

GUIDANCE NOTE NO.2

Significant breach obligations

General Insurance Code of Practice

June 2020



GENERAL INSURANCE
Code Governance Committee

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1. Background

The Code Governance Committee (CGC) has developed this Guidance note in response to its inquiry into compliance monitoring and reporting frameworks and the influx of significant breach matters reported by industry since 2018–19.

The CGC's inquiries revealed that subscribers are failing to correctly identify multiple breaches connected to the same underlying cause as a reportable significant breach, instead including them as standard breaches in their annual report of breach data. Some subscribers have historically reported a disproportionately low number of significant breaches when compared to other subscribers of comparable size and market share.

These findings point to a failure by subscribers to understand and interpret the definition of a “significant breach” as set out in the General Insurance Code of Practice (the Code) and to an unwillingness or unpreparedness to review breaches and their root causes for evidence of systemic failings and major problems.

Identifying and reporting significant breaches to the CGC, and taking corrective actions to remediate consumers and minimise the occurrence of future breaches, will result in improved consumer outcomes. This aligns with the purpose and spirit of the Code and meets the community's needs and evolving expectations.

2. Purpose

The purpose of this Guidance note is to set out the CGC's expectations of you, the Code subscriber, to ensure that you:

- can appropriately identify a significant breach
- report significant breaches to the CGC in an efficient and timely manner
- understand the expected timeframe for correcting a significant breach, and
- understand the circumstances in which the CGC will close a significant breach matter.

This Guidance note applies to the 2014 Code, and the CGC considers it will continue to be appropriate upon implementation of the 2020 Code.

Given the potential negative impact on consumers, if you fail to identify, report or remediate significant breaches in an efficient and timely manner, you will be subject to sanctions under both the current and 2020 Code.

3. Definition of a significant breach

While the CGC is responsible for monitoring and enforcing compliance with the Code, it is your responsibility to determine whether a breach of the Code is significant and therefore needs to be reported to the CGC.

A significant breach is defined under section 15 of the Code as:

...a breach that is determined to be significant by reference to:

- a. the number and frequency of similar previous breaches;*
- b. the impact of the breach or likely breach on our¹ 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.*

You must assess a breach of the Code against each of these five criteria to determine whether or not it should be classified as a significant breach. It does not need to meet all five criteria to be significant; if it meets only one of the criteria, it counts as a significant breach.

¹ We, us and our are defined in the Code as the organisation that has adopted the Code.

Similarly, a significant breach does not need to impact multiple consumers. If the breach meets any of the above criteria but impacts even a single consumer, it will still be considered a significant breach.

If you determine that the breach is not a significant breach and therefore not reportable to the CGC, you must still address the breach.

4. Causes of a significant breach

As with any breach of the Code, a significant breach can be an isolated incident or an ongoing systemic issue.

Possible causes of a significant breach are listed below, and are characterised by a failure to act with honesty, fairness, transparency or timeliness. They can include, but are not limited to:

- **Inappropriate sales culture** – where the sales culture (and the supporting sales processes and systems) do not put the consumer at the centre of the transaction, resulting in employees or authorised representatives selling insurance products in a way that is dishonest, unclear or unfair to the consumer.
- **A process or system failure** – where systems and processes are not sufficiently tested before and/or after being implemented.
- **Lack of monitoring** – a lack of oversight or monitoring of processes and systems, such as sales, claims and complaints processes, and information technology systems, particularly over a period of time.
- **Inadequate training or awareness of Code obligations** – where employees or authorised representatives are not sufficiently trained to perform services or functions on the subscriber's behalf. This can also occur when service suppliers do not adhere to their contractual obligations when acting on the subscriber's behalf, resulting in breaches caused by human error or ignorance of Code obligations.
- **Misconduct** – the misconduct of an employee, authorised representative or service supplier, for example, through wilful neglect of duty or a breach of the law relating to a service or services provided by the subscriber.
- **Inadequate financial hardship assistance** – where an agent fails to advise the consumer that they are acting on the subscriber's behalf and/or to pass on a consumer's request for financial difficulty assistance to the subscriber. A significant breach can also be caused by a subscriber failing to respond in a timely manner to a request for financial hardship assistance or failing to confirm arrangements in writing or failing to provide the financial counselling contact number to the consumer.
- **Claims handling delays** – where there are delays in keeping consumers informed of their claims, such as whether the subscriber has accepted or denied a consumer's claim.

