when making claims.

Deciding whether to investigate a claim

Respondents to this Inquiry reported that they might investigate a claim before deciding whether to accept it when:

- a claim is identified as ‘high risk’, usually due to the presence of claims anomalies
- incomplete information has been provided, and/or
- further information is needed.

Claims anomalies, commonly referred to as ‘fraud indicators’, ‘fraud triggers’ or ‘red flags’, are particular characteristics of a claim that suggests to an insurer that the claim is ‘high risk’ and that it

⁸ The duty of utmost good faith is in section 13, *Insurance Contracts Act 1984 (Cth)*.

⁹ *Briginshaw v Briginshaw* [1938] HCA 34, at 39. ‘The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. ‘Dixon J, at 39. In *Briginshaw*, the Court did not alter or displace the civil standard of proof (on the balance of probabilities). Rather, the Court noted that the more serious the allegation made in a civil case, the stronger the evidence required to prove the allegation.

should conduct further enquiries or examine the claim more closely before deciding whether to accept the claim. In this report, the CGC uses the term 'fraud investigation indicators' to describe such claims anomalies.

Many respondents emphasised that fraud investigation indicators are a detection method only, and their presence does not determine that a claim is fraudulent – it is not uncommon to find anomalies even though the claim is valid. Not all claims that are reviewed because of these indicators will undergo further investigation. Claims are often referred for investigation because further clarification of the circumstances of the loss is needed.

Development of fraud investigation indicators

Respondents develop fraud investigation indicators within the context of their risk appetite, their product coverage and exclusions, and from their understanding of fraudulent or high risk behaviours gained from several sources including:

- advice, information or training provided by external Investigators and other experts
- outcomes of intelligence analysis – intelligence drawn from past investigations, information provided by informants
- new and emerging business and industry trends, including non-insurance industries
- investigation outcomes – such as analysis of historical claims data and declined claims, claims investigations experience of new and existing Employees
- systems modelling and testing claims scenarios.

For the most part, these fraud investigation indicators do not remain static: 25 respondents stated that they periodically reviewed fraud investigation indicators for relevancy. However, two respondents had not reviewed their fraud investigation indicators for several years.

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.

Types of fraud investigation indicators

Fraud investigation indicators vary because of a particular product's coverage and exclusions, as well as behavioural, circumstantial and factual characteristics, such as:

- the nature of the claim, such as a fire or theft claims
- if the claim is made a short time after the policy began (commonly referred to as 'inception' of a policy) or shortly after an increase in the cover under the policy
- the timeframe between the incident that led to the claim and lodgement of the claim
- inconsistency between the nature of the claim and the injury or loss
- a history of similar claims, declined claims or fraudulent claims
- a history of queries or hypothetical questions about coverage in circumstances similar to the claim
- inconsistencies or discrepancies in the claimant's statements and information
- evasive, hostile, uncooperative, vague or dismissive behaviour by a claimant and/or a witness

- if the claimant is under financial pressure or in hardship.

Identification and evaluation of fraud investigation indicators

Respondents identify fraud investigation indicators manually or through a combination of automated and manual processes. Automated processes are based on rules which, when automatically triggered, identify the relevant claim as high risk. Most respondents reported that they do not rely only on an automated process to identify fraud investigation indicators. From time to time, a respondent may also highlight a claim for investigation because of information provided by an informant (such as a private individual) or other third parties (such as law enforcement).

The claims triage process

All respondents use a triage process to determine whether a claim flagged as high risk warrants closer examination. The triage process generally follows these steps:

Level 1 – After a consumer lodges a claim, the presence of one or more fraud investigation indicators causes the claim to be flagged, by either a manual or auto-manual process, as ‘high risk’ – and so potentially requiring investigation. Respondents refer a claim initially flagged as high risk to Level 2. Most respondents require the presence of multiple fraud investigation indicators to justify referral of a claim to Level 2.

Level 2 – To determine whether a claim should be investigated further, a specialist claims consultant or a senior claims staff member reviews the high-risk claim. This review assesses the suitability of the initial application of fraud investigation indicators to the claim’s circumstances, and whether further investigation is needed. If no further investigation is needed the claim is returned for processing in accordance with the usual claims procedure. The claim moves to Level 3 if the Level 2 review confirms an investigation should occur either internally and/or through allocation to an external Investigator.

Level 3 – At this stage, an investigations specialist is assigned to investigate the claim, speaks to the claimant or witnesses as needed and/or refer the claim to an external Investigator. Many respondents engage an external Investigator to conduct enquiries that the respondent cannot perform internally because of the nature or extent of enquiries to be made. The Investigator’s role is to verify the circumstances relating to the claim and analyse the collected evidence. Evidence may include information gathered by interviewing the consumer who submitted the claim as well as statements from witnesses and discussions with other parties such as the police.

Five respondents stated that initial identification and evaluation of manual fraud investigation indicators might occur at any time during the life of a claim, including at claim settlement. Three respondents reported that they rely on experienced claims staff, who are responsible for managing claims from beginning to end, to identify and evaluate fraud investigation indicators against the claim’s circumstances, before deciding if they need to engage an external Investigator.

Two respondents said that they would treat a claim differently at Level 1 if they identified the presence of just one of several specified fraud investigation indicators. Both respondents said that they would refer such a claim to Level 2 for evaluation to ensure that only high risk claims are referred to an external Investigator for further investigation.

Employee guidance, education, experience and training

Employees who act as frontline claims staff – those usually involved at Level 1 of the triage process – are required to complete mandatory fraud awareness training. Respondents reported that frontline claims staff have access to fraud investigation indicator checklists to guide them on matters that may

require referral for further investigation. One respondent informed the CGC that all claims are managed by Employees with at least 10 years' experience, and did not specify whether it provides them with any additional guidance or training. Six respondents reported that some of their specialist Employees are qualified Investigators, and one respondent reported that a member of its senior management team is a certified fraud examiner.¹⁰

Claims staff involved in evaluating high risk claims against fraud investigation indicators (Level 2) or specialist claims staff responsible for investigating claims (Level 3), typically have one or more of the following attributes:

- strong technical/policy interpretation skills
- strong analytical skills
- practical experience or qualifications in investigations
- practical experience in the management of insurance claims
- an ability to investigate suspected fraudulent matters to the standards required by law.

Level 2 and 3 claims staff and specialist claims staff (where applicable) also:

- have access to documented investigation guidelines, processes and procedures
- receive internally and/or externally-provided training, including on-the-job training, in one or more of the following areas (dependent on role):
 - how to evaluate claims against fraud investigation indicators
 - how to conduct claims investigations
 - how to conduct investigative interviews
 - how to monitor data for indicators of fraud, and/or
 - how to coordinate investigation processes.

Although some respondents have documented procedures supporting Code compliant claims handling within their businesses, from time to time in its other monitoring work the CGC has seen that some Code Subscribers do not always comply with their claims handling obligations, as seen in the case study below.

Case study – Claims handling not in good faith

The Code obligations

A key obligation that applies to Employees handling claims is that they must carry out claims handling in an honest, efficient, fair and transparent manner, as set out in subsection 7.2.

The claim

A car insured by a respondent and driven by a member of a policyholder's extended family had collided with another car. The respondent formed the view that the driver had staged the collision with the knowledge of the policyholder.

As a result, the respondent refused to pay the policyholder's claim because the policyholder was dishonest about the claim's circumstances or it was entitled to reduce its liability to nil because the policyholder had not acted in good faith.

¹⁰ State and territory laws exempt insurance companies registered under the *Insurance Act 1973* and their employees from the requirement to hold a licence to carry out activities as a private investigator.

The CGC's decision

The Committee concluded that the respondent had breached subsection 7.2. The CGC was not persuaded that the respondent had met the high onus of proof that applies when a fraud allegation is made. It found the information the respondent had gathered did not support a conclusion that the policyholder had been dishonest about the circumstances of the claim in relation to several aspects. Moreover, even if the collision had been staged, the Committee found there was no evidence to show that the policyholder had known about it or consented to it. As a result, the respondent should have paid the policyholder's claim under the malicious damage cover.

Even though the respondent's forensic report was inconclusive about the cause of the collision, the respondent had drawn adverse inferences based on that report. The Committee also expressed particular concern about inferences the respondent had drawn against the policyholder, based on the policyholder's living arrangements with the driver. The respondent had concluded that as the driver was a member of the policyholder's extended family and also lived in the same home, it followed that the policy holder must have consented to the driver's alleged decision to intentionally damage the car.

Using Investigators

Code Subscribers typically outsource investigations to external Investigators. Of the 27 respondents, only 1 does not outsource its investigations – instead, this respondent conducts its own investigations using specialist claims staff to verify the circumstances of high risk claims. The remaining 26 respondents all use external Investigators, either exclusively or in combination with specialist claims staff. These 26 respondents confirmed that external Investigators do not decide if it is necessary to investigate a claim or to refuse a claim because of fraud, and that external Investigators are only used to:

- conduct enquiries, including surveillance, that cannot be performed internally due to the nature or extent of enquiries that must be made, and/or
- verify the circumstances of a claim.

One respondent reported that it authorises its Claims Management Service to appoint external Investigators when needed, as part of its claims handling services.

Appointing external Investigators

Investigators are also required to comply with the Code, and respondents described the appointment, training and monitoring processes that they employ to promote compliance.

Most respondents reported that they use an appointment or accreditation process to assess the ability of external Investigators' firms to meet their expectations and Code requirements. Factors taken into account when appointing external Investigators include capability, reputation and qualifications as well as expertise, staffing, resourcing and key personnel.

The accreditation process may include a review of licences to ensure they are current; reference checks; and engagement on a trial basis. If claims are managed by Claims Management Services, these are required to verify that the external Investigators they use hold relevant licenses and have the necessary competencies.

The Code requires Code Subscribers to only appoint Service Suppliers who hold a current licence, where such a licence is required by law (subsection 6.3(b)). The CGC understands that, with the

exception of the ACT, all other Australian states and territories have laws requiring any person who engages in activities as a private Investigator¹¹ to hold the appropriate and current licence. One respondent reported that it does not permit its external Investigators to put a fraud allegation to a claimant without its express authority.

Recommendation 2 – Maintain a register of external Investigators’ licences

To ensure that licences are current, 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.

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.

Compliance with Code obligations is reinforced in contracts. Contracts with external Investigators include service level agreements (SLAs) that they must adhere to, and generally include a standard provision to comply with all laws, regulations and industry codes.

Training and monitoring external Investigators

Four respondents require their external Investigators to complete Code training even though the Code does not require them to do so – this is a significant development in raising the standards of services provided by external Investigators. The CGC’s recently released *Industry Data Report 2015–16* also observed that most Service Suppliers, including Investigations, completed Code training, with a completion rate of 91% for external Investigators and 90% for Claims Managements Services.¹²

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.

Respondents monitor the quality of external Investigators’ performance and compliance with the Code and other requirements by performing regular reviews including:

- verification of processes and supporting documentation
- review of claims files
- consumer feedback
- performance reviews
- site visits.

¹¹ A private investigator is also known as a 'private inquiry agent'.

¹² See page 48, CGC’s *General Insurance Code of Practice Industry Data Report 2015–16*. This report is available here: <https://fos.org.au/custom/files/docs/general-insurance-code-governance-committee-industry-data-report-201516.pdf>.

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.

Compliance with Code standards on outsourcing to Service Suppliers

The 26 respondents that use external Investigators reported that they comply with section 6 on outsourcing to Service Suppliers. The CGC requested supporting documentation to verify these arrangements. Disappointingly, eight respondents did not provide relevant supporting documents, and as a result, the CGC could not verify their compliance with section 6.

Most (18) respondents did provide some supporting documents, from which the CGC was able to draw some conclusions about their compliance. One of these 18 respondents also engages a Claims Management Service that uses external Investigators. The CGC was unable to verify compliance of those arrangements because the respondent did not provide supporting documents relating to the Claims Management Service's activities. The remaining discussion in this part of the report is about the 18 respondents who did provide supporting documents.

Contracts with Service Suppliers

One of the key changes introduced by the Code in 2014 was subsection 6.4. This subsection concerns any contracts with Service Suppliers that a Code Subscriber enters into after adopting the Code. Such contracts must reflect the standards of the Code that are related to the services of the Service Supplier. In effect, 'after adopting the Code' means from 1 July 2015, when the Code became operational, and by which time Code Subscribers had completed their transition to the standards under the Code. Of the 18 respondents, half (9) had executed new contracts with Service Suppliers and comply with subsection 6.4 (as well as subsections 6.2, 6.5, 6.6 and 6.7).

The remaining nine respondents had not executed new contracts with their Service Suppliers. Of these respondents, three were in the process of reviewing their existing templates for contracts to align with subsection 6.4. Additionally, one respondent had written to all of its Service Suppliers advising them about the commencement of the Code from 1 July 2015 and their obligation to comply with it; and setting out the Code's requirements when Service Suppliers perform services on its behalf, in line with the Code standards that apply to their services. Another had incorporated the specific Code requirements into a checklist that it requires its external Investigators to complete and submit a checklist when investigating matters.

