

Parts 9 and 10 of the 2020 Code

Review of subscribers' implementation
of vulnerability and financial hardship
obligations

November 2021



GENERAL INSURANCE
Code Governance Committee

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Executive summary

The 2020 General Insurance Code of Practice (2020 Code) was published at the beginning of 2020, following an extensive review of the previous 2014 Code.

From the submissions of various stakeholders during the review process, including the General Insurance Code Governance Committee (Committee), it was evident that the new Code needed to provide increased protection for consumers experiencing vulnerability, including financial hardship, to meet evolving community expectations in this area.

As a result, Parts 9 and 10 of the 2020 Code were introduced to support customers experiencing vulnerability, and existing obligations around financial hardship were significantly enhanced.

These new standards came into effect on 1 January 2021.

Purpose of Part 9: Supporting customers experiencing vulnerability

Part 9 only applies to Code subscribers who provide Retail Insurance products or services.

It introduces new standards to the 2020 Code with specific provisions for consumers experiencing vulnerability, including a requirement for Code subscribers to ensure that staff are appropriately trained to understand when a consumer may be experiencing vulnerability and decide how best to support them in that circumstance.

Purpose of Part 10: Financial Hardship

Part 10 applies to both Retail and Wholesale Insurance providers.

It replaces Section 8 of the 2014 Code with enhanced standards for communicating with consumers who are experiencing financial hardship. It provides clarity on assessment timeframes, as well as training for employees and debt collection agents on the financial hardship requirements in the 2020 Code, including how to identify financially vulnerable consumers.

Implementation deadlines

When the 2020 Code was released at the beginning of 2020, it was intended that all parts of the Code would become applicable from 1 January 2021.

However, in May 2020, the Insurance Council of Australia (ICA) – acknowledging that insurers had been significantly impacted that year by both COVID-19 and natural disaster recovery – announced that the new Code was to be implemented in phases, as follows:

- Paragraph 95 by 1 July 2020
- Parts 9 and 10 by 1 January 2021,
- The balance of the 2020 Code by 1 July 2021.

While Parts 9 and 10 were not required to be implemented until 1 January 2021, it was expected that the actions of Code subscribers would reflect the spirit and intention of those parts from 1 July 2020.

Post-implementation

The standards in Parts 9 and 10 are some of the most significant changes in the Code and the Committee is pleased to see the work that Code subscribers have completed in order to meet these important obligations.

Parts 9 and 10 have come into effect at a time of heightened vulnerability. It is critical that these obligations are not just seen as a one-off update of a policy or a training program simply to be completed, and instead are sustainably embedded into Code subscribers' ways of everyday working. The Committee encourages Code subscribers to frequently test and review their vulnerability and financial hardship processes to ensure they are supporting the better consumer outcomes intended.

Where Code subscribers fall short of what is required and breach these parts of the Code, the Committee will consider whether a sanction is appropriate to address this non-compliance.

Based on its findings in this review, the Committee will now look to update its existing guidance note on financial hardship to provide industry with further guidance on complying with these important Code obligations.

Our findings - Implementation of Part 9

About Part 9 (Supporting customers experiencing vulnerability)

Part 9 (Supporting customers experiencing vulnerability) of the 2020 Code contains 14 paragraphs outlining specific provisions for consumers experiencing vulnerability, including a requirement for Code subscribers to ensure that staff are appropriately trained to identify when a consumer may be experiencing vulnerability and decide how best to support them in that circumstance.

Part 9 applies exclusively to providers of Retail Insurance.

Implementation deadline

Of the 162 Code subscribers bound by the 2020 Code, 114 indicated that they provide Retail Insurance products and/or services.

Of those 114 Code subscribers, 98 (86%) advised they had completed implementation of Part 9 by the deadline of 1 January 2021.

Of the 16 (14%) Code subscribers that did not complete implementation by the deadline, 13 advised they had completed implementation by the time of completing the questionnaire. The Committee followed up with the remaining three Code subscribers after completion of the survey and confirmed they have now completed implementation of Part 9.

