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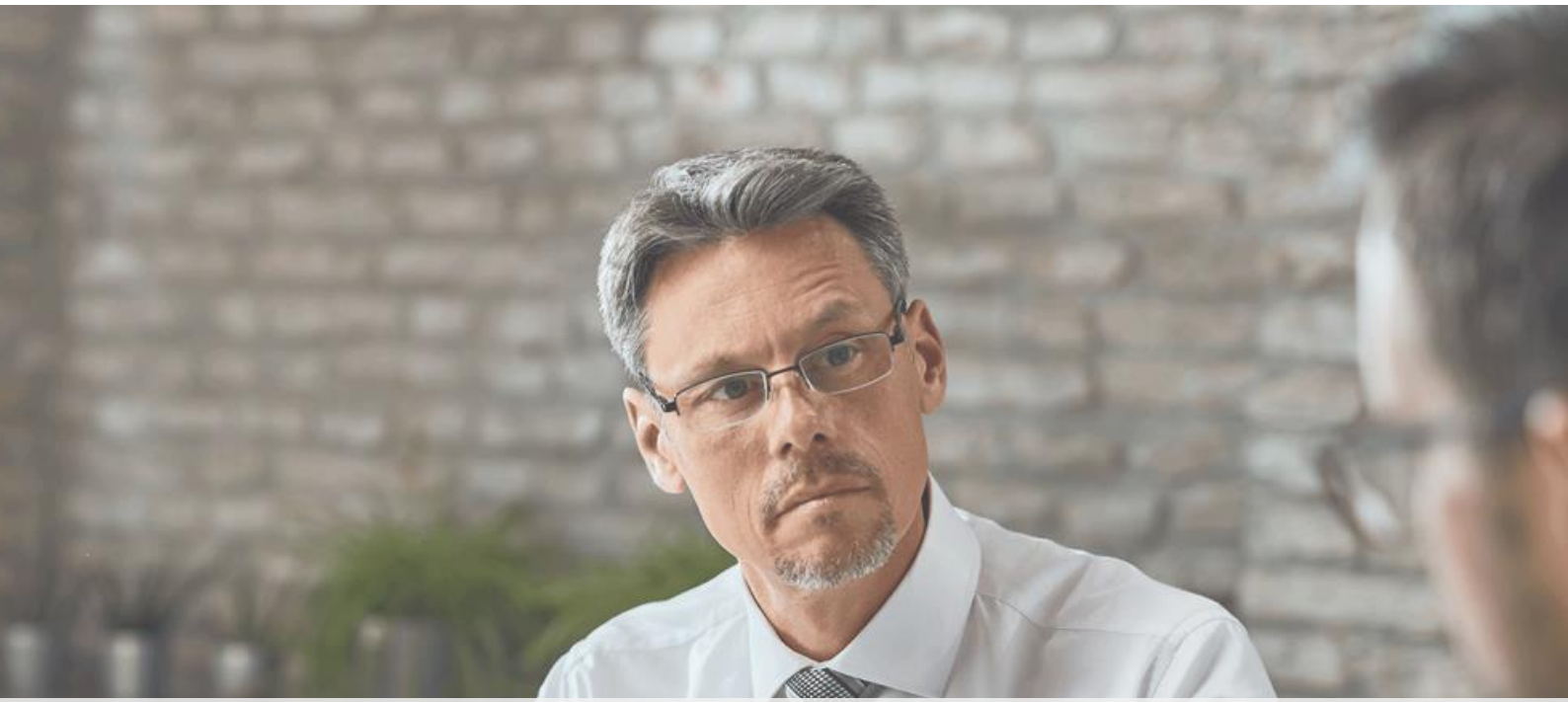

ACIL Submission: Code Governance Committee Monitoring Priorities Consultation - ACIL Insights and Recommendations.

January 2024: Commissioned By Australian Consumers Insurance Lobby

Introduction

We are delighted to present our submission to the General Insurance Code Governance Committee's (**CGC**) Monitoring Priorities Consultation for 2024-25. ACIL is deeply committed to enhancing transparency, accountability, and consumer welfare in the general insurance sector.

This year's submission is the result of a collaborative effort that relied heavily on the valuable insights and expertise of claims advocates, along with input from industry experts and stakeholders. Their contributions have been instrumental in shaping our recommendations and identifying key areas that require attention.