Recommendation 6 – Updating existing contracts with Service Suppliers

Code Subscribers who have contracts with Services Suppliers that pre-date 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.

For the nine respondents who had not executed new contracts, the CGC considered whether the existing contracts complied with standards in Subsections 6.2, 6.5, 6.6 and 6.7.

Subsection 6.2 requires that Service Suppliers will provide their services in an honest, efficient, fair and transparent manner. Two of the nine respondents complied with this standard. The remaining seven respondents have a contractual term requiring competent delivery of services and compliance with all laws and regulations, but not in terms identical to subsection 6.2.

Subsection 6.3 requires that Code Subscribers only appoint Services Suppliers who are competent and professional, and who hold current licences (if required by law). All nine respondents comply, and additionally, six of these respondents retain records of external Investigators' licences. (See Recommendation 3 above.)

Subsection 6.5 states that Service Suppliers must obtain approval from Code Subscribers before subcontracting their services. Eight respondents have a contractual term requiring prior approval for subcontracting. One respondent has a contractual term authorising subcontracting without prior written consent if the external Investigator manages the services of the subcontractor. All nine respondents have a contractual term holding external Investigators liable for the conduct of their subcontractors, and two respondents require Service Suppliers to report complaints about subcontractors or agents.

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.

Under subsection 6.6, Service Suppliers are required to explain their services and identify the Code Subscriber they are acting on behalf of. All nine respondents comply with this requirement.

Under subsection 6.7, Service Suppliers must also notify Code Subscribers about any complaints when acting on their behalf, and Code Subscribers will handle such complaints under their complaints framework. Although subsection 6.7 does not specify a timeframe in which a Service Supplier will report complaints to a Code Subscriber, seven of the nine respondents did stipulate a timeframe in their contracts.

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.

Investigating claims

When investigating claims, whether internally or externally, Code Subscribers are bound by the general requirement that claims be handled honestly, fairly and transparently, as well as some specific requirements concerning timeframes and the information used.

Informing consumers about investigations

All respondents but one stated that they proactively contact consumers, usually by phone and some respondents write to consumers, to advise them:

- of the decision to investigate in order to gather more information
- of the appointment of an external Investigator, and
- that they will be interviewed.

Generally, respondents said that a staff member from a specialist claims team (or claims team) will advise a consumer that in order to make an informed decision about the claim, they need to clarify the circumstances of the claim and will investigate to gather further information. They also advise the consumer that when they have completed all their enquiries and reviewed the information, they will decide whether to accept or refuse the claim and notify the consumer of their decision.

Respondents replied that they do not usually specify the exact information/documents that may be needed from consumers because of the limited information available at the time they decide to investigate. However, respondents may outline the type of supporting documents they generally require – in the case of a motor vehicle claim, for example, this may include a traffic record, the registration certificate and the purchase and service documents for the insured vehicle.

Consumer experience – Communication about investigation of a claim

A consumer advocate informed the CGC that a client's car was stolen and burnt out. The client lodged a claim with his insurer who asked him to provide bank and phone records. The insurer informed the client that it would contact him in 21 days. The client did not receive any further information about the claim process and did not know that his claim was being investigated.

Four respondents require staff to follow a script when informing consumers about their decision to investigate a claim. The script includes information about:

- the need to clarify the claim's circumstances
- the role of the external Investigator
- the need to interview the consumer and that the external Investigator may speak with other persons
- the possibility that further documents may be needed to support the claim, and
- estimated timeframes for obtaining reports, providing general updates and ongoing contact.

During the Inquiry, these four respondents changed their procedures to notify consumers in writing that an investigation would occur and to provide information about the external Investigator and consumers' rights and responsibilities.

Two respondents require their senior claims staff, such as a claims manager, to inform consumers about the decision to investigate their claim. Another respondent reported that it informs consumers that they should not draw a negative inference from its decision to investigate the claim.

All respondents reported that any complaints raised by consumers about their decision to investigate a claim must be dealt with in accordance with their complaints processes.

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.

Information provided by one respondent about one of its Claims Management Services suggests that it might not be fully assessing or investigating a claim before deciding to decline a consumer’s claim. In addition, a comprehensive investigation of the circumstances of the claim might not occur until after the consumer has lodged a dispute about the decision to decline their claim. The respondent has also authorised the Claims Management Service to handle complaints that it has received in relation to these claims, rather than referring them to the respondent to deal with under its own complaints process as required by the Code. This is discussed further in Part two of this report.

Time taken to make a claim decision

The Code permits a Code Subscriber to take up to 12 months to make a claim decision if it has decided to investigate a claim because the claim is fraudulent or it reasonably suspects fraud, as provided by subsection 7.18. Investigation of a claim because of fraud or a reasonable suspicion of fraud is one of five ‘Exceptional Circumstances’¹³ that extend the timeframe for deciding whether to accept or deny a claim from the usual four months to up to 12 months. Subsection 7.18 also requires

¹³ ‘Exceptional Circumstances’ is defined in section 15 of the Code and in **Appendix 6** of this report.

the Code Subscriber to provide a consumer with information about its complaints process if it is unable to make a decision about the claim within that timeframe.

The timeframe in subsection 7.18 ensures that Code Subscribers make a claim decision within a reasonable period of time, after completing their assessment and enquiries, and proactively inform consumers of their decision within the specified timeframe. The intention is to avoid a situation where a Code Subscriber fails to accept or deny the claim, compelling a consumer to act in response to the lack of a decision about the claim.

When Code Subscribers have all relevant information, and have completed all enquiries, they must decide whether to accept or deny the claim and notify a consumer of their decision within 10 business days – this is outlined in subsection 7.16. Respondents use several mechanisms to ensure they can make claims decisions within the specified timeframe, such as:

- embedding the required timeframe within diary systems and procedures manuals
- monitoring and quality assurance frameworks
- proactive claims management
- requiring external Investigators to provide their reports within agreed timeframes.

For example, one respondent reviews active claims files monthly and assesses quality based on compliance with Code standards and its own internal service standards.

An area that Code Subscribers should monitor is whether Employees, Claims Management Services and external Investigators are deciding as early as practicable whether they need to make further enquiries or obtain more information in order to decide whether a claim should be accepted or declined.

All respondents reported that any complaints raised by consumers about the time being taken to make a claim decision, would be handled by them under their complaints processes.

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.

Arrangements for interviews

Respondents reported that they conduct interviews, whether over the phone or in person, at a time and place that is mutually suitable. Most respondents instruct external Investigators to make interview arrangements directly with interviewees.

One respondent reported that its claims staff manage the interview arrangements. Most respondents confirmed that external Investigators' SLAs require them to contact the respondent if they are unable to arrange an interview.

Consumer experience – Interview location and consumer’s circumstances

A consumer advocate reported that an insurer arranged for an external Investigator to interview one of their clients after she lodged claim a under a Home policy. The client experiences anxiety and had recently separated from her partner.

The client declined the external Investigator’s offer to interview her in her home because she was uncomfortable being interviewed there by a stranger. The external Investigator suggested interviewing the client in a hotel room (not a meeting room), which the client also declined.

When the client explained that the alternate arrangement made her uncomfortable, the external Investigator informed her that the interview could only occur at her home or in the hotel room and did not offer another alternative. The client suggested a community centre but the external Investigator said that it would not be suitable because there would not be any meeting rooms.

After some discussion with the insurer, the client contacted her local community centre and arranged access to a meeting room there for the interview. When the client informed the external Investigator of the arrangement, he informed her that the interview could take several hours and to bring a letter from her doctor confirming her anxiety condition.

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.

Five respondents stated that they require an external Investigator to notify it of the interview arrangements and/or 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 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.

Relevance, fairness and transparency of interview questions

When interviewing consumers in relation to a claim under investigation, interview questions must be relevant, fair and transparent, as Code Subscribers are required to ensure that claims are handled honestly, fairly and transparently (subsection 7.2) – as must external Investigators (subsection 6.2). In

addition, the Code states that Code Subscribers will only ask for and rely on information that is relevant to their decision when deciding a consumer's claim (subsection 7.3).

Specialist claims staff

Two respondents stated that their guidelines, processes and procedures for investigations staff include interview questions for different investigation types to ensure that questions are relevant. These respondents regularly perform call monitoring (as frequently as monthly) on investigation staff to review and assess staff performance in the areas of compliance, process and customer service.

The one respondent that does not engage external Investigators and conducts all investigations internally, including interviews, stated that it ensures staff are complying with the relevant Code obligations by:

- requiring staff to comply with standard operating procedures and to undertake e-learning on these
- conducting daily and monthly monitoring of tasks
- conducting monthly call audit reviews and
- conducting company audits.

However, this respondent did not provide any supporting documents to verify its practices.

External Investigators

One respondent outlined the scope of the investigation in its instructions to external Investigators (using a standard instruction letter) to ensure the questions used are relevant to the circumstances of the claim. This respondent does not allow external Investigators to go beyond their instructions without its prior consent. It conducts audits on all investigations completed by external Investigators, including monitoring their conduct and their compliance with instructions.

Five respondents review interview transcripts, external Investigator running sheets, and reports to ensure that interview questions are consistent with the duty of utmost good faith, and that they are honest, fair, transparent and relevant to the circumstances of the claim.

Seven respondents audit the performance of external Investigators against SLAs, including interview records. In particular, they assess external Investigators' conduct against the obligation to be honest, fair, transparent and to ask questions that are relevant to the claim.

Ten respondents stated that they require external Investigators to ensure that all interviews and statements or other information collected by external Investigators is admissible at law and complies with principles of natural justice to ensure fairness and transparency.

These respondents require external Investigators to put an allegation to an interviewee, including evidence of any wrongdoing, and give them the right to respond.

Most respondents also reported that before an external Investigator conducts an interview, the external Investigator must inform the interviewee that the information collected may be used in legal proceedings and for purposes relating to any current or future claims or policies. These respondents stated that they audit investigations for procedural fairness.

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.
-

Duration of interview

The Code does not provide any guidance about the duration of an interview of a consumer when investigating a claim. However, as seen earlier in this report, one of the key elements of the Code is that services captured by the Code, including claims handling services, must be conducted fairly (subsections 6.2 and 7.2). As interviews commonly occur when claims are investigated, the requirement of fairness extends to how an interview is conducted, including its duration.

Consumer experience – Duration of interview

A consumer advocate reported that one of their clients had lodged a claim with his insurer under his comprehensive motor vehicle policy after his car had been fire-bombed. The insurer initially interviewed the client over the telephone about the circumstances of the claim and then arranged a face-to-face interview conducted by an external Investigator. The external Investigator interviewed the client for a period of four hours.

Specialist claims staff

One respondent reported that the nature of internal investigations makes it unlikely that interviews would continue for an extended period or that the interviewee would require a break. However, if an interviewee requests a rest break, the internal investigations staff will suspend the interview and resume at a later time. This respondent conducts call monitoring on investigation staff every month to review and assess staff performance in the areas of compliance, process and customer service.

External Investigators

Four respondents do not provide any guidance to external Investigators about the duration of interviews. They rely on reviews and audits of interview transcripts to identify the duration of the interview and when breaks have occurred. External Investigators' SLAs require them to provide regular breaks for refreshment during longer interviews, whether the interviewee asks for a break or

not, with the general requirement to ensure the interview length is not 'excessive'. However, none of these respondents provide any guidance on the meaning of 'excessive'. For example:

- one respondent requires external Investigators to provide a break at least every hour even if the interviewee does not want one
- another respondent requires external Investigators to explain at the beginning of the interview that it can be paused at any time for a break.

During the Inquiry, four respondents instructed all external Investigators to ensure compliance with their requirements around interview length and breaks, and implemented procedures and reporting requirements to assess their adherence, including adoption of an interviewee's request for a break in the record of interview (usually audio recorded).

For example, these respondents require external Investigators to:

- offer a break to an interviewee at the end of the first and second hours of the interview, for a period to be determined by the interviewee
- if the interview goes to two hours, inform the interviewee how much longer the interview is likely to take so they can consider whether to continue
- proactively advise the interviewee if exceptional circumstances justify exceeding three hours, so they can consider whether to proceed
- ensure that no interview exceeds four hours overall, unless exceptional circumstances exist, in which case both the interviewee and the respondents must consent – if the respondents do not consent then the interview must be terminated.

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 external 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 and if more time is needed, the interview should be suspended and arrangements made to continue at a later date, subject to the Code Subscriber authorising the continuation of the interview and the consumer's consent
-

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- 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.
-

Consumer access to an interpreter or support person during interview

Some consumers require assistance from an interpreter or support person during an interview.

