Monitoring Priorities Consultation 2024-25

Response paper

July 2024

GENERAL INSURANCE
Code Governance Committee

Contents

1. Executive Summary

Following a successful consultation with stakeholders to develop our monitoring agenda and priorities for 2023-24, we undertook a similar process for 2024-25.

This consultation period ran from late November 2023 until early February 2024.

We received nine responses to the consultation from a range of stakeholders, including the Insurance Council of Australia (ICA), insurers, regulators and consumer groups.

The insights from stakeholders are valuable in helping us develop our priorities and we appreciate the efforts they made for our consultation.

The responses to the consultation revealed issues and concerns that fell broadly into three key themes:

- Cash settlements
- Identification and treatment of vulnerable consumers
- Poor claims handling.

We will ensure our 2024-25 monitoring agenda covers these themes, addressing the serious or systemic issues and the issues that pose the greatest risk of consumer detriment. Focusing our agenda like this helps us manage our priorities and use our resources most efficiently.

2. Our workplan for 2024-25

After consideration of the submissions we received in the consultation, we determined the following to feature in our workplan for 2024-25:

- **Targeted stakeholder engagement on claims handling timeframes.**
  We will engage with insurers that had more than 100 breaches per 10,000 claims in the 2023 and an increase in breaches from 2022 to 2023 to monitor root causes and improvement initiatives. We will continue to be proactive in monitoring and engaging with insurers that have reported increasing breach numbers in recent years.
- **Targeted inquiry on breach identification and compliance frameworks**.
  We will focus on insurers that do not report any breaches or consistently report a low number of breaches or significant breaches.
- **Review the information insurers provide to customers on cash settlements**.
  We will examine the information insurers provide, the processes insurers follow in deciding to offer a cash settlement, and the factors that insurers consider when deciding on a cash settlement.
- **Review concerns with insurers not recognising and accepting authorities.**
  We will examine the way insurers engage with consumer representatives (such as consumer advocates, lawyers, family and friends) and the extent to which they do not disclose information. We will consider the need for guidance for insurers on this issue.

Our enduring priorities

In addition to the slated priorities for 2024-25, we continue to prioritise our work and resources according to enduring priorities that form the core of our ongoing Code compliance monitoring:

- Code breaches that lead to significant consumer detriment
- Code breaches that cause disproportionate harm to vulnerable or disadvantaged consumers
- New or emerging risks
- Reporting from insurers.

It is important to note that we are not resourced to include all the concerns raised by stakeholders as part of the consultation.

Our workplan and monitoring agenda for 2024-25 will sufficiently cover serious or systemic issues or issues we consider to be the most important and have the greatest risk of consumer detriment.

3. Submissions

We received nine written submissions to the consultation, one of which was submitted confidentially. The remaining eight submissions are published in full on our website.

The submissions were overwhelmingly positive about our consultative approach, recognising the important opportunity to contribute towards our monitoring priorities and workplan.

The approach underscores our commitment to engaging with stakeholders and incorporating their perspectives into our work.

The three most common themes that stakeholders raised in their submissions were:

- Cash settlements
- Identification and treatment of vulnerable consumers
- Claims handling.

Cash settlements

Concerns about cash settlements included:

- Insurers offering low or unfair cash settlements
- Insurers being inconsistent with contingency or uplift payments
- Insurers seeking cash settlements when consumers are vulnerable or when it is difficult for consumers to arrange repairs themselves
- Insurers pressuring consumers to accept cash settlements.

In its submissions, the Australian Financial Complaints Authority (AFCA) noted that for several years its approach has been to include a contingency in cash settlements to account for risks such as unforeseen repairs. It noted:

- It has seen issues with insurers not including contingencies in cash settlements, or not doing so consistently.
- It is common that the rates and costs included in the insurer's quote cannot be matched by the consumer in the market.
- It has seen instances of insurers seeking to settle in cash when the consumer is vulnerable or not able to arrange repairs themselves.

Consumer Action Law Centre (CALC) and WEstJustice noted that a cash settlement transfers all the risk of rebuilding onto the consumer. An insurer has access to economies of scale and is in a stronger bargaining position. Both also noted that they are not seeing uplifts included in cash settlement offers from insurers.

