6 February 2024

To the Code Compliance Committee,

We refer to your Consultation Paper regarding 'Monitoring Priorities' (the Consultation Paper). We thank you for the opportunity to make a submission on the Consultation Paper.

In resolving complaints at AFCA we have identified a number of issues that have arisen that we consider would benefit from focus.

1. Delays in Claims Handling

This is frequently an issue in complaints resolved by AFCA. As evident from the Consultation Paper, complaints about claims handling is consistently either the most complained about issue in general insurance or is in the top 3 (by a small margin from the top issue). This has been the case since 2020.

In particular, following the disaster events of 2022, the number of complaints on this issue has significantly increased. It is now the most complained about issue by a significant margin.

The issues we see in complaints about delays include the following matters:

- poor communication
- poor quality of works
- poor engagement between the insurer, its representatives and the complainant
- poor quality control of builder/assessors.

We acknowledge there have been several macro environmental factors that substantively affected insurers' access to resources. This includes the shortage of trades and materials in the building industry, Covid-19, recruitment in a tight and competitive market and the war in Ukraine which affected international supply of relevant building and motor vehicle materials.

AFCA frequently makes decisions awarding non-financial loss due to insurer claim handling delays. In some cases AFCA has awarded large amounts for non-financial loss. While our limit up until 31 December 2023 was $5,300 per claim, in some complaints we have made multiple awards of non-financial loss, taking into account different aspects of the conduct of the insurer, and the effects on the complainant. It is important to note decision-makers would only award non-financial loss in relation to claim delays if they were satisfied the delays were caused by the insurer, not by the environmental factors outlined above outside the insurer's control.

AFCA typically awards the complainant non-financial loss where:

- the insurer has not made clear, consistent or regular contact
- there have been delays in the claims handling that cannot be explained or were likely caused by the insurer (e.g. delays in actioning a report or following up their contractors on outstanding information)
- there has been poor quality works undertaken by the insurer.

These awards have not been limited to a particular insurer. Instead, awards have been, and continue to be made across a wide range of insurers.

Therefore, we consider there are opportunities for improvement of insurers' claims handling processes and procedures in accordance with Code standards.

2. Cash settlements

This is a common issue we see at AFCA. Typically, the complaints can involve one, or a combination, of the following issues, whether the:

- insurer is fairly exercising its discretion to cash settle the claim
- scope of works is fair
- amount offered by the insurer is fair.

In decisions issued in the last 12 months on these issues, the following have been identified:

- scopes of works can be incomplete, inadequate or not substantiated – this inevitably means the quoted cash settlement is unfair
- insurers are relying on quotes that are not actionable (by actionable, we mean this is not a quote the complainant is able to action by using regular tradespeople in the marketplace) – this is particularly concerning as the consistent theme from consumers is that the rates and costs included in the insurer's quote cannot be matched in the market
- insurers relying on estimates without the estimate being supported by a contractor's quote
- no contingencies are included in cash settlement – AFCA's approach for several years is that a contingency should be included, particularly for home losses, to account for the risks of the works passing to the complainant (i.e. potential unforeseen repairs or variations that arise during the works). Whilst some insurers include a contingency, it is not done consistently and often no contingency has been included
- insurers seeking to cash settle when the complainant is vulnerable and in circumstances that are unfair
- the insurer has not included sufficient allowances for other policy benefits (e.g. temporary accommodation, storage of contents, etc.)
- temporary accommodation benefits are exhausted and the insurer says it will cease payment or changes its position at the last minute – this inevitably causes significant stress to the complainant.

It is important to note that we do not see these issues in every case, and inevitably AFCA sees the worst cases. Each case differs on its facts, and we do often see circumstances where an insurer's position is fair.

However, numerous decisions or assessments have been issued on the themes above in the last two years. It is probable that consumers have been unfairly affected and who have decided not to complain for whatever reason.

We are concerned that insurers' processes and procedures in settling claims, particularly for home claims, are inconsistent with their Code obligations or unfair.

3. Expert reports

We acknowledge the CGC's thematic inquiry into 'Making better claims decisions' (the Claims Report). We also acknowledge the CGC's commitment to undertake another inquiry to examine how insurers onboard and oversee the performance of their external experts.

We can confirm that there have been several cases dealt with by AFCA that have identified similar issues to that set out in the Claims Report. However, the AFCA cases have not been limited to wear and tear or maintenance clauses. That is, there have been instances where the expert report does not sufficiently link the excluded event with the damage. For example:

- a leak in a shower was identified that was likely excluded – however, it was not evident how the excluded event caused the damage claimed (being water damage to an adjacent wall) given the leak was at the bottom of the shower
- if there was a defect of workmanship issue identified, how this caused the loss claimed.

Further, during AFCA's resolution of complaints, other issues have been identified that follow a similar theme. This includes the following:

- insurers denying claims because of defects or faulty workmanship (often relying on their experts' reports) but the report or decision is either:
    - not based on the relevant standards at the time of construction, or
    - based on insufficient information about the standards at the time of construction
- an allegation of poor workmanship has been made against the insurer's contractor - the insurer is denying that based on that same contractor's opinion saying their work is not faulty.

It is important to note that AFCA does not see these issues in every complaint. There are numerous instances when the quality of the insurer's expert opinion is sufficient to support the insurer's position.

However, there have been sufficient examples of complaints that indicate potential room for improvement.

4. Vulnerable complainants

In AFCA's complaint resolution, several cases have been identified where the insurer's handling of claims involving a vulnerable complainant had significant scope for improvement. This can often arise when there is mould at the property but is not limited to only those cases.

Issues that have been identified include:

- failing to recognise the potential health risk when mould is at the property
- failing to consistently and regularly communicate with the customer
- ensuring consistent and appropriate temporary accommodation
- attempting to address the individual's particular concerns
- insufficient make safe to the property to protect it from further damage.

This is more an exception rather than the rule. There have been several instances when an insurer has identified and attempted to accommodate vulnerable complainants. This may

include exceeding temporary accommodation benefits or providing this benefit even though it has denied the claim.

However, again, there have been several cases on these themes which suggest there is still room for improvement in the insurer's systems and processes.

We trust these comments are useful and look forward to discussing them further with you.

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AFCA