Specialist claims staff

One respondent requires internal investigations staff to offer interpreter services to consumers from non-English speaking backgrounds. It also stated that as interviews are conducted by telephone, the circumstances where a support person is needed are limited, and noted that an interviewee may authorise a third party to act on their behalf in handling the claim.

External Investigators

The CGC verified that seven respondents have SLAs that outline their requirements for handling special circumstances including interviews with juveniles, people with disabilities or medical conditions, and those requiring interpreters. Another respondent stated it is explicitly including these requirements and the training that Service Suppliers provide to their operators in its new proposed SLAs for external Investigators.

Two other respondents stated that when arranging an interview, they assess whether the interviewee has any special needs due to age, language difficulties or any other issue. If needed, they arrange for access to a support person or a qualified interpreter during the interview. One of these two respondents provides guidelines to its external Investigators to ensure they are aware of its expectations. This respondent requires interviewees to complete an interview consent form which also asks whether they need an interpreter.

A number of respondents reported that their SLAs require external Investigators to accommodate any support the interviewee may require such as carers, friends or legal representation in addition to other needs. Under the SLAs, if an agreement about support cannot be reached external Investigators must contact the respondents.

Some respondents also require external Investigators to consider whether a person with a mental or physical disability needs a support person during their interview. External Investigators must record details of the responsible person and they must co-sign the statement or interview.

Consumer experience – Access to a support person

A consumer advocate reported that a client had lodged a claim with her insurer for the theft of her car. This was the client's first claim and at the time she was six months pregnant. The client attended an interview with an external Investigator who asked her to attend a second interview. The external Investigator informed the client that she could not bring a support person with her to the interviews.

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 a 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.
-

Where an interpreter is required (because of language difficulties or hearing impairment), these respondents require external Investigators to contact them to obtain approval for the appointment of an accredited and independent interpreter.

If an interview is recorded electronically, the use of an interpreter must be acknowledged at the beginning of the interview, including their name and professional details. Where the interview is not electronically recorded, the interpreter must sign each page of the interviewee's written record of the interview. One of these respondents may also require an interpreter to provide a separate statement about their qualifications and the services they provide.

Six respondents do not allow external Investigators to use a relative, friend or other close associate of the interviewee as an interpreter in any circumstances.

Another respondent's investigations operations manual states that it is preferable to use an independent and accredited interpreter and is a requirement where contentious matters are involved.

These respondents require external Investigators to ask an interviewee before an interview begins whether they need an interpreter or support person.

Consumer experience – Using an appropriate interpreter

A consumer advocate reported that a client had lodged a claim with her insurer following damage to her car as a result of a motor vehicle accident. The client's husband had been driving the car at the time of the accident. During the investigation of the claim, the insurer arranged for an external Investigator to interview their client and her husband. The husband had a very limited understanding of English and needed an interpreter in a particular dialect of his native language. An interpreter was arranged but did not speak the husband's particular dialect, leading to several misunderstandings about the circumstances of the claim.

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.

Interviewing minors

Several respondents' operations manuals and/or SLAs for external Investigators include requirements that apply to the interview of minors, generally defined as a person under the age of 18 years. These respondents do not allow external Investigators to interview minors unless a responsible adult, such as a parent or guardian, is also present. External Investigators must record the details of the parent, guardian or other responsible adult, and they are required to co-sign any statement or record of interview.

The CGC is concerned that these respondents permit external Investigators to interview minors and it is not clear in what circumstances it would be necessary to do so. Those respondents that have guidelines do not include guidance on when a minor would be considered too young to interview. Some of these respondents reported that an external Investigator is required to determine whether the minor understands the difference between a truth and a lie before interviewing them. This suggests that external Investigators may interview very young people and it is unclear how an external Investigator would assess whether a minor distinguishes between a truth and a lie.

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, whether they are capable of distinguishing truth from fiction, and setting a minimum age for minors who may be interviewed
 - ensure that external Investigators conduct any interview with a minor in the presence of a responsible adult, such as a parent or guardian
 - ensure that external Investigators suspend an 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.
-

External Investigators compliance with the *Privacy Act 1988 (Cth)*

In the context of claims investigations, Code Subscribers, their Employees and Service Suppliers are bound by the principles of the *Privacy Act 1988 (Cth)* when they collect, store, use and disclose personal information about customers (as reinforced in subsection 14.1).

Most respondents reported that their SLAs require external Investigators to comply with the *Privacy Act 1988 (Cth)*. Seven of these respondents reported that their investigation audits include compliance with privacy obligations.

Two respondents stated that external Investigators must provide individuals with a privacy statement. One of these respondents also requires individuals to sign a privacy statement before the interview. The other respondent requires external Investigators to audio record an individual's acknowledgement that they have been provided with a copy of its privacy statement prior to the interview beginning.

Case study – Complying with privacy obligations

The CGC dealt with a matter, which highlighted the importance of external Investigators complying with privacy obligations. In the course of investigating a consumer's claim, their relative raised concerns that a respondent's external Investigator had breached the relative's privacy by disclosing information that was not known to the consumer or the relative's partner. The CGC could not deal with the relative's privacy concerns because the Code does not extend to them. In such cases, the CGC refers the individual to the Office of the Australian Information Commissioner.

The respondent that conducts all investigations internally, including interviews, stated that it conducts monthly call audit reviews and file audits to ensure staff are complying with privacy obligations.

None of the documents that the CGC reviewed referred to the scope or lifespan of an authority obtained from consumers to access information held by third parties. In addition, is not clear whether

Code Subscribers ask external Investigators to surrender the original signed authorities at the conclusion of their investigation.

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 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 and 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.
-

Best practice standards for Investigators

In light of the recommendations that the CGC has made about the conduct of Investigators in this report, the CGC has one final recommendation as follows:

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.

Part two – Outsourced functions

Part two of this report focuses on the policies and procedures respondents have in place that govern the outsourcing of claims-related functions to Service Suppliers, and how they monitor Service Suppliers' compliance with the Code.

Expectations of Code Subscribers who outsource to Service Suppliers

The Code places a high onus on a Service Supplier to ensure that it conducts its services in an honest, efficient, fair and transparent manner when acting on behalf of Code Subscribers – this key obligation is found in subsection 6.2. Depending on the services that are being provided, the Service Supplier is also required to comply with specific Code obligations, most of which would have applied to the Code Subscriber if it had carried out the relevant services rather than outsourcing them to the Service Supplier. Some Code obligations apply specifically to the Service Supplier, such as the requirement to report to a Code Subscriber any complaint about a matter under the Code when providing services for the Code Subscriber (subsection 6.7).

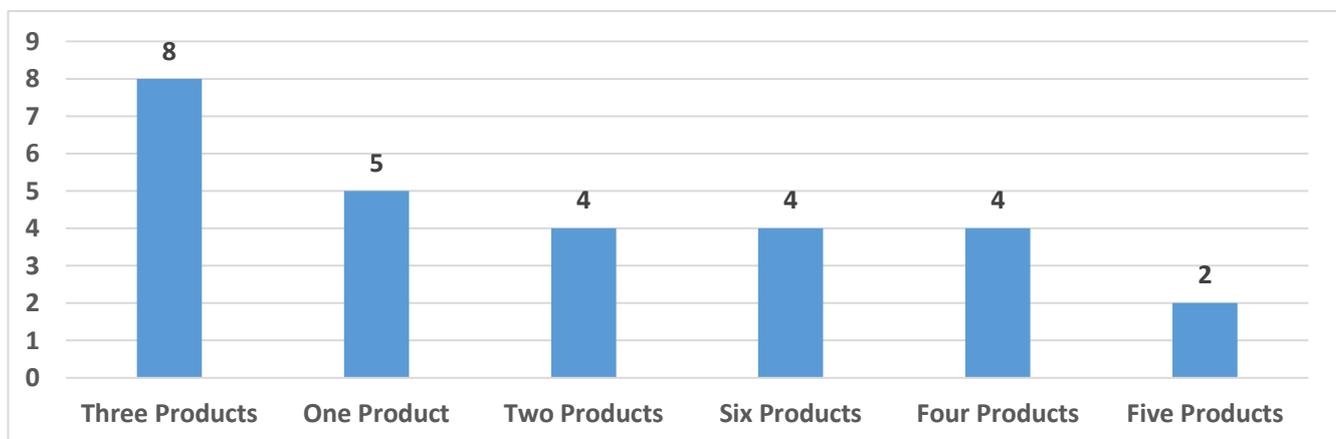
As a result, a Code Subscriber who chooses to outsource functions covered by the Code to a Service Supplier must ensure that the Service Supplier is capable of, and does, deliver such services in accordance with the relevant Code standards.

Retail Insurance products and outsourced functions

Retail Insurance products covered by the Code

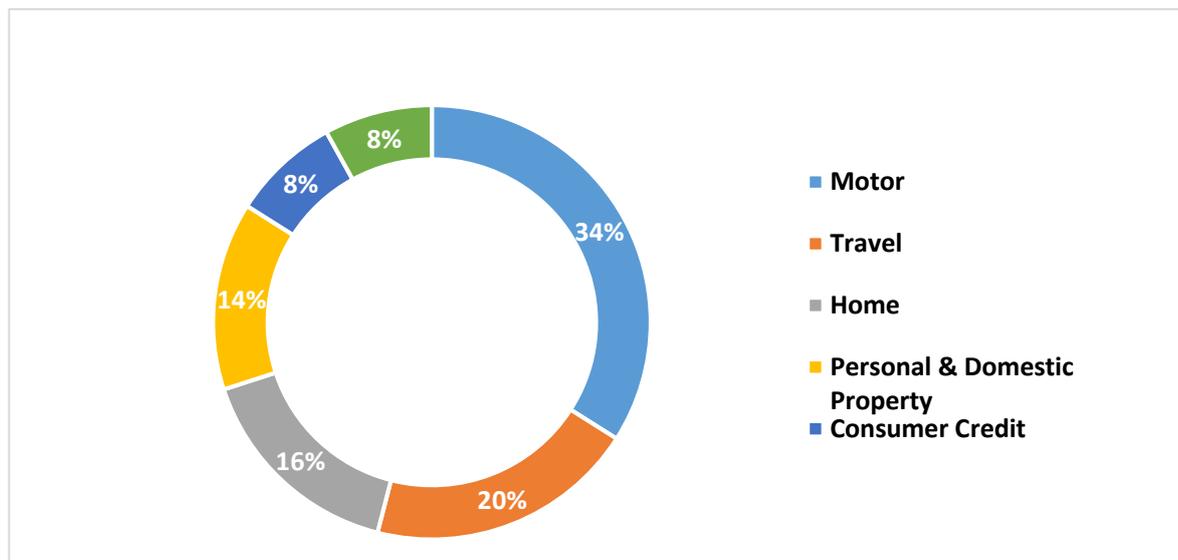
The Code primarily applies to the following Retail Insurance¹⁴ products: Consumer Credit, Home, Motor, Personal & Domestic Property, Sickness & Accident and Travel. Most respondents deal in multiple Retail Insurance products and all respondents outsource functions, as shown in the table and chart below.

Number of Retail Insurance Products handled by respondents



¹⁴ See **Appendix 6** of this report for the Code's definition of 'Retail Insurance'.

Percentage of respondents outsourcing functions for types of Retail Insurance products



Why do respondents outsource functions to Service Suppliers?

Respondents reported that they principally outsource claims-related functions because it extends their capability in terms of resources and expertise. Respondents also cited time, cost and customer service benefits flowing from outsourcing functions.

Some respondents operate a business model comprising small claims teams, and outsource all functions that they do not have the resources and/or necessary expertise to carry out. Other respondents said that they outsource functions:

- when they need additional resources to manage claims volumes
- when they need to access expertise or specialist services that do not exist within the organisation, such as 24-hour emergency assistance services for consumers covered by Travel insurance products, damaged property is in a remote locale, or medical expertise for some aspects of Sickness & Accident claims
- to enable them to focus on core operations and/or manage claims costs.

Types of outsourced functions

All respondents engaged at least one of the four types of Service Suppliers captured by the Code. Several respondents utilised specialised services as follows:

Claims Management Services

Most respondents (18 or 67%) use traditional Claims Management Services for day-to-day management of claims or from time to time. Six respondents (22%) use 24-hour emergency assistance services exclusively or in addition to traditional Claims Management Services. Emergency assistance services are varied and include:

- emergency assistance due to for example lost or stolen passports
- emergency medical advice
- assistance to customers who are hospitalised

- air ambulance transportation or early return to Australia
- general claims advice, limited claims processing such as document management or authorisation of some claims expenses
- containment of overseas medical costs

Loss Assessors for medical claims

A small proportion of respondents (4 or 18%) use legal firms to handle some aspects of claims management, such as negotiating settlement of claims.

Collection Agents

Of the 27 respondents, 18 (67%) engage Collection Agents to recover money from an individual who has caused loss or damage to an insured person or to a Third Party Beneficiary covered by a general insurance product issued by the respondent. One of these respondents uses legal firms as Collection Agents.