Reasons for not meeting the implementation deadline

The 16 Code subscribers that did not complete implementation by 1 January 2021, provided the following reasons:

- Did not know that the deadline was 1 January 2021 (one Code subscriber)
- Did not understand the scope of Part 9 (one Code subscriber)
- Cited 'unexpected constraints on resources' (nine Code subscribers),
- Cited 'other reason' but did not provide further detail (five Code subscribers).

Post-implementation review

The 2020 Code does not require Code subscribers to conduct a post-implementation review. However, given the importance of these new obligations, the Committee considers it is an important exercise that Code subscribers should undertake to ensure these obligations are being met in practice.

Of the 114 Code subscribers that were required to complete implementation, 97 (85%) said they had conducted, or intended to conduct, a post-implementation review of their arrangements to comply with Part 9.

The remaining 17 Code subscribers (15%) said they had not conducted a post-implementation review and did not intend to do so.

Of the 97 Code subscribers intending to conduct a post-implementation review, 73 said the review would be conducted internally and two said it would be conducted by external parties, while 21 said they'd use a combination of internal and external reviewers. One Code subscriber didn't specify.

When asked, 20 Code subscribers had already conducted their post-implementation review. Of those yet to do so, 14 said they anticipated completion by 30 June 2021 and 47 anticipated completion by 31 December 2021, while 15 expected to complete the review in 2022. One subscriber did not specify a timeframe.

Code subscribers are encouraged to share the results of their implementation reviews with the Committee.

Wholesale Insurance providers

Part 9 of the 2020 Code only applies to Retail Insurance. However, of the 48 Code subscribers who only provide Wholesale Insurance, 19 have elected to apply Part 9 to their business voluntarily.

Of those 19 Code subscribers, 18 completed their implementation of Part 9 by 1 January 2021, with the remaining Code subscribers confirming they had completed implementation by the time of the questionnaire.

While the Code does not require these Code subscribers to extend the support outlined in Part 9 to their Wholesale Insurance customers, the Committee is pleased to see them going above and beyond their Code requirements. The Committee encourages other Code subscribers to do likewise for their Wholesale Insurance products and services.

Key takeaways – Part 9 implementation

86% of Code subscribers completed implementation by 1 January 2021

100% of Code subscribers have now completed implementation

85% of Code subscribers either conducted or intended to conduct a post-implementation review

19 Code subscribers have elected to apply Part 9 to Wholesale Insurance

Our findings - Implementation of Part 10

About Part 10 (Financial Hardship)

Part 10 contains 34 paragraphs that provide protections to insureds or third-party beneficiaries who owe money to an insurer under a policy, and also to individuals that insurers are seeking to recover money from because they have caused damage or loss to either an insured or a third-party beneficiary covered under an insurance policy.

The protections in Part 10 are particularly important for uninsured third parties from whom an insurer is seeking to recover money, as this debt recovery activity falls outside the jurisdiction of the Australian Financial Complaints Authority (AFCA).

Part 10 of the 2020 Code applies to both Retail Insurance and Wholesale Insurance. Therefore, all Code subscribers that are bound by the 2020 Code were required to comply with Part 10 from 1 January 2021.

Implementation deadline

Of 162 Code subscribers, 138 (85%) advised they had completed implementation of Part 10 by 1 January 2021.

Of the 24 Code subscribers (15%) that did not complete implementation of Part 10 by 1 January 2021, 10 confirmed they had completed implementation by the time of completing the questionnaire, and one Code subscriber subsequently confirmed it has now completed implementation.

The remaining 13 Code subscribers informed us that they considered they were not required to comply with Part 10.

Reasons for not meeting the implementation deadline

The 24 Code subscribers that did not complete implementation by 1 January 2021 provided the following reasons:

- They considered that they were not required to comply with Part 10 (13 Code subscribers)
- They did not know that the deadline was 1 January 2021 (two Code subscribers)
- Unexpected constraints on resources (four Code subscribers)
- Cited 'de-prioritisation of implementation of Part 10' (one Code subscriber),
- Cited 'other reason' but did not provide further detail (four Code subscribers).