Our recommendations are practical steps aimed at fostering a fairer and more consumer-centric insurance industry. We sincerely appreciate the CGC's dedication to this mission and hope that our submission serves as a meaningful contribution to advancing the industry's integrity and customer focus. Thank you for your commitment to this important endeavour.

Acknowledgement

We extend our sincere appreciation to the team at Claims Hero for their invaluable contributions to this submission. Their dedicated advocacy and insightful examples of consumer issues have enriched our understanding and recommendations, shedding light on critical areas of improvement in the insurance industry. Claims Hero's commitment to consumer rights and their tireless efforts to enhance the insurance landscape are commendable, and we are grateful for their partnership in this endeavour.

Concerning Insights

Alarming Trends in Code Compliance and Claim Processes

Recent figures indicate a troubling trajectory over the last five years in the realm of code compliance and claims handling:

- A 733% increase in self-reported breaches.
- A 72% rise in declined claims (percentage-wise).
- A 22.5% uptick in withdrawn claims (percentage-wise).

As the entity tasked with overseeing adherence to the Code, the CGC should view the significant rise in these trends with concern, as it potentially indicates shortcomings in governance. Such substantial escalations necessitate a thorough examination by the CGC to understand the underlying causes.

Self-Reported Breaches – A Reflection of Improved Reporting or Underlying Issues?

The increase in self-reported breaches raises questions about whether this is due to enhanced reporting mechanisms, more stringent compliance requirements, or an actual increase in the number of breaches. Comparing self-reported breach data with other breach data could provide valuable insights.

Investigation into Claim Denials and Withdrawals

The CGC should leverage data from insurers and AFCA to scrutinise specific claim types or insurers showing marked increases in declines and withdrawals. It's crucial to assess the reason for this alarming increase. ACIL expresses concerns that the hardening insurance market may be influencing the observed increase in claim denials and withdrawals. We firmly believe that market conditions should not dictate or adversely affect the manner in which insurers handle and manage claims.

Evaluating CGC's Compliance Enforcement Strategies

In the context of these rising concerns, it is imperative to evaluate whether the CGC's current compliance enforcement strategies are sufficient. The CGC's ability to apply sanctions, including community benefit payments up to $100,000 for significant breaches, seems underutilised, as evidenced by the lack of data on imposed sanctions in recent annual reports. If the CGC were to utilise this penalty it would act as a powerful incentive for subscribers to invest in compliance.

Recommendations:

- **Comprehensive Investigation and Reporting:** The CGC should undertake an in-depth investigation to comprehend the reasons behind the significant increase in self-reported breaches, claim denials and withdrawn claims. This should culminate in a detailed report providing insights and potential solutions.
- **Transparency in Enforcement:** The CGC's annual report should include explicit data on sanctions imposed on insurers. This transparency is critical for understanding the effectiveness of the CGC's enforcement mechanisms and for maintaining public trust in the insurance sector.

Fostering a Culture of Code Compliance

In our consultations it was expressed that significant variations exist in the culture of Code compliance among different insurers. Claims advocates we spoke to have noted that a culture of compliance serves as a reliable indicator of adherence to the Code. Insurers with a strong compliance culture tend to exhibit better Code compliance.

To promote a culture of code compliance across the industry, the CGC should explore methods for monitoring compliance culture. This could involve:

Conducting surveys among staff members of insurers to gauge their perspectives on compliance culture.

Surveying external parties, including AFCA, claims advocates, insurance brokers, and other stakeholders, to gain insights into cultural aspects related to compliance for individual Code subscribers. Conducting surveys with consumers whose claims have been either declined or accepted, posing detailed questions to ascertain compliance with the Code and their perception of the fairness of the outcome achieved.

Recommendations: The CGC should establish a framework for benchmarking cultural aspects associated with Code compliance. This framework should encompass key indicators from surveys with key stakeholders that contribute to improved compliance among insurers.

Expert Reports

The subject of Expert Reports remains a crucial area of concern, especially in the context of the efficacy and impact of the CGC initiatives.

Evaluation of the 'Making Better Decisions' Report

In our engagements with claims advocates, there appears to be a notable absence of improvements since the release of the CGC's 'Making Better Decisions' report in July 2023. This observation prompts a need for a thorough review. ACIL urges the CGC to actively follow up with Code subscribers to assess the implementation and effectiveness of the recommendations outlined in the 'Making Better Decisions' report.

Support for Ongoing Investigations

We acknowledge and support the CGC's ongoing investigation into the use and governance of expert reports. This initiative is crucial for enhancing transparency and accountability in the insurance claims process.