External Investigators

Of the 27 respondents, 26 (96%) respondents reported that they use external Investigators to assist with factual investigations and to verify claim circumstances – for instance:

- to conduct face-to-face enquiries, such as with witnesses or third parties
- due to the complex nature of a claim, such as aspects of disclosure, or the need to conduct on-site incident investigation, and
- where fraud or serious misconduct is suspected.

Loss Assessors or Loss Adjusters

Sixteen or 59% of respondents use Loss Assessors and/or Loss Adjusters to examine claim circumstances, assess the extent of the damage or loss, obtain repair/replacement quotations and/or settle claims. Three (11%) respondents exclusively engage medical experts to assess medical claims or in addition to traditional loss assessing and/or adjusting services.

Outsourcing contracts

All 27 respondents reported that their outsourcing contracts require Service Suppliers to comply with the Code and/or reflect the standards of the Code that apply to their services. Most respondents (21) provided documents such as templates of Service Supplier contracts, extracts from or copies of such contracts to support their submissions that these contracts complied with the Code. To simplify the discussion, the CGC has used the term 'contract' to describe these documents.

In the following discussion, the number of respondents is greater than 21 because some respondents provided contracts for different Service Suppliers that were inconsistent in their content and as a result, their level of compliance.

The CGC has drawn several broad conclusions about the level of compliance with section 6:

- 13 respondents provided some Service Supplier contracts (current or a template) that complied with section 6.

- eight respondents have contracts that state that a Service Supplier must comply with ‘the General Insurance Code of Practice’ or ‘all industry codes’ and comply with section 6, apart from the requirement to incorporate the standards of the Code that apply to their services (subsection 6.4).
- three respondents use at least two different types of Service Suppliers and their contracts do not consistently comply with section 6. These contracts authorise Claims Management Services to handle complaints they have received, either partly or fully. This is inconsistent with the obligation in subsection 6.7, which requires a Code Subscriber to handle such complaints itself, under their own internal complaints process. The CGC has discussed this development further in pages 45 – 47.
- two respondents use contracts that contain provisions reflecting some of the standards in section 6, such as the requirement to report complaints to the respondent (subsection 6.7) and obtain approval before subcontracting services (subsection 6.5). However, these contracts do not state that a Service Supplier must comply with the Code or incorporate the standards of the Code that apply to their services.

In relation to subsection 6.7, which requires a Service Supplier to report complaints to a Code Subscriber:

- one respondent’s contract requires a Service Supplier to report any complaints it receives within ‘one day’
- a second respondent requires complaints to be reported to them immediately
- a third respondent also requires the Service Supplier to report complaints received by its subcontractors
- the remaining respondents who comply with subsection 6.7 do not specify a timeframe for reporting complaints to them.

Providing services

Subsection 6.2 of the Code requires Services Suppliers to provide services on behalf of Code Subscribers ‘in an honest, efficient, fair, and transparent manner’. In addition, there are specific standards that apply to the appointment of Service Suppliers (subsection 6.3), the content of their contracts (subsection 6.4), subcontracting of services (subsection 6.5), informing consumers about their role (subsection 6.6) and their obligations in relation to complaints (subsection 6.7).

Evaluating the suitability of Service Suppliers

All respondents reported that they have implemented processes to ensure that they appoint Service Suppliers who:

- are competent, professional, and appropriately qualified and experienced to carry out appointed functions
- understand and apply the standards of the Code that apply to their services when acting on behalf of respondents.

Respondents vary in the way they evaluate the suitability of Services Suppliers depending on the type of services required. Generally, respondents take into account several factors, including experience,

expertise, qualifications, membership of relevant professional bodies, reputation, and references/feedback from other Code Subscribers and industry participants.

A number of respondents require Service Suppliers to apply through a formal tender process, which may include obtaining resumes and evidence of licences; checking for potential conflicts of interest, adverse findings of disciplinary bodies and criminal history; and reviewing Service Suppliers' compliance and quality assurance reports. Some respondents also engaged Service Suppliers for a trial period and re-assessed their performance on completion. Respondents who use specialised Service Suppliers such as medical professionals also considered their experience as expert witnesses and the quality of their reports.

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.

Ensuring that Service Suppliers comply with Code obligations

Most respondents reported that they actively ensure Service Suppliers comply with Code obligations that apply to their services in various ways. There is one notable exception to this, which the CGC has highlighted in the case study on page 42 below.

Skills, expertise, reputation and qualifications

Respondents engage Service Suppliers based on skills, expertise, reputation and qualifications. In addition, contracts with Service Suppliers contain key performance indicators (KPIs).

Assessing quality of work, performance and compliance

Most respondents assess the quality of Service Suppliers' work and performance by:

- reviewing reports and files, conducting site visits, regular meetings, to assess their conduct and performance against KPIs as part of their quality assurance frameworks
- obtaining staff feedback about the quality of Service Suppliers' conduct and performance, reviewing complaints databases, and carrying out customer surveys to identify emerging issues and make improvements if required
- conducting daily, weekly and monthly monitoring of Service Suppliers' performance with timeframes that apply to the delivery of services
- regularly auditing Service Supplier performance (at least annually and some respondents do this on a quarterly basis)
- using external providers to audit the performance of Service Suppliers.

Providing clear and comprehensive instructions

Instructions to Service Suppliers will of course vary depending on the nature of the claim, however respondents' instructions include the following common elements:

- the consumer's details
- the scope of the services that are needed including timeframe
- information about the consumer's claim, details of the applicable insurance cover and claims history.

Access to online claims management portals

Some respondents provide their Service Suppliers with access to an online claims management portal, giving them direct access to a consumer's claim file on a 'read only' basis, or including an ability to add file notes, upload their reports and other documents. Several respondents include a reminder to their Service Suppliers that they must comply with applicable Code obligations and privacy obligations when carrying out their services.

Code and other training

Some respondents provide Code training to Service Suppliers or require them to obtain it – data about the extent of Code training is outlined on page 21 above. Some provide induction training to Service Suppliers or require Service Suppliers to conduct their services in accordance with respondents' procedures manuals. Some respondents also provide ongoing compliance support by meeting regularly with Service Suppliers to discuss issues, the status of matters and outcomes of claims assigned to them.

Some respondents also require Service Suppliers to develop their own systems and processes to ensure compliance with applicable Code obligations. This includes prompt reporting of actual or possible Code breaches, complaints about a matter under the Code and actions taken to rectify Code breaches.

Specific service levels in contracts

Many respondents informed the CGC that in addition to incorporating specific Code obligations they include other service levels such as requiring them to:

- comply with any directions given by the respondent to enable it to meet its Code obligations
- only ask for and rely on information that is relevant to the respondents' decision about the claim
- not act outside their areas of expertise and inform respondents if they are unable to deliver the requested service
- inform respondents if Service Suppliers receive a request from a customer to access information held about them or relied on assessing their claim
- provide reports, advice and recommendations about a claim on all the relevant facts, policy terms and law and factually accurate reports.

Case study – Inadequate oversight of Service Suppliers

The Code obligations

All Service Suppliers must ensure that they conduct their services in an honest, efficient, fair and transparent manner when acting on behalf of Code Subscribers (subsection 6.2). Service Suppliers are required to comply with other Code obligations dependent on the services they are providing – such as conducting claims handling in an honest, fair, transparent and timely manner (subsection 7.2). Some Code obligations, such as the requirement to report all complaints about its services to the Code Subscriber (subsection 6.7), apply specifically to Service Suppliers.

The respondent's oversight of outsourced services

One respondent stated that it uses several types of Service Suppliers but does not proactively monitor their compliance with the Code and stated that:

- it reviews Service Suppliers' policies and procedures to ensure that they align with the relevant Code standards
- it relies on Service Suppliers' reputations for operating within Code requirements
- it relies on the absence of complaints or negative feedback from consumers as an indicator that Service Suppliers are complying with the Code
- Service Suppliers are aware they must refer any complaints to it
- it has authorised one of its Claims Management Services to manage complaints that it receives about the services it is performing on behalf of the respondent.

The CGC's concerns

The CGC is concerned that this respondent's oversight of its Service Suppliers is inadequate and that some aspects may be in breach of the Code. The respondent's overall approach to monitoring is based on passive or reactive mechanisms – it is relying on Service Suppliers' reputations for operating within Code requirements and the absence of consumer complaints as indicative of their compliance with Code standards. It is also clear that in relation to one of its Claims Management Services, the respondent is not complying with a fundamental Code obligation to handle all complaints itself under its own complaints process, including those about its Claims Management Service.

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.

Subcontracting of Service Suppliers' services

The Code requires a Service Supplier to obtain a Code Subscriber's approval before further subcontracting its services (subsection 6.5). Of the 27 respondents, most (22) allow Service Suppliers to subcontract their services in specified circumstances, if the subcontractor is appropriately qualified and has the necessary expertise and experience. Of these 22 respondents, 1 respondent said that it attempts to reallocate the work to another Service Supplier if possible. Five respondents said that they do not permit the use of subcontractors.

Subcontracting occurs when a Service Supplier is unable to provide services, when additional resources are needed because of a large influx of claims, due to the location of the services that are needed or where a quick response is needed. Respondents informed the CGC that investigation firms routinely subcontract work to individual operatives. Claims Management Services outsource functions to Loss Assessors or Loss Adjusters, external Investigators or Collection Agents as a normal part of their business operations. Collection Agents may in turn subcontract recovery work to a law firm (usually a related entity).

Several respondents require their Service Suppliers to use subcontractors who meet the respondent's requirements for appropriate experience, expertise, qualifications and service delivery, and to terminate the subcontractor's services when the respondent asks them to. Importantly, these respondents also require their Service Suppliers to:

- require subcontractors to comply with applicable Code standards – by informing them in the subcontracting agreement of the relevant standards, including the requirement to comply; and/or requiring the subcontractor to complete Code training
- retain responsibility for the subcontractor's acts or omissions and/or ensure that the subcontractor complies with the same obligations that apply to the Service Supplier
- inform the subcontractor that they must notify it of any complaints they receive while carrying out their services
- inform the respondent if the subcontractor receives any complaints about their conduct or breaches the Code
- manage the subcontractor and/or monitor their conduct.

Recommendation 25 – Oversight of approved subcontractors

In addition to Recommendation 7 (see page 23) 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.
-

Outsourced debt collection functions

The CGC examined how respondents ensure compliance with the financial hardship assistance standards in section 8 when a Collection Agent receives a request for assistance from uninsured third parties. Respondents also carried out additional compliance monitoring activities as outlined below.

Oversight

Respondents described different ways of maintaining oversight over Collection Agents. Two respondents do this through direct access to Collection Agents' recovery files and review of their weekly reports. One respondent requires its Collection Agents to provide it with regular reports (monthly or quarterly) about the outcomes of quality assurance and monitoring programs, while another respondent monitors litigated recovery matters on a monthly basis and receives regular updates. One respondent encourages its Collection Agents to contact it for guidance if they are concerned that their conduct might not comply with Code obligations.

Handling of requests for financial hardship assistance

Four respondents do not allow their Collection Agents to assess financial hardship assistance requests – these are referred immediately to the respondent for assessment. Five respondents require Collection Agents to keep them informed about financial hardship assistance requests that they are handling. These respondents also require the Collection Agent to inform them if it cannot reach an agreement with an individual about how to repay the debt. In these circumstances, the respondents provide further instructions to the Collection Agent on whether recovery action should continue.

Code training

Six respondents require Collection Agents to complete Code training with a focus on the requirements of section 8 of the Code. Four of these respondents require Collection Agents to complete refresher training at least twice a year.

One respondent reviewed its Collection Agent's financial hardship policies and procedures to ensure that they aligned with the Code standards. However, this respondent stated that it does not monitor that Collection Agent's compliance with Code requirements and relies on its reputation of operating within Code requirements and the absence of complaints as indicative of Code compliance.

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 and ASIC *Debt Collection Guideline 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.
-

Outsourced complaints handling functions

Subsection 6.7 of the Code requires a Service Supplier, when acting on behalf of a Code Subscriber, to notify it of any complaint about a matter under the Code. Further, Code Subscribers are required to handle, under their own complaints process, any complaints about Service Suppliers acting on behalf of the Code Subscriber.

Section 10 of the Code sets out an extensive, detailed framework of minimum standards that Code Subscribers must implement for internal and external complaints and disputes handling.¹⁵ Code Subscribers are members of FOS, which provides independent external dispute services for those matters that come within its jurisdiction.¹⁶ Internal complaints processes generally comprise two stages – Stage One and Stage Two – and some of the standards require Code Subscribers to:

- complete each stage within 15 business days unless a consumer has agreed to an extension of time
- notify the consumer in writing of the outcome of each stage of the internal review including reasons, information about escalation to the next stage including the availability of external dispute resolution
- ensure that the combined Stage One and Stage Two timeframes do not exceed 45 calendar days, unless they are unable to provide the consumer with a final decision within that timeframe, and
- if they are unable to meet the 45 calendar day timeframe, inform the consumer before the timeframe expires of the reasons for the delay and the consumer's right to take their complaint to FOS, together with FOS's contact details.