Post-implementation review

Similar to Part 9 above, the 2020 Code does not require Code subscribers to conduct a post-implementation review for Part 10. However, given the importance of these enhanced obligations, the Committee considers it is an important exercise Code subscribers should undertake to ensure these obligations are being met in practice.

Of the 162 Code subscribers that responded to the questionnaire, 125 (77%) said they had conducted, or intended to conduct, a post-implementation review of their arrangements to comply with Part 10.

The remaining 37 Code subscribers (23%) said they had not conducted a post-implementation review and did not intend to do so.

Of the 125 Code subscribers intending to conduct a post-implementation review, 90 said the review would be conducted internally and four said it would be conducted by external parties, while 30 said they would use a combination of internal and external reviewers. One subscriber did not specify.

When asked, 24 Code subscribers had already conducted their post-implementation review. Of those yet to do so, 24 anticipated completion by 30 June 2021 and 53 anticipated completion by 31 December 2021, while 15 expected to complete the review in 2022 and one expected to complete after 2022. One subscriber did not specify a timeframe.

Code subscribers are encouraged to share the results of their implementation reviews with the Committee.

Key takeaways – Part 10 implementation

85% of Code subscribers completed implementation by 1 January 2021

77% of Code subscribers either conducted or intended to conduct a post-implementation review

8% of Code subscribers informed us that they considered that they were not required to comply with Part 10

Our observations - Parts 9 and 10

Overall, the Committee is pleased that the majority of Code subscribers completed their implementation of Parts 9 and 10 by 1 January 2021, when these enhanced standards became applicable.

The Committee encourages Code subscribers to undertake a post-implementation review to ensure these important obligations are fully embedded.

However, it is disappointing that a number of Code subscribers missed the 1 January 2021 deadline, given the Insurance Council of Australia (ICA) had communicated this publicly in May 2020, after the 2020 Code was released. The Committee also engaged regularly with Code subscribers about 2020 Code implementation through the ICA's National Code Committee meetings.

Given the long lead time and heightened vulnerability caused by the COVID-19 pandemic, the Committee is disappointed that these subscribers did not meet the implementation deadline. Implementation of these provisions occurred alongside a wide program of regulatory change; however, given the importance of these obligations, the Committee expected Subscribers to ensure these obligations were met.

While COVID-19 and natural disaster recovery will no doubt have also impacted Code subscribers throughout 2020, it is particularly concerning to see that one Code subscriber remained unaware of its obligation to implement Part 9 by the deadline and two Code subscribers did not know that Part 10 was applicable from 1 January 2021.

There also seems to be some confusion among Code subscribers as to how Part 10 applies to their operations, with 13 Code subscribers informing the Committee that they did not believe they were required to comply with Part 10 due to their specific business models and the nature of their interactions with consumers.

The Committee will continue to engage with these Code subscribers to better understand their business models and determine whether they are in breach of their Code obligations.

In the future, the Committee will look to publish additional guidance on the requirements to comply with Part 10 of the 2020 Code.

Breaches of the Code

The Committee notes that some Code subscribers had not completed implementation by 1 January 2021, but have since done so, and the failure to implement on time had not resulted in Code breaches when dealing with consumers.

So, while there were Code subscribers who had failed to complete implementation of Parts 9 and/or 10 by the deadline, this failure to implement on time did not necessarily constitute a breach of the Code.

However, while the Committee is satisfied that the instances outlined above were not breaches of the Code, it has recorded breaches where Code subscribers did not meet obligations in Parts 9 and 10:

- One Code subscriber informed us that it breached Paragraph 96 in Part 9, which requires Code subscribers to have internal policies and training to help employees understand if a consumer may be vulnerable and decide how best they can provide support.
- One Code Subscriber informed us that it breached Paragraph 109 in Part 10, which requires Code subscribers to have internal policies and training to help employees to identify if a consumer is experiencing Financial Hardship and decide how they may be able to provide support.

Breaches of Paragraph 103

The Committee has also recorded breaches of Paragraph 103 against five Code subscribers.

Paragraph 103 requires Code subscribers to provide a link on their website to interpreting services, teletypewriter services (TTYs), any information on their products that they have translated into other languages, and any other relevant information for people with language barriers.