Recommendations:

- **In-depth Analysis of Insurers' Responses:** The CGC is recommended to conduct a detailed analysis to determine the actions, if any, taken by insurers in response to the 'Making Better Decisions' report. Understanding the extent of these actions is essential for measuring the report's real-world impact.
- **Continuation of the Expert Reports Inquiry:** We recommend that the CGC persists with its inquiry into expert reports. This continuous effort is vital for ensuring that the issues surrounding expert opinions are adequately addressed and resolved.
- **Enhance Engagement with Key Stakeholders:** Leverage insights from AFCA Consultants and Claims Advocates, especially for specific examples, to improve the CGC's understanding of the issue.

Improving Internal Dispute Resolution Outcomes

The effectiveness and integrity of the Internal Dispute Resolution (IDR) process within the insurance sector is a topic of significant concern. Feedback from claims advocates indicates substantial room for improvement in this area, which is vital for maintaining consumer trust and ensuring fair outcomes.

Perceived Inefficacy of the IDR Process

There is a prevalent sentiment among claims advocates ACIL spoke to that the current IDR process often serves as a perfunctory step, merely reaffirming initial dispute decisions rather than genuinely reassessing the cases. This perception devalues the IDR's role and diminishes its credibility. ACIL is concerned that numerous customers with legitimate disputes do not escalate their issues to AFCA, resulting in their acceptance of incorrect decisions.

Contrast with External Dispute Resolution (EDR) Outcomes

A notable observation is that when disputes are escalated to the Australian Financial Complaints Authority (AFCA), a different case manager within the same insurance company often overturns the IDR decision shortly after lodgement. This trend is particularly concerning in instances where the dispute submission remains largely unchanged, yet the outcome differs significantly. This inconsistency creates a perception among consumers and consumer advocates that the Internal Dispute Resolution (IDR) process may not be the effective avenue for achieving a fair resolution. Such a perception severely undermines the integrity of the IDR process.

Identifying Underlying Issues in IDR

Several factors contribute to the perceived inadequacy of the IDR process, including:

- Greater authority and decision-making power vested in insurer's EDR case managers.
- Once a complaint reaches AFCA, insurers face increased pressure to make correct decisions, as opposed to the IDR process where there are fewer consequences for errors.
- Lower experience levels among IDR team members.
- Potential overburdening of IDR case managers with higher caseloads.
- A lack of independence between the Claims and IDR functions.
- Rushed responses to complex complaints due to time constraints, evidenced by the bulk of them being delivered on the 30th day of the mandated response period.
- Inadequate communication efforts with consumers to fully comprehend their issues before delivering their final decision.
- Concerns exist about insurers potentially using the IDR process to test if consumers will escalate their complaints.
- A lack of direct communication from IDR teams with customers or advocates directly.

Recommendations:

- **Data Analysis on Early AFCA Complaint Resolution:** The CGC should obtain data from AFCA for each insurer, specifically on complaints resolved within the 30-day period post-AFCA lodgement. This should be analysed to identify any concerning behaviours and assess if insurers are violating the code or acting in bad faith during the dispute process.
- **Benchmark Reporting on IDR and EDR Resourcing:** The CGC should request insurers to report IDR and EDR caseloads to assess if workload affects dispute resolution quality. The CGC should distribute a benchmark report comparing industry resourcing levels for IDR and EDR, guiding insurers to align their resources effectively.
- **Structural Considerations:** The CGC ought to investigate the positioning of each IDR team within the organisational hierarchy. This will help determine whether the structure facilitates an independent review that can potentially deviate from the initial decision made by the Claims Function.

Enhancing Support for Vulnerable Consumers

There is a noticeable gap in the range of support options provided to vulnerable consumers by insurers. While counselling is commonly offered, advocates indicate that insurers frequently lack innovative, “out of the box” or fit for purpose solutions to effectively assist these consumers. Key mechanisms that would greatly benefit consumers are often overlooked over symbolic gestures that have little impact on the wellbeing of vulnerable consumers.

Broadening Support Options

Insurers should expand their support mechanisms for vulnerable consumers beyond counselling. This could include:

Funding claims advocates where the insurer recognises a consumer lacks the ability to effectively self-represent.

Actually fast-tracking a decision for consumers that need the decision fast-tracked.

Proactively offer alternate accommodation in situations where a home is unsafe or uninhabitable. While ACIL understands insurers' reluctance to set a precedent impacting claim payments, this should be balanced with their responsibility to support vulnerable consumers adequately.