None of the respondents outsource the handling of complaints that they have received about themselves to a Service Supplier. However, five respondents have authorised Service Suppliers to manage complaints that they (the Service Suppliers) receive while acting on behalf of those respondents. Two of the five respondents have authorised some of their Service Suppliers to handle complaints only up to the end of Stage One. One of these respondents authorises its Claims

¹⁵ Some of the standards of section 10 are contained in **Appendix 8** of this report. For full details of section 10 go to <http://codeofpractice.com.au/document/10-complaints-and-disputes>.

¹⁶ Information about FOS including its jurisdiction is available from <http://fos.org.au/>.

Management Service to do this while the other respondent authorises its Claims Management Service as well as some types of Loss Assessors and its Collection Agents to do so.

These respondents maintain oversight of these activities through several measures, including:

- regular reports from and meetings with these Service Suppliers
- service escalation to a respondent if a complaint is not resolved within two days
- requiring Collection Agents to notify the respondent of all complaints they receive, and
- not allowing them to handle any complaints about or relating to financial hardship.

One respondent provided an example of a Service Supplier's report about its Stage One complaints. The report is limited to a high level overview of the number of complaints the Service Supplier received, and the time taken to complete Stage One of the internal complaints process. However, the report lacks information about the nature of the Stage One complaints or how they were resolved.

Authorising Claims Management Services to handle complaints

The remaining three respondents authorise their Claims Managements Services to handle internal complaints about claims, including declined claims across Stages One and Two.

For instance, the first of these respondents requires its Claims Management Service to record all complaints in a complaint register to monitor timeframes and to discuss these at regular meetings with the respondent. If the Claims Management Service maintains its decision to deny the claim at the end of Stage One, and the consumer does not escalate their complaint to Stage Two, it is authorised to close the complaint. If the consumer escalates the complaint to Stage Two, the Claims Management Service continues to handle the complaint and must notify the respondent if the complaint raises any reputational risk for the respondent. If the respondent disagrees with the Claims Management Service's Stage Two decision, it retains control of the final decision: the respondent will review the Service Supplier's decision and determine whether it should support it. This respondent monitors the Claims Management Service's conduct monthly and analyses compliance outcomes to identify issues and areas requiring improvement, including:

- systemic or procedural issues leading to complaints
- failure to comply with various laws and the Code
- conflicts of interest, and
- complaints and claims registers.

It also uses the outcomes of Stage Two complaints to inform its reviews of its product disclosure statements.

The second respondent stated that it maintains an appropriate level of oversight of complaints handling by its Claims Management Service because:

- it provides its Claims Management Service with documented procedures and training about complaints handling, and direct access to its complaints register to log any complaints received about the claims managed on its behalf
- it conducts quality assurance reviews of these files, and
- its compliance team maintains regular contact with the Claims Management Service to ensure complaints are managed appropriately.

The third respondent authorises its Claims Management Service to handle its own complaints rather than refer them to the respondent. The CGC has already expressed its concerns about this respondent and its oversight of its Claims Management Service on pages 40 and 42. This respondent did not provide sufficient information for the CGC to assess the extent to which (if any) it maintains oversight of the Claims Management Service's conduct, including internal complaints handling.

These three respondents are not complying with subsection 6.7 of the Code, which requires them to handle all complaints under their own internal complaints process. Further, these respondents have variable ability to see and monitor their Service Suppliers' complaints handling to ensure compliance with the Code's standards. This may result in:

- disparate and unfair complaint outcomes for consumers
- incomplete/lack of information about internal complaints outcomes for consumers, and
- incomplete/lack of information about consumers' rights to access internal complaints and/or external complaints handling systems.

These respondents have not specified why they elected to authorise their Service Suppliers to handle complaints. The key reason is likely to be pragmatism – some of these Service Suppliers have particular expertise or specialist knowledge relevant to the particular Retail Insurance products that they are handling on behalf of the respondents.

The Code recognises that the use of Service Suppliers is a standard business practice but to strengthen consumers' trust and confidence in the general insurance industry, it requires Code Subscribers to take full responsibility for the internal review of complaints that relate to their Service Suppliers. This is a high standard for internal complaints handling and companies who have subscribed to the Code have committed to this.

Recommendation 28 – Code Subscribers must handle complaints about Service Suppliers

All Code Subscribers who use Service Suppliers should review their 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.

Monitoring Service Suppliers' Code compliance

Most respondents informed the CGC that they have monitored Service Suppliers' compliance with the Code since it became operational on 1 July 2015, using two or more of the following mechanisms:

- peer review, monthly and quarterly quality assurance and audit programs
- feedback from customers including complaints and social media feedback
- engagement of external auditors
- on a claim by claim basis
- regular review meetings with Service Suppliers including on-site visits.

One respondent reported that as its relationship with the relevant Service Supplier was less than 12 months old, it had not conducted any compliance reviews yet. As already discussed, another respondent does not actively monitor the conduct of some of its Service Suppliers and relies on consumer complaints as a measure of how well these providers are complying with Code obligations.

All respondents reported that they would provide feedback to Service Suppliers on non-compliance with the Code as part of their remedial actions.

Recommendation29– 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.

Reporting non-compliance to boards or executive management

All respondents said that they have a governance process that ensures that Code non-compliance is reported to the individual organisation's Board of Directors or Executive Management (subsection 13.2(c)). This usually requires escalation of a Code breach or possible breach in accordance with the organisation's incident and breach policy to a chief risk officer or executive management for resolution of the incident, including required remedial action, and reporting to its Board Risk Committee and finally to its Board.

Typically, the governance process consists of one or more of the following elements:

- Non-compliance is recorded in an incident register and these incidents are discussed at regular (usually monthly) meetings with the respondent's risk committee or CEO.
- Significant issues are raised with Executive Management and then the Board of Directors.

Several respondents have a Chief Risk Officer who reports to a risk committee, which is often a subcommittee of the Board of Directors. These risk committees meet at least quarterly and more often if issue are significant or material. These matters are then reported to the Board of Directors.

Identifying instances of non-compliance

The Code requires Code Subscribers to be responsible for their own compliance with the Code (subsection 13.2). All respondents reported that they have incident reporting and breach identification processes in place. These systems:

- enable respondents to record and report on issues that are or indicate breaches of relevant laws, Code standards and internal policies and procedures
- enable some respondents to capture issues relating to contractual arrangements with Service Suppliers
- capture compliance issues that may be reported by staff and/or Service Suppliers or identified through monitoring activities
- may also capture the cause of compliance issues and their impact, in addition to remedial actions.

However, one respondent reported that its breach incident reporting system relies on identification of 'material non-compliance' that it defined as a breach resulting in a detrimental outcome for consumers.

The CGC is concerned that a focus on 'material non-compliance' may mean that other Code Subscribers might also be underreporting Code breaches. The Code does not incorporate 'materiality' as a factor in considering whether a Code Subscriber has breached the Code. In particular, subsection 13.4 of the Code unequivocally states that a Code Subscriber will be in breach of the Code if its '...Employees ... Authorised Representatives, or ... Service Suppliers **fail to comply** with this Code when acting on [Code Subscribers] behalf' (emphasis in bold added).

In relation to a 'significant Code breach', the Code defines this term by reference to several factors. A matter is significant and thereby reportable to the CGC within 10 business days of identification, even if only one of the following factors has been met:

Significant Breach means 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 Code obligations is inadequate;*
- (d) the actual or potential financial loss caused by the breach; and*
- (e) the duration of the breach.*

The focus on 'materiality' is a concern because this may mean that Code Subscribers are underreporting Code breaches, including possibly significant breaches.

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.
-

About the Code and the CGC

The General Insurance Code of Practice

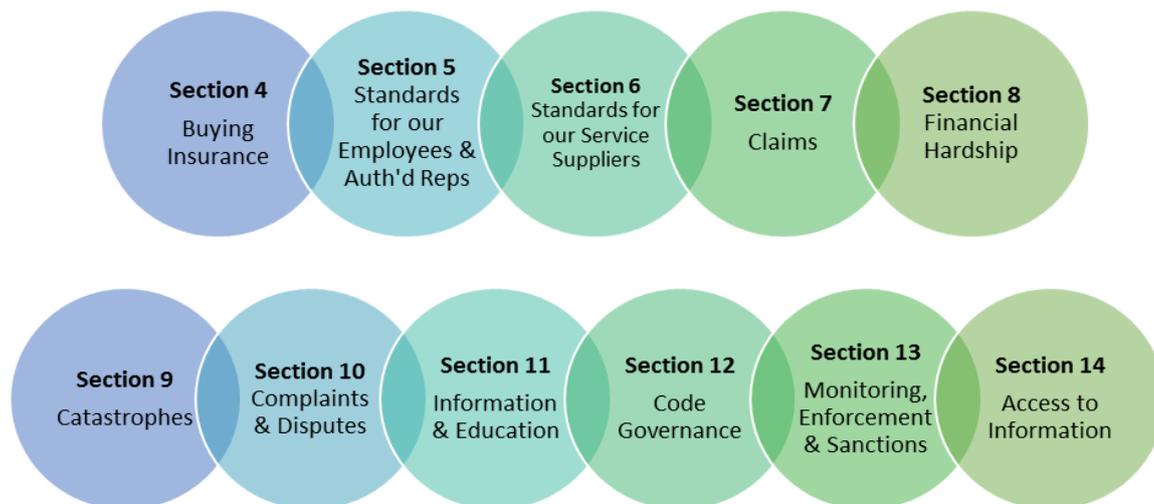
The ICA developed the General Insurance Code of Practice (the Code) as a voluntary industry code to promote high standards of service and better customer relationships in the general insurance industry. The ICA introduced the Code in 1994 and it has undergone significant revisions since then to ensure its continued relevance and effectiveness.

The ICA released the latest version of the Code – the Code – on 1 July 2014. The Code became operational on 1 July 2015 and primarily applies to the following retail (not wholesale) general insurance products (defined by the *Corporations Act 2001* (Cth) and related regulations:

- a motor vehicle insurance product
- a home building insurance product
- a home contents insurance product
- a sickness and accident insurance product
- a consumer credit insurance product
- a travel insurance product, or
- a personal and domestic property insurance product.

The Code enhanced and strengthened existing standards and introduced new standards, which apply to a range of areas of general insurer practice, outlined in **Figure 1** below. The 181 general insurers, coverholders and claims administrators who subscribe to the Code agree to comply with its standards. See **Appendix 5** for a list of current Code Subscribers.

Figure 1. The Code standards



CGC members

The CGC is the independent body responsible for monitoring Code Subscribers' compliance with Code standards. Under an outsourcing agreement, the Code team at FOS acts as Code administrator, with responsibility for monitoring Code compliance on the Committee's behalf.



Lynelle Briggs AO – Independent Chair

Lynelle Briggs is Chairperson of the NSW Planning Assessment Commission. She serves on the Boards of Maritime Super and Goodstart Early Learning, and the Council of the Royal Australian College of General Practitioners.

Lynelle was formerly a member of the Australian Rail Track Corporation Board. She was also Chairperson of the Australian Security Intelligence Organisation's Audit and Risk Commission and Chairperson of the Jigsaw Theatre Company Board. She has chaired the Shipping Workforce Development Forum, the Inquiry into Compliance, Work Health and Safety Laws in the ACT Construction Industry, and the Catholic Development Fund Steering Committee. She was the Independent Project Facilitator for the Millers Point Accommodation Project. During her executive career, Lynelle Briggs was Australia's Public Service Commissioner and Chief Executive of Medicare Australia.



Ian Berg – Industry Representative

Ian retired from FM Global Australia's operations in March 2014 after 35 years with the group. He was Vice President and Operations Manager for Australia, Chief Executive Officer for FM Global in Australia and a director of FM Insurance Co. Ltd. Ian spent five years as a director on the ICA Board.

Starting his career as a loss prevention engineer, Ian has worked in engineering, business development, marketing, underwriting and management positions for FM Global in Australia, the UK and the US. Ian is a qualified engineer and a Member of the Australian Institute of Company Directors.



Julie Maron – Consumer Representative

Julie has been a practicing solicitor since 2001, having worked in private practice and government legal departments in Canberra, before moving to her current role as a senior consumer lawyer for Legal Aid NSW, based in Wagga Wagga in regional NSW.

Julie has assisted hundreds of consumers with insurance matters after natural disasters, including the 2010–2011 Queensland floods, the 2010 and 2012 Riverina floods and the 2013 Warrumbungles bushfire. Julie was the consumer adviser to the Independent Review of the General Insurance Code of Practice.