Five Code subscribers told us that they did not have the required link and/or information on their websites by 1 January 2021. One of these Code subscribers advised they were providing this information to any customer who sought it, however this does not meet the requirements of Paragraph 103. Therefore, the Committee has recorded a breach of Paragraph 103 against each of these Code subscribers.

All five Code subscribers have since confirmed that they have now added the relevant information to their websites.

Post-implementation review uncovers a significant breach

One subscriber informed us that it undertook a post-implementation review of its compliance with the 2020 Code in July 2021, and as part of this review it identified that a recovery letter it was using for property claims did not meet the requirements of Paragraph 134 in Part 10.

Paragraph 134 requires that communications about money owed must include information about a Code subscriber's Financial Hardship process and contact details to enable a consumer to contact the Code subscriber to discuss Financial Hardship support.

The Code subscriber had sent the letter without this information to consumers in 50 instances since 1 January 2021. The Code subscriber therefore considered this matter to be a significant breach of Paragraph 134 and reported it to the Committee accordingly.

How subscribers comply with Parts 9 and 10

The questionnaire included a general question asking Code subscribers to tell us how they comply with Parts 9 and 10.

Examples of compliance with Part 9

Code subscribers outlined a range of measures they have in place to comply with Part 9. While some measures in relation to product design were already required to meet legal obligations, many new arrangements have been implemented to meet the new obligations in Part 9 of the Code.

There is some variation in how subscribers are addressing the new obligations. This makes a post-implementation review even more important, to understand if different approaches have specific benefits or drawbacks.

Some common examples of the types of measures that Code subscribers have in place are listed below:

Training on vulnerability:

- Training for employees and distributors/third-party providers
- Internal training and training provided by external bodies (ANZIIF, Uniting Kildonan, Wesley Mission, Safetrac),
- Broad vulnerability training as well as targeted training on family violence, mental health, financial hardship, etc.

Specialist employees/teams:

- Roles such as 'Extra Care Specialists', 'Vulnerability Specialists', a 'High Care Support' team, specialised triage team
- Customers Experiencing Vulnerability (CEV) Hubs with specially trained staff,
- A 'Vulnerable Customer Committee' which consists of senior members of staff who have the authority and ability to make decisions on how best to assist the most vulnerable customers.

Improved processes and monitoring:

- A 'Vulnerable Customer Framework', supported by staff manuals and procedures, registers, escalation processes and training
- A "Care" model which has three levels of care customers can expect (Business as Usual (BAU) Care/More Care/High Care), supported by policies, training, processes, and system flags,
- Development of a 3-tiered escalation process to assist staff with handling vulnerable customers,
- 'The Equity Program' – a multi-year commitment to uplift the capability to serve all customers in a fair and equitable way.

Improved systems:

- System flags/codes to record vulnerabilities and ensure customers only have to tell their story once to receive the appropriate level of support
- Only recording customer vulnerabilities with their express consent,
- New vulnerability data fields and workflow on claims and complaint systems to enable the recording and reporting of vulnerability cases.

Referrals to other support services:

- Referrals to National Debt Helpline, Lifeline, interpreter services,
- Referrals to Uniting, Care Ring for holistic support.

Product design:

- Anti-discrimination updates to include mental illness
- Updated joint policyholder provisions to account for instances of family violence,
- Ensuring new and existing products are compliant with the Disability Discrimination Act 1992.

Examples of compliance with Part 10

Similar to our question on Part 9, we asked Code subscribers to tell us about how they comply with Part 10. Some common examples of the measures that Code subscribers have in place are listed below:

Training on financial hardship:

- Onboarding and annual refresher training for identifying and responding to consumers experiencing financial hardship,
- In-house training and training by external providers (e.g., Uniting).

Improved processes:

- Increased flexibility in approach when recovering debts
- Fast-tracking of claims, including advance payments,
- Extending support to customers having difficulty paying premiums, over and above the requirements in the Code.

Improved systems:

- System flags to identify customers experiencing financial hardship,
- Enhanced systems reporting to identify financial hardship clients for premium payments processing and also for accelerated claims handling and interim payment process.