5. Examples of significant breaches

Specific examples of some significant breaches reported by subscribers to the CGC are listed in Appendix 2. Summaries of these significant breaches, and additional examples, are outlined as follows.

SALE OF INSURANCE

- The subscriber's website text about a specific class of products was generic and applied regardless of which product the consumer chose. The text did not make it clear that the specified limit for insurance coverage only applied to a specific type of cover. Consumers were led to believe that the limit applied to all levels of cover and were quoted incorrect premiums that were not in accordance with the subscriber's Product Disclosure Statement (PDS).
- The subscriber identified a number of issues in relation to website discount disclosures for its general insurance distribution channels. These included inconsistent disclaimer sections for discounts spanning over seven years and discrepancies between online search results for discount disclaimers in relation to motor insurance.
- The subscriber provided consumers with additional time to pay premiums and subsequently cancelled the policies in breach of the requirements contained in the *Insurance Contracts Act 1984* (Cth) (the Act). There was no cancellation trigger under section 60 of the Act until the end of that additional time period, meaning the policy would need to be cancelled at the end of the additional period.
- Due to a system failure, consumers were not receiving discounts from the subscriber to which they were entitled.
- Due to a system failure, consumers did not receive cover for certain pre-existing medical conditions under their travel insurance policy.
- Some notifications relating to the expiry of insurance cover were not sent in writing to consumers at least 14 days prior to expiry. This was a breach of section 58(2) of the Act and meant that affected policies would remain in force in the circumstances described in section 58(3).

FINANCIAL HARDSHIP

- The subscriber failed to provide financial hardship questionnaires to establish an accurate picture of consumers' financial circumstances.
- The subscriber failed to provide consumers with the national financial counselling hotline phone number.
- The subscriber failed to confirm agreed financial hardship arrangements with consumers in writing.
- When seeking to recover money from uninsured individuals for loss or damage they had caused to the subscriber's customers, the collection agent failed to identify that it was acting on behalf of the subscriber.

POOR MONITORING OF COMPLIANCE SYSTEMS

- The subscriber did not have adequate processes for monitoring and reporting on compliance with its obligations to advise customers about the status of their claims and complaints within the relevant Code timeframes.

COMPLAINTS HANDLING

- The subscriber did not meet the customer communication timeframes that applied to complaints outlined in section 10 of the 2014 Code.

Further information and examples of significant breaches are provided in the CGC's Annual Report: [General Insurance in Australia 2018-2019](#) and its [Living the Code Report](#), available at <https://insurancecode.org.au/>.

6. Possible significant breach matters

The CGC encourages you to report possible significant breaches. These are breaches that you are in the process of investigating to determine whether or not they are significant, as well as breaches you have investigated but are unsure whether to classify as significant.

Reporting possible significant breaches to the CGC helps us to identify emerging areas of risk for the industry. It is also valuable intelligence that we can use to identify priority areas for our monitoring work.

If the Australian Financial Complaints Authority (AFCA) informs you of a definite systemic issue, serious contravention or other breach, the CGC expects you to review the relevant conduct and assess whether it is also a significant breach of the Code. If it is, you must report it to us. If you are unsure, we encourage you to report it as a possible significant breach.

At the very least, we would expect you to inform and update us about your investigation into a possible significant breach, and to advise us of the outcome.

7. Assessing whether a breach is significant

The CGC expects you to proactively identify significant breaches of the Code, using the significant breach criteria set out in section 15 of the Code.

In the event that:

- you become aware of a breach of the Code, or
- Australian Securities and Investments Commission (ASIC) identifies a breach of the law or you report a breach to the ASIC, or
- AFCA determines that a matter represents a definite systemic issue, serious contravention or other breach,

then the CGC expects you to review the relevant matter and assess whether it is also a significant breach of the Code.