Sally Davis – General Manager

Sally Davis began her role as General Manager of the Code team at FOS and CEO of the Code Compliance and Monitoring Committee on 1 September 2015. Prior to her appointment to this role, Sally was Senior Manager of Systemic Issues at FOS and has worked at FOS and its predecessor schemes for over 15 years. Sally is a graduate of the Mt Eliza Business School and an accredited mediator. She holds a Bachelor of Commerce and a Bachelor of Laws degree from the University of Melbourne and a Graduate Diploma (Arts) from Monash University.

Sally provides support to the Committees in their monitoring of those Codes, shares insights from monitoring activities and adds value back to industry and consumers. Sally also regularly works with all relevant stakeholders to enhance the knowledge and effectiveness of Codes of Practice in the financial services industry.



Rose-Marie Galea – Compliance Manager

Rose-Marie is a lawyer and holds a Bachelor of Science with Honours from Monash University. After working in private practice, the general insurance industry and the Queensland public service, she began working with FOS and its predecessor schemes in 2001. Rose-Marie has been involved in Code compliance monitoring within the general insurance industry since 2003.

Rose-Marie provides support to the CGC in the monitoring of the General Insurance Code of Practice. She also engages regularly with Code Subscribers to facilitate the Code's objectives and with other key stakeholders to broaden their knowledge of the Code's role within the general insurance industry.

Appendices

Appendix 1: CGC's key findings

Area of assessment	Key findings: Part one – Claims investigations
<i>Deciding whether to investigate claims</i>	<ul style="list-style-type: none"> Claims are usually investigated before a respondent decides whether to accept the claim. This may be because: <ul style="list-style-type: none"> a claim is identified as 'high risk', usually due to the presence of claims anomalies broadly described as 'fraud investigation indicators' incomplete information has been provided, and/or further information is needed.
<i>Fraud investigation indicators</i>	<ul style="list-style-type: none"> Fraud investigation indicators are claims anomalies that suggest a claim is 'high risk'. Usually the presence of multiple indicators within a claim will influence a respondent to conduct further enquiries or examine the claim more closely, before it decides whether it should accept the claim.
<i>Development of fraud investigation indicators</i>	<ul style="list-style-type: none"> A respondent's fraud investigation indicators are based on its risk appetite, product coverage and exclusions, and an understanding of fraudulent or high risk behaviours.
<i>Types of fraud investigation indicators</i>	<ul style="list-style-type: none"> Fraud investigation indicators may vary within a respondent's organisation, and from respondent to respondent, because of a particular product's coverage and exclusions, as well as behavioural, circumstantial and factual characteristics.
<i>Identification and evaluation of fraud investigation indicators</i>	<ul style="list-style-type: none"> Respondents identify fraud investigation indicators manually or through combined automated and manual processes. All respondents use a triage process to determine whether a claim flagged as high risk warrants closer examination and allocation (usually) to an external Investigator. Many respondents said that the presence of fraud investigation indicators does not determine that a claim is fraudulent.
<i>Expertise of Employees</i>	<ul style="list-style-type: none"> The extent of guidance, education, experience and training varies depending on an Employee's role in the processing or evaluation of high risk claims.
<i>Internal and external Investigators</i>	<ul style="list-style-type: none"> Only one of the 27 respondents conducts its own investigations to verify the circumstances of high risk claims. The remaining 26 respondents use external Investigators exclusively or in combination with specialist Employees.
<i>Ensuring external Investigators comply with the Code</i>	<ul style="list-style-type: none"> Most respondents reported that in relation to external Investigators: <ul style="list-style-type: none"> they use an appointment/accreditation process to assess whether external Investigators have the ability to provide services competently and professionally contracts incorporate SLAs they monitor performance and compliance with the Code in various ways including performance reviews, review of claims files and consumer feedback, and

	<ul style="list-style-type: none"> – if a Claims Management Service engages external Investigators, they must verify that they have the necessary competencies. • Four respondents require their external Investigators to complete Code training even though the Code does not require them to do so.
<i>What respondents said about compliance</i>	<ul style="list-style-type: none"> • Section 6 sets out the standards that apply to Code Subscriber's Service Suppliers, including external Investigators. All 26 respondents who use external Investigators reported that they and their external Investigators comply with section 6 of the Code. • 18 of these 26 respondents provided some supporting documents that enabled the CGC to draw some conclusions about their compliance. • The remaining eight respondents did not provide relevant supporting documents.
<i>Contracts with Service Suppliers entered into after 1 July 2015</i>	<ul style="list-style-type: none"> • Of the 18 respondents who provided some supporting documents: <ul style="list-style-type: none"> – nine had executed new agreements with Service Suppliers and complied with subsections 6.2, 6.4, 6.5, 6.6 and 6.7, and – the remaining nine respondents had not executed new agreements.
<i>Some respondents may not be complying with Code obligations</i>	<ul style="list-style-type: none"> • Some respondents do not maintain adequate oversight of Services Suppliers. • There are concerns about the way in which one Claims Management Service investigates claims that have fraud investigation indicators. • Some respondents reported that they authorise some of their Service Suppliers to handle their own complaints, which is inconsistent with the requirement under the Code that all Code Subscribers must handle all complaints under their complaints process, including those relating to their Service Suppliers.
<i>Informing consumers about investigations</i>	<ul style="list-style-type: none"> • Most respondents proactively inform consumers about their decision to investigate claims and the reasons why.
<i>Time taken to make a claim decision</i>	<ul style="list-style-type: none"> • Respondents use several mechanisms to ensure they can make claims decisions within the specified timeframe, such as embedding the required timeframe within diary systems and procedures manuals.
<i>Arrangements for interviews</i>	<ul style="list-style-type: none"> • Most respondents instruct external Investigators to make interview arrangements directly with interviewees and to notify them if unsuccessful.
<i>Relevance, fairness and transparency of interview questions</i>	<p>Respondents use various means to ensure relevance, fairness and transparency of interview questions including:</p> <ul style="list-style-type: none"> • outlining the scope of the investigation in its instructions to external Investigators • reviewing interview transcripts, external Investigator running sheets, and reports
<i>Duration of interview</i>	<ul style="list-style-type: none"> • Some respondents do not provide any guidance to external Investigators about the duration of interviews. • However, during this Inquiry four respondents provided guidance to external Investigators about interview duration and rest breaks.
<i>Consumer access to an interpreter or support person during interview</i>	<ul style="list-style-type: none"> • All respondents reported that they provide consumers with access to an interpreter or support person during interviews. • The level of guidance provided internally and externally to assess consumers' special needs varied.
<i>Interviewing minors</i>	<ul style="list-style-type: none"> • Several respondents' operations manuals and/or SLAs for external Investigators refer to the interview of minors.

<i>External Investigators compliance with the Privacy Act 1988 (Cth)</i>	<ul style="list-style-type: none"> • Most respondents replied that SLAs require external Investigators to comply with privacy obligations under the <i>Privacy Act 1988</i> (Cth).
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Area of assessment	Key findings: Part two – Outsourced functions
<i>Why respondents outsource functions to Service Suppliers</i>	<p>Respondents principally outsource claims-related functions because it:</p> <ul style="list-style-type: none"> • extends their capability in terms of resources and expertise. • offers time, cost and customer service benefits.
<i>Types of outsourced functions</i>	<ul style="list-style-type: none"> • 18 respondents use Claims Management Services • 18 respondents use Collection Agents • 26 respondents use external Investigators • 16 respondents use Loss Assessors and/or Loss Adjusters.
<i>Standards that apply to Code Subscribers and their Service Suppliers</i>	<p>All respondents reported that they have implemented processes to ensure that they appoint Service Suppliers who:</p> <ul style="list-style-type: none"> • are competent, professional, and appropriately qualified and experienced to carry out appointed functions • understand and apply the standards of the Code that apply to their services when acting on behalf of respondents.
<i>Subcontracting of Service Suppliers' services</i>	<p>Most respondents permit Service Suppliers to subcontract their services, usually with prior approval, if the subcontractor is appropriately qualified and has the necessary expertise and experience.</p>
<i>Outsourced debt collection functions</i>	<ul style="list-style-type: none"> • Four respondents do not allow Collection Agents to assess financial hardship assistance requests. • Six respondents require Collection Agents to complete Code training.
<i>Outsourced complaints handling functions</i>	<ul style="list-style-type: none"> • None of the respondents outsources the handling of complaints that they have received to a Service Supplier. • However, five respondents have authorised Service Suppliers to manage complaints they have received while acting on behalf of those respondents.
<i>Monitoring Service Suppliers' compliance</i>	<ul style="list-style-type: none"> • All respondents said that they have a governance process for the reporting of Code non-compliance, including by Service Suppliers. • However, there may be underreporting of Code breaches due to a focus on 'materiality' as a factor in deciding whether an incident has resulted in a Code breach.

Appendix 2: CGC's 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.

Appendix 3: Code Subscribers' Questionnaire

Your organisation's retail general insurance products

Retail General Insurance Product (as defined in the Corporations Act 2001 and the relevant regulations)	Do you deal in this product? Yes/No
A motor vehicle insurance product (Reg. 7.1.11)	
A home building insurance product (Reg. 7.1.12)	
A home contents insurance product (Reg. 7.1.13)	
A sickness and accident insurance product (Reg. 7.1.14);	
A consumer credit insurance product (Reg. 7.1.15)	
A travel insurance product (Reg. 7.1.16)	
A personal and domestic property insurance product (Reg. 7.1.17)	

Part 1: Claims Investigations

In Part one only, "Investigator" means an Employee of a Code Subscriber or an Investigator who is a Service Supplier as defined by the Code.

Deciding whether to investigate a claim

1. What indicators does the organisation rely on when deciding whether to investigate a claim and why?
2. How were these indicators developed?
3. How often does the organisation review the indicators for continuing relevance?
4. Are these indicators manually identified by the organisation or by an automated process?
5. What type of guidance, education, experience and training does the organisation provide to, or require of, an Investigator responsible for:
 - a) Manually identifying these indicators?
 - b) Evaluating claims against these indicators?
6. a) Does the organisation only rely on the indicators or does it conduct any other examination of the claim to determine whether further investigation is warranted?
 b) If yes, what other factors does the organisation take into account when deciding whether to further investigate?
7. When and how does the organisation notify a customer that it has appointed an Investigator to investigate their claim?
8. a) What information does the organisation provide to the customer about its decision to investigate their claim and when it is likely to make a claim decision?
 b) When and how does it do this?
9. How does the organisation respond to the customer if they complain about the:
 - a) Organisation's decision to investigate their claim?
 - b) The length of time that the organisation is taking to make a decision about their claim?

Using Investigators

10. In what circumstances does the organisation conduct investigations using an Investigator?
11.
 - a) Does the organisation require an Investigator to hold a current licence to conduct investigation services for the organisation and/or hold membership with a relevant professional body?
 - b) If not, why not?
12. How does the organisation ensure that:
 - a) Prior to conducting an interview with a customer, the Investigator notifies the customer of the proposed interview(s) and the purpose of the interview?
 - b) Reasonable arrangements are made to conduct the interview(s) at a time and place that is mutually suitable?
 - c) The Investigator's interview questions are honest, fair, transparent and relevant to your organisation's decision whether to accept the claim?
 - d) The duration of the interview is appropriate and provides the customer with an opportunity for a reasonable break or breaks?
 - e) A disadvantaged or vulnerable customer has access to an appropriately qualified interpreter and/or access to a support person during the interview?
 - f) The Investigator explains to a customer why they may be asked for certain documents or information?
 - g) The Investigator complies with the Privacy Act 1988 when they collect, store, use and disclose any personal documents and/or information obtained from or about the customer?

Claims decisions

13. How does the organisation ensure that it will make a decision whether to accept or deny a customer's claim in accordance with the timeframes set out in subsections 7.16 and 7.18?
14. If the organisation decides to refuse the customer's claim, how does the organisation ensure that the decision is based on all relevant facts, the terms of the customer's insurance policy and the law (subsections 7.2 and 7.11)?
15. If the organisation decides to refuse the customer's claim, describe how the organisation complies with the obligations outlined in subsection 7.19.

Part 2: Functions outsourced to Service Suppliers

Types of Outsourced Functions and Classes of General Insurance

16. Describe functions that the organisation outsources to Service Suppliers.
17. Why does the organisation use outsourced Service Suppliers to conduct these functions?
18. List the classes of general insurance where the organisation outsources functions.

Providing services

19. How does the organisation ensure that a Service Supplier will provide services on its behalf in an honest, efficient, fair and transparent manner?

Evaluation and Appointment of Service Supplier

20. How does the organisation evaluate the qualifications, experience and professionalism of a Service Supplier and their Employees?

21. How does the organisation ensure that the Service Supplier will provide services that fall within their area of expertise?
22. What is the organisation's process for the appointment of the Service Supplier?
23. How does the organisation convey instructions to the Service Supplier?
24. What does the organisation include in its instructions to the Service Supplier? Please include specific examples.