Where there are maintenance issues, considering whether a consumer should be supported with costs of maintenance repairs (usually excluded) in cases where a consumer is facing severe financial hardship.

Establish a specialised team responsible for handling claims from customers who identify as vulnerable, ensuring this team manages a reduced caseload for more focused and sensitive support. Offering to provide funding for a consumer to obtain their own independent reports.

Recommendations:

- **Reporting on Support for Vulnerable Consumers:** The CGC should require insurers to report on:
  - The primary vulnerabilities they encounter.
  - The specific actions taken to support vulnerable consumers.
  - Additional expenditure allocated for supporting vulnerable consumers.
- **Collaborative Development of Support Strategies:** The Insurance Council of Australia (ICA) should collaborate with AFCA, consumer groups and consumer advocates to create a comprehensive list of potential strategies, including creative and out-of-the-box solutions, for assisting vulnerable consumers effectively.

Information Disclosure – Enhancing Transparency

Challenges have been identified in the information provision practices among insurers, particularly regarding:

Denial of access to crucial documents like building scope of works, expert reports, claim file notes, and call transcripts.

Noticeable inconsistencies in the process and level of information provided by different insurers.

Some subscribers overtly refuse to provide crucial information, neglecting their responsibilities as outlined in the Privacy Act and the GI COP's requirement for transparent claims handling. This issue is compounded by the varying procedures in place for providing information.

Recommendations:

- **Guidance on Information Provision:** Develop and disseminate clear guidelines for both consumers and insurers on what information is expected to be provided in various scenarios.
- **Transparency in Information Denial:** Insurers should offer clearer explanations when withholding information, referencing appropriate legislation, ensuring consumers understand the basis of such decisions.
- **Clear Policy on Information Exemptions:** Establish unambiguous guidelines detailing circumstances under which subscribers are not required to provide certain information, aligning with legal and ethical standards.

Reducing Over-Reliance on Frontline Staff for Code Compliance

A key concern ACIL have is the dependence on frontline staff for adherence to the Code, rather than integrating systematic processes to guarantee compliance. Examples include the failure to provide essential documents like Cash Settlement Fact Sheets to consumers when offering a cash settlement, providing regular updates, correcting mistakes/errors and inadequate acknowledgment of complaints and expressions of dissatisfaction.

Recommendations:

- **Analysis of Common Breaches and Preventative Measures:** The CGC should analyse the top five breaches across all insurers. It should then assess the systems and controls each insurer has in place to prevent such breaches, offering guidance to subscribers on effective strategies and tools that can be implemented to enhance compliance.
- **Product Guidance Notes** – The CGC should produce clear guidance notes for subscribers on the expectations of controls in place to ensure compliance (including examples).

Exploring the Use of Independent Claims Advocates for Reducing Disputes

The insurance claims process is often fraught with disputes, leading to consumer dissatisfaction and resource-intensive resolutions. ACIL recognises the potential value of independent claims advocates in the claims process, particularly in reducing disputes within IDR and AFCA, and enhancing consumer and insurer outcomes.

Benefits of Greater Utilisation of Independent Claims Advocates Paid for by Insurers

Effective Dispute Communication: Advocates are adept at clearly articulating disputes, bridging understanding gaps between consumers and insurers.

Objective Claim Assessment: Claims advocates play a vital role in objectively evaluating the merits of a claim. Their advice can deter baseless disputes, conserving time and resources by preventing unnecessary escalations. Given the mistrust of consumers of insurers, an independent advocate can serve as a neutral mediating, providing a balanced viewpoint.

Reduction in Dispute Escalations: The use of advocates can lead to fewer disputes being referred to IDR or AFCA.

Shortened Claim Processing Times: Involving advocates in situations where communication and trust have deteriorated between the insurer and consumer can facilitate claim progression, ultimately leading to a swifter resolution.

Enhanced Support for Vulnerable Consumers: Offering vulnerable consumers the choice of an advocate can aid insurers in addressing their specific needs more effectively, thereby leading to improved outcomes in their claims.

Clearly Articulating Outcomes: The complexity of insurance claims can be daunting for many consumers. Advocates, equipped with more time and specialised knowledge than a typical insurer's claims manager, play a crucial role in helping consumers comprehend the desired outcomes of their claims. This clarity often leads to expedited resolutions, benefiting all involved parties.

Key Situations for Advocate Utilisation Funded By Insurer

Assisting consumers with communication challenges.