You should use a systemic issue, serious contravention or other breach identified by AFCA, or a significant breach reported to or identified by ASIC, as a trigger to examine whether the matter is also a significant breach of the Code. It is the CGC's view that these possible breaches of the Code would likely also amount to a significant breach of the Code and would therefore be reportable to us. This would be subject to several factors, including whether the issue relates to a general insurance product that comes within the scope of the Code and has met one or more of the five criteria underlying a significant breach of the Code.

You must have robust and accurate complaints, incident and breach registers to record all breaches. These registers provide valuable information about your business and give you early warning of potential systemic issues. Timely and thorough reviews of your internal breach registers should be a part of your compliance framework.

Review any complaints that AFCA or regulators receive about you to identify trends and emerging issues. Assess any such issues immediately to determine if they are significant breaches, and report them to the CGC if this is the case.

When assessing whether a breach is a significant breach, consider each factor identified in the definition and take a broad view. If in doubt, err on the side of caution and report a “possible significant breach” to the CGC.

It is our view that all subscribers should examine and record the root cause of all incidents and breaches to determine any trends or patterns. If multiple breaches share the same root cause, they are likely to be a significant breach and must be reported to us.

8. Reporting significant breach matters to the CGC

While the Code specifies that you must report a significant breach to the CGC within 10 business days of identifying the breach, it is the CGC's expectation that you will report a matter to us as soon as you determine that it is a significant breach.

If you have a breach review committee that reviews issues/breaches and determines if a significant breach has occurred, you should ensure that this committee meets monthly so that it can review issues in a timely manner after they become evident.

The CGC is likely to find a breach of the Code if you take too long to review an issue and determine that a significant breach occurred. We may subsequently exercise our sanctioning powers if we consider this appropriate in the circumstances.

To help you meet this timeframe and capture all the required information about the breach and its impacts as you understand them at the time of making the report, we have developed a significant breach reporting template (see [Appendix 1](#)).

The template includes several accompanying notes, which must be read prior to completing the report. To complete the template, you must provide certain details about the breach, including:

- when the breach was identified
- how you became aware of the breach
- the nature of the breach – what happened, why it happened and why you consider it to be significant
- the impact on consumers, and
- the actions you are taking to correct the breach and prevent it from reoccurring.

9. Batching significant breach matters

Where appropriate, the CGC may manage several significant breach matters reported by one subscriber by batching them by theme. This may also be done for matters that we are investigating as possible significant breaches.

Batching can be the most efficient way for us to deal with significant breach matters, particularly when we receive an influx of reports. It helps us work collaboratively with subscribers via regular meetings, to identify themes, emerging trends and common root causes of significant breaches, and to review actions to correct existing breaches and prevent them from reoccurring.

10. Timeframe for correcting a significant breach

The CGC expects you to correct and remediate a significant breach promptly and within a period not exceeding six months after identifying the breach. If there are exceptional circumstances that prevent you from correcting the significant breach within this timeframe, you must provide us with:

- comprehensive reasons for needing more than six months to correct the breach, and
- a detailed account of the measures to be put in place to prevent any further impacts from the breach while it is corrected.

We will assess a request for more time on a case by case basis, taking the above factors into account.

11. Closure of significant breach matters

When you report a significant breach, we will consider your remediation action plan, along with the timeframe for implementing it. If we are satisfied that the remediation action plan and timeframe to resolve the significant breach is appropriate in all the circumstances, we will close the matter.

In keeping with the spirit of the Code's self-regulatory nature, we do this in the expectation that you will notify us immediately if, by the agreed date you:

- have not implemented the remediation plan – in which case we will consider and decide the next steps, and/or
- are unlikely to complete the remediation plan – in which case we will consider whether it is appropriate to extend the timeframe and decide the next steps.

Subject to the above, once the file is closed, the CGC expects you to comply with the agreed timetable. Should you fail to do so, then we may impose a further significant breach and impose sanctions.

You may be audited to verify that you have implemented all actions within the agreed timeframes across all significant breach matters. This could occur randomly or periodically.