Service Supplier Contract

25. How does the organisation ensure that its contract with a Service Supplier reflects the standards of the Code that apply to their services?
26. Do the terms of the organisation's contract with the Service Supplier reflect the standards of the Code that may apply to their services? Please provide copies of the organisation's current or template Service Supplier contracts.

Subcontracting of Service Supplier's services

27. In what circumstances would the organisation permit the Service Supplier to subcontract their services and who provides the approval?
28. How does the organisation ensure that the Service Supplier obtains its approval before subcontracting their services?
29. What factors does the organisation take into account when assessing a request from the Service Supplier to subcontract their services?
30. How does the organisation ensure that the subcontractor will comply with the relevant Code standards, including notifying the organisation promptly of any complaints about them?

Monitoring of Service Supplier standards

31. How does the organisation monitor the Service Supplier's conduct to ensure that they are or have been providing their services to the organisation's customers/uninsured third parties in an honest, efficient, fair and transparent manner (section 6.2)? Please provide examples.
32. How does the organisation monitor the Service Supplier's conduct to ensure that they are or have been complying with the requirements of sections 6.5, 6.6 and 6.7 and the standards within section 14 (to the extent that they apply to the services being provided)? Please provide examples.

Monitoring of outsourced claims management functions

If the organisation outsources claims management functions to a Service Supplier please respond to the following questions. Please provide examples.

33. How does the organisation maintain oversight of the Service Supplier's conduct to ensure that they comply with the claims handling standards within section 7?
34. How does the organisation maintain oversight of the Service Supplier's conduct to ensure that they comply with the standards of section 9, in relation to catastrophe claims?

Monitoring of outsourced debt collection functions

If the organisation outsources debt collection functions to a Service Supplier, please respond to the following questions. Please provide examples.

35. How does the organisation maintain oversight of the Service Supplier's conduct to ensure that they comply with subsections 8.3 – 8.9 and subsection 8.13?
36. How does the organisation maintain oversight of the Service Supplier's obligation to comply with the requirements of subsections 8.10 and 8.11?

37. How does the organisation maintain oversight of the Service Supplier's obligation to comply with subsection 8.12?

Monitoring of outsourced complaints handling functions

38. If the organisation outsources a part or the whole of its complaints process to a Service Supplier, how does it maintain oversight? Please provide supporting documentation.

Monitoring activities since 1 July 2015

39. What monitoring has the organisation undertaken since 1 July 2015 to ensure the Service Supplier has complied with the relevant Code obligations?
40. a) Has the organisation identified any instances of non-compliance with the relevant Code obligations?
b) If yes, please complete the attached non-compliance report.
41. How does the organisation report on the conduct of the Service Supplier and any impact on Code compliance to the organisation's Board of Directors or Executive Management?
42. a) Does the organisation provide feedback to the Service Supplier about non-compliance issues, including non-compliance identified by the CGC and the outcomes of IDR and EDR issues?
b) If yes, how?
41. How does the organisation report on the conduct of the Service Supplier and any impact on Code compliance to the organisation's Board of Directors or Executive Management?
42. a) Does the organisation provide feedback to the Service Supplier about non-compliance issues, including non-compliance identified by the CGC and the outcomes of IDR and EDR issues?
b) If yes, how?

Appendix 4: Questionnaire for consumer advocates

Since 1 July 2015, when you or your clients dealt with a Code Subscriber or their Service Supplier:

1. What were the most important issues you identified?
2. What type of services were provided?
3. Was the Code Subscriber's or their Service Supplier's role made clear to you or your client?
4. What did the Code Subscriber or their Service Supplier do well?
5. What could they have done better?
6. Have you noticed any difference in the way in which Code Subscribers or their Service Suppliers deal with you or your clients in relation to claims investigations since 1 July 2015? If yes, what are the differences?
7. Have you noticed any difference in the way in which Code Subscribers or their Service Suppliers deal with you or your clients in relation to financial difficulty since 1 July 2015? If yes, what are the differences?
8. Have you noticed any other difference in the conduct of Code Subscribers or their Service Suppliers since 1 July 2015? If yes, what are the differences?
9. Are there any further comments you would like to make with regard to this Inquiry and/or your overall experiences when dealing with Code Subscribers or their Service Suppliers?

Appendix 5: Current Code Subscribers

Code Subscribers – General Insurers			
1	AAI Limited	26	Mitsui Sumitomo Insurance Co Ltd
2	AIG Australia Ltd	27	MTA Insurance Limited
3	AIOI Nissay Dowa Insurance Company Australia Pty Ltd	28	NTI Limited
4	Allianz Australia Insurance Limited	29	OnePath General Insurance Pty Limited
5	Ansvar Insurance limited	30	Progressive Direct Insurance Pty Ltd
6	Assetinsure Pty Ltd	31	QBE Insurance (Australia) Limited
7	Auto & General Insurance Company Limited	32	QBE Lenders' Mortgage Insurance Limited
8	Berkshire Hathaway Specialty Insurance Company	33	RAA Insurance Limited
9	Calliden Insurance Limited	34	RAC Insurance Pty Limited
10	Catholic Church Insurance Limited	35	RACQ Insurance Limited
11	CGU Insurance Limited	36	RACT Insurance Pty Ltd
12	Chubb Insurance Australia Limited	37	Sompo Japan Nipponkoa Insurance Inc
13	Commonwealth Insurance Limited	38	Southern Cross Benefits Limited
14	Credicorp Insurance Pty Ltd	39	St Andrew's Insurance (Australia) Pty Limited
15	Defence Service Homes Insurance Scheme	40	Sunderland Marine Mutual Insurance Company Limited
16	Eric Insurance Limited	41	Swann Insurance (Aust) Pty Ltd
17	Factory Mutual Insurance Company	42	The Hollard Insurance Company Pty Ltd
18	Genworth Financial Mortgage Insurance Pty Ltd	43	The Tokio Marine & Nichido Fire Insurance Co Ltd
19	Great Lakes Insurance SE	44	Virginia Surety Company Inc
20	Guild Insurance Limited	45	Westpac General Insurance Limited
21	Hallmark General Insurance Company Limited	46	WFI Insurance Limited
22	Insurance Australia Limited	47	XL Insurance Company Ltd
23	Insurance Manufacturers of Australia Pty Limited	48	Youi Pty Ltd
24	LawCover Insurance Pty Limited	49	Zurich Australian Insurance Ltd
25	Lloyd's Australia Limited		

Code Subscribers: Lloyd's Australia Limited – coverholders and claims administrators			
1	1Cover Pty Ltd	67	Ironshore Australia
2	About Underwriting	68	iSure Pty Ltd
3	Advent Insurance Management Pty Limited	69	Itrek Pty Ltd
4	Agile Underwriting Services Pty Ltd	70	Jardine Lloyd Thompson Pty Ltd
5	AIS Insurance Brokers Pty Ltd	71	JMD Ross Insurance Brokers Pty Ltd
6	AJ Gallagher t/a Offshore Market Placements Limited	72	JUA Underwriting Agency Pty Ltd
7	Amazon Underwriting Pty Ltd	73	Lockton Companies Australia
8	AON Risk Services Australia Ltd	74	Logan Livestock Insurance Agency Pty Ltd
9	Arch Underwriting Agency (Australia) Pty Ltd	75	London Australia Underwriting Pty Ltd
10	Arch Underwriting at Lloyd's (Australia) Pty Ltd	76	Marsh Pty Ltd
11	Argenta Underwriting Asia Pte Ltd	77	Millennium Underwriting Agencies Pty Ltd
12	ASG Insurance	78	Miramar Underwriting Agency Pty Ltd

13	ASR Underwriting Agencies Pty Ltd	79	Mobius Underwriting Pty Ltd
14	ATC Insurance Solutions Pty Ltd	80	Morris Group Investments Pty Ltd
15	Austagencies Pty Ltd	81	Newline Australia Insurance Pty Ltd
16	Australian Insurance Agency Pool T/A Fairways Agencies	82	NM Insurance Pty Ltd
17	Australian Warranty Network	83	Nova Underwriting Pty Ltd
18	Axis Underwriting Services Pty Ltd	84	NWC Insurance Pty Ltd t/as No worries insurance
19	Beazley Underwriting Pty Ltd	85	One Underwriting Pty Ltd
20	Bizcover Pty Ltd	86	Online Insurance Brokers Pty Ltd
21	Blue Badge Insurance Australia	87	Pacific Underwriting Corporation Pty Ltd
22	BMS Risk Solutions Pty Ltd	88	Panoptic Underwriting Pty Ltd
23	Bovill Risk & Insurance Consultants Pty Ltd	89	Pantaenius Australia Pty Ltd
24	Broadspire by Crawford & Co	90	Pen Underwriting Group Pty Ltd
25	Brooklyn Underwriting Pty Ltd	91	Pen Underwriting Pty Ltd
26	Catalyst Consulting (Aust) Pty Ltd	92	Petplan Australasia
27	Cerberos Brokers Pty Ltd	93	PI Direct Insurance Brokers Pty Ltd
28	Cerberus Special Risks Pty Ltd	94	Point Underwriting Agency Pty Ltd
29	Cheap Travel Insurance Pty Ltd	95	Prime Underwriting Agency Pty Ltd
30	Claims Management Australasia	96	ProCare
31	Coastal Marine Underwriting (Pacific) Pty Ltd	97	Proclaim Management Solutions Pty Ltd
32	Coffre-Fort Pty Ltd	98	Procover Underwriting Agency
33	Columbus Direct Travel Insurance Pty Ltd	99	Professional Risk Underwriting Pty Ltd
34	Commercial and Trucksure Pty Ltd	100	Quanta Insurance Group Pty Ltd
35	Coversure Pty Ltd	101	Quantum Insurance Holdings
36	Cunningham Lindsey Australia Pty Ltd	102	Richard Oliver Underwriting Managers Pty Ltd
37	Dracko Insurance Brokers	103	Risk Partners Pty Ltd
38	Dual Australia Pty Ltd	104	RiskSmart (part of Honan)
39	Duinsure Pty Ltd	105	Savannah Insurance Agency Pty Ltd
40	East West Insurance Brokers	106	SLE Worldwide Australia Pty Ltd
41	Edge Underwriting Pty Ltd	107	Solution Underwriting Agency Pty Ltd
42	Elkington Bishop Molieaux Brokers Pty Ltd (also known as EBM Insurance Brokers)	108	Specialist Underwriting Agencies Pty Ltd
43	Emergence Insurance Pty Ltd	109	Sportscover Australia Pty Ltd
44	Ensurance Underwriting Pty Ltd	110	Starr Underwriting Agents (Asia) Limited
45	EPG Protecton Plans	111	StarStone Underwriting Australia
46	Epsilon Underwriting Agencies Pty Ltd	112	Steadfast IRS Pty Ltd
47	Fitton Insurance (Brokers) Australia Pty Ltd	113	Sterling Insurances Pty Ltd
48	Fullerton Health Corporate Services	114	Sura Hospitality (formely Guardian Underwriting)
49	Gallagher Bassett Service Pty Ltd	115	Sura Labour Hire Pty Ltd
50	Gard Insurance Pty Ltd	116	Sura Professional Risks Pty Ltd
51	Genesis Underwriting Pty Ltd	117	Surafilm & Entertainment Pty Ltd
52	Glenowar Pty Ltd (Fenton Green & Co)	118	SureSave Pty Ltd
53	Go Unlimited Pty Ltd	119	SureSeason Australia Pty Ltd
54	Gow-Gates Insurance Brokers Pty Ltd	120	Talbot Underwriting Australia
55	GSA Insurance Brokers Pty Ltd	121	Topsail Insurance Pty Ltd
56	High Street Underwriting Agency Pty Ltd	122	Travel Insurance Direct Pty Ltd

57	Holdfast Insurance Brokers	123	Trident Insurance Group Pty Ltd
58	Honan Insurance Group	124	Trinity Pacific Underwriting Agencies Pty Ltd
59	Hostsure Underwriting Agency Pty Ltd	125	Triton Global (Australia) Ltd
60	HQ Insurance	126	Windsor Income Protection
61	HW Wood Australia Pty Ltd	127	Winsure Underwriting Pty Ltd
62	IBL Ltd (Planned Professional Risks Underwriting Agency)	128	Woodina Underwriting Agency Pty Ltd
63	Imalia Pty Ltd	129	World Nomads Group Ltd
64	Inglis Insurance Brokers	130	Wymark Insurance Brokers
65	Insurance Facilitators Pty Ltd	131	XL Catlin Australia Pty Ltd
66	Insure That Pty Ltd	132	YourCover Pty Ltd

Appendix 6: Code – key definitions

Complaint means an expression of dissatisfaction made to **us**, related to **our** products or services, or **our Complaints** handling process itself, where a response or resolution is explicitly or implicitly expected.