Referrals to other support services:

- Referrals to National Debt Helpline and Financial Counselling Australia,
- Referrals to Uniting Kildonan.

An ongoing area of concern: Non-compliance by collection agents

As part of its investigation work, the Committee receives allegations of Code breaches from consumers and consumer advocate organisations, including allegations of breaches of the Code's financial hardship standards.

Among the matters it investigates, the Committee regularly sees concerning conduct related to the recovery of money from uninsured consumers who are experiencing financial hardship.

This occurs most commonly where an uninsured driver causes damage to the vehicle of another driver who was insured, and the Insurer seeks to recover the cost of repairs from the uninsured driver. Insurers often use collection agents (including solicitors) in these cases to recover the debt on their behalf.

Aside from the protections in the Code, these uninsured consumers have limited protections available to them, as their circumstances are outside the jurisdiction of AFCA.

Common issues that the Committee sees with collection agents and solicitors include:

- Failure to provide information about the Insurer's financial hardship process when a Consumer advises that they are experiencing financial hardship
- Failure to put recovery action on hold when a Consumer asks for financial hardship support
- Lack of understanding of the financial hardship requirements in the Code
- Failure to provide sufficient information about the nature of the claim and the amount of the debt,
- Failure to comply with the ACCC and ASIC Debt collection guideline, including contacting a Consumer directly rather than contacting their representative.

Non-compliance with the Code's financial hardship obligations, as a result of the actions of collection agents authorised by Code subscribers, has been a recurring issue over several years. The Committee is concerned that Code subscribers are still not adequately monitoring the conduct of their collection agents, including any solicitors engaged in this capacity.

The Committee therefore urges Code subscribers to remind collection agents and solicitors acting on their behalf, of their obligations to comply with Parts 9 and 10 of the 2020 Code when recovering debts from people experiencing vulnerabilities.

This includes:

- specifying the standards of the Code that apply to services provided by collection agents and solicitors, including the financial hardship standards, in contracts with them
- ensuring that collection agents are made aware of their obligations under the Code, and
- proactively monitoring collection agents' compliance with these obligations.

Examples and case studies

The Committee is pleased to see Code subscribers' commitment to meeting the requirements in Parts 9 and 10, and acknowledges the considerable program of work that Code subscribers have undertaken to enable them to comply with these new and enhanced standards.

The Committee is keen to see that Code subscribers are now putting things into practice when dealing with consumers.

- Are employees recognising consumers' vulnerabilities and/or financial hardship?
- Are issues being escalated and referred to the relevant people or teams within the Code subscriber?
- Are Code subscribers providing vulnerable consumers with the appropriate support according to their circumstances?

Since 1 January 2021, the allegations of Code breaches the Committee receives have included allegations relating to Parts 9 and 10 of the 2020 Code.

These allegations, together with the Committee's investigations, are an invaluable source of information that allows the Committee to see the kinds of vulnerabilities that consumers are experiencing, and how Code subscribers are responding.

While the Committee may see some examples of poor practice in the matters raised by consumers, the Committee trusts that Code subscribers are meeting their obligations in the majority of their dealings with vulnerable consumers and providing appropriate support where required.

From the examples we have seen, it appears that while Code subscribers have implemented new policies and processes and provided training to employees, this may not be embedded across the organisation as there are still instances where they are not recognising consumers' vulnerabilities and, therefore, are not providing appropriate additional support.

Some examples from the allegations the Committee has received include:

Case Study 1:

The Consumer's home was destroyed in a natural disaster.

The Consumer lived in a remote community, and she was experiencing financial hardship and serious mental health issues as a result of the destruction of her property.

The insurer did not fast-track the assessment and decision on the claim, and it did not make an advance payment to assist with the Consumer's financial hardship.

Case Study 2:

The insurer denied the Consumer's claim for malicious damage to his rental property.

The Consumer complained about the claim denial. He said he was experiencing stress and financial hardship as he was unable to rent the property, and had needed to borrow money for living expenses.

The insurer did not expedite the complaint or provide any additional support.