Contacting the CGC

If you have any queries about the reporting of significant breaches or possible significant breaches, please contact the CGC through its secretariat at: info@codecompliance.org.au.

Appendix 1: Reporting significant breach matters to the CGC

Note to subscriber: Before completing this document please read the accompanying notes.

Subscriber's report to the CGC of a significant breach ² of the 2014 General Insurance Code of Practice (Code)	
Name of subscriber	
Date of report	
Overview ³	
Status	
Code standards	
General insurance product/s and class	
Date the subscriber identified the breach ⁴	
If applicable, date of subscriber's report to ASIC, any other regulatory authorities, or AFCA and sections/Act involved	
How did the subscriber become aware of the breach? ⁵	

² The 2014 Code defines "significant breach" – see section 15, 2014 Code.

³ This is a high-level overview only.

⁴ If the subscriber's report to the CGC was not made within 10 business days of identifying the significant breach or likely significant breach, include the reasons for delay. See subsection 13.3, 2014 Code.

⁵ This includes instances where your report to the CGC is a result of or connected with a matter identified by ASIC, another regulatory body, or AFCA, including a definite systemic issue, serious contravention or other reportable breach.

Subscriber's report to the CGC of a significant breach of the 2014 General Insurance Code of Practice (Code)	
Nature of breach	Date breach happened (or date it is likely to happen) and duration (if known).
	What happened and why did it happen?
	Why does the subscriber consider this a significant breach?
Consumer impact ⁶	
Other impact ⁷ on ability to provide services	
Corrective actions including actions to prevent similar breaches occurring ⁸	
Number and frequency of similar previous breaches	
Extent to which the breach or likely breach indicates compliance arrangements are inadequate	
Any other relevant information	

6 "Consumer impact" means the number of people affected and the nature of the detriment. Detriment may be actual or potential and may be financial or non-financial detriment.

7 "Other impact" means actual or potential loss to the subscriber.

8 If the timeframe for completion of corrective action/s is likely to exceed 6 months provide comprehensive reasons for this.

Appendix 2: Examples of significant breach matters reported to the CGC

Relevant Code section	Significant breach	Causes of the significant breach
Subsection 4.4 Buying Insurance	The subscriber migrated a range of policies to a new administration system over a 12-month period. As part of this migration, customers were offered a discount for holding more than one policy. The application of the discount was dependent on the customer being allocated a unique identifier in the new system to enable an accurate policy count. However, not all eligible policies were allocated the unique identifier, resulting in some customers receiving the wrong discount, while other customers did not receive the discount despite being entitled to it.	The subscriber determined the matter to be a significant breach due to: <ul style="list-style-type: none"> the potential financial loss the number of consumers affected, the duration of the breach.
Subsections 7.13, 7.14 and 7.16 Claims	The subscriber found that it had inadequate processes in place for monitoring and reporting on compliance with its obligations to advise consumers about the status of their claims. The monitoring controls were found to be detecting rather than preventing Code breaches and were not consistently utilised.	The subscriber determined the matter to be a significant breach because it had inadequate arrangements in place to ensure compliance with its Code obligations.
Subsection 4.4 Buying Insurance	The subscriber issued travel insurance products which resulted in the “pre-existing medical assessment” cover being incorrectly applied as a result of a system fault. The travel insurance products provided medical cover for all customers who were of or under a specified age. The policy automatically covered certain pre-existing conditions but as a result of the system fault, the system incorrectly refused both medical cover and cover for pre-existing conditions where medical cover should have been provided. The incident was identified when a customer complained to the subscriber’s service supplier.	The subscriber determined the matter to be a significant breach due to: <ul style="list-style-type: none"> the duration of the breach and the amount of time taken to identify it, inadequate monitoring arrangements in place to confirm that system changes were made according to correct specifications.
Subsections 10.10, 10.11, 10.12(a) and 10.12(b) Complaints and Disputes	The subscriber identified a significant breach of complaints handling standards in section 10 of the Code through its quality assurance file sampling. In particular, the subscriber failed to meet the customer communication timeframes outlined in subsections 10.10, 10.11 and 10.12 of the Code.	The subscriber determined the matter to be a significant breach due to the number of complaints lodged during the period sampled and the potential number of customers affected across its insurance products.
Subsection 4.4 Buying Insurance	The subscriber discovered that some notifications relating to expiry of insurance cover were not sent in writing to the insured at least 14 days prior to expiry. This was in breach of section 58 of the Insurance Contracts Act.	The subscriber determined the matter to be a significant breach due to an increased number of breaches of the requirements, which indicated that procedures were not always followed and that the requirements were not always understood.