Financial Counselling Victoria (FCV) provided an example of a consumer who had their cash settlement offer increased (including ex-gratia payment) by $100,000 after they got involved in assisting the consumer with the claim.

Identification and treatment of vulnerable consumers

AFCA, the Australian Consumer Insurance Lobby (ACIL), FCV and Financial Rights Legal Centre (FRLC) raised issues about how insurers identify and treat vulnerable consumers.

FCV said that financial counsellors have identified industry-wide failings by insurers in effectively supporting customers experiencing vulnerability. It noted:

"Part 9 of the Code provides only a vague description of what is expected of insurers in supporting customers experiencing vulnerability, with no guidance on what appropriate training for employees might look like."

FCV recommended that we issue guidance to support insurers to meet obligations in Part 9 of the 2020 Code consistently. It suggested the guidance consider the impacts of trauma on cognitive capacity following a significant event and the extra care and support consumers needed.

ACIL's submission expressed concerns about a noticeable gap in the range of support options insurers provide to vulnerable consumers. It stated that insurers often offer counselling, but advocates believe insurers do not have innovative or fit-for-purpose solutions to effectively assist vulnerable consumers.

AFCA noted that insurers' handling of claims for consumers experiencing vulnerability could be significantly improved. However, it also acknowledged many examples in which an insurer identified and attempted to accommodate a consumer's vulnerabilities.

Claims handling

AFCA, CALC and WEstJustice, FCV and FRLC raised concerns with insurers' claims handling practices. The main concerns were:

- Poor communication
- Claim delays
- Poor quality assessments and reports
- Poor quality repairs.

CALC and WEstJustice stated that they often see communications from insurers that are automated and do not provide meaningful updates about claims. These communications are particularly difficult for consumers who are new to Australia or from culturally and linguistically diverse backgrounds.

FCV raised issues about the length of time insurers took to process urgent claims, such as when a customer is displaced after a natural disaster. It also noted financial counsellors have reported that insurers do not expedite claims consistently – if they do at all – even when it may be warranted.

Other issues

Beyond the main three concerns, stakeholders raised a range of other issues in their submissions, including:

- Access to relevant information
- Issues with accepting authorities
- Financial hardship.

Access to relevant information

FCV raised an issue with insurers refusing to give access to certain information (for example, regarding repair works) in accordance with Part 12 of the Code.

In examples, FCV notes that insurers had redacted details regarding costs and cited the Australian Privacy Principles as justification, noting that the information relevant to their contractors was personal. FCV acknowledges that certain information may be sensitive or personal and warrant redaction, but information regarding costs should not be redacted on these grounds.

Moreover, FCV states that information regarding the scope of works, including rates and quotes, are integral to a claim and a consumer's ability to make a decision about it.

FCV asked that we review this issue and publish guidance on complying with Part 12 of the Code ('Your access to information'). FRLC recommended that we prioritise compliance with obligations in Part 12 of the Code.

Issues with accepting authorities

FCV, CALC and WEstJustice all expressed concerns about insurers not accepting their authority to act for a consumer. In their submissions, they cited relevant examples, including:

- An insurer or its third-party contractor not able to access the authority on file.
- An inappropriate requirement that an authority be an individual lawyer or financial counsellor rather than an organisation (including demands that caseworkers supply their personal information or identity documents).
- Insurers not accepting standard authorities and requiring representatives to complete bespoke forms.

CALC and WEstJustice reported raising concerns about these issues directly with senior executives of insurers for several years but have not seen improvements in their regular interactions with insurers.

Financial hardship

Financial counsellors expressed concerns about the accessibility of financial hardship support and the training insurers provide to staff.

On this issue, the ICA said it would like us to consider where the Code delivers the greatest value to individuals and small businesses beyond that which is required by the law.

The ICA said its members would welcome us revising 'Guidance Note 1 – Financial Hardship' and completing a thematic inquiry into processes for providing financial hardship support to consumers. This work was outlined in our 2023-24 workplan as a follow-up to the inquiry that looked at the financial hardship information available on insurers' websites.