Case Study 3:

The insurer accepted a claim for hail damage to the Consumer's property.

The Consumer experienced stress and anxiety after delays and poor repairs by the Insurer's authorised repairer meant the property remained in a damaged condition for several months.

The Consumer sought to lodge a complaint over the phone, as he did not have access to a computer and was uncomfortable with using technology.

However, the Insurer did not provide additional support – it did not accept the verbal complaint and insisted that the Consumer must lodge the complaint in writing.

Case Study 4:

The Consumer lodged a claim after his car was badly damaged in a not at fault accident.

The Consumer received a disability support pension. He was unable to work due to physical and mental health issues and relied on his car for his independence.

It was over six months after the claim was lodged when the Insurer sent its settlement offer to the Consumer. During that time, he was without a vehicle.

Throughout the claim process, the Consumer had to contact the Insurer on multiple occasions to get updates on the progress of the matter.

Despite the Consumer informing the Insurer of his vulnerabilities and personal circumstances, the Insurer did not expedite the settlement of the claim, nor did it provide additional support.

In the examples outlined above, the Insurers do not appear to have identified the consumers' vulnerabilities in line with Paragraph 92 of the Code, nor provided additional care and support in accordance with Paragraphs 91 and 97.

The Committee notes that in some of these cases, the delays are likely to be a breach of other Code obligations independent of obligations Code subscribers must meet to support consumers experiencing vulnerability or financial hardship.

In such circumstances, the Committee would expect a subscriber to take proactive steps to meet its Code obligations, including:

- Acknowledging the Consumer's vulnerabilities and making every effort to expedite the settlement of the claim or the assessment of the complaint
- Communicating with the Consumer regularly and clearly about the progress of the claim, particularly if there are any delays
- Paying an advance amount for the claim where there is an urgent financial need,
- Providing additional support throughout the claim process, appropriate to the Consumer's circumstances.

About this report

In line with its compliance monitoring role, the Committee undertook this implementation review in relation to Parts 9 and 10 of 2020 Code. These parts of the 2020 Code came into effect on 1 January 2021.

The implementation review was conducted via a questionnaire provided to all 162 entities bound by the Code (**the Code subscribers**). This group is comprised of 45 General Insurers, four 'other participants' operating in the general insurance industry, 103 Lloyd's Coverholders, and 10 Lloyd's Claims administrators.

The 45 General Insurers and four 'other participants' subscribe to the Code through a deed of adoption with the Insurance Council of Australia and the Code Governance Committee Association Inc. Coverholders and Claims administrators are bound by the Code through Lloyd's Deed of Adoption and individual binder agreements with Lloyd's Australia Limited for the sale of insurance and/or the handling of claims.

The Committee received responses to the questionnaire from all 162 Code subscribers.

The Committee asked Code subscribers whether they had completed their implementation (as required) by 1 January 2021 and, if not, when they expected to complete implementation, and what the reasons were for the delay.

The Committee also asked Code subscribers to outline the ways in which they complied with Parts 9 and 10 in practice, so the Committee could better understand the measures in place to support consumers and meet obligations under the 2020 Code.

The Committee also looked at examples from its investigations work to assess the real-world responses of Code subscribers in cases where consumers had identified as being vulnerable and/or experiencing financial hardship.

This review did not consider Paragraph 95 in Part 9, requiring Code subscribers to have a family violence policy published on their website. This requirement was the subject of an earlier review by the Committee and the report of this review is available on the [Committee's website](#).

In addition, the review did not include Paragraph 105 in Part 10, requiring Code subscribers to have information about applying for Financial Hardship support on their websites. This obligation was added to the Code on 5 October 2021, replacing the previous Paragraph 105 which contained the definition of Financial Hardship.

About the General Insurance Code Governance Committee

The 2020 Code is a voluntary industry code that promotes high standards of service and better customer relationships in the general insurance industry. The Committee is the independent body responsible for monitoring and enforcing Code subscribers' compliance with Code standards. See: www.insurancecode.org.au.

Contact the Code Governance Committee

If you have any queries about this report, please contact the Committee through its secretariat at: info@codecompliance.org.au.