Supporting vulnerable consumers.

Managing cases with unrealistic consumer expectations, or where there is a lack of understanding of the claims process.

Handling high dispute volumes, particularly during catastrophic events.

Recommendations:

- **Pilot Project:** The Insurance Council of Australia (ICA) should initiate a pilot project with select subscribers to evaluate the impact of claims advocates paid for by insurers on dispute reduction in IDR & AFCA, and on overall consumer outcomes.

Enhancing Transparency in Property Inspections

Insurers are increasingly using claims assessments as opportunities to identify unrelated maintenance issues within consumers' properties.

Consumer Impact

The impact of maintenance findings during property inspections can be significant and multifaceted, leading to various challenges for consumers:

Unexpected Repair Costs: The identification of maintenance issues often results in substantial costs for repairs that are unrelated to the initial claim. This can place an unexpected financial burden on consumers.

Compulsion towards Cash Settlements: In many cases, the discovery of these issues may compel consumers to opt for cash settlements. This could be due to the complexity or cost of addressing the identified maintenance problems.

Denial of Policy Renewals: Unrectified maintenance issues can lead insurers to deny policy renewals. This leaves consumers without coverage and potentially struggling to find alternative insurance options.

Transparency Measures

To address these concerns, insurers should prioritise transparency when sending contractors to consumers' properties for claim investigations. This transparency should include:

Clear Purpose of Inspection: Insurers should explicitly state the purpose of each inspection, clarifying whether it is solely for the claim at hand or if it includes a maintenance check.

Scope Disclosure: If the inspection extends beyond the claim, this should be communicated beforehand, detailing the areas to be inspected.

Consequences Explanation: Inform consumers about the possible outcomes of the inspection, including the identification of maintenance issues and their implications.

Recommendations:

- **Policy Review:** The CGC should review and assess the legitimacy and ethical considerations of inspections that exceed the claim's scope.
- **Mandatory Disclosures:** Implement requirements for insurers to provide advance notice and detailed explanations of the inspection's scope and potential repercussions.

Enhancing the Accountability and Performance of External Loss Adjusters

Claims consultants we interviewed highlighted a notable increase in Code breaches associated with External Loss Adjusters. These breaches primarily revolve around:

Providing regular updates.

Delays in processing claims.

Timely provision of information.

Proper identification and handling of complaints (expressions of dissatisfaction).

Recommendations:

- **Review of Loss Adjusters:** There is an urgent need to conduct a comprehensive review of the controls and oversight mechanisms currently in place for External Loss Adjusters. This review should critically evaluate the efficacy of existing controls in addressing and mitigating the identified breaches of the Code.

Heavy-Handed & Intimidating Fraud Investigation Process

Claims advocates we spoke to raised concerns regarding certain subscribers employing heavy-handed and intimidating tactics in their fraud investigations.

Concerning Behaviours

- Labelling investigations as fraud inquiries to consumers.
- Engaging global security firms who's services go beyond private investigations and may convey an intimidating presence.
- Requesting information beyond what is essential for the investigation.
- Failing to engage in a discussion with consumers before initiating investigations.

Consumer Impact

Such tactics could be perceived as attempts to pressure consumers into withdrawing their claims, particularly impacting those who are most vulnerable. It's important to emphasise that insurers have a duty to act in good faith with consumers, and the excessive use of intimidating investigations may breach this duty.

Recommendations:

- **AFCA Review Of Investigations:** Engage with AFCA case managers to determine if there is a discernible trend among certain insurers that employ heavy-handed investigation tactics that AFCA deems unnecessary or in violation of insurers' duty to act in good faith.

A Call To Action

ACIL's submission to the General Insurance Code Governance Committee's 2024-25 Monitoring Priorities Consultation serves as a call to action for the CGC & Insurers. We are deeply committed to driving positive change, and this submission reflects our unwavering dedication to improving the general insurance landscape.

Our recommendations, shaped by invaluable insights from industry stakeholders, offer a roadmap for enhancing consumer outcomes, transparency, and Code compliance. They are not mere suggestions but actionable steps that demand attention and implementation. We strongly encourage the CGC, insurers, and all relevant stakeholders to proactively implement measures to transform these recommendations into tangible consumer outcomes.

As we move forward, ACIL remains steadfast in its commitment to actively engage in collaborative efforts aimed at transforming the industry. Together, we can ensure that the principles of the General Insurance Code of Practice are upheld and that consumers receive the fair, transparent, and responsive service they deserve.

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