However, our focus on the thematic inquiry into engagement and monitoring of external experts in claim assessments took precedence. We intend to revisit the work on processes for providing financial hardship support to consumers in 2025-26 as the ongoing review of the 2020 Code will take significant resources in 2024-25.

4. How we approach our work

Our monitoring and enforcement strategy 2024-25 guides the approach we take to our work. The strategy is framed by two key objectives:

- To drive better compliance with the Code
- To provide independent assurance on the level of compliance with the Code.

Our approach to enforcement is underpinned by a set of principles that help us to focus our work on high-value outcomes and to allocate our resources appropriately:

- **Harms-based:** We will concentrate our efforts on areas that pose the greatest risk of consumer detriment.
- **Self-reporting:** We will promote and encourage insurers to self-report breaches of the Code.
- **Forward-looking:** In addition to addressing significant historical breaches, our strategic focus will be on reducing future risks and consumer detriment.
- **Proportionality:** Our response will reflect the nature and seriousness of risk, as determined by the potential level of consumer detriment cause by the breach. This includes consideration of consumer vulnerability and financial hardship.
- **Outcomes-focused:** Part of the self-regulatory framework, we operate between consumers' interaction with insurers and intervention from legislated enforcement. If a breach sits with multiple parts of this framework, we will ensure that the relevant administrative or legislative treatment is identified to avoid inefficiency or duplication for the insurer and to ensure the fairest outcome for the consumer.

Our toolkit

We are expanding our range of options for proactive monitoring and to further explore issues and concerns expressed in the submissions to our consultation. Our toolkit includes the following:

- **Thematic inquiries:** Comprehensive analyses of an industry-wide subject or issue.
- **Targeted investigations:** More targeted than a thematic inquiry, such investigations assess the practices and performances of a limited range of insurers regarding high priority commitments in the Code.
- **Targeted audits:** Highly targeted and designed to assess Code compliance with regards to a specific issue.
- **Reports, guides, and research:** Publications to support best practice and drive better compliance with the Code.
- **Meetings with insurers and liaison:** Discussions regarding issues with an individual insurer's compliance undertaken before audit activity is required.
- **Enhanced annual data collection:** Capturing information and insights we can analyse in future years.
- **Investigations:** Detailed examination of high priority allegations and third-party referrals.
- **Sharing insights with other regulators:** Providing relevant information and data to regulatory agencies that may be better placed to address, or already addressing, specific risks and concerns.

5. Consultation process

We undertook the consultation process from 23 November 2023 to 5 February 2024.

We invited submissions from key stakeholders, including:

- Insurers
- Consumer organisations
- Industry bodies
- Other interested parties such as the Australian Securities and Investments Commission (ASIC) and AFCA.

We invited stakeholders to share their insights on concerns that may be causing detriment to consumers.

In addition to receiving written submissions, we invited the ICA, ASIC, AFCA and selected consumer advocates to present their submissions to us in person in March 2024.

This is the second consecutive year we have sought external feedback for our monitoring priorities.

Appendix A: List of respondents

Australian Financial Complaints Authority (AFCA)

Australian Consumer Insurance Lobby (ACIL)

Australian Securities and Investments Commission (ASIC) (confidential)

Consumer Action Law Centre (CALC) and WEstJustice (joint submission)

Financial Counselling Victoria (FCV)

Financial Rights Legal Centre (FRLC)

Guild Insurance Limited (Guild)

Insurance Council of Australia (ICA)

Southern Cross Travel Insurance (SCTI)

About the General Insurance Code Governance Committee

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 Committee is the independent body responsible for monitoring and enforcing Code subscribers' compliance with the Code standards. See www.insurancecode.org.au.

Statement of Recognition

We acknowledge the traditional custodians of the different lands across Australia, and pay respects to elders past, present and future. For they hold the songlines, the stories, the traditions, the culture and the hopes of First Nations Australia. This land is, was, and always will be traditional First Nations country. We also acknowledge and pay respects to the traditional custodians of the lands on which our Code team works: the Wurundjeri, Boon Wurrung, Wathaurong, Taungurung and Dja Dja Wurrung peoples of the Kulin Nation and Gadigal people of the Eora Nation.

Contact the Code Governance Committee

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