Exceptional Circumstances means:

- a) the claim arises from an extraordinary Catastrophe as declared by the ICA Board;
- b) the claim is fraudulent or **we** reasonably suspect fraud;
- c) there is a failure by **you** to respond to **our** reasonable inquiries or requests for documents or information concerning **your** claim;
- d) there are difficulties in communicating with **you** in relation to the claim due to circumstances beyond **our** control; or
- e) **you** request a delay in the claims process.

Insured means a person, company or entity seeking to hold or holding a general insurance product covered by this **Code**, but excludes a **Third Party Beneficiary**.

Retail Insurance means a general insurance product that is provided to, or to be provided to, an individual or for use in connection with a **Small Business**, and is one of the following types:

- (a) a motor vehicle insurance product (Regulation 7.1.11);
- (b) a home building insurance product (Regulation 7.1.12);
- (c) a home contents insurance product (Regulation 7.1.13);
- (d) a sickness and accident insurance product (Regulation 7.1.14);
- (e) a consumer credit insurance product (Regulation 7.1.15);
- (f) a travel insurance product (Regulation 7.1.16); or
- (g) a personal and domestic property insurance product (Regulation 7.1.17),

as defined in the Corporations Act 2001 and the relevant Regulations.

Third Party Beneficiary means a person, company or entity who is not an **Insured** but is seeking to be or is specified or referred to in a general insurance product covered by this **Code**, whether by name or otherwise, as a person to whom the benefit of the insurance cover provided by the product extends.

we, us or **our** means the organisation that has adopted this **Code**.

you or **your** means an **Insured** or **Third Party Beneficiary**, or as otherwise stated in relation to a particular section of this **Code**.

Appendix 7: Summary of Code standards underlying the Inquiry

The Inquiry referenced the following Code standards:¹⁷

Part one – Investigating claims

1. **Section 7 Claims** – This section applies only to Retail Insurance products and contains 22 subsections comprising obligations that apply to Code Subscribers, their Employees and Service Suppliers when dealing with Retail Insurance claims. The Inquiry targeted the following claims handling standards:
 - **Subsection 7.2** – A Code Subscriber must conduct claims handling in an honest, fair, transparent and timely manner.
 - **Subsection 7.3** – When deciding whether to accept or deny a consumer’s claim, a Code Subscriber must only ask for and rely on information that is relevant to its claim decision.
 - **Subsection 7.11** – A Code Subscriber must base its assessment of a consumer’s claim on all relevant facts, the terms of the consumer’s insurance policy and the law.
 - **Subsection 7.16** – After a Code Subscriber has completed all enquiries and information gathering, it must decide whether to accept or deny a consumer’s claim and notify them of the decision within 10 business days.
 - **Subsection 7.18** – Where Exceptional Circumstances¹⁸ apply to a consumer’s claim – for instance, when a claim is fraudulent or a Code Subscriber suspects fraud – a Code Subscriber must make a claim decision within 12 months of receiving the claim. If the Code Subscriber fails to meet this timeframe, it must provide details of its Complaints process to the consumer.¹⁹
 - **Subsection 7.19** – If a Code Subscriber denies a consumer’s claim, it is required to notify them of its decision in writing and include the following:
 - written reasons for the decision
 - information about the consumer’s right to ask for copies of information, including Service Suppliers’ or External Experts’ reports, that the Code Subscriber relied on to assess the claim
 - information about the Code Subscriber’s Complaints process.
2. The related standards are:
 - **Section 5 Standards for our Employees and Authorised Representatives** – in particular **subsection 5.1** which describes the standards that apply to ensure Code

¹⁷ **Appendix 8** of this report reproduces the Code standards that are the subject of the Inquiry. The 2014 General Insurance Code of Practice is available from codeofpractice.com.au.

¹⁸ ‘A fraudulent claim/suspicion of fraud is one of five Exceptional Circumstances’ – see **Appendix 6** for the definition of Exceptional Circumstances.

¹⁹ If Exceptional Circumstances do not apply to a claim, a Code Subscriber must make a claim decision within four months, and if it fails to do so, it must provide details of its complaints process to the consumer – see subsection 7.17 of the Code.

Subscribers' Employees are competent and professional in their dealings with consumers.

- **Section 6 Standards for our Service Suppliers** – this section of the Code comprises standards that apply to:
 - Code Subscribers when outsourcing claims-related services to their Service Suppliers, and
 - Service Suppliers when providing services covered by the Code for Code Subscribers.
- **Section 10 Complaints and Disputes** – this section contains 24 standards that apply or relate to:
 - the right of consumers to make a Complaint to Code Subscribers about any aspect of their relationship with them and
 - how Code Subscribers handle consumers' Complaints.
- **Section 13 Monitoring, enforcement and sanctions** – in particular **subsections 13.2, 13.3 and 13.4**, which describe the standards that apply to monitoring compliance with the Code, and identifying and reporting non-compliant outcomes.
- **Section 14 Access to information**, and in particular **subsection 14.1** – this standard requires Code Subscribers to adhere to the principles of the *Privacy Act 1988 (Cth)* when they collect, store, use and disclose personal information about consumers.

Part two – Outsourced functions

1. **Section 6 Standards for our Service Suppliers** – as noted earlier, this section of the Code describes the standards that apply to:

- Code Subscribers when outsourcing claims-related services to their Service Suppliers, and
- Service Suppliers when providing services covered by the Code for Code Subscribers.

For example:

- **Subsection 6.2** – Services Suppliers must provide services for Code Subscribers in an honest, efficient, fair and transparent manner.
 - **Subsection 6.7** – Services Suppliers must notify Code Subscribers about any Complaint about a matter under the Code when acting for them. Code Subscribers must handle such Complaints under their Complaints process.
2. How Code Subscribers ensure that Service Suppliers comply with the standards of sections 7, 8, 9, 10 and 14, as they relate to their services.
 3. **Section 13 Monitoring, enforcement and sanctions** – in particular **subsections 13.2, 13.3 and 13.4**, which describe the standards that apply to monitoring compliance with the Code, and identifying and reporting non-compliant outcomes.

Appendix 8: The applicable Code standards

This part reproduces the Code standards that are the subject of the Inquiry. The 2014 General Insurance Code of Practice is available from codeofpractice.com.au.

6 STANDARDS FOR OUR SERVICE SUPPLIERS

6.1 This section applies to **Retail Insurance** only.

6.2 **Our Service Suppliers** will provide services on **our** behalf in an honest, efficient, fair and transparent manner, in accordance with this section.

6.3 **We** will only appoint **Service Suppliers** who:

(a) reasonably satisfy **us** at the time of appointment that they are, and their Employees are, qualified by education, training or experience to provide the required service competently and to deal with **you** professionally (including but not limited to whether they hold membership with any relevant professional body); and

(b) hold a current licence, if required by law.

6.4 **Our** contracts with **our Service Suppliers** entered into after **we** have adopted this **Code** must reflect the standards of this **Code** as they relate to the services of the **Service Supplier**.

6.5 A **Service Supplier** must obtain **our** approval before subcontracting their services.

6.6 When providing a service to **you**, **our Service Suppliers** will inform **you** of the service they have been authorised to provide on **our** behalf, and **our** identity.

6.7 **Our Service Suppliers** must notify **us** about any **Complaint** about a matter under this **Code** when acting on **our** behalf. **We** will handle **Complaints** relating to **our Service Suppliers** when they are acting on **our** behalf under **our Complaints** process.

7 CLAIMS

7.2 **We** will conduct claims handling in an honest, fair, transparent and timely manner, in accordance with this section.

7.3 **We** will only ask for and rely on information relevant to **our** decision when deciding on **your** claim.

Assessment and Investigation

7.11 **We** will assess **your** claim on the basis of all relevant facts, the terms of **your** insurance policy, and the law.

Decision

7.16 Once **we** have all relevant information and have completed all enquiries, **we** will decide whether to accept or deny **your** claim and notify **you** of **our** decision within ten **business days**.

7.17 **Our** decision will be made within four months of receiving **your** claim, unless **Exceptional Circumstances** apply. If **we** do not make a decision within four months, **we** will provide details of **our Complaints** process.

7.18 Where **Exceptional Circumstances** apply, **our** decision will be made within 12 months of receiving **your** claim. If **we** do not make a decision within 12 months, **we** will provide details of **our Complaints** process.

7.19 If **we** deny **your** claim, **we** will:

(a) give **you** reasons for **our** decision **in writing**;

(b) inform **you** of **your** right to ask for the information about **you** that **we** relied on in assessing **your** claim, and supply the information within ten **business days** if **you** request it, in accordance with section 14 of this **Code**;

(c) inform **you** of **your** right to ask for copies of any **Service Suppliers'** or **External Experts'** reports that **we** relied on in assessing **your** claim, and supply the reports within ten **business days** if **you** request them, in accordance with section 14 of this **Code**; and

(d) provide details of **our Complaints** process.

8 FINANCIAL HARDSHIP

Where You Owe Us Money

8.3 If **you** owe **us** money, and **you** experience **Financial Hardship**, **you** may ask **us** to assess whether **you** are entitled to assistance.

8.5 In assessing **your** request for **Financial Hardship** assistance...

We will only request information from **you** that is reasonably necessary to assess **your** application for **Financial Hardship** assistance.

8.6 **We** will notify **you** about **our** assessment of whether **you** are entitled to assistance for **your Financial Hardship** as soon as reasonably practicable. If **we** determine that **you** are not entitled to **Financial Hardship** assistance, **we** will provide **you** with the reasons for **our** decision, and information about **our Complaints** process.

8.7 If **you** make a request for **Financial Hardship** assistance in relation to an amount **we** seek from **you**, **we** will contact any relevant **Collection Agent** and put on hold any recovery action in relation to that amount until **we** have assessed **your** request and notified **you** of **our** decision.

8.8 If **we** determine that **you** are entitled to **Financial Hardship** assistance:

(a) **we** will work with **you** to consider an arrangement that could include:

- (i) extending the due date for payment;
 - (ii) paying in instalments;
 - (iii) paying a reduced lump sum amount;
 - (iv) postponing one or more instalment payments for an agreed period; or
 - (v) a combination of the above options,
- and **we** will confirm any agreed arrangement **in writing**;

...

(c) **you** may ask **us** for a release, discharge or waiver of a debt or obligation; however, **you** are not automatically entitled to a release, discharge or waiver;

(d) if **we** agree to release, discharge or waive a debt or obligation, **we** will confirm this **in writing**, and if **you** are an **Insured** or **Third Party Beneficiary**, at **your** request **we** will notify any financial institution with an interest in **your** insurance policy;

(e) if **we** are unable to reach an agreement, **we** will provide details of **our Complaints** process.

8.10 If **we** authorise an agent to send **you** any communication about money **you** owe **us**, that communication will identify **us** as the insurer on whose behalf the agent is acting, and it will specify the nature of **our** claim against **you**.

8.11 **We** will require **our** agents to notify **us**, or to tell **you** to notify **us**, if **you** inform them that **you** are experiencing **Financial Hardship**, and require them to provide **you** with details of **our Financial Hardship** process.

9 CATASTROPHES

9.2 **We** will respond to **Catastrophes** in an efficient, professional and practical way, and in a compassionate manner.

10 COMPLAINTS AND DISPUTES

10.3 **You** are entitled to make a **Complaint** to **us** about any aspect of **your** relationship with **us**.

10.4 **We** will conduct **Complaints** handling in a fair, transparent and timely manner, in accordance with this section.

Internal Complaints Process

10.10 Stage One and Stage Two of **our Complaints** process described below will not exceed 45 calendar days in total, unless **we** are unable to provide **you** with a final decision within 45 calendar days. If **we** are unable to provide **you** with a final decision within 45 calendar days, **we** will inform **you** before the end of that period of the reasons for the delay and **your** right to take **your Complaint** to **FOS**, together with contact details for **FOS**.

Stage One

10.13 **We** will respond to **your Complaint in writing** and tell **you**:

- (a) **our** decision in relation to **your Complaint**;
- (b) the reasons for **our** decision;
- (c) **your** right to take **your Complaint** to Stage Two if **our** decision at Stage One does not resolve **your Complaint** to **your** satisfaction; and
- (d) if **you** are still not satisfied with **our** decision after Stage Two, **your** right to take **your Complaint** to **FOS**, together with contact details for **FOS** and the time frame within which **you** must take **your Complaint** to **FOS**.

Stage Two

10.19 **Our** response to the review of **your Complaint** will be **in writing** and will include:

- (a) **our** final decision in relation to **your Complaint** and the reasons for that decision; and
- (b) **your** right to take **your Complaint** to **FOS** if **you** are not satisfied with **our** decision, together with contact details for **FOS**, and the time frame within which **you** must take **your Complaint** to **FOS**.

14 ACCESS TO INFORMATION

14.1 **We** will abide by the principles of the Privacy Act 1988 when **we** collect, store, use and disclose personal information about **you**.

END DOCUMENT