Relevant Code section	Significant breach	Causes of the significant breach
Subsection 8.10 Financial Hardship	When seeking to recover money from uninsured individuals for loss or damage they had caused to the subscriber's customers, the collection agent acting on the subscriber's behalf failed to identify that it was acting on behalf of the subscriber.	The subscriber determined the matter to be a significant breach due to: <ul style="list-style-type: none"> misconduct by a service supplier engaged to perform services or functions on the subscriber's behalf inadequate arrangements in place to ensure compliance with its Code obligations.
Subsections 4.4, 6.2, 7.2, 7.4 and 7.11 Buying Insurance, Service Suppliers and Claims	The subscriber's travel and accident insurance policies contained a blanket mental health exclusion clause. The clause excluded any claim arising directly or indirectly from a customer's mental health condition. This was in breach of anti-discrimination legislation as the relevant actuarial analysis had not been undertaken.	The subscriber determined the matter to be a significant breach due to: <ul style="list-style-type: none"> the nature of the breach including the failure to comply with anti-discrimination laws the duration of the breach. inadequate monitoring arrangements.
Subsection 4.4 Buying Insurance	The subscriber's website text in relation to a specific class of products was generic and applied regardless of which product the customer chose. The text did not make it clear that the specified limit for insurance coverage only applied to a specific type of cover. It was represented that the limit applied to all levels of cover.	The subscriber determined the matter to be a significant breach due to: <ul style="list-style-type: none"> the duration of the breach the length of time taken to identify the issue the number of similar previous breaches.
Subsection 4.4 Buying Insurance	The subscriber's customers were quoted incorrect premiums that were not in accordance with its Product Disclosure Statement (PDS). Some customers were quoted and charged a flat rate premium, irrespective of the product they were purchasing.	The subscriber determined the matter to be a significant breach due to inadequate processes stemming from inadequate oversight arrangements and the duration of the breach.
Subsection 4.4 Buying Insurance	The subscriber identified a number of issues in relation to website discount disclosures for its general insurance distribution channels. These included inconsistent disclaimer sections for discounts spanning over seven years and discrepancies between online and google search results for discount disclaimers in relation to motor insurance.	The subscriber determined the matter to be a significant breach due to: <ul style="list-style-type: none"> the nature of the breach the number of similar incidents the duration of time taken to identify the breach
Subsection 4.9 Buying Insurance	The subscriber provided customers with additional time to pay premiums and subsequently cancelled the policies in breach of the requirements contained in the <i>Insurance Contracts Act 1984 (Cth) (ICA)</i> . There was no cancellation trigger under section 60 of the ICA until the end of that additional period and the policy would need to be cancelled at the end of the additional period.	The subscriber determined the matter to be a significant breach due to: <ul style="list-style-type: none"> the duration of the breach the number of similar breaches, an indication that arrangements to ensure compliance was inadequate.

ABOUT THE GENERAL INSURANCE CODE GOVERNANCE COMMITTEE (CGC)

The General Insurance Code of Practice is a voluntary industry code that promotes high standards of service and better customer relationships in the general insurance industry. The CGC is the independent body responsible for monitoring and enforcing Code Subscribers' compliance with Code standards.

GUIDANCE NOTES

This Guidance note is issued as part of the CGC's functions under its Charter, which authorises the CGC to provide Code subscribers and other interested persons with guidance on compliance with the Code.

Guidance notes are subject to change and reflect the CGC's views at the date of publication. The CGC considers all matters individually and this document does not anticipate all possible issues that might come